

# DEPLOYED MARINE AIR-GROUND TASK FORCE JUDGE ADVOCATE HANDBOOK



INTERNATIONAL AND OPERATIONAL LAW BRANCH  
JUDGE ADVOCATE DIVISION  
HEADQUARTERS MARINE CORPS



CENTER FOR LAW AND MILITARY OPERATIONS  
THE JUDGE ADVOCATE GENERAL'S LEGAL CENTER & SCHOOL  
U.S. ARMY

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MARINE AIR-GROUND TASK FORCE  
JUDGE ADVOCATE  
HANDBOOK**

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## CHAPTER 1

# INTRODUCTION TO THE MARINE AIR GROUND TASK FORCE (MAGTF)

“The Marine Corps is America’s Expeditionary Force in Readiness – a balanced air-ground-logistics team. We are forward deployed and forward engaged: shaping, training, deterring, and responding to all manner of crises and contingencies. We create options and decision space for our Nation’s leaders. Alert and ready, we respond to today’s crisis with today’s force...TODAY.”

**- Gen James Amos, Commandant of the Marine Corps<sup>1</sup>**

Since World War II, in nearly every crisis, the United States Marine Corps has projected forces to the crisis area with the ability to move ashore, backed with sufficient sustainability for prolonged operations. These forces have been organized into Marine Air Ground Task Forces (MAGTF), a combination that includes air, ground, and logistic assets, that maximizes the combat power of each of the war fighting elements. This capability is unique among all the military services and provides combatant commanders with scalable, versatile, and agile expeditionary forces.

The largest standing MAGTF is the Marine Expeditionary Force (MEF), which is comprised of a headquarters element, possibly multiple divisions (ground combat element), wings (aviation combat element), and logistic groups (combat service support element). The intermediate-sized MAGTF is the Marine Expeditionary Brigade (MEB), which is normally composed of a headquarters element, a reinforced infantry regiment, a composite air group, and a brigade service support element. The smallest standing MAGTF is the Marine Expeditionary Unit (MEU), which is composed of a headquarters element, a reinforced infantry battalion, a composite air squadron, and a MEU service support group. In addition to the MEF, MEB, and MEU, a MAGTF can be task organized into essentially any size for a specific mission, operation, or exercise. Such a MAGTF is referred to as a Special Purpose MAGTF (SPMAGTF).

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<sup>1</sup> General James F. Amos, USMC; Reshaping America’s Expeditionary Force in Readiness, Report of the 2010 Marine Corps Force Structure Review Group (March 14, 2011).

MAGTFs have long provided the United States with a broad spectrum of response options when U.S. and allied interests have been threatened, or in non-combat situations requiring instant responses to a crisis. Selective, timely, and credible commitments of MAGTF units have, on many occasions, helped bring stability to a region and sent signals worldwide to aggressors that the United States is willing to defend its interests and able to do so on extremely short notice with a significantly powerful force.

With these unique MAGTF capabilities come unique challenges. Three of these challenges are recurrent themes of this book: tempo, transience, and isolation. First, MAGTF operations are characterized by speed. Things move fast in the MAGTF world, from the ability to deploy at a moment's notice to the ability to execute missions within hours of receipt of a warning or execute order. As a result, MAGTF commanders and staff planners, including the judge advocate (JA), must be able to act quickly and decisively with little time for contemplation and debate. Second, MAGTFs rarely stay in one place for an extended period of time. Whether it is the MEU floating from port to port on a routine deployment or the MEB establishing a foothold in a hostile country for follow-on forces, MAGTF operations are marked by the uncertainties and the fluidity of transience. Third, because of its ability to sustain itself and fight as a combined arms package, the MAGTF often finds itself as the lone force in the early days of an operation or for an entire operation, requiring commanders and staff planners to make critical decisions and take critical actions often times with little outside support or guidance.

The unique mission of the MAGTF drives our law practice and our approach to developing and assigning JAs. Our Corps is committed to the principle that every Marine officer is a complete MAGTF officer and every Marine is a rifleman. Without a MAGTF officer background, our JAs would be less effective in their primary roles as command legal advisors, military justice practitioners, and operational law advisors.

The JA Community assigns only the most senior and experienced JAs as Staff Judge Advocates (SJAs) to the Marine Forces components, MEFs, Marine Corps Installations, and our major subordinate commands. In the context of the MAGTF, and in addition to MEF SJAs, Marine JAs serve on the commander's staff for the MEB and MEU. These assignments reflect the priority these billets have in the Corps and the role these JAs have in advising senior commanders, planning legal support of operations, and supervising the military justice process for their commands. As a key member of a MAGTF commander's

staff, the JA provides advice and guidance to the commander on all legal issues, including operational law, both in garrison and in deployed environments. The value of the JA to the commander has been demonstrated in the recent assignment of JAs to the regiment and battalion levels.

To meet the demand for legal support during combat operations, Marine JAs have been assigned on an *ad hoc*, but continuous basis to deploying regimental and battalion-level commands. As special staff officers, these JAs perform a wide range of legal and non-legal functions within the unit. Similar to higher headquarters SJAs, command JAs are intended to be the resident experts and primary advisors to the commander on such issues as the Law of War (LOW), rules of engagement (ROE), detainee handling, sensitive site exploitation, targeting, military justice, and preventive law. A deployed MAGTF JA also may be called upon to adjudicate claims in a foreign country, or resolve complex legal issues with top-level officials from nongovernmental organizations or foreign military forces as the only JA on the scene. Given these challenges, the purpose of this handbook is to help MAGTF JAs quickly identify and resolve recurring legal issues in MAGTF operations.

“Operational law” is a term that can have different meanings for different persons. A common perception is that operational law deals exclusively with ROE and the LOW. Another view is that operational law encompasses every field of law that is practiced in a deployed environment. This handbook, similar to Army legal doctrine, and guided by Marine experience, uses operational law as an umbrella term to describe those legal disciplines and functions that have a tangible impact on operations.<sup>2</sup> According to Marine Corps Order 3300.4: “Operational law is that body of international, foreign (host nation), and United States domestic laws, regulations, and policies that directly affect United States military operations across the operational spectrum – from peacetime activities to combat operations.” Operational law, as a legal support function, addresses the entire range of legal issues that arise as a direct result of planning and executing military operations.

While traditionally focused on areas such as the LOW, status of forces agreements, and ROE, it also encompasses such divergent areas as claims,

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<sup>2</sup> According to Army doctrine, “Judge Advocates serve at all levels in today’s operational environment and advise commanders on a wide variety of operational legal issues. These issues include the law of war, rules of engagement, lethal and nonlethal targeting, treatment of detainees and noncombatants, fiscal law, foreign claims, contingency contracting, the conduct of investigations, and military justice.” U.S. DEP’T OF ARMY, FIELD MANUAL 1-04, LEGAL SUPPORT TO THE OPERATIONAL ARMY at 1-1 (15 Apr. 2009).



intelligence law, law of the sea, and cyber operations. The art of providing operational law support is to identify legal and related policy issues in many divergent areas, and rapidly synthesize them in order to give timely and coherent legal advice to commanders, their staffs and Marines, and to assist commanders in the assessment and mitigation of legal risk. The ultimate goal is to ensure the Marine Corps can maintain unit readiness and conduct operations in accordance with applicable laws, regulations, and policies.

Guided by this fundamental premise of operational law as a legal umbrella, this handbook divides operational law into discrete chapters discussing the legal disciplines and functions that comprise it.<sup>3</sup>

The first substantive chapter, chapter two in order, discusses crisis action planning during MAGTF operations, specifically, the Marine Corps Planning Process (MCPD). The MAGTF JA plays a pivotal role in the MCPD, yet most JAs have had little or no MCPD training. This chapter endeavors to fill the training gap by providing a detailed description of how the process works, defining the terminology used in it, and emphasizing the critical need for JA integration into MAGTF staff planning efforts. This chapter is consistent with MCPD (MCWP 5-1) released by MARADMIN 487/10.

Chapter three addresses recurring ROE and LOW issues that arise in MAGTF operations. Rather than duplicate material covered in other publications, such as the *Operational Law Handbook*,<sup>4</sup> this chapter strives to analyze ROE and LOW issues in greater detail and with more of a focus on Marine issues and problems than found in these other works.

Chapter four is dedicated to military justice. Discussed here are topics such as the difficulties of conducting courts-martial in a deployed setting, foreign criminal jurisdiction, and nonjudicial punishment aboard a naval vessel. This chapter is not intended to be a military justice primer, but rather to augment the baseline military justice knowledge most JAs possess with a discussion of recurring criminal law issues unique to shipboard life and deployment to foreign countries.

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<sup>3</sup> This handbook also borrows from Army legal doctrine in the selection of legal disciplines. “The core legal disciplines are ... military justice, international and operational law, administrative and civil law, contract and fiscal law, claims, and legal assistance.” *Id.* at iii. Each of these disciplines is the subject of its own separate chapter in this handbook, save international law, which is more of a cross-cutting discipline that appears in many of the chapters, most prominently in the chapter on recurring ROE and LOW issues.

<sup>4</sup> INT’L & OPERATIONAL LAW DEP’T, THE JUDGE ADVOCATE GENERAL’S SCHOOL, U.S. ARMY, OPERATIONAL LAW HANDBOOK (2011).

Chapter five focuses on recurring administrative law concerns in MAGTF operations. In addition to discussions of government ethics and informal unit funds, the chapter attempts to outline the interrelationships between the various administrative investigations likely to arise in a deployed environment, most notably aircraft and ground safety mishaps.

Broadly speaking, chapter six deals with civil law. More specifically, the chapter highlights three areas of civil law that have proven difficult for MAGTF JAs to grasp: fiscal law, deployment contracting, and overseas environmental law. Somewhat of a departure from the other chapters, this chapter does not strive to take a baseline knowledge of civil law and develop finer points applicable to MAGTF operations. Put frankly, after action reports and anecdotal evidence suggest that Marine JAs have a less-than-adequate understanding of fiscal law, deployment contracting, and overseas environmental law. To help alleviate this deficiency, the chapter wades through the complexities of civil law in these three areas, capturing the essence of what a MAGTF JA should be prepared to address.

Chapter seven addresses foreign claims. The primary purpose of this chapter is to tie together claims statutes, international agreements, and claims regulations into a comprehensible whole. For example, most JAs are familiar with statutes such as the Foreign Claims Act, but few understand how the Act interrelates with status of forces agreements or the concept of single-service claims responsibility or the actual mechanics of paying a claim. This chapter attempts to provide a logical framework for the JA to follow in determining how to adjudicate and pay foreign claims.

Chapter eight's focus is legal assistance. The purpose is not to present an outline of substantive law, an undertaking that could fill an entire book, but rather to identify recurring legal assistance issues and practical concerns in MAGTF operations to better prepare the JA to provide sound counsel for Marines of the MAGTF who are in need of legal assistance.

The final chapter sets forth guidance on conducting legal research and providing legal support in a deployed environment. This chapter discusses equipment, resources, and materials to bring on a deployment, and also provides a current listing of unclassified and classified web sites useful for the MAGTF JA.

The remainder of the handbook consists of appendices. Feedback from readers of other Center for Law and Military Operations (CLAMO) publications indicates that oftentimes the materials found in the appendices prove even more useful than the substantive chapters themselves.

In the end, it should be emphasized that this handbook is not a legal “cookbook” for MAGTF JAs, nor a comprehensive collection of legal lessons learned, nor a substitute for primary sources of law. The handbook’s focus is on recurring legal issues faced by deployed MAGTF JAs and constitutes an ambitious attempt to offer legal insight, analysis, and, when possible, guidance.

## CHAPTER 2

### JUDGE ADVOCATE'S ROLE IN THE MARINE CORPS PLANNING PROCESS (MCP)

#### I. INTRODUCTION - OVERVIEW OF JUDGE ADVOCATES ON OPERATIONAL STAFFS

In the operational environment, judge advocates are special staff officers often located on a battalion level or above staff within the Ground Combat Element (GCE), the Aviation Combat Element (ACE), and the Logistics Combat Element (LCE) of a Marine Air Ground Task Force (MAGTF). The nature and degree of integration of a judge advocate into the staff and the involvement in the Marine Corps Planning Process (MCP) can vary. In the case of battalion and regimental command judge advocates, there is no structure for judge advocate billets and the officers have historically been assigned as individual augmentees ("IAs") to the units. Ideally, these officers should participate in the unit's Pre-Deployment Training Program (PTP), to include exercises like Enhanced Mojave Viper. Early assignment and participation in established training programs will enhance integration into the staff and the MCP. Judge advocates on ACE and LCE staffs are often times already filling billets on those staffs and so they are able to enhance their integration into the staff and the MCP during PTP. The judge advocates on MEU staffs also enhance their staff and the MCP integration during MEU work-ups.

For purposes of the MCP, judge advocates act as advisors, planners, and legal services support representatives under the six warfighting functions. Based upon the commander's philosophy and existing unit standard operating procedures, advice is communicated in various ways across the command and staff sections to different audiences during the course of the planning process. In the early portion of the MCP, the judge advocate's role will often times more closely resemble an educator to the commander and staff through the provision of a general overview of principles and applicable law, regulations, and policy.

As the MCP progresses, the judge advocate's attention will normally begin to focus on specific issues within planning cells or general operational issues identified during the development of the plan. The judge advocate will

refine his or her general overview to apply to particular issues within a Course of Action (COA). Throughout the entire process, it is important for the judge advocate to recognize that he or she should be continuously communicating with the commander and staff. Judge advocates, like other staff officers, should routinely initiate contact with their counterparts at higher, adjacent, supporting, and supported commands. The intent of the open technical line of communication is to provide the judge advocate with a resource to discuss complex and nuanced legal and policy issues, and to ensure that the applicable staff plan nests with the higher headquarters staff plan. As an advisor and planner, the judge advocate must also be able to memorialize his or her advice into the plan. This advice is usually explicitly written into certain portions of applicable annexes and appendixes and often times as a separate stand-alone legal appendix in the plan.

In order to efficiently and effectively fulfill the role of a trusted advisor and planner on a staff, the judge advocate must be a technically and tactically proficient MAGTF officer, an integrated staff officer, and a competent attorney. The judge advocate is expected to be competent and proficient at offering advice and support across core legal and military functions, providing a “plug and play” asset for the commander and serving as a versatile force-multiplier. Additionally, the judge advocate must be able to integrate into the staff and the process and understand the MCPP. A judge advocate with these capabilities will have the opportunity to properly incorporate advice into the MCPP at the appropriate times and will ensure that the command complies with existing laws, regulations, and policies. Finally, communication and trust, as much as substantive competency and proficiency, are the bedrocks to providing effective advice and support.

## **II. BASIC PRINCIPLES OF LEGAL ADVICE TO THE PLANNING PROCESS**

For purposes of the MCPP, efficient and effective legal advice is built on three basic principles:

*Knowledge of the law.* All judge advocates must possess knowledge of the relevant applicable law, regulations, and policy to be effective advisors and planners. This knowledge of the law can be enhanced through participation in pre-deployment legal training (PDLT), and attendance at operational law, fiscal law, and contract law training courses. Issue spotting is critical and

communication up the technical lines of communication with judge advocates and SJAs at higher headquarters and adjacent commands on complex issues is recommended.

*Knowledge of the situation.* Knowledge of the operational situation shapes the framework for the advice to be given. Knowledge of the situation is gained through integration into the staff and the planning process, which is designed to expose, analyze, synthesize, and evaluate the situation. A staff that properly executes the battle rhythm in an operational environment is continually updating its knowledge of a situation. The planning process then isolates the problem at a point in time and places it into a manageable framework in order to achieve a solution.

*Knowledge of the planning process.* Understanding the planning process enables the judge advocate to effectively take his or her knowledge as it applies to a situation and integrate this knowledge into the plan at the appropriate time through the planning process. Effective integration of the entire staff, to include the judge advocate, into the planning process will minimize the potential for inefficiency and friction points. This integration also promotes the proper allocation of time for the development of viable COA's.

### **III. MEASURES OF EFFECTIVENESS FOR JUDGE ADVOCATE ADVICE IN THE PLANNING PROCESS**

A solid operational foundation, combined with sound advice throughout the planning process, enhances a judge advocate's effectiveness. There are at least five measures of effectiveness for advice provided by judge advocates in the planning process:

*Relevant.* Advice must be both applicable to the situation and provided to those who need it.

*Timely.* Advice must be available to all who require it when they require it.

*Accurate.* Advice must be accurate as applied to the facts and in accordance with applicable laws, regulations, and policies.

*Complete.* Advice must meet the needs of the plan or order as it moves forward in the process and as COA's are developed, new issues arise and branches and sequels are explored.

*Usable.* Advice must be provided in such a manner as to be meaningful to commanders, planners, and other staff members who are not well versed in many of the laws, regulations, and policies that are present in today's complex operational environment.

The accomplishment of these five measures of effectiveness is premised upon the judge advocate knowing the law, knowing the situation, and knowing the planning process.

#### **IV. OVERVIEW OF THE MCPP**

The MCPP supports the Marine Corps warfighting philosophy of maneuver warfare and focuses on the mission and threat. Marine Corps Doctrinal Publication 5, *Planning*, provides a definition of Marine Corps planning as the "art and science of envisioning a desired future and laying out effective ways of bringing it about." Planning is an essential element of command and control. The intent of command and control is to enhance the commander's ability to make timely and sound decisions. Effective decision-making requires both the situational understanding to recognize the essence of a given problem and the creative ability to devise a practical solution.

The MCPP is the formal methodology that is used by staffs to frame the problem and to develop a practical solution. Marine Corps Warfighting Publication 5-1, *Marine Corps Planning Process*, is the seminal Marine Corps doctrine on this subject. The MCPP encompasses six steps: Problem Framing, COA Development, COA War Gaming, COA Comparison and Decision, Orders Development, and Transition. Each of these steps will be more fully examined later in this chapter.

The MCPP applies to both deliberate and crisis action planning and results in various plans or orders. If there are time constraints precluding the use of the full six-step MCPP, then commanders and staff may use the Rapid Response Planning Process (R2P2), a compressed version of MCPP. The R2P2 process is generally employed by Marine Expeditionary Units (MEU) staffs and

provides them with the capability to go through the planning process and execute certain tasks within six hours. The R2P2 process is dependent upon the use of Standing Operating Procedures (SOP).

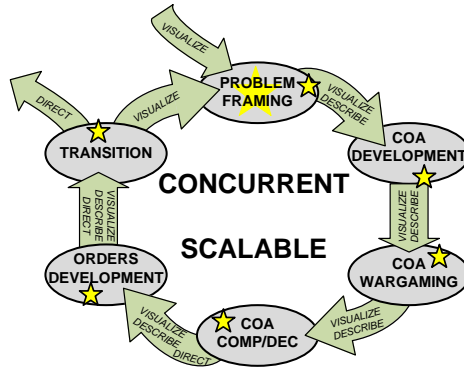
It is important to recognize that the MCPP should not be viewed as a rigorous six-step sequential process, but instead as a dynamic and iterative process that involves a planning, execution, and assessment continuum. Based upon fluid operational environments, commanders and staff must apply a conceptual and articulated framework called “design” to solve a problem. The purpose of design is to achieve a greater understanding of the environment and the nature of the problem in order to identify an appropriate conceptual solution. Design is based upon five basic concepts. The first is critical thought through analysis, synthesis, and evaluation of the situation. The second is conceptual planning. The third is visualization of the problem by the commander to provide a snapshot of his or her understanding of the problem. The fourth is the emergence of a hypothesis and the fifth is continuous activity to ensure that there is reoccurring evaluation within the process.

There are three fundamental tenets of the MCPP that guide the commander’s actions and the use of the staff during the planning process. The first is top-down planning and is based on the premise that planning is a fundamental responsibility of command. The commander must not just participate in planning, the commander must drive the planning process. His or her personal involvement and guidance are key to planning. The second tenet is single-battle concept which provides that operations and events in one part of the battlespace can have a significant effect on other areas; therefore, the commander must always view the battlespace as an indivisible entity (rear, close, and deep). Commanders prepare for a single-battle effort during planning through their issuance of commander’s intent. The third tenet is integrated planning which advocates a staff coordinating action towards a common purpose. Integrated planning is facilitated by the assignment of certain personnel with an appropriate level of knowledge of their respective organization or activity to an appropriate Operational Planning Team (OPT). The key to integrated planning is to involve the right personnel from the appropriate organization or activity in the planning process as early as possible to consider all relevant factors, reduce omissions, and share information as broadly as possible. These three tenets guide the commander’s use of the staff during the process.



## A. THE MCPP

The six steps in the MCPP are illustrated below:



The plans or orders resulting from the MCPP may be considered hypotheses that will be tested and refined as a result of execution and assessment. The six steps in the MCPP are broken down in more specific detail as follows:

- 1.) *Problem Framing* enhances an understanding of the environment, the nature of the problem, and identifies what the command must accomplish, when and where it must be done and, most importantly, why—the purpose of the operation. The purpose is articulated in the mission statement (task and purpose). The purpose of the operation, which is enduring, is re-stated and expanded as desired in the commander’s intent. Since no amount of subsequent planning can solve a problem that is insufficiently understood, Problem Framing is the most important step in the planning process. This understanding allows the commander to visualize and describe how the operation may unfold, which he or she articulates as the commander’s concept—his or her overall picture of the operation. The commander’s concept is also known as the concept for operations, operational concept, or method. As planning continues, the commander’s concept becomes more detailed, providing additional clarity and operational context. Design does not end with Problem Framing, because the situation constantly evolves requiring the commander to continually review and possibly modify the design.

- 2.) *COA Development* produces options for accomplishing the mission in accordance with commander's intent. Simply put, COA development is about providing options for the commander while continuing to refine the design, including understanding of the environment and problem, and the approach to solving the problem.
- 3.) *COA War Game* examines and refines the options in light of adversary capabilities and potential actions/reactions as well as the characteristics peculiar to the operating environment, such as weather, terrain, culture, and non-DoD entities or stakeholders. This detailed examination of the operational environment and possible adversary reactions should forge a greater understanding of the environment and the problem as well as possible solutions.
- 4.) *COA Comparison and Decision* allows the commander to review the pros and cons of the options and decide how he will accomplish the mission, either by approving a COA as formulated or by assimilating what has been learned into a new COA that may need to be further developed and wargamed.
- 5.) *Orders Development* translates the commander's decision into oral, written, and/or graphic direction sufficient to guide implementation and initiative by subordinates.
- 6.) *Transition* may involve a wide range of briefs, drills, or rehearsals necessary to ensure a successful shift from planning to execution. A number of factors can influence how transitions are conducted, such as echelon of command, mission complexity, and, most importantly, available time.

The judge advocate must be intimately familiar with and integrated into this process in order to ensure his or her advice and potential work product are relevant, accurate, timely, usable, and complete.

## **B. PROVIDING ADVICE TO MEET THE TENETS WITHIN MCPP**

Throughout the planning process there are opportunities for the provision of staff estimates, estimates of supportability, and support concepts. These

opportunities present themselves in a complementary manner to the process and provide judge advocates with a mechanism to integrate his or her advice into the plan.

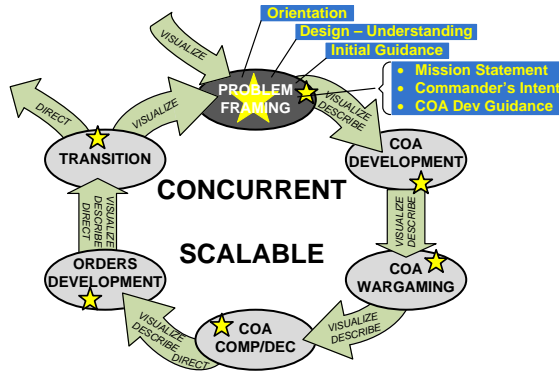
It is critical for judge advocates, particularly ones that are new to the MCPP, to identify the earliest opportunity to provide his or her advice in order to be relevant and timely. If this opportunity is missed, then the judge advocate will likely provide an “estimate of feasibility of support” after planning has already taken place and runs the risk of being perceived as an impediment to the process. Taking advantage of the earliest opportunity to provide advice will effectuate an improvement in the integration of that advice into the plan and will result in a greater probability of a legally feasible plan being developed without interruption. This can be accomplished through regular OPT participation and through maintaining awareness of the different operational and legal issues that arise. At some levels of command, there may be only one judge advocate on the staff, let alone on the OPT, and so it is important to recognize that he or she cannot be everywhere at once. Judge advocates will need to prioritize the division of labor and participation in different staff meetings and OPTs.

Existing laws, regulations, and policies are part of the operational environment and everyone must understand the environment prior to the initiation of mission planning. The judge advocate must be proactive and embrace the idea of early integration. Initially, a judge advocate may not possess a full understanding of the situation necessary to give *complete* advice; however, neither will anyone else on the staff. A stated purpose of planning is to develop the situation. Based upon his or her knowledge of the law and understanding of the situation at that moment, however, the judge advocate should be able to provide a broad overview of the applicable laws, regulations, and policies in a particular situation. This will educate the commander and staff so that any formulated ideas in the early stages of the planning process will respect this “legal” environment just as it respects the enemy, troops, and terrain.

The MCPP embraces the concept of understanding the environment early within “Problem Framing”, *the first step* in the process. Within this initial step the judge advocate should provide a general overview of applicable laws,

regulations, and policies to a particular situation, and in so doing, will have gone far in accomplishing the measures of effectiveness.

### C. EARLY INTEGRATION - PROBLEM FRAMING



The Commander’s Orientation is the first of many venues where the commander, the staff, and subordinate commanders will collaborate through the exchange of information and the sharing of ideas and perspectives. The Commander’s Orientation is the initial step in the design effort to begin to frame the problem as a basis for developing possible solutions. The specific content of the Commander’s Orientation will vary, but most importantly, the Commander’s Orientation demonstrates the commander’s personal involvement in the planning process and allows him to set the tone for the commander and staff dialogue. Once the Commander’s Orientation is provided, the commander, staff, and others may participate in subsequent discussions, or “design discourse”, to collectively gain an enhanced understanding of the *environment* and the nature of the problem.

Understanding the environment is an important aspect of design. The essential activities in understanding the environment include critical thinking and open discussion by all participants, including the commander, to help expose a broad range of ideas to be considered in the identification of the problem. Useful items to consider include design results from higher headquarters to include orders and commanders guidance, and Intelligence Preparation of the Battlespace (IPB). The IPB gives the commander the ability to gain an understanding of the adversary in the context of the broader operational environment. Understanding the environment also provides background information, facts, status, connections, relevant actors, habitat,

local beliefs, and a broad range of other factors that serve as context for the commander and staff to more thoroughly understand the problem.

Possessing an appreciation of the environment, the design effort shifts to understanding the problem. The essential activities in understanding the problem continue to be critical thinking and an open, frank discussion to help reveal the underlying nature of the problem. Understanding the problem facilitates the finding of possible solutions. As with the environment, the problem includes a number of factors to include initial staff estimates, input, and assessments. This is an opportunity for the judge advocate to provide his or her initial advice. The judge advocate applies his or her particular understanding of the environment to laws, regulations, and policies. He or she is able to assist the commander and staff in setting the left and right lateral limits of the battlefield for policy and legal matters.

Problem framing presents the first and best opportunity for the judge advocate to educate his or her commander and the staff on the legal parameters for the operational environment. This early integration in the process weaves the applicable laws, regulations, and policies into the entire planning process. This early advice assists the commander and the staff in developing legally supportable COAs and focuses them into the arena of viable solutions. This is a solid first step by the judge advocate to facilitate the staff focus on the supportable vice the unsupportable and results in efficient use of available time. As an educator during the problem framing stage, the judge advocate is providing *relevant* advice and by being relevant – as well as *timely and accurate* - the advice effectively becomes part of the process and ultimately woven into the plan or order.

The judge advocate's role continues as the planning process moves forward. Ultimately, the product of the "Problem Framing" stage is the development of the commander's intent, mission statement, and COA development guidance. The judge advocate must continue to integrate into the process when it moves into the next stages of planning.

#### **D. FURTHER INTEGRATION: ACHIEVING CONTINUED ACCURACY AND COMPLETENESS**

The judge advocate must continue forward in his or her role as advisor throughout the remaining steps in the planning process. Just as all planners will continue to refine their input, the judge advocate will refine and update his or her advice as it applies to the developing situation. In continuing to participate in the process in this manner, the judge advocate is ensuring that his or her advice is *accurate and complete*. As the planners fill in the details through COA development and wargaming, so will the judge advocate fill in the details of the broad legal parameters that were initially provided. The judge advocate will work to refine and provide further detailed guidance, especially as the nature of the plan itself is added to the equation.

This process of refining advice would continue from COA Development to COA War Gaming. In “COA War Gaming” the purpose of the process becomes improving the plan through examining and refining options in light of the adversary capabilities and potential actions/reactions as well as other factors peculiar to the operation in a developing and evolving environment.

This wargaming enables the commander and the staff to determine the advantages and disadvantages of each COA and forms the basis for the commander’s COA comparison and decision. COA wargaming involves a detailed assessment of each COA, to include support estimates, as they relate to the enemy and the other elements of the battlespace. This support estimate for the judge advocate goes further than simple supportability – “No legal issues.” The assessment of the COA’s through their application presents the judge advocate with another opportunity to refine his or her advice based on what he or she learns of the situation and the ability to further educate the staff in the applicable laws, regulations, and policies.

The refinement of advice and guidance continues and intensifies as the process moves to COA comparison and COA selection. The comparison is many times an open forum event. Commanders and staff gather to present the COA’s and provide assessment of supportability based upon their area of expertise and what was learned of the environment and the plan through the wargaming process. The staff may simply provide estimates by recording a vote on a matrix. However, because the next step is a decision point for the

commander – which COA is to be pursued – the commander will probably desire to not only hear “supportable,” but the reasons for a plan being supportable or not from the planning cell member based upon that member’s particular area of expertise.

At this point, the role of the judge advocate is as an advisor. Based on the area of expertise, the judge advocate must formulate an opinion for the commander as to why one specific COA is more legally supportable than the other COAs. Typically, it is not enough to say, “They are equally supportable.”

Additionally, the judge advocate is not an operator and should try to limit the recommendation to a legal basis. Provided the judge advocate has been fully immersed and integrated into the planning process, he or she should possess sufficient insight into the legal nuances of the situation to be able to articulate why one COA is more legally supportable than the other COAs. In providing this recommendation to the commander, the judge advocate’s advice must be *usable*.

Once the commander makes the decision on the appropriate COA, the judge advocate must take all of the advice provided throughout the process and put it in final form either in a confirmation brief or through order writing. The judge advocate must distill the broad legal parameters, refined advice and guidance, and supportable estimates and help place them in an order. This final act ensures the *completeness* of the judge advocate’s advice.

## V. CONCLUSION

A judge advocate is able to efficiently and effectively fill the role of an advisor, a planner, and a legal services support representative under the six warfighting functions on a staff during the MCPP when he or she has provided relevant, timely, accurate, complete, and useable advice. A judge advocate’s knowledge of the law, the situation, and the process together with full integration into the planning process ensures that the final solution to a problem in the form of the commander’s plan or order is in compliance with existing laws, regulations, and policies.

## CHAPTER 3

# RECURRING RULES OF ENGAGEMENT AND LAW OF WAR ISSUES IN MARINE AIR-GROUND TASK FORCE OPERATIONS

### I. INTRODUCTION

This chapter addresses a range of Law of War (LOW) and Rules of Engagement (ROE) issues that frequently arise in MAGTF pre-deployment training and real-world operations. With stability and security operations (SASO) now given equal importance to combat operations,<sup>1</sup> the deployed judge advocate must anticipate the needs of commanders and Marines, and the diverse legal issues they will face. The “Three-Block War” predicted by General Charles C. Krulak, former Commandant of the Marine Corps, has become the rule rather than the exception, and MAGTF commanders train for these full-spectrum operations.<sup>2</sup> Marine Expeditionary Units (MEUs) in particular can expect to engage in real-world, full-spectrum operations, in semi-permissive environments where potentially hostile forces are intermixed with a civilian population.

Preparing Marines to be able to shift from direct combat operations to SASO requires the judge advocate to be able to clearly define and articulate subtle legal aspects of operations that can be critical to mission success. The difference between ‘militia fighter,’ ‘terrorist,’ or ‘suspected pirate’ can mean a great deal to an operational commander and higher headquarters even if they are impossible for a Marine rifleman to distinguish on sight. Despite our participation in armed conflicts during the last decade, there is still misunderstanding of LOW and ROE principles that you must be prepared to address. Becoming familiar and comfortable with the concepts contained in this chapter will assist in this regard.

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<sup>1</sup> DOD Directive 3000.05, (November 28, 2005)

<sup>2</sup> General Charles C. Krulak, The Strategic Corporal: Leadership in the Three Block War. *Marine Corps Gazette* Vol. 83, Issue 1 (January 1999)



## II. LEARNING THE FUNDAMENTALS OF LOW AND ROE

### A. LAW OF WAR (LOW)

A number of military publications listed in the section below give detailed treatment of the LOW and its applicability to U.S. service members. The detailed treatment of the four LOW principles (Military Necessity, Distinction, Proportionality, and Humanity) does not need repeating in this Handbook. It is important to keep in mind, however, that ROE should never be inconsistent with these principles, and that ROE training includes the training of these LOW principles in a mission-specific context.<sup>3</sup> The Marine Corps LOW Program requires ROE training as a ‘specialized’ training topic for Marine Corps officers and SNCOs expected to lead troops in combat, plan for combat operations, direct prisoner of war handling, investigate alleged war crimes, or direct contingency operations among foreign civilian populaces. There is also required ‘follow-on’ training for all deploying Marines and for all students in our formal schools. In the era of the ‘Strategic Corporal,’ it is equally important for junior leaders to understand how ROE is derived from, and shaped by, the intersection of the LOW and policy. When at all possible, include ROE training with LOW training pursuant to the Marine Corps LOW Program.<sup>4</sup>

Military operations during the Global War on Terrorism have revealed challenging legal issues in the LOW. In our counterterrorism (CT) efforts against al Qaeda and associated forces, the foundation of the military’s domestic legal authority continues to be the Authorization for the Use of Military Force (AUMF) passed by Congress one week after 9/11.<sup>5</sup> In the AUMF, Congress authorized the President to:

“...use all necessary and appropriate force against those nations, organizations, or persons he determines planned, authorized, committed, or aided the terrorist attacks that occurred on September 11, 2001, or harbored such organizations or persons, in order to prevent any future acts of international terrorism against the United States by such nations, organizations or persons.”

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<sup>3</sup> Mark S. Martins, Rules of Engagement for Land Forces: A Matter of Training, Not Lawyering, 143 MIL.L. REV. 1, 71–76 (1994).

<sup>4</sup> MCO 3300.4 Marine Corps Law of War Program (Oct 20, 2003)

<sup>5</sup> Pub. L. No. 107-40, 115 Stat. 224 (September 18, 2001).

More than ten years later, the AUMF remains the bedrock of our CT efforts and it is still a viable authorization today.

Within the detention context, the current Administration has interpreted this authority to include:

“...those persons who were part of, or substantially supported, Taliban or al-Qaeda forces or associated forces that are engaged in hostilities against the United States or its coalition partners.”<sup>6</sup>

This interpretation of our statutory authority has been adopted by the courts in the habeas cases brought by Guantanamo detainees,<sup>7</sup> and in 2011 Congress joined the Executive and Judicial branches of government in embracing this interpretation when it codified it almost word-for-word in Section 1021 of the National Defense Authorization Act.<sup>8</sup> (A point worth noting here: contrary to some reports, neither Section 1021 nor any other detainee-related provision in the Defense Authorization Act creates or expands upon the authority for the military to detain a U.S. citizen.)

It is significant to note that the AUMF, the statutory authorization from 2001, is not open-ended, and this is a source of frustration and confusion for our commanders. It does not authorize military force against anyone the Executive Branch labels a “terrorist.” Rather, it encompasses only those groups or people with a link to the terrorist attacks on 9/11, or associated forces.

The concept of an “associated force” is also not open-ended, as some suggest. The concept has become more relevant over time, as al Qaeda has, over the last 10 years, become more de-centralized, and relies more on associates to carry out its terrorist aims. This concept, too, has been upheld by the courts in the detention context,<sup>9</sup> and it is based on the well-established concept of co-belligerency in the LOW.

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<sup>6</sup> See Respondent’s Memorandum Regarding the Government’s Detention Authority Relative to Detainees Held at Guantanamo Bay, *In re: Guantanamo Bay Detainee Litig.*, Misc. No. 08-0442, at 1 (D.D.C. March 13, 2009).

<sup>7</sup> See *e.g.*, *Al-Adahi v. Obama*, 613 F.3d 1102, 1103 (D.C. Cir. 2010), *cert. denied*, 131 S. Ct. 1001 (2011); *Awad v. Obama*, 608 F.3d 1, 11-12 (D.C. Cir. 2010), *cert. denied*, 131 S. Ct. 1814 (2011).

<sup>8</sup> Section 1021 of the National Defense Authorization Act for Fiscal Year 2012, Pub. L. 112-81 (December 31, 2011).

<sup>9</sup> See, *e.g.*, *Barhoumi v. Obama*, 609 F.3d 416, 432 (D.C. Cir. 2010); *Hamilly v. Obama*, 616 F. Supp. 2d 63, 74-75 (D.D.C. 2009); *Gherebi v. Obama*, 609 F. Supp. 2d 43, 69 (D.D.C. 2009).

An “associated force” has two characteristics to it: (1) an organized, armed group that has entered the fight alongside al Qaeda, and (2) is a co-belligerent with al Qaeda in hostilities against the United States or its coalition partners. In other words, the group must not only be aligned with al Qaeda, but it must also have entered the fight against the United States or its coalition partners. Thus, an “associated force” is not any terrorist group in the world that merely embraces the al Qaeda ideology.

The US warfighter has been placed in the position of operating within the area where an individual’s status may not be obvious. Determinations of proper legal status extend to detainees. Debate continues over the “unprivileged enemy belligerents” detained in Guantanamo Bay, Cuba more than ten years after their capture.<sup>10</sup>

Doctrine is now full of terminology that has no source in international law but attempts to clarify issues for the benefit of the warfighter. Terms like Positive Identification (PID), Likely and Identifiable Threats (LITs), Troops-in-Contact (TIC), and Time Sensitive Targets (TSTs) are now found and variously defined in different sources. These modern attempts to assist in the distinction of lawful targets and prevent collateral damage are only tools for the warfighter and do not reflect a consensus of approval in international law.

Much of this new terminology was developed in response to confusion from early versions of OIF and OEF ROE at a time when combatants dressed as civilians became the norm. In addition, law review articles and journals are replete with suggestions for ‘updating’ the LOW to bring it in line with modern conflicts.<sup>11</sup> As a rule: commanders and warfighters abhor the LOW gray areas and will prefer simple and clear-cut rules and interpretation. Commanders and planners will usually understand the targeting difficulties in the modern battle space, but ‘trigger pullers’ often express frustration with conducting operations in the ‘gray area’ created by an enemy without a uniform. There is no international consensus for the ‘right’ answers to these questions, but there are relatively clear DoD policies on how to treat detainees, conduct interrogations, execute operations, and how to apply the LOW to operations. You will be

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<sup>10</sup> While US policy has remained consistent, the determination of ‘unlawful combatant’ status and use of military tribunals as the proper mechanism for prosecution has been challenged in US Federal Courts and has no international consensus.

<sup>11</sup> A good example of a new look at LOW is Laurie R. Blank and Amos Guiora, Updating the Commander’s Toolbox; New Tools for Operationalizing the Law of Armed Conflict. *PRISM, Journal for the Center for Complex Operations*, Vol 1, No 3. (June 2010). Law Reviews since 2001 have been replete with analyses of International Humanitarian law.

expected to understand these issues and offer approaches to mitigate their effects.

## **B. ROE SOURCES AND RESOURCES**

ROE is generally issued as specific directives and prohibitions in a mission order. OPLANs will have an ROE annex, and OPORDs and EXORDs will frequently have an ROE paragraph. However, the decision to use force must be based on broader information. The ROE must be read, understood, and trained in conjunction with the Commander's Intent and Guidance, which can be found in accompanying language from the orders as well as separate orders and directives, such as Tactical Directives, Fragmentary Orders (FRAGOs), and Special Instructions (SPINs). Restrictions and limitations on a commander's ability to shoot, move, and communicate can be found in a wide range of orders and documents, and the judge advocate must know where to look to find all relevant sources. Think of the use of force guidance as a hierarchy, with layers of permissions and limitations prescribed at different commands. Understanding the use of force policy for a mission requires looking for ROE and the accompanying guidance at each layer, consolidating them, and then defining and explaining the restrictions and authorities to any element of the mission: from the mission commander to the rifleman.

It may be helpful to search sources for use of force guidance in the following order:

1. Chairman of the Joint Chiefs of Staff Instruction 3121.01B, *Standing Rules of Engagement/Standing Rules for the Use of Force for U.S. Forces* (SROE/SRUF).<sup>12</sup> Updated in 2005 with significant revisions, the SROE/SRUF is the original source document, upon which all other ROE references are built. The unclassified provisions on Self-Defense and Declared Hostile Forces must be thoroughly understood. In addition to substantive ROE provisions, the SROE/SRUF contains the policy behind various provisions, as well as detailed procedures for requesting supplemental ROE that may be needed for a particular mission. Enclosure J: RULES OF ENGAGEMENT PROCESS is unclassified and gives further guidance on determining and developing mission-specific ROE. The Table of Contents is also unclassified and should be kept on-

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<sup>12</sup> CHAIRMAN, JOINT CHIEFS OF STAFF, INSTR. 3121.01B, STANDING RULES OF ENGAGEMENT/STANDING RULES FOR THE USE OF FORCE FOR U.S. FORCES (13 Jun. 2005) (partially classified) [hereinafter SROE/SRUF].

hand as a reference for issue spotting. The current version of the CJCS SROE is presently undergoing its five year review and a new version of the instruction was due out in 2013.

2. Combatant Command (COCOM)-Specific Rules of Engagement.

These classified documents are maintained by the J3 and/or SJA for each Regional Combatant Commander. They will incorporate regional and culturally-specific limitations, usually for national strategic effect.

3. COCOM or Joint Task Force (JTF) level memorandum and messages limiting/regulating use of force. COCOMs may have specific directives concerning LOW/ROE issues, such as preventing collateral damage or detainee operations. These messages may not be called ROE, but often will impose ROE-like provisions. A common example of this is the Tactical Directive in effect in Afghanistan.

4. COCOM Level-OPLAN/OPORD/FRAGOs for specific mission-sets.

These will also be classified and can relate to specific mission types or events. They could also be issued by the Component Commander of each theater. Example: NAVCENT OPORDs regarding piracy.

5. Task Force Level and below OPORD/FRAGO. A TF may also designate specific limitations, whether or not they are listed as ROE. For coalition operations, there may be guidance from the COCOM level on how to reconcile differences between coalition and US ROE.

6. Status of Forces Agreement (SOFA)/Diplomatic Notes (DipNotes).

SOFAs or DipNotes may contain authorities and restrictions that affect the use of force. They will typically be contained in orders issued by COCOM or TF commanders. If a discrepancy is discovered, consult the HHQ SJA for guidance and inform your commander.

7. UN or other International Organization documents. Operations under a UNSCR mandate may contain limitations on the scope and purpose of an operation. While these will normally be incorporated in the OPORD received, they should be reviewed to ensure plans are consistent with the mandate.

8. Host Nation law. No judge advocate is going to be an expert in host-nation laws worldwide, but some basic research or guidance from US

Embassy personnel or COCOM SJA in the host nation may reveal Host Nation (HN) domestic laws that limit operations.

9. Other force-limiting instructions or messages. Often related to Fires, Targeting, and Air Ops, documents such as SPINS often have an ROE subsection and may provide guidance and limitations on search and rescue in a nation's airspace or territorial waters. The Fire Support and Force Protection annexes to an OPLAN or OPORD may also have ROE-like limitations. Consult the staff Air, Fires, and Force Protection Officers early in mission planning to locate and incorporate these limitations into ROE briefings. It is also extremely important to understand who holds target engagement authority for certain targets based on collateral damage issues.

Ideally, the COCOM and/or TF SJA section will maintain a classified database of ROE related documents, with clear guidance of any revoked or expired restrictions. COCOM and Command SJAs should also maintain a database of applicable SOFAs and international agreements within their AO.

In addition, Navy Fleet Commands and squadrons are linked by the Collaboration-At-Sea (CAS) classified SharePoint site.<sup>13</sup> CAS access requires registration and approval, normally based on assignment to a fleet unit. CAS sites can be very useful as Task Forces maintain all their relevant operations documents in one place.

While the above are the common sources of ROE, below are useful resources to better understand ROE and how to best define it and apply it in different situations:

1. *Operational Law Handbook*.<sup>14</sup> The *OpLaw Handbook* is published regularly by the International and Operational Law Department at the Judge Advocate General's Legal Center and School. The *OpLaw Handbook* contains a chapter on ROE, as well as other chapters dealing with Law of War issues. The regular republishing of the *OpLaw Handbook* ensures that the information is relatively up-to-date.

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<sup>13</sup> Available on SIPR only, the CAS New User Registration can be accessed at <http://205.0.215.194/reg.nsf>

<sup>14</sup> INT'L AND OPERATIONAL LAW DEP'T, THE JUDGE ADVOCATE GENERAL'S LEGAL CENTER AND SCHOOL, U.S. ARMY, OPERATIONAL LAW HANDBOOK (2010) [hereinafter OPLAW HANDBOOK].

2. NATO MC 362, *NATO Rules of Engagement*.<sup>15</sup> This document is a valuable reference to review and have on hand for operations carried out in connection with NATO forces or affected by the actions of NATO forces.

3. Department of Defense Directive 5210.56, *Carrying of Firearms and the Use of Force by DoD Personnel Engaged in Security, Law and Order, or Counterintelligence Activities*.<sup>16</sup> This directive establishes DoD policy and assigns responsibilities for carrying of firearms and the use of force by DoD personnel engaged in security, law and order, or counterintelligence activities.

4. Center for Law and Military Operations (CLAMO) website. Currently, CLAMO maintains a collection of recent AARs at <https://www.jagcnet2.army.mil/CLAMO>. Additionally, the CLAMO website contains current ROE and LOW training presentations and other materials helpful to deployed MAGTF JAs. Upon request, the Marine representative to CLAMO will mail you pertinent publications, lessons learned compendiums, and resource DVDs.

5. *Air Force Operations & The Law: A Guide for Air, Space & Cyber Forces*.<sup>17</sup> Provides a detailed treatment of sources of aviation ROE, including SPINS, JFACC control measures and Search & Rescue considerations. This is an essential reference for JAs advising Wing units.

6. *Legal Lessons Learned from Afghanistan and Iraq: Vol I & II*.<sup>18</sup> Volume I concerns Major Combat Operations, while Volume II addresses Full Spectrum Operations. Each contains a chapter on ROE and highlights difficulties of incorporating new, non-doctrinal terminology (such as PID, TIC and LIT) within CJCS SROE definitions.

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<sup>15</sup> NORTH ATLANTIC MILITARY COMMITTEE, MC 362 encl. 1, NATO Rule of Engagement (9 Nov. 1999) [hereinafter NATO MC 362].

<sup>16</sup> U.S. DEP'T OF DEFENSE, DIR. 5210.56, CARRYING OF FIREARMS AND THE USE OF FORCE BY DOD PERSONNEL ENGAGED IN SECURITY, LAW AND ORDER, OR COUNTERINTELLIGENCE ACTIVITIES (1 Apr. 2011)

<sup>17</sup> THE AIR FORCE JUDGE ADVOCATE GENERAL'S SCHOOL, available electronically at <http://www.afjag.af.mil/library/>

<sup>18</sup> Available through CLAMO, (2004).

Perhaps the best means of understanding ROE comes from the reading of different ROE for different missions under different local conditions. The ROE for humanitarian relief in a friendly, stable country will be significantly different from the ROE for stability operations in a region with a known insurgency threat. Spending some hours on the SIPR reading varying ROE from different COCOMs will help you develop an understanding of common patterns and variance. Additionally, many component commands, such as NAVEUR and NAVCENT, will publish legal primers for judge advocates working in their areas of operation.

### **C. UNDERSTANDING SELF-DEFENSE V. DECLARED HOSTILE**

A hallmark of LOW is the principle of attacking distinct targets of military necessity: i.e., targets identifiable on sight, the destruction of which offers a military advantage. Enemies in modern conflicts are less likely to be able to be positively identified, so to declare them ‘hostile’ may be of little practical value. An Al Qaeda operative may be “declared hostile,” but the label is nearly meaningless if he is indistinguishable from a civilian. A member of the ‘hostile’ force may not be identified as hostile until committing a hostile act or demonstrating hostile intent.<sup>19</sup> However, under SROE there is a major distinction between the Declared Hostile force and the threat engaged in Self-Defense, and it is imperative for the JA to fully understand and articulate the difference.

A ‘Declared Hostile’ force is the type of enemy anticipated in traditional international law from The Hague and Geneva Conventions. Even before the LOW was first codified, it was understood that clearly identifiable enemies could be targeted with deadly force, even if they did not present an immediate threat. Their status from combatant to non-combatant changed only if they were captured or wounded and out of the fight as *hors de combat*. The actions of a Declared Hostile force are irrelevant: they may be targeted with deadly force unless they have surrendered or rendered incapable of resistance and have abandoned the fight. As a rule, warfighters will prefer to engage ‘Declared Hostile’ forces, since there is little ambiguity as to their options and obligations. They are the enemy and can be killed on sight.

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<sup>19</sup> There can be circumstances in which a Declared Hostile force can be identified even if they do not practice distinction or are seen committing offensive acts. Circumstances for making such a determination will be classified. In current conflicts, the tactical unit on the ground usually cannot make the determination that an enemy is Declared Hostile just by appearance.



Responding to a threat in Self-Defense requires a different mind-set. Per SROE, the degree of force used in Self Defense should be sufficient to respond decisively to the threat. Escalation of Force procedures, of which there are many useful examples, stress and encourage tactical patience and strategies for resolving threats without resorting to deadly force.<sup>20</sup> That said, there is no legal obligation to resort to less than lethal force first when faced with a lethal threat. Resort to immediate deadly force in the face of a lethal threat is lawful, but may not be the preferred course of action depending upon the circumstances ruling at the time.

You may find that training scenarios mix the concepts of Declared Hostile and Self-Defense in unhelpful ways, such as: “Militia force X is ‘declared hostile,’ but they wear the traditional clothing of the local population and may be engaged in Self-Defense.” The rifleman is then forced to wait for the ‘Declared Hostile’ force to commit a Hostile Act or demonstrate Hostile Intent, and then use force in Self-Defense appropriate to the level of the threat. Without a means of distinguishing the militia member on sight, the rifleman cannot treat him as a Declared Hostile enemy, since the use of force must be appropriate to the level of the threat against him. This can confuse the rifleman to think that ALL threats, even those Declared Hostile, must be engaged in Self-Defense using escalation of force procedures. This misread of Declared Hostile and Self Defense puts the Marine in danger. No Marine should leave your LOW/ROE training with any confusion about the difference between a Declared Hostile force and responding to a threat in Self-Defense. You can make great strides in preventing this confusion by ensuring that training scenarios and vignettes are accurate, consistent, and frequently rehearsed.

As discussed above, new terms are being developed in an attempt to remove ambiguity in the modern battlespace. Some of this terminology has origins in aviation, targeting, and weaponeering; recognizing the difficulties in targeting persons and objects for which there was military necessity to engage, but were at times indistinguishable from civilians. These remain difficult questions: when is the ‘part-time’ insurgent a legitimate target? If a farmer plants an IED in the morning, may he be targeted in Self-Defense in the afternoon? Questions like these and others prompted requests from the field for targeting clarification. A detailed treatment of this topic can be found in

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<sup>20</sup> CENTER FOR ARMY LESSONS LEARNED (CALL) HANDBOOK 07-21 ESCALATION OF FORCE available through <http://call.army.mil> is one of many practical guides to teaching the EOF principle of SROE Self-Defense.

CLAMO's Legal Lessons Learned from Afghanistan and Iraq, Vol I.<sup>21</sup> The following terms represent some of the efforts to clarify targeting in the modern battlespace, with some more successful than others. They now appear in ROE annexes and are mentioned for the JA's familiarization:

Positive Identification (PID) is a term now commonly found in ROE promulgated at the CCDR level, usually defined as "*reasonable certainty* that the proposed target is a legitimate military target." PID is a useful term for the uncertain or semi-permissive environment, as it invokes the LOW principles of Necessity, Distinction, and Proportionality. It also applies equally well to Declared Hostile forces as well as threats engaged in Self-Defense. Arguably, PID is not a new requirement, but has always been an implicit requirement before engaging a target. The definition seems to be helpful by articulating a standard: *reasonable certainty*, for making a targeting decision. Reasonable certainty is a familiar standard to Judge Advocates who are already familiar with the "reasonable doubt" standard as a burden of proof. Emphasizing reasonable certainty in training can prevent hesitation over whether to engage a threat. Based on what the trigger puller knew or should have known at the time, would another reasonable person in that position have acted the same way?

Likely and Identifiable Threat (LIT) was a term used in early OEF ROE as an attempt to permit a non-uniformed enemy force to be Declared Hostile. Unlike PID, LIT does not have a stated definition, resulting in greater ambiguity and greater risk that civilians would be targeted. To state that a potential target is a "likely" threat suggests that it is "more likely than unlikely" that there is military necessity to engage the target. This means that a suspicious person could be targeted with deadly force on a 51% likelihood, preponderance-of-the-evidence standard. This would seem to offer a lower degree of certainty than the "reasonable certainty" standard in the PID definition. The LIT standard for targeting was found to be unhelpful and made the targeting of civilians more probable. While not entirely out of use, LIT is probably a term to avoid in both drafting and briefing ROE.

Time-Sensitive-Target (TST), Point-of-Origin Target (POT), Troops-In-Contact (TIC): These terms have become common from OIF/OEF and relate to the approval authorities for unplanned targets. Because use of

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<sup>21</sup> CLAMO Legal Lessons from Iraq & Afghanistan, *supra*, pages 96-103, inclusive.

air-delivered ordnance and indirect fire must still follow LOW principles, these terms originated to define targeting parameters in urban environments or other cases with a significant risk of collateral damage. Overuse and misuse of these terms can cloud their intended purpose: that is, to prevent or minimize collateral damage. These terms are still in use in fire support doctrine, but their meanings and applications are clarified by the Collateral Damage Estimation Methodology, discussed in greater detail in section III C.1., below.<sup>22</sup>

#### **D. ROE v. RUF**

The 2005 update to the SROE added six Enclosures detailing Standing Rules for the Use of Force (SRUF) by DoD personnel within US territory and on U.S. military facilities worldwide. The key distinction between SROE and SRUF is the Constitutional limitations on the authority to use force within the United States and against US citizens, such as the Fourth Amendment's prohibition against unreasonable seizures. Enclosure L provides operational guidance and establishes fundamental policies and procedures governing the actions taken by DoD personnel performing civil support missions, (e.g., Defense Support of Civil Authorities (DSCA)), and AT/FP duties within US territory and territorial waters. SRUF also apply to land homeland defense missions occurring within U.S. territory and to DoD forces, civilians, and contractors performing law enforcement and security duties at all DoD installations (and off-installation, while conducting official DoD security functions), within or outside U.S. territory, unless otherwise directed by the SecDef. Like the SROE, SRUF may be augmented by CCDRs for specific missions through a process similar to requesting Supplemental ROE.

SRUF includes some terms not found in SROE, including definitions for Assets Vital to National Security, Inherently Dangerous Property, and National Critical Infrastructure. Guidance on the use of force are similar to the SROE guidance on Self-Defense, with additional authority to use deadly force if necessary to protect the property listed above if the property has been properly designated and determined to create an imminent threat of death or serious bodily harm if stolen or damaged; to protect persons threatened with death or grievous bodily harm; and to apprehend or prevent the escape of a person who is committing or has committed a serious offense. When training the distinction

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<sup>22</sup> CJCSI 3160.01A NO-STRIKE AND THE COLLATERAL DAMAGE ESTIMATION METHODOLOGY (12 October 2012). (Unclassified//FOUO). Hereafter CDE METHODOLOGY

between ROE and RUF, it may be helpful to equate RUF to the type of force a policeman is authorized to use, as opposed to the force a warfighter would use. A domestic criminal suspect is protected by the Fourth Amendment and cannot be 'declared hostile' and targeted as such by law enforcement. A criminal suspect may only be engaged with deadly force when that suspect poses an imminent threat of death or serious bodily harm. See the SRUF Enclosures (L-Q) for further guidance.

### **III. GENERAL LOW/ROE ISSUES**

#### **A. INSERTION OF OPLAW INTO PRE-DEPLOYMENT TRAINING**

Pre-deployment training requires a unit to demonstrate the capability to conduct full-spectrum operations. A typical MEU work-up will include multiple field and ship-based training evolutions with continuous planning and execution of multiple scenarios, including raids, HA/DR, NEO, and TRAP missions. Typically a White Cell or Expeditionary Training Group will produce the training scenarios. They 'drop' a Warning Order to the MEU staff, who then develops courses of action using the Marine Corps Planning Process. In field exercises, a component unit will then refine and execute the plan. Unfortunately, there is usually little Judge Advocate input to the scenario, and the ROE provided in the WARNORD is unspecific or insubstantial. Granted, MAGTF training scenarios are not designed to test the Judge Advocate: they are to test the unit's ability to plan and execute a complicated mission. However, the omission of operational law issues in the Warning Order, MCPP process, and in tactical field training detracts from the readiness of the staff and tactical units.

An absence of operational law issues in mission planning creates a problem in staff readiness. Real-world missions will always have detailed and often burdensome legal limitations, imposed by CCDRs or TF commanders, host nation governments, or USG agencies or embassies. These complications usually do not appear in work-up exercises because the White Cell or Training Group may not know how to realistically inject legal issues into the play of the problem. If necessary, seek support from your higher headquarters SJA to insert relevant legal scenarios in training exercises.

Sometimes, the WARNORD issued by the training group is actually too permissive, and does not impose limitations found in real-world operations. The 'enemy' at the objective is already 'declared hostile' and there are no over

flight or airspace clearance requirements, and no significant risk of collateral damage. Planners may be willing to approve whatever ROE is requested during the planning process, which creates an unrealistic expectation for the staff. Frequently, mission-specific ROE will be drafted at the CCDR level, with little opportunity for the operational unit input.<sup>23</sup>

At the tactical level, realistic operational law issues are often absent in the execution of training missions. Real-world full-spectrum operations are usually conducted in or near urban areas, where significant numbers of the civilian population will be present. Operations in these areas will more often than not have no Declared Hostile force, or if there is one, they will not be identifiable on sight.<sup>24</sup> Except for training venues with large numbers of contracted role players (Mojave Viper in 29 Palms for example), tactical units will often not have to make the Hostile Act/Hostile Intent determination before using deadly force. This lack of realism can cause hesitation in identifying targets in real-world missions.

The Judge Advocate can mitigate the lack of operational law realism in both planning and field exercises by getting involved with the development of the training scenarios, perhaps months before the work-up cycle begins. Something as simple as one legal inject into the play of the problem will force the MAGTF staff and tactical units to react to the unexpected. Example: A MEU is assigned a training scenario for a raid on a 'militia camp.' After seizing the objective, the unit discovers some role-players on the objective who were not part of the hostile force, and they reveal that they are victims of human trafficking. The tactical unit and MAGTF staff now have the opportunity to react to a more complex problem. Additional assets (HET, CID/NCIS) are employed and the scenario simulates complexities the unit is likely to encounter in a real-world mission.

Another aspect of operational law frequently missing in predeployment training is detention operations. While a MAGTF will have an assigned MP detachment (usually in the Combat Logistics Battalion or Regiment), the capturing unit must be trained and equipped to properly process detainees before transfer. Tactical units will typically use the phrase "detainees will be treated with the 5 S's & T (Search, Segregate, Silence, Speed, Safeguard, &

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<sup>23</sup> There is generally greater opportunity to provide input to the ROE before the WARNORD is received. Having open contacts with the SJAs at the COCOMs and TF HQ gives you the opportunity to shape the ROE while it is still being drafted.

<sup>24</sup> See Section II. C. above

Tag), and taken to the rear” during pre-mission briefs, but most field evolutions do not require practicing those skills. In addition to detainee operations, follow-on actions on the objective may include Tactical Site Exploitation (TSE). TSE may result in actionable intelligence being collected, and training in TSE is frequently available aboard Camp Lejeune and Camp Pendleton.<sup>25</sup> However, site exploitation is a perishable skill that should be incorporated into regular training as much as possible. The JA should urge that some personnel in every platoon-sized unit be designated as TSE NCOs and have TSE follow-on training included in the Training Exercise Employment Plan (TEEP) from the company level up.

## **B. TRAINING AND INTERPRETING ROE**

### **1. ROE CARDS**

*The OpLaw Handbook* includes detailed sections on the pros and cons of using ROE cards as a means to train and disseminate ROE to a unit. To summarize key points, the ROE most relevant to the rifleman should be unclassified//FOUO, and ideally is simple enough that it can be captured on a pocket card. The aspects of ROE worth reducing to a card will be the tactical issues most relevant to the combat Marine: Who is Declared Hostile? (if unclassified); Who and what may I protect in Self-Defense?; Under what circumstances may I take detainees and what do I do with them next?; What are common Escalation of Force measures?; What constitutes a Hostile Act/Hostile Intent?; and What are legitimate targets? In a complex semi-permissive environment with uncertain threats, an ROE card alone will not be sufficient to answer the questions of the combat Marine. However, if used as a training aide, it can provide a constant refresher of how to make proper decisions.

Many units will produce a white Standing ROE card, containing unclassified provisions of the SROE as well as some more specific command guidance. Disseminating laminated Standing ROE cards while conducting LOW/ROE classes allows for a building block approach with constant reinforcement of good battlefield decision making. LOW/ROE classes with vignette training referencing the SROE card is the foundation for field training and rehearsing SOPs and immediate action drills. Rehearsal with the SROE card as a pocket reference permits LOW principles to be internalized.

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<sup>25</sup> Often provided by contracted civilian trainers with law enforcement backgrounds.

On deployment, mission-specific ROE may deviate from the SROE card. You may want to create a ‘template’ ROE card for common MAGTF missions (NEO, HA/DR, Amphibious Raid/Assault, TRAP, etc.), ready to be edited and printed shortly after the mission ROE is released. You may also issue a supplemental ROE card that complements your standard white card. Consider deploying with heavy card stock of different colors, so you have the capability to produce mission-specific ROE cards while deployed that are identifiable on sight. Preparing ROE cards is also a useful exercise for JAs. To refine and reduce complex issues down to a clear and unambiguous ROE card in a short time is a challenge.

## **2. LOW AND ROE CLASSES**

The *Oplaw Handbook* covers this in great detail. The Marine Corps Law of War Program lists specific requirements for “Entry level” and “Follow-On” training for all personnel as well as “Specialized” and “Detailed” training for designated personnel. The International and Operational Law (JAO) Branch at HQMC provides the official and **ONLY** authorized training packages for training Marines on the LOW subjects.<sup>26</sup> These training packages are developed and consistently updated in order to provide consistent and accurate information so as to avoid discrepancies in the knowledge base among Marines. The goal is to instill in all Marines the LOW principles and to build a solid foundation from which to draw upon during practical applications.

During these training sessions, it is important to understand that different audiences require different approaches. Members of a rifle platoon will lose interest quickly if too much time is spent on the Geneva Conventions, and commanders probably do not need as long a lecture on the prohibition on taking war trophies. While presenting the information, the judge advocate must stress those points that best fit the audience’s role in the mission.

In a composite unit like a MAGTF, some components may arrive having already received their ROE training. If the TEEP allows, train them again and

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<sup>26</sup> The training packages – one for each level of development (Entry Level, Follow-on, Specialized, and Detailed) – are standardized and available on the JAO sharepoint page at <https://ehqmc.usmc.mil/org/sja/JAO/default.aspx>. The training packages are standardized and the subject matter may not be modified by the presenter. If modifications to the content of the presentation are desired, the presenter must receive permission from the JAO Branch at HQMC. Minor modifications (additions/edits/deletions) of non-substantive material are authorized to suit the particular audience.

stress the important factors relevant to the upcoming deployment or operation. Ensure that Training Officers in the Operations section of the subordinate commands give you the training time you need early in the work-up cycle, so LOW and ROE issues are briefed consistently with each training event and scenario. It is important to routinely inject LOW training scenarios/sessions throughout the pre-deployment and deployment to reinforce training standards.

A useful addendum to LOAC / ROE training is a session on Battlefield Vignettes that stress ethical decision making. This ties into the LOW training program and highlights the importance of small-unit leadership. Case studies of past war crimes and allegations of offenses from OIF/OEF can reinforce the basic LOW principles and demonstrate the strategic importance of moral and responsible behavior at the tactical level. Such classes and examples are best given in conjunction with training and instruction to commanders and key planners on specialized LOW issues, as required by MCO 3300.4.

### **3. *VIGNETTES***

Vignette training, following LOW/ROE training is an invaluable teaching tool. After Action Reports from OIF & OEF recommend using LOW training vignettes that describe conditions and threats on the ground as accurately as possible. This allows Marines to mentally work through the very threats they will face. If training for a specific mission, base the vignettes on the actual course of action selected, using accurate locations and terrain in the vignettes. For missions of long duration, events derived from SIGACTS can easily be converted into vignettes for continuous follow-on training. Occasionally junior officers will request vignettes from you so they can validate their SOPs and immediate action drills. This is an invaluable opportunity to inject realism into training.

### **4. *BRIEFING ROE***

a. Command Briefs: One of the most visible roles of the Judge Advocate in the planning process is advising the staff on ROE and legal considerations. At the confirmation brief before execution and through the duration of the mission, the JA commonly briefs the ROE to the commander. Power point has become ubiquitous in the planning and briefing process and Judge Advocates should be prepared to produce legal guidance slides that are specific to every mission. If possible, have templates with anticipated ROE for



different mission sets, ensuring that the standards established in the JAO-prepared training packages are reinforced.

Techniques for drafting and briefing ROE vary. Some commanders prefer detailed ROE briefs up front but only request follow-up briefs if there are changes or updates to the ROE. Some OpsOs (who manage the planning process) insist that ‘less is more’ and that detailed ROE need not be briefed, as long as it is incorporated during planning. As the JA, develop a style appropriate to the commander’s needs and the needs of the staff. It is often helpful to list all ROE sources in one slide, then reference the source when briefing or advising on a particular point. This can make it easier to update the brief if an ROE source is cancelled or updated.

b. Pre-Mission Brief: Perhaps more important than the command brief is the pre-mission brief to the tactical units prior to execution. This will follow the Command Brief, usually during the unit’s rehearsal phase or while the unit is staged for embarking on vehicles or preparing to exit friendly lines. Pre-Mission briefs are an excellent opportunity to ensure that LOW considerations and mission-specific ROE are clearly understood by all personnel. If a mission is being executed in phases, there may be several pre-mission briefs for different elements, focusing on LOW issues most relevant to them. Ex: Briefing the R&S team before insertion should cover their actions to prevent compromise, actions if they have to take detainees while infiltrating and actions in escape and recovery. Briefing the close-air support pilots will focus on weaponeering, collateral damage estimate methodology and limitations on airspace control. If you provide pre-mission briefs consistently, tactical units will come to expect it and will be more able to talk through vignettes for actions on the objective.

### **C. MISSION-SPECIFIC ISSUES AND SPECIAL CONSIDERATIONS**

Every MAGTF component and mission will have special operational law concerns. The SROE requirement to use only the force necessary to end the threat in Self-Defense will mean different things to an AV-8 pilot as opposed to a rifle platoon commander. This section highlights special concerns and where to look for solutions.

## 1. AVIATION AND FIRES ROE AND COLLATERAL DAMAGE METHODOLOGY

Special consideration must be given to ROE applied to the air element and indirect fire support. The speed and altitude of aircraft give pilots a different perspective of the battlespace. Obvious threats on the ground may be invisible to the aircraft, and what constitutes a threat to a ground unit may be no threat at all at 5000 feet. On missions where there is likely to be no identifiable Declared Hostile forces, pilots of aircraft travelling hundreds of knots need detailed guidance of how to determine Positive ID of threats and how to minimize collateral damage. Similarly, a fire support position providing indirect fires may have no visibility of the threat at all and relies completely on forward observers to ensure that fires are not indiscriminate and that the effects are not disproportionate.

Sources of aviation-specific ROE and other restrictions are frequently found in sources other than an ROE annex. Additional sources for aviation ROE can be found in Fire Support Control Measures, in mission SPINS, FRAGOs, or in a Joint Air Operations Plan (JAOP). Topics typically covered include authority to enter territorial airspace, weapon release authority, limitations on use of ordnance, response to queries, measures to prevent collateral damage and indicators of Hostile Act/Hostile Intent. Introduction of the term Positive ID (PID) has had an interesting effect on Close Air Support (CAS). When confronting a non-uniformed enemy, it can be very difficult for a pilot on a CAS mission to have independent “reasonable certainty” that the proposed target is a legitimate military target. Aviation ROE will frequently detail how the PID established by an observer on the ground can be used by and relied upon by the pilot providing CAS.

In recent conflicts, collateral damage has had operational and strategic effects. Deaths of civilians have outraged local populations and are used by insurgents for propaganda effect. To ensure that the proportionality principle of LOW is carefully observed,<sup>27</sup> revised guidance for fires in a complex battlespace has been released in the CJCSI No-Strike and the Collateral Damage Estimation Methodology (unclass//FOUO).<sup>28</sup> Designed to evaluate the potential for collateral damage and adjust the strike approval authority for planned targets, the CDE Methodology provides the Fires Cell with definitions

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<sup>27</sup> Proportionality requires commanders to analyze whether the expected incidental death or injury to civilians or damage to civilian property will be excessive in relation to the concrete and direct military advantage anticipated.

<sup>28</sup> CDE METHODOLOGY, *supra*, (12 October 2012)

and considerations of ‘collateral’ objects, dual-use facilities and equipment, and human shields. In addition, CCDR ROE and messages may have additional limitations and command considerations to prevent collateral damage. The JA must be aware that the issue of collateral damage may have CCDR-level interest and fully understand changes and safeguards in the targeting process.

A much greater treatment of this subject is covered in *Air Force Operations & The Law*, chapters on Rules of Engagement and Targeting and Weaponing.<sup>29</sup> After review of this source as a primer, ask the Air Officer for an example of an Air Operations Plan and SPINS to see how ROE-like restrictions are presented in these aviation directives. To build familiarity with fires and targeting, ask the S3/J3 Fires Officer to go over Fire Support Control Measures and review a Fire Support annex in an OPLAN/OPORD. If possible, attend a Joint Tactical Air Controller (JTAC) training course and/or Joint Targeting Collateral Damage Estimate (CDE) Course.

## **2. MARITIME MISSIONS: VBSS, MRF, MIO, AND ROE**

MAGTF JAs usually do not have primary responsibility for Maritime Law issues. The cognizant Fleet or Squadron SJAs will normally advise their commanders on these issues, with embarked Marine units assuming a supporting role. Nevertheless Marine JAs must have a basic understanding of maritime-specific LOW and maritime missions to advise a MAGTF tasked with supporting a ship or squadron conducting Maritime Operations. In addition, command of expeditionary operations transiting from ship-to-shore will include transfer of authority from the Maritime Component Commander to the Land Component Commander. To ensure a smooth transition, you must know the basic conventions for maritime territorial jurisdiction under international law, including Baselines, Internal Waterways, Territorial Seas, Contiguous Zones, Exclusive Economic Zones, and High Seas.<sup>30</sup> Such familiarity is essential given tensions in places like the Straits of Hormuz and the East/South China Seas. If embarked as a MEU SJA, aspects of maritime operations that will require your involvement are transiting through straits and archipelagic sea lanes. The UN Convention on the Law of the Sea (UNCLOS) and US policy contain specific directions for military ships and aircraft passing through designated straits and archipelagic zones. Maintaining responsible force protection measures while simultaneously following international law of

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<sup>29</sup> AIR FORCE OPERATIONS AND THE LAW, *supra*.

<sup>30</sup> See the UNITED NATIONS CONVENTION ON THE LAW OF THE SEA (UNCLOS III) (1982).

innocent or transit passage will require your understanding of how the embarked Marine contingent and aircraft can augment the ship's operations.

In recent years there has been increasing focus on maritime security, starting with the *2007 Cooperative Strategy for 21st Century Seapower* and further developed in the *Sea Services Naval Operations Concept 2010*.<sup>31</sup> Embarked Marines may be called upon to support a ship or amphibious squadron assigned to counter-piracy (CP), Visit, Board, and Search and Seizure (VBSS) or Maritime Interdiction Operations (MIO).<sup>32</sup> The Judge Advocate should understand the purpose behind Maritime Operations in order to understand their legal aspects. Maritime Interdiction Operations include a broad range of different missions for equally broad purposes. For example: a VBSS mission could be as benign as confirming a vessel's identity by bridge-to-bridge communications, or it could be as dangerous as an opposed boarding targeting hostile pirates. Both are VBSS missions, but the ROE could be radically different. It may help to consider a VBSS mission to be like a policeman pulling over a car. Most times, after compliance with the instruction to pull over and questioning, the policeman finds no illegal activity and lets the car move on. In extreme cases, the driver of the car may be known to be armed and dangerous, requiring a high-speed chase and use of deadly force to apprehend the suspects. For those missions that require specific ROE it will be released by the naval component command (NAVCENT for example) or a Task Force specifically designated for the mission. Researching the Collaboration At Sea SIPR pages for the supported Task Force and contacting the appropriate Fleet or TF SJA should provide ROE specific to the mission. A working knowledge of the UNCLOS and Commanders Handbook on Law of Naval Operations will set the context for mission-specific ROE. CJCSI SROE also contains classified provisions on Maritime ROE.<sup>33</sup>

Maritime Interdiction Operations also have a law enforcement purpose, a point highlighted by the interagency strategy. The need for a comprehensive interagency approach to Maritime Security contributed to the development of

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<sup>31</sup> Available at <http://www.navy.mil/maritime/Maritimestrategy.pdf> and <http://www.navy.mil/maritime/noc/NOC2010.pdf>

<sup>32</sup> These missions will be consistent with Maritime LOAC, recently summarized in The Commanders Handbook on the Law of Naval Operations, MCWP 5-12.1 (July 2007). (available at [http://www.nwd.navy.mil/cnws/ild/documents/1-14M\\_\(Jul\\_2007\)\\_NWP.pdf](http://www.nwd.navy.mil/cnws/ild/documents/1-14M_(Jul_2007)_NWP.pdf)) Note: the previous edition included an Annotated Supplement, NWP 1-14M (1997). The supplement, while not revised, is still a valuable resource for research and developing basic understanding of the legal aspects of naval warfare. It is available at <http://www.diils.org/file/8/view>

<sup>33</sup> CJCSI SROE/SRUF, specifically Enclosure B, and Enclosure I, Appendix B

the Maritime Operational Threat Response (MOTR) and the Maritime Counterproliferation Interdiction (MCPI) EXORD, which define the roles and responsibilities of U.S. government agencies with overlapping interests in maritime security, including DoJ, DoD, DHS, DoS, and intelligence agencies, but also provide specific guidance to DoD entities on vessels of interest (VOI).<sup>34</sup> Drug smuggling, trafficking in persons, and piracy are common crimes on the high seas in regions with failed or weak states, and naval forces conducting MIO and VBSS must be trained and capable of collecting evidence for law enforcement or intelligence purposes (i.e., pictures of cargo, copies of bills of lading, etc.). In those rare cases that require the processing of a seized vessel as a ‘floating crime scene’, it is best to rely on the embarked NCIS or Coast Guard Law Enforcement Teams.

Starting in 2009, the Marine Corps has taken renewed interest in training for opposed boarding operations. The skill set is designated as Maritime Raid Capability (MRC) with the assault element designated the Maritime Raid Force (MRF). Using the ‘police stop’ analogy of VBSS missions, the MRF is the “SWAT team” capable of combat raid missions on the high seas. Because Maritime Operations will often have law enforcement functions, the MAGTF JA must ensure that criminal site exploitation is addressed early in the planning process. Early liaison should be made with higher headquarters and federal law enforcement agencies, such as FBI, NCIS, and DoJ. If NCIS is not available, be prepared to assemble trained personnel from any PMO/CID Marines, ship Masters-at-Arms and Force Protection personnel to form an ad hoc “CSI” to follow in trace of the MRF’s “SWAT team.” Ensure that forensic site exploitation is included in the VBSS/MRF concept of operations and that designated personnel are assigned and trained in crime scene processing in the predeployment workups. It is entirely possible for a successful MRF raid to ultimately result in failure months later if the criminal suspects cannot be prosecuted due to poor evidence collection.

### **3. *NON-COMBATANT EVACUATIONS OPERATIONS (NEO)***

NEOs are a staple mission essential task for a MEU. Enclosure G of the SROE specifically addresses NEOs. Further treatment of NEO legal issues, including command and control relationships between DoS and DoD, authority to grant asylum and temporary refuge status and force protection are given

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<sup>34</sup> Maritime Operational Threat Response for the National Strategy for Maritime Security (October 2006). This document is unclassified//FOUO.

detailed treatment in the *Oplaw Handbook* and need not be restated here.<sup>35</sup> The Combat Logistics Element is usually assigned as the Main Effort for NEO operations and will likely conduct several simulated NEOs during predeployment training. As with most training scenarios, operational law issues are usually absent or minimal. The complexity of real-world NEO missions ensures that legal issues will complicate efforts. These complications should be included in NEO training in the form of scenario injects. Get involved early and participate in the drafting of the scenario and the scripting of the actions of the role players.

Frequently a MEU will insert a Forward Command Element (FCE) to liaise with Embassy personnel in preparation of the NEO. If the nature of the NEO suggests complex legal issues are expected, go forward with the FCE and be personally available to address problems as they arise. The nature of the NEO (permissive, uncertain, or hostile) will greatly affect the posture of the MAGTF security element and the likelihood of conflict. NEOs require more flexibility and are less predictable than any other MAGTF mission because they vary greatly in scale, with evacuees numbering from a few hundred to many thousands.

#### **4. *HUMANITARIAN ASSISTANCE/DISASTER RELIEF (HA/DR)***

HA/DR missions have become increasingly frequent for MEUs and MAGTFs. Like NEOs, the scope and circumstances of HA/DR missions will vary greatly, but there are a number of issues in common for the JA's understanding. An exhaustive study of HA/DR legal issues can be found in CLAMO's AARs for Hurricane MITCH (1998), Haiti Earthquake Relief (2010), Operation TOMODACHI (2011), and the Colorado Wildfires (2012). Specific points on force protection and ROE are addressed here for planning purposes.

Foreign humanitarian assistance is primarily a function of the Department of State, but has become a mission of the US military because of our capability. For the foreign country, it is a sign to the world that they are incapable of meeting the needs of their population and they must sacrifice a degree of their legitimacy to meet an urgent need. US and international humanitarian aid agencies and relief workers are generally resistant to military

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<sup>35</sup> See also JP 3-68 NONCOMBATANT EVACUATION OPERATIONS, particularly the legal appendix. Available at <http://www.fas.org/irp/doddir/dod/jp3-68.pdf>

assistance except in large-scale disasters that have overwhelmed indigenous and civilian capacity to respond or in situations where safety is a concern (i.e., the threat of terrorists/insurgents). Relief agencies generally follow principles of strict neutrality and are concerned that working with (or appearing to work with) military forces will erode their impartiality. US military assistance is requested because of our unmatched deployable transportation capability, organizational skill and flexibility. But as a rule, a sovereign nation will not want a large foreign military presence on their soil longer than necessary. US military planners conducting HA/DR often become frustrated by lack of cooperation, poor command and control, and indecisiveness of the host nation government.

For the United States, participation in HA/DR missions has tremendous value by strengthening partnerships and strategic relationships. Protecting the relationship may be a driving factor for determining the scope and parameters of US HA/DR operations. This may manifest in a number of ways:

Force protection and force-posture issues can be very touchy to a sovereign country. The host nation is responsible for maintaining safety and security within their borders, but there could be significant force protection concerns if US forces conduct HA/DR unarmed. MEUs have recently provided HA/DR support in several countries which had significant problems with local insurgency or lawlessness even before the natural disaster occurred.<sup>36</sup> You may expect that concessions on force protection may be a condition for entry of US forces for HA/DR missions. This can significantly impact the scope of the mission if host nation security forces cannot adequately provide protection to US forces.

Expecting that there will be no Declared Hostile force while conducting HA/DR, Marines will react to threats based on SROE Self-Defense. Exactly who and what can be protected in Self-Defense must be clarified by higher headquarters before deployment of forces. May deadly force be used to protect host nation civilians threatened with grievous bodily harm? May 'mission essential property' be protected in self defense, and what level of command may make the designation? May relief supplies distributed by relief agencies

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<sup>36</sup> Since 2005, MEUs have provided HA/DR support in some of the most volatile regions of the world. Ache Province, Indonesia, had been fighting a separatist movement for 30 years before the December 2004 tsunami. The 2005 earthquake and 2010 flooding in northern Pakistan involved operations near sites of recent insurgent activity. Port-au-Prince, Haiti, devastated by an earthquake in January 2010 has lead the world for decades in poverty and endemic corruption. Force protection was a major concern for all these HA/DR missions.

by protected? May looters be apprehended if they are preventing mission accomplishment? Is the use of riot control agents authorized for specific reasons?

If you have previous contact with the SJA of the higher headquarters tasking your unit to conduct HA/DR, you may have the opportunity to influence the language of the ROE. You can expect that ROE and force protection, while arguably the most straight forward legal issues for HA/DR, will be of greatest concern to mission planners.

## **5. OFFENSIVE OPERATIONS – ASSAULTS AND RAIDS**

The imperative for the Marine Corps is to maintain the role as the nation's crisis response force with the capability to project punishing combat power when required. In other words, the primary purpose of a military is to "kill people and break things." Offensive operations are the Marine Corps' *raison d'être*. As such, issues of common concern for amphibious raids and assaults deserve some discussion.

Naturally, offensive operations are conducted in compliance with the LOW and applicable mission ROE. But since field training scenarios usually focus on the actual skills of combat and not the nuances of operational law, some important LOW considerations are glossed over during predeployment training. This can result in major problems in real-world operations.

Declared Hostile Forces. As stated before, tactical units prefer to engage Declared Hostile forces which may be targeted immediately without waiting for the enemy to commit a hostile act or demonstrate hostile intent. Scenario training seldom simulates the full complexities of the modern battlespace. Marines with experience in OIF/OEF are aware that the designation of 'declared hostile' can mean little if the enemy cannot be identified. To ensure that Marines fully understand the difference between engaging a Declared Hostile force and reacting in Self-Defense, training scenarios should contain a mix of engaging threats of both types. At the very least, planners and tactical units should not always assume that the 'enemy' on an objective is 'hostile' and consider how a plan would be executed differently if persons on an objective must commit a Hostile Act/Hostile Intent before engagement.

Treatment of Detainees. The assault or raid force must account for detainees in their plan. If transportation to/from the objective is mechanized or



helo-borne, sufficient space must be allocated to transport detainees and their security detachment. Raid force personnel must be issued detainee handling 'kits,' including blacked-out goggles, flex cuffs, and gags. In anticipation of a requirement to turn detainees over to host-nation authorities for trial, Marines involved in capture operations must practice preparing detailed statements of the circumstances of the capture, including inventory and photographing weapons and contraband. This became common practice in OIF/OEF, and the requirement is likely to continue in future conflicts. Military raids against insurgents and terrorists will result in prisoners who probably do not meet the traditional definitions of a prisoner of war/privileged belligerent under the LOW. Despite this recent development, DoD policy is to apply the LOW in all armed conflicts, regardless of how characterized, and in all other military operations. Thus, these types of detainees must be treated as if they were prisoners of war upon capture despite the lack of actual POW/privileged belligerent status. Urge raid force commanders to include detainee operations at the point of capture as an essential action on the objective. Excellent training products are available through the Center for Army Lessons Learned<sup>37</sup>

R&S of the objective and action of reconnaissance personnel. If reconnaissance or surveillance elements are inserted prior to the raid/assault, their actions must also be in compliance with the LOW. This can raise questions of what actions are permissible to prevent compromise. A common "plan" for detainees captured by R&S is to "flex cuff and leave in place." While arguably the prisoner is not "harmed," the LOW is clear that prisoners become the responsibility of the capturing force and cannot simply be left in a position where death or suffering is likely. Similarly, R&S elements normally cannot deliberately target non-combatants and civilians to prevent compromise.<sup>38</sup> Personnel executing Evasion and Recovery (E&R) are normally still subject to domestic laws of the country they are operating in. R&S planning should consider whether it would be appropriate for personnel conducting E&R to violate local laws to affect escape (e.g., stealing a car) or if they should contact local authorities for assistance. The Judge Advocate should take a 'Murphy's Law' approach to reviewing R&S CONOPS: what can go wrong, and how can the R&S react in compliance with the LOW?

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<sup>37</sup> The most relevant is Handbook No. 06-17 "Detainee Operations at the Point of Capture: Tactics, Techniques, and Procedures," a FOUO document that may be requested at: <http://call.army.mil>

<sup>38</sup> Considering proportionality, is it POSSIBLE that the military advantage gained by preventing compromise COULD outweigh the collateral damage of targeting a non-combatant, but the burden of proof would likely be on the shooter to justify his actions.

Proportionality in targeting. LOW training, ROE standards, and vignettes will all stress the need to consider proportionality and the risk of collateral damage before engaging with any weapon system. However, except for large predeployment training events (Mojave Viper for example), simulated raids and assaults will frequently be staged in isolated training areas populated only by the opposing force who are Declared Hostile. Real-world objectives are unlikely to be so ‘pristine’. Marines need not consider weaponeering issues such as blast radius and maximum effective range if there are no notional civilians in and around the objective. This can be addressed to a degree by imposing arbitrary limitations in the mission profile. Example: a notional “village” is 1000 yards from the objective, just opposite the proposed avenue of approach. How would that affect the mission commander’s plan or the weapon systems used in conduct of the mission?

Pursuit. As a similar problem, a real-world raid objective is likely to be in or near an urban area. An opposing force fleeing the objective would attempt to lose themselves in the civilian population. In training, the raid is likely to be in an isolated training area, miles away from nowhere. Pursuit of an enemy in real-world missions is likely to be much more problematic. Declared Hostile forces may be pursued until they are destroyed, surrender, or are incapable of resistance. SROE permits pursuit under Self Defense of forces “that have committed a hostile act or demonstrated hostile intent, if those forces continue to commit hostile acts or demonstrate hostile intent.”<sup>39</sup> Maintaining Positive ID of fighters dressed as civilians in a populated area is unlikely absent ISR support. Mission specific ROE and pre-mission briefings should address the parameters of pursuit and the likely environment where the enemy would be pursued.

## **6. TACTICAL RECOVERY OF AIRCRAFT & PERSONNEL (TRAP)**

With heavy MAGTF reliance on aircraft, TRAP missions to recover downed personnel and aircraft take on special importance. A recent example was the TRAP mission conducted by the Marine Corps to recover a downed U.S. pilot flying in support of the coalition efforts in Libya. Unlike offensive operations, NEOs, HA/DR, and other MAGTF missions, the “objective area” of a TRAP cannot be known ahead of time. The objective is wherever the aircraft or personnel are located, a site that probably has not been subject to ISR imaging or intelligence collection. The TRAP site and persons around it could

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<sup>39</sup> CJCS SROE Enclosure A. 4.b. (Unclassified)

be benign or hostile, and factors for a successful recovery are almost entirely out of the planners' control. In short, the TRAP force must be ready for anything.

Some factors are common to all TRAP missions. First, is there authority under the ROE to enter a country's territory or airspace to conduct the TRAP? If not, what is the approval authority to conduct the mission anyway? SOFAs and international agreements may permit unilateral TRAP with little or no notice, depending on the location. Some countries would consider unapproved entry of their airspace a hostile act and commit military forces to 'repel the invasion' of the TRAP force. Authority to enter territory on TRAP missions should be clearly addressed in ROE, whether it is for a training scenario or real-world operation.

Second, what actions can be taken to secure the TRAP site: either the downed aircraft or location of stranded personnel? What if local civilians have arrived at the site first and are salvaging the wreckage? What if the personnel to be recovered are already in the hands of local civilians? TRAP missions should also be looked at with a 'Murphy's Law' eye and training vignettes designed to test Marines reaction. Like most pre-deployment training, TRAP missions in work-ups usually do not include LOW curve-balls, but they will always occur in real-world missions.

Finally, is use of Riot Control Agents (RCAs) appropriate for TRAP missions? There seems to be a presumption that TRAP missions are the type of mission for which RCAs are appropriate. The SROE does not address this presumption. RCAs normally could be approved as a de-escalation measure in limited circumstances and not in offensive operations. As such, if the mission profile suggests that civilians at or near the crash site must be dispersed for mission accomplishment, then RCAs might be authorized. There is no presumptive association between TRAP missions and use of RCAs, and they must be requested as a supplemental ROE if appropriate to the TRAP CONOPS. The approval authority for use of RCA will depend upon the context within which the TRAP mission is to be executed. *See* CJCSI 3110.07D, *Guidance Concerning Employment of Riot Control Agents and Herbicides (U)*, of 31 January 2011 (Note: this CJCSI is classified).

## 7. LAW OF WAR VIOLATIONS – REPORTABLE INCIDENTS

In any contingency or operation, a judge advocate must be conscious of the possibility of the occurrence of a law of war violation. Such an event triggers reporting requirements in which the judge advocate must coordinate and assist the command. Understanding what qualifies as a “reportable incident” is the key to properly documenting and reporting the event to the correct officials. Timeliness of reporting is a major factor in appropriately handling law of war violations.

The *DoD Law of War Program* (DoDD 2311.01E) (9 May 2006), requires that all reportable incidents committed by or against U.S. personnel, enemy persons, or any other individual be reported promptly, investigated thoroughly, and, where appropriate, remedied by corrective action. This directive defines a reportable incident as “[a] possible, suspected, or alleged violation of the law of war, for which there is credible information, or conduct during military operations other than war that would constitute a violation of the law of war if it occurred during an armed conflict.”

Per SECNAVINST 3300.1C, *DoN Law of War Program* (28 May 2009), any person in the Department of the Navy, including contractors, who obtain information regarding a reportable incident shall, as soon thereafter as practicable: (1) Make the incident known to his or her immediate commanding officer or officer-in-charge; or (2) Make the incident known to an officer, normally in the chain of command, senior to the commanding officer or officer-in-charge, if such a person has an honest and reasonable belief that his or her immediate commanding officer or officer-in-charge is or may be involved in the violation. Information regarding a reportable incident may also be reported through other channels, such as military police, a judge advocate, or an inspector general. Reports made to officials other than those specified in this paragraph shall, nonetheless, be accepted and forwarded through the recipient’s chain of command. (3) Contractor employees shall report information regarding a reportable incident to the commanding officer or officer-in-charge of the unit they are accompanying or the installation to which they are assigned, or as otherwise specified in their contract.

Commanding Officers and officers-in-charge receiving information regarding a reportable incident shall promptly report such information up their operational chain of command and up their Service chain of command to the CNO or CMC, as appropriate. MCO 3300.4, *Marine Corps Law of War*

*Program* (20 October 2003), further requires that the commander of any unit that obtains information about a reportable incident also: (1) take immediate action to mitigate or correct the harm; (2) as soon as practical, report the matter to the nearest military police investigator; and, (3) if practical, secure the scene of the possible law of war violation so that evidence may be preserved and collected.

MCO 3300.4 also states that higher authorities receiving an initial report from a commanding officer or officer-in-charge will: (1) report the incident by the most expeditious means to the responsible Combatant Commander and (2) request a formal investigation by the cognizant military investigation authority. Absent other applicable directives, commanders will normally report “reportable incidents” by means of an OPREP-3 report (MCO 5740.2 Report Control Symbol Exempt applies.) CMC (DC PP&O (PO/PS), IGMC, and SJA to CMC (JAO)) will be designated as information addressees on all reports of “reportable incidents”.

All reports and completed investigations of reportable incidents alleged to have been committed by or against DoN personnel, or persons accompanying them, must be forwarded to the Judge Advocate General. It is the responsibility of the judge advocate to work with the command to ensure proper reporting procedures are followed and timely submission of the investigation is completed.

#### **IV. CONCLUSION**

The Law of War consists of very basic principles, but the range of military operations has produced thousands of books, pamphlets, articles, treatises, and analyses of how they are to be applied properly in different situations. As military law generalists, Marine JAs cannot hope to have encyclopedic knowledge of every aspect of LOW and ROE application, and you cannot expect your Marines and their commanders to have this knowledge either. Before focusing on mission-specific details, spend as much training time as possible getting the Marines to internalize the basics: Military Necessity, Humanity (including, Distinction, Unnecessary Suffering, and Proportionality), and Honor, principles that are captured in the Marine Corps Law of War program “Marine’s Rules” Entry-Level Training Objectives. With a solid foundation in the basics, Marines can deduce the answers to more complex questions. This foundation needs constant reinforcement through predeployment training and continued emphasis on deployment.

## CHAPTER 4

# MILITARY JUSTICE<sup>1</sup>

### I. INTRODUCTION

From a practical standpoint, the MAGTF SJA is expected to be the command's military justice expert. The MAGTF SJA must have or be able to find the answers to all military justice questions from the command. Experience as a prosecutor or defense counsel helps, but is not necessary to advise the command on military justice issues. More important for a MAGTF SJA is a thorough understanding of, and ready access to, the current editions of the Manual for Courts-Martial,<sup>2</sup> the JAGMAN,<sup>3</sup> LEGADMINMAN, and the Marine Corps Separations Manual.<sup>4</sup>

The chapter is divided into three parts. First, the chapter discusses military justice relationships. Second, it analyzes the various methods for addressing misconduct during a deployment, both judicial and administrative. Third, the chapter discusses specific areas of misconduct highlighted in a deployed environment. The chapter concludes with a brief discussion of post-deployment concerns.

### II. MILITARY JUSTICE RELATIONSHIPS

A MAGTF SJA involved in military justice will interact with all commanders, and often with platoon leaders and NCOs, as these leaders address misconduct and unit discipline. The SJA will also interact with Navy lawyers and investigators as military justice cases arise. Understanding the relationships and personnel involved is an important prerequisite for appropriately handling military justice matters.

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<sup>1</sup> This chapter examines military justice issues that typically arise in the context of a deployed Marine Air-Ground Task Force (MAGTF).<sup>1</sup> In keeping with this book's purpose, this chapter identifies recurring military justice issues and concerns stressed during deployments and highlighted by the experiences of former MAGTF SJAs. Further, it is not a comprehensive military justice primer and MAGTF SJAs should, accordingly, cross-reference the publications listed below. Finally, the chapter will assume a basic knowledge of military justice, and then analyze specific, recurring issues.

<sup>2</sup> MANUAL FOR COURTS-MARTIAL, UNITED STATES (2012) [hereinafter MCM].

<sup>3</sup> U.S. DEP'T OF NAVY, OFFICE OF THE JUDGE ADVOCATE GEN. INSTR. 5800.7E W/CH. 1-2, MANUAL OF THE JUDGE ADVOCATE GENERAL (JAGMAN) ( 20 June 2007).

<sup>4</sup> U.S. MARINE CORPS, ORDER P1900.16F W/CH. 2, MARINE CORPS SEPARATION AND RETIREMENT MANUAL (MARCORSEPSMAN) ( 06 June 2007).

The MAGTF SJA should create opportunities to brief legal issues to officers and NCOs on the staff and in the subordinate commands. For these briefs, the MAGTF SJA can focus on such topics as search and seizure law, Article 31b rights advisements, and other military justice topics of importance to leaders. Appendix 4-1 contains an example of “legal cards” that, when reduced and reproduced, make good handouts for discussion. Ensuring leaders have a common understanding of basic military justice concepts is an effective preventive law tool and can also dispel myths surrounding these topics. Finally, legal briefings are a good opportunity to cover “hot topics” such as fraternization and computer misuse (both discussed below).

#### **A. COMMAND RELATIONSHIPS**

The MAGTF commanding officer is typically a special court-martial convening authority (SPCMCA). The commanders of several subordinate commands or “elements” may also possess special court-martial convening authority. Each SPCMCA is also a summary court-martial convening authority (SCMCA). In addition, the MAGTF will have numerous commanders exercising nonjudicial punishment (NJP) authority that may include company-grade and field-grade punishment authority. All of these commanders will rely on the MAGTF SJA for advice on military justice matters. Potential problems may arise when a subordinate commander holds an opinion about the appropriate handling of misconduct that differs from the senior commander, particularly the opinions of the MAGTF commander.

On its face, this situation may seem to be a potential conflict of interest for the MAGTF SJA. Is the MAGTF SJA’s role to provide legal advice only to the MAGTF commander? Can the MAGTF SJA provide advice to subordinate commanders when the MAGTF SJA knows the MAGTF commander’s view concerning appropriate disposition of a particular case? It is important to remember that the DON is the SJA’s client—not any one particular commander. This helps resolve the potential conflict and allows the MAGTF SJA to advise all commanders within the disciplinary chain. Understanding this attorney-client relationship does not, however, solve all of the problems presented when commanders hold differing views as to appropriate disposition of military justice matters.

As a result of these command relationships, the MAGTF SJAs must remain attuned to the possibility of unlawful command influence (UCI). Unlawful command influence can occur when a senior commander dictates the

disposition of a military justice matter to a lower-level commander. The MAGTF SJA needs to understand the tools available for a commander to lawfully influence potential judicial matters. A commander may personally dispose of any case within that commander's authority or any subordinate commander's authority. In addition, a superior commander may withdraw a subordinate commander's authority on individual cases or types of cases. These provisions allow senior commanders to take actions they deem appropriate without directing subordinate commanders to take particular actions.

The MAGTF SJA must anticipate the types of cases in which the MAGTF commander will be interested. The best method is for the MAGTF SJA to ask the subordinate commanders to report all of these types of cases to the MAGTF commander through the SJA. Typical scenarios that the MAGTF commander may be interested in include misconduct that involves members of one of the MAGTF's major subordinate element (MSE) interacting with a member of another MSE (for example, Marines from the aviation combat element (ACE) in a fight with members of the ground combat element (GCE)); or misconduct involving any interaction with civilians, civilian authorities, or foreign nationals.

## **B. NAVY RELATIONSHIPS**

The Navy will deploy a judge advocate and criminal investigators on some types of MAGTF deployments. It is important for the MAGTF SJA to form a working relationship with the Navy personnel involved in military justice matters.

### ***1. AMPHIBIOUS SQUADRON (PHIBRON) JUDGE ADVOCATE***

The PHIBRON will typically rate and deploy a lawyer. The MAGTF SJA should work closely with the PHIBRON JAG on both operational and military justice issues. Having another JA available to discuss operational and military justice matters can make the MAGTF SJA's job easier. Further, the PHIBRON JAG can be of assistance by providing MAGTF Marines and Sailors counsel on such issues as NJP, competency review boards, administrative separations, or vacation hearings.<sup>5</sup>

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<sup>5</sup> The JAGMAN allows advice on technical aspects of actions and the basic principles of military law without an attorney-client relationship forming. JAGMAN, *supra* note 4, at para. 0109 d(2). The JAGMAN cautions



## **2. NAVAL CRIMINAL INVESTIGATIVE SERVICE (NCIS)**

There will be an NCIS agent attached to the PHIBRON. NCIS duties are split between force protection and criminal investigation while underway or in liberty ports. For good reason, expect force protection to be NCIS's primary focus, potentially leaving little time for investigating misconduct.

The MAGTF SJA should meet and talk with the NCIS agent regularly and certainly prior to any investigation. In addition to the agent assigned to the PHIBRON, there will often be agents on the ground for the various countries visited by the MAGTF. These agents can be a valuable resource to the MAGTF SJA as they will investigate alleged misconduct by Marines in port. Additionally, NCIS likely will have more sophisticated interrogation skills than the ships' Masters-at-Arms. Consult NCIS on potential criminal issues that you have and request the same from them. When NCIS calls the MAGTF SJA immediately on an incident involving MAGTF Marines or Sailors, it can save the MAGTF SJA much time and trouble. Involving the MAGTF SJA early can also save the MAGTF commander from being caught unaware during a call from his superior command on military justice issues.

## **3. MASTER-AT-ARMS**

A Master-at-Arms (MAA) is located on every ship within the Amphibious Ready Group (ARG). The MAA will likely run the Navy's shore patrol at all liberty ports, and will take the lead on most of the Navy's military justice matters. The MAA will also be the point of contact on all investigations conducted by the Navy. Just like with NCIS, a good working relationship with the MAA on each ship ensures that the MAGTF SJA is informed on all matters relating to its members. The MAGTF SJA should get to know the senior members of the MAA force on the command ship. Again, a good relationship with the MAA members will make it more likely they will come to the SJA with an issue regarding a MAGTF Marine or Sailor. This will allow the SJA to keep the commander apprised and help resolve situations as soon as possible.

One method of gaining the MAA's confidence is to volunteer to provide Rules of Engagement (ROE)/Law of Armed Conflict (LOAC) training. Coordinate with the PHIBRON JAG and the MAA (who often doubles as the

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against establishing an attorney-client relationship unless detailed by proper authority to serve as defense counsel or personal representative of the accused. *Id.*

force protection officer for the ARG), and if there is a desire, the MAGTF SJA can give these classes to Sailors from each of the ships. Like the legal briefing to MAGTF leaders, this provides a good opportunity to meet members of other ships.

### **III. ADDRESSING MISCONDUCT**

#### **A. REQUIRED REPORTS**

One of the MAGTF SJA's key roles is to track and report how misconduct is handled within the MAGTF. The MAGTF SJA should require subordinate commanders' legal officers to report legal statistics on a regular basis. As discussed above, this can also be an area of friction when interests of the subordinate commanders are not exactly the same. Nonetheless, the MAGTF SJA needs to be able to account for how all the subordinate commanders are handling military justice issues in order to appraise the MAGTF commander about their impact on good order and discipline within the MAGTF. Appendix 4-2 contains a report format the MAGTF SJA can use, and this report can be tailored to the MAGTF commander's particular internal reporting desires. Additionally, certain misconduct, discussed below, requires reporting outside the MAGTF chain of command; therefore, the MAGTF SJA needs to be familiar with standing operating procedures and reporting requirements of higher command headquarters.

#### **B. PRE-DEPLOYMENT**

The MAGTF SJA's main focus during the predeployment phase will be pursuing operational proficiency (for example, coordinating and providing ROE/LOAC training) and coordinating legal service support (for example, wills and powers of attorney). Nevertheless, there are some issues that relate to military justice that the MAGTF SJA should address prior to deployment.

How to appropriately handle misconduct that occurs prior to deployment – particularly when it occurs shortly before departure – is a recurring issue. For instance, you may receive a question like, “Hey judge, I’ve got a guy who popped on a urinalysis last month, and we leave for deployment next week—how should I handle the case?” There are several options available to commanders depending on the nature of the allegations and the time available prior to deployment.

Adjudicate during deployment. One option is to simply bring the Marine or Sailor along on deployment and address the matter while the MAGTF is underway. Indeed, this is often the only option, especially when the misconduct occurs just prior to deployment. Cases in this category are normally those that will be handled through non-punitive measures, NJP, summary court-martial (SCM), and/or administrative separation. Securing pretrial agreements and administrative board waivers in appropriate cases prior to deployment is especially helpful. If the case merits court-martial, it is possible to conduct a court-martial aboard the ship if the witnesses and evidence are available. Keep in mind, however, that special courts-martial also require coordination of court personnel (such as the military judge, court reporter, and members) and defense counsel. This is usually very difficult while deployed. See Section III.E below for more details.

Leave the member behind. Another possibility is to leave the member behind for disposition of the case. For serious offenses, particularly if the member is in pretrial confinement, this may be the only option. Another concern on leaving a Marine or Sailor behind is determining to what unit they will be transferred. Typically the S-1/adjutant will coordinate the transfer by sending the member to the next echelon higher in the chain of command or back to the parent unit. If a member remains behind for adjudication, it is imperative that the MAGTF SJA actively coordinates with the receiving unit's SJA. Since the alleged misconduct occurred while the member belonged to the MAGTF, potential witnesses and evidence may remain with the MAGTF on deployment. Therefore, even though the member remains behind, the case may still impact the MAGTF and coordination during predeployment will help assess the impact and assist to plan accordingly.

Adjudicate after deployment. A final option is to bring the member along and wait until the deployment is completed to adjudicate the matter. For several reasons, this is the least desirable solution. Allowing a case to sit without reasonably prompt action can create overall unit discipline problems. Further, the longer a case awaits disposition the more likely witnesses' memories will fade and evidence will become stale.

MAGTF SJAs should be attuned to commanders delaying action on weak cases until after the ships are underway. Obviously, if the misconduct occurs the night before deployment, there is little choice but to hold NJP aboard ship. The tougher issues arise when the misconduct occurs weeks prior to deployment or an underway training period. While there is no specific

prohibition preventing the commander from waiting for an underway period to conduct NJP, doing so -- particularly under circumstances where proof or logistical issues exist -- raises serious fundamental fairness concerns. These concerns are highlighted when such actions are reviewed by senior SJAs and commanders through NJP appeals, Inspector General complaints, congressional inquiries, Article 138 complaints, or other mechanisms allowing Marines to petition for redress. When circumstances dictate, MAGTF SJAs should advise handling the matter prior to any underway period in order to provide the Marine the appropriate opportunity to exercise his or her rights.

### *1. URINALYSES*

The MAGTF SJA should advise commanders to conduct all urinalysis about forty-five days prior to deployment. This ensures that any case with a positive urinalysis that proceeds to trial by court-martial will have minimal impact on the unit by avoiding leaving members behind to testify or losing a Marine half-way through the deployment to testify at trial. Non-deploying adjacent units in the area can typically provide urinalysis assistance. The key is to ensure all members of the chain of custody are outside of the command or are not scheduled to deploy.

### *2. DEPOSITIONS*

Related to preserving testimony for urinalysis, depositions can be a valuable tool to preserve evidence of members of the command who are key witnesses in a pending contested special or general courts-martial. The MAGTF SJA should work with the jurisdictional trial and defense counsel early to identify such members. Rule for Court-martial (R.C.M.) 702 discusses depositions. The existence of a deposition does not necessarily mean that the deposition will automatically be allowed during trial in lieu of live testimony. Generally, there would have to be a determination that the service member who gave the deposition is unavailable pursuant to R.C.M. 804. Under Article 49, a military judge could determine that a service member deployed on a MAGTF is unable to attend a court-martial because of military necessity. However, a judge is not required to make such a determination, and it is possible that a judge would require the presence of a Marine on a float. Factors such as the nature of the witness (percipient vs. character), the billet of the witness (MAGTF commander vs. rifleman), and current operational status (engaged in combat operations vs. enroute home via liberty ports) may all be relevant. Ultimately, pre-deployment planning can reduce or eliminate the possibility of

members of the command being returned for several days (or weeks) to participate in a trial stateside.

## C. NONJUDICIAL PUNISHMENT

### *I. ADMINISTRATIVE MATTERS*

The MAGTF SJA normally coordinates with the adjutant and the command sergeant major to ensure all NJPs, particularly within the command element, run smoothly. On some MAGTFs, the SJA generates the unit punishment book (UPB), prepares the acknowledgement of rights statement (including appeal rights and process) for the accused, and prepares the charge sheet and script for the commanding officer. On other MAGTFs, these responsibilities fall within the adjutant's purview. When the adjutant is responsible, the SJA should ensure that the adjutant follows all JAGMAN procedural requirements as failure to do so may prevent introduction of the NJP at a subsequent court-martial. If not on ship, the SJA normally ensures the accused has the opportunity to consult with qualified counsel. At the conclusion of the NJP, the SJA coordinates with the adjutant to prepare the appropriate service record book entries. Finally, if the Marine or Sailor receives a reduction in rank as a result of the NJP, the SJA (or adjutant) prepares a reduction order for the commanding officer's signature.

The JAGMAN contains forms for notifying a member of NJP proceedings and a script for conducting NJP. Appendix 4-3 to this Chapter contains a chart reflecting maximum punishment at NJP. The MAGTF SJA should also review Chapter 4 of the Marine Corps Manual for Legal Administration (LEGADMINMAN)<sup>6</sup> for guidance on handling officer misconduct. In accordance with the JAGMAN and the LEGADMINMAN, commands are required to report all incidents of officer misconduct to Headquarters, Marine Corps (JAM). Additionally, the SJA should coordinate with higher command prior to initiating disciplinary proceedings against an officer.

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<sup>6</sup> U.S. MARINE CORPS, ORDER P5800.16A w/CH. 1-5, MARINE CORPS MANUAL FOR LEGAL ADMINISTRATION (31 Aug. 1999).

## 2. *NONJUDICIAL PUNISHMENT AUTHORITY*

### *a. NONJUDICIAL PUNISHMENT AUTHORITY WHILE ABOARD SHIP*

Section 0108 of the JAGMAN provides that as a matter of policy for units *attached to a ship*, nonjudicial punishment should be referred to the commanding officer of a ship for disposition. However, when a unit is *embarked for transportation only*, the commanding officer of the ship should only exercise nonjudicial punishment in unusual cases concerning incidents occurring on board the ship.<sup>7</sup> Determining whether members of the MAGTF are embarked for transportation or attached to the ship has been a source of confusion for MAGTF SJAs.

Despite the JAGMAN guidance, as a practical matter, putting members of the MAGTF before a Navy commander for NJP is a recurring source of friction between Marine and Navy commanders. It is wise to defuse this potential friction up front with a policy letter that spells out both the MAGTF and the PHIBRON position on this. The policy can quote the JAGMAN and, ideally, will contain the signatures of both the MAGTF and the PHIBRON commanding officers. The key is to preemptively address the matter before misconduct arises so that while deployed, if one of the ships' commanding officers attempts to take one of the MAGTF's Marines or Sailors to NJP, the policy in place will govern how the case is adjudicated.

### *b. COMMANDING OFFICER OF TROOPS AND OFFICER-IN-CHARGE WITH NONJUDICIAL PUNISHMENT AUTHORITY*

Because the MAGTF will be split between several ships, with MSEs and portions of MSEs also split between ships, it is advisable to designate a Commander of Troops (COT) for each ship. The COT assumes command

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<sup>7</sup> The key language is in paragraph 0108(a)(2):

When an organized unit is embarked for transportation only in a ship of the Navy, the officer in command of such organized unit shall retain the authority possessed over such a unit prior to embarkation, including disciplinary authority. . . . In the case of units embarked for transportation only, however, the commanding officer of the ship should take disciplinary action under the UCMJ over members of such embarked units only in unusual circumstances concerning incidents occurring on board the ship.

responsibility over the disparate MAGTF elements aboard the respective ship and represents these elements when coordinating with the ship's staff.

Designation as a COT should not be confused with designation as an "officer-in-charge (OIC) with NJP authority." Appointment as an OIC with NJP authority requires the specific approval of a general officer in command.<sup>8</sup> Typically, the MAGTF will seek this NJP authority from the MEF commanding general prior to deployment. The SJA should consider obtaining this appointment early in the predeployment cycle so that the MAGTF will have OICs with NJP authority available as a disciplinary option during underway training periods. Included in Appendix 4-4 is a sample OIC with NJP authority appointment request letter. Each COT should be designated as an OIC with NJP authority; otherwise, without the additional appointment as an OIC, the COT will not have NJP authority. Note that regardless of the OIC's rank, the maximum punishment the OIC can impose at NJP is the equivalent of company-level NJP.<sup>9</sup> This fact is often overlooked, particularly when the COT/OIC is a lieutenant colonel who understandably assumes that he will have the authority to impose battalion-level punishments.

The primary reason for appointing an OIC is that a swift NJP option will be available for members of the MAGTF whose commanders are located on another ship. This can be important during split-ARG operations when the ships are operating independently and geographically distant. Further, the ability to expeditiously impose NJP can be important when the MAGTF is concerned about the ships' commanding officers exercising NJP authority over members of the MAGTF. Not all MAGTFs decide to exercise the option of having an OIC with NJP authority appointed, determining instead that there usually will be a reasonably available opportunity to cross-deck the Marine or the Marine's commander to hold office hours.

### ***3. RIGHTS TO COUNSEL AND NJP REFUSAL***

While deployed, a Marine no longer has the option of refusing NJP. The MAGTF SJA must ensure that the service book entry reflects that the NJP was held "onboard USS \_\_\_\_." This may be important if the Marine is involved in later misconduct warranting court-martial because, without this entry, the NJP may not be admissible during the presentencing phase of a trial.

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<sup>8</sup> See JAGMAN para. 0106(b).

<sup>9</sup> See JAGMAN, para. 0106(b).

The fact that Marines aboard ship do not have a right to advice from counsel prior to NJP is frequently a surprise to commanders. Many commanders nonetheless ask the SJA if the Marine can consult with an attorney. It is important to remember that neither the MAGTF SJA nor the PHIBRON JAG are detailed defense counsel and cannot represent a member if they later wind up at a court-martial or administrative separation board.<sup>10</sup>

#### **4. APPEALS**

The process for appeals of NJP awarded by MSE commanders and company commanders does not change during deployment. The appeal goes to the next higher echelon for review. The MAGTF commander is the appellate authority for MSE commanders; the battalion commander is the appellate authority for company commanders. Appeals of NJP awarded by the MAGTF commander are forwarded to the next higher commander in the *operational* chain of command.<sup>11</sup>

#### **D. ADMINISTRATIVE SEPARATIONS**

Strictly speaking, administrative separations are not military justice matters; however, administrative separations are inextricably linked to military justice matters in many cases. Consequently, the MAGTF SJA should review the MARCORSEPMAN and the Navy Military Personnel Manual (MILPERSMAN)<sup>12</sup> to ensure commanders properly process administrative separations. Examples of the appropriate notification and acknowledgement of rights forms are contained in the respective references. Errors in processing administrative separations can significantly delay or even derail the proceedings.

While the MAGTF's operational chain of command will likely change several times during deployment as it travels through various areas of operation, the MAGTF's administrative chain of command will not change while deployed. It is essential that all documents, including administrative separations, be routed through the appropriate channels. At the MAGTF level, involuntary administrative separations are normally routed through the SJA

<sup>10</sup> See JAGMAN para. 0109(d)(2).

<sup>11</sup> See JAGMAN para. 0117(b). Once the MAGTF "chops" to the relevant Naval Fleet command, the MEF is no longer in the operational chain and will not review NJPs.

<sup>12</sup> U.S. DEP'T OF NAVY, DIR. 15560D, NAVAL MILITARY PERSONNEL MANUAL (22 Aug. 2002).



while voluntary administrative separations are handled by the S-1. At the MSE level, however, the MSE S-1 normally handles both forms of administrative separations; therefore, increased attention, consultation, and advice to the MSEs on initiating involuntary administrative separations may be necessary.

A significant challenge in processing an administrative separation is determining the proper separation authority. The MARCORSEPMAN states that the separation authority for enlisted Marines under Chapter 6 is the officer exercising general court-martial convening authority (GCMCA) over the respondent.<sup>13</sup> A Marine respondent could have multiple GCMCAs depending upon the MAGTF's current location. For example, a respondent on a MAGTF deployed in the Mediterranean would fall under the GCMCA of 6th Fleet, II MEF, and, for Marines from the battalion landing team (BLT), 2d Marine Division. The best practice is to clarify the administrative chain and separation authority with the MEF SJA prior to deployment and certainly prior to initiating proceedings.

The MARCORSEPSMAN and the MILPERSMAN, as discussed above, will govern the administrative separations process while deployed. A major concern is that under certain types of administrative separations processing, the Marine may elect representation by detailed defense counsel and have the right to a separation board. Unless the Marine facing the administrative separation is willing to waive the right to an administrative separation board, the command will have to find a competent detailed defense counsel (see below for possible ideas on where to obtain one).

## **E. ARTICLE 32 INVESTIGATIONS AND COURTS-MARTIAL**

Conducting Article 32 investigations and courts-martial in a deployed setting presents difficult logistical challenges. An Article 32 hearing requires trial and defense counsel and an investigating officer. A court-martial has an additional requirement for a judge and court reporter. Depending on the area of operations (AO), military justice support may be available from a nearby installation, such as a Naval Legal Service Office (NLSO). Before deploying, the SJA should coordinate with the Fleet JAs in the anticipated AOs to ascertain the availability of and the procedures for obtaining such support.

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<sup>13</sup> MARCORSEPSMAN para. 6307(1).

To conduct an Article 32 investigation, the SJA may be able to coordinate appointment of a suitable investigating officer (IO) from within the MAGTF. Pursuant to the MCM, the IO must be a commissioned officer.<sup>14</sup> The discussion to R.C.M. 405 indicates a preference for a field grade officer or an officer with legal training.<sup>15</sup> The SJA may have to assist the trial counsel in the logistics of getting the witnesses to the investigation. The IO may consider witnesses not embarked unavailable.<sup>16</sup> The IO could then consider alternatives to testimony, including telephonic sworn testimony.<sup>17</sup> These provisions make conducting an Article 32 hearing easier than conducting a court-martial.

Conducting a court-martial will be more difficult. Yet, if the command is near a major military installation, particularly a NLSO, it may be possible to conduct a court-martial while deployed, particularly if the facts surrounding the charges are not too complex and if all the evidence is available. One benefit of holding a court-martial while deployed is that all the members of the command are generally easy to locate (i.e., on the ship). Another (and often the most important) concern is funding. Costs for travel and TAD will come from the MAGTF's operational budget.

## **F. SEARCH AND SEIZURE**

The MAGTF SJA must have a complete understanding of the rules of search and seizure and inspections and their implications in garrison, while embarked, and while in a foreign country. As discussed above, search authorizations are also a good topic to cover with the MAGTF's officers and staff noncommissioned officers prior to deployment.

Commanders may authorize a probable cause search of Marines and Sailors under their command. Additionally, commanders may authorize a probable cause search of any property under their control. An issue that can arise is determining the breadth of the commander's "control." Without question, the MAGTF commander has control over and is able to authorize the search of any person in the MAGTF. Also without question is the authority of a ship captain to authorize the search of any property on the captain's ship. More problematic is the ability of the MAGTF commander to authorize searches of

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<sup>14</sup> R.C.M. 405(d)(1).

<sup>15</sup> The Discussion to R.C.M. 405(d)(1) states that the "investigating officer should be an officer in the grade of major or lieutenant commander or higher or one with legal training."

<sup>16</sup> See R.C.M. 405(g)(1)(A); 405(g)(2)(B).

<sup>17</sup> R.C.M. 405(g)(4)(B)(ii).

ship spaces. While a search of “green” berthing spaces would likely be proper, search of other spaces (such as work spaces) will likely require authorization from the ship’s captain.

Searches within a foreign country require special care. If the United States is a party to a treaty or agreement (such as a SOFA) that governs a search in a foreign country, the search should be conducted in accordance with the treaty or agreement. If no treaty or agreement exists, obtain concurrence from an appropriate representative of the foreign country before conducting a search.

It is always wise to document probable cause searches, regardless of outcome. For example, the SJA can draft a memorandum for the record for the commander’s signature memorializing the facts known at the time of the authorization and the basis for authorizing the search. Another option is to use the sample Record of Authorization for Search contained in the JAGMAN.

## **G. BRIG**

Some Naval ships are equipped with a certified brig. NJP for members attached to or embarked on a vessel can include confinement on bread and water for up to three days (although this punishment is seldom used). Further, depending on the circumstances surrounding the case, the commander may place a Marine in pretrial confinement pending court-martial.<sup>18</sup>

Confinement within the ship’s brig will create logistical requirements on the MAGTF. Anytime a member is confined, there is a requirement for personnel to monitor that individual’s condition. Monitoring personnel must receive appropriate training which is usually not available while deployed. Thus, if the command wants to confine members for any reason, it is in the command’s interest to send Marines to the required training prior to deployment. The SJA should coordinate with the Navy and the MAA on the command ship to send a few Marines to the training prior to deployment so that the command may preserve this option.

While overseas, the command may be able to use a brig from a nearby military installation. This option, however, may entail more effort than it is worth; confined members still belong to the command and, thus, when the

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<sup>18</sup> R.C.M. 304 and 305.

MAGTF leaves the AO, the command will either have to take them back, or send (and pay TAD and travel for) chasers to escort them back stateside.

#### **IV. SPECIFIC AREAS OF MISCONDUCT**

##### **A. LIBERTY**

###### ***1. OVERSEAS LIBERTY RISK PROGRAM***

The Overseas Liberty Risk Program is an important tool by which the commander may regulate MAGTF members' conduct during a deployment. The program is designed to protect the United States' relations with foreign countries; therefore, the program is not to be used as punishment. Deprivation of normal liberty as a punishment, except as specifically authorized by the UCMJ, is illegal. However, lawful deprivation of normal liberty may be authorized when such deprivation is "deemed essential for the protection of the foreign relations of the United States."<sup>19</sup> A formal Liberty Risk program should be promulgated in writing prior to deployment and any deprivation of normal liberty pursuant to the Liberty Risk Program should be documented. An example of policy, procedures, and documents for administrative curtailment of liberty overseas is included in Appendix 4-5.

Commanders have substantial discretion in deciding whether to place a Marine on liberty risk; however, the decision should generally be limited to those cases involving a potential serious breach of the peace or flagrant discredit to the armed forces. Examples of when it may be appropriate to place a Marine on liberty risk include: committing an offense under the UCMJ involving the use of force; committing misconduct involving drugs, alcohol, or weapons; and committing acts in violation of the law of host nations. This list is not all-inclusive. Other legitimate bases for administrative withholding of privileges exist outside the liberty risk program and the military justice system. These include safety and security of personnel, medical concerns, operational necessity, bona fide training, and properly conducted extra military instruction.

Commanders should afford administrative due process protections when assigning Marines to a liberty risk status. At a minimum, the commander should review each liberty risk case individually, advise the Marine in writing of assignment to the liberty risk program and the underlying basis for

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<sup>19</sup> See JAGMAN para. 0104(b).

assignment, and provide the Marine an opportunity to respond, typically by requesting mast. Commanders should consider using incremental degrees of liberty curtailment, assigning categories to specific types of curtailment. For example, “Class A” liberty risk might require accompaniment of a Marine senior in rank; “Class B” liberty expires at a certain early hour; and “Class C” involves no liberty. Variations of these classifications are frequently used.

The SJA should also recognize that the ships may have their own liberty risk programs. While no requirement exists that the MAGTF and Navy follow the same policies and specific procedures, it is useful to coordinate the programs so that each service understands the other’s policies and liberty risk categories.

## ***2. LIBERTY BRIEFS***

Liberty briefs provide another good opportunity to interact with members of the MAGTF. The MAGTF SJA can put together information on the local culture and legal concerns for a given liberty port. This is also an excellent opportunity to brief the Liberty Risk Program, reemphasize any existing general orders, and to cover relevant terms of any applicable Status of Forces Agreement (SOFA) or Defense Cooperation Agreement (DCA) and how they may impact interaction with local law enforcement. Finally, this is a good time to advise the command about the SJA’s location and role during liberty call. The SJA can accomplish this brief by sending an e-mail to the MSE executive officers and adjutants prior to each liberty port, or by personal participation in the liberty brief typically broadcast on the ships’ internal television system.

## ***3. LIBERTY PORTS***

The MAGTF SJA will be the focal point for all legal issues that arise during liberty port calls. The SJA must be available at all times while on liberty in foreign ports. Typically that means the SJA will have a cell phone and the commanders will know the number to the hotel where the SJA is staying. Most of the activity during liberty ports will center around Shore Patrol headquarters, especially in ports that have a continuous Navy presence. Shore Patrol will have direct contact with the local law enforcement authorities, and any problems that Marines encounter will likely first be identified by the Shore Patrol. The SJA should make a habit of checking in with Shore Patrol at least once a day and making sure Shore Patrol knows how to contact the SJA.

#### 4. CRIMINAL JURISDICTION IN A FOREIGN COUNTRY

The MAGTF SJA should read and understand the applicable SOFA or DCA prior to going ashore. SOFAs will often govern criminal jurisdiction when Marines commit crimes in a host country. Typically, criminal jurisdiction is categorized as either “exclusive” or “concurrent,” with most offenses being concurrent - that is, an offense under the laws of both the sending state (US) and the receiving state (host nation).<sup>20</sup> Concurrent jurisdiction is typically further delineated to provide primary and secondary concurrent jurisdictional rights for either the U.S. or the host nation. Primary rights are often determined by factors such as the type of offense, whether the offense arose in the performance of official duty, and whether the victim was a fellow member of the force. The most important point to understand is that SOFAs rarely provide exclusive jurisdiction to the U.S. military.

SOFAs generally include a waiver procedure where the host nation may waive jurisdiction if the U.S. requests a waiver. In many countries, additional treaties, working agreements, and letters of understanding exist between the U.S. and the host country concerning the exercise and waiver of foreign criminal jurisdiction over U.S. personnel. These supplementary agreements implement the SOFA or other treaties by prescribing the procedures to be followed in a particular country. Because these agreements vary between countries and are subject to change, the importance of notifying the appropriate liaison in the MAGTF’s higher headquarters and the U.S. country representative in cases that may result in the exercise of foreign criminal jurisdiction cannot be overemphasized. It is U.S. policy to request a waiver of jurisdiction and attempt to gain immediate custody in all cases involving U.S. military personnel. While aggressive actions by the MAGTF SJA may allow the MAGTF to regain custody, if the proper procedures are not followed, the waiver of jurisdiction may not be valid.

The exercise of foreign criminal jurisdiction creates many reporting requirements.<sup>21</sup> Often, these reports must go through the chain of command and to a Department of State representative.

In certain countries where no SOFA or DCA is in force, common sense applies. If a member of the command falls into the hands of civilian authorities,

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<sup>20</sup> The current version of the INT’L & OPERATIONAL LAW DEP’T, THE JUDGE ADVOCATE GENERAL’S SCHOOL, U.S. ARMY, OPERATIONAL LAW HANDBOOK contains a good overview of SOFAs and jurisdiction.

<sup>21</sup> See, e.g., JAGMAN para. 1009(i).

the MAGTF SJA should be aggressive, courteous, and humble in attempting to get the member released to the command's authority. The SJA may need to work through a translator. By explaining to the local authorities the SJA's rank and position, and that the member will be dealt with firmly when released to the command's control, the SJA can often get cooperation from local officials. While attempting to gain custody, the SJA should coordinate with country representatives in the U.S. Embassy. If the SJA cannot immediately gain release, further coordination with the embassy or consulate will be necessary to try to gain release prior to the command's departure.

## **B. FRATERNIZATION AND INAPPROPRIATE PERSONAL RELATIONSHIPS**

The potential for fraternization and inappropriate personal relationships between service members is particularly acute in a deployed environment and within the confines of a ship. To address this concern, many MAGTFs issue a MAGTF order to regulate the conduct. Although fraternization is already criminalized under the UCMJ and various general orders, a MAGTF order will allow the commander to emphasize the importance of the prohibition on fraternization and to provide more specific guidance for the deployed, shipboard setting. Furthermore, these orders also address inappropriate actions that do not constitute fraternization, such as sexual relations between same-rank MAGTF personnel. Included in Appendix 4-6 is an example of such a MAGTF order that can be used to regulate this conduct. It is important to stress the importance of disseminating this information. Unlike a general order, Marines must have actual knowledge of the existence of the order and its contents to be held accountable under the UCMJ.

## **C. UNAUTHORIZED COMPUTER USE**

The improper use of government computers is another fertile area for misconduct. The Navy's local access network (LAN) policy and procedures aboard ship may be quite different from the MAGTF's policies in garrison. For example, most Marine Corps bases and stations have software to prevent Marines from visiting prohibited sites. However, naval ships may or may not use such devices. Expect that Marines and Sailors will have the ability to visit any web address they choose. The S-6 will monitor computer use and can track web pages MAGTF personnel visit while on board. They will likely flag instances where members visit prohibited sites.

An aggressive command policy on computer use can forestall problems. Included in Appendix 4-7 is an example of such a policy. Note also that the Joint Ethics Regulation<sup>22</sup> can be used as a general order to regulate the same conduct. The MAGTF SJA should coordinate with the MAGTF commander and the S-6 when crafting such a document.

## **V. POST-DEPLOYMENT**

Typically, there will be a short window after the deployment where the subordinate commands are still administratively attached to the MAGTF. This is the time to complete all pending military justice matters. A real concern for a returning MAGTF is that many members, especially the junior members, will reach the end of their obligated service and separate from the Marine Corps or Navy shortly after return. Other members will transfer to new duty stations. For these reasons, it is important to identify potential witnesses for courts-martial or administrative separations hearings early and determine their availability. The SJA should track all the military justice issues to the date of “chop” (the date when the subordinate commands re-attach to their parent units for operational and administrative purposes) and be able to “turn-over” with the appropriate authorities military justice issues that remain unresolved.

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<sup>22</sup> U.S. DEP'T OF DEFENSE, REG. 5500.7R, JOINT ETHICS REGULATION para. 2-301 (C4, 6 Aug. 1998).



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## CHAPTER 5

### ADMINISTRATIVE INVESTIGATIONS

#### I. INTRODUCTION

This chapter discusses recurring issues concerning administrative investigations that confront Marine Air-Ground Task Force (MAGTF) operations. The chapter is divided into several parts: 1) JAGMAN investigations—procedural guidance for, and the interrelationship between: preliminary inquiries, command investigations, line of duty/misconduct investigations, death investigations, field flight performance boards, aviation mishap safety boards and ground safety investigations; 2) Other investigations, to include, equal opportunity and sexual harassment investigations and inspector general investigations; and 3) Serious Incident Reports. Given the subject matter of this chapter, numerous references are made to the Manual of the Judge Advocate General (JAGMAN).<sup>1</sup>

#### II. INVESTIGATIONS

The MAGTF judge advocate (JA) should be prepared to assist in the conduct and review of the varying preliminary inquiries and administrative investigations that a deployment may generate. The JA must be very familiar with Chapter II of the JAGMAN to provide assistance to investigating officers (IOs) as required.<sup>2</sup> The primary purpose of an administrative investigation is to provide the convening authority and reviewing authorities with information regarding specific incidents.

There are three types of administrative investigations pursuant to the JAGMAN: command investigations, litigation-report investigations, and courts and boards of inquiry. Regardless of the type of investigation, the Investigating Officer should review checklists provided in the JAGMAN and the Naval Justice School's Handbook on JAGMAN Investigations prior to initiating the investigation to determine if there are specific requirements which attach to the nature of the incident under investigation.

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<sup>1</sup> U.S. DEP'T OF NAVY, OFFICE OF THE JUDGE ADVOCATE GENERAL INSTR. 5800.7(SERIES), MANUAL OF THE JUDGE ADVOCATE GENERAL (JAGMAN). Note that review of JAGMAN procedures in this chapter is designed to give the deployed Judge Advocate a cursory overview regarding investigations. If there is conflict between this chapter and the JAGMAN, the JAGMAN controls.

<sup>2</sup> The JAGMAN is available on line at [www.jag.navy.mil/library/instructions.htm](http://www.jag.navy.mil/library/instructions.htm) or [www.nko.navy.mil](http://www.nko.navy.mil)

Command Investigations are the most common type of administrative investigation. The Command Investigation is designed to search out, develop, assemble, analyze, and record all available information relative to the incident under investigation. The findings of fact, opinions, and recommendations developed may provide the basis for various actions which are designed to improve the command's management and publish "lessons learned" so that others can gain from the experience.<sup>3</sup>

Litigation-report investigations are used to investigate an incident or event that is likely to result in claims or civil litigation against the government.<sup>4</sup> These types of investigations must be: convened only after consultation with a "cognizant judge advocate", conducted under the direction and supervision of a judge advocate, protected from disclosure to anyone who does not have an official need to know, and ultimately forwarded to the Judge Advocate General.<sup>5</sup> Investigations will be conducted in accordance with the guidelines for command investigations, but shall also address the specific claims considerations.<sup>6</sup> Because statements taken are subject to discovery, witnesses will be asked probing questions, but they will generally not be asked to make a written statement or to sign a statement that the investigator has prepared, nor will audio or video recorded statements be obtained.<sup>7</sup> Finally, note that OJAG (Code 15) is the custodian and the only release authority for litigation-report investigations. FOIA/PA requests must be forwarded to Code 15 for action and the requester notified.

Courts and boards of inquiry use a hearing procedure and should be reserved for the investigation of "major incidents".<sup>8</sup> Major incidents are extraordinary incidents that occur during the course of official duties resulting in multiple deaths, substantial property loss, or substantial harm to the environment, where the circumstances suggest a significant departure from the

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<sup>3</sup> See generally Naval Justice School's JAGMAN Investigations Handbook. Note that this Handbook is an excellent resource for checklists and methodology behind administrative investigations.

<sup>4</sup> JAGMAN at para 0210(a). The possibility of claims against the government often arise from "major incidents" which are investigated by courts of inquiry, or from other incidents documented in command investigations. In these cases, the convening authority need not convene multiple investigations into a single event, but may direct a "dual purpose" investigation. The convening authority must contact a JA or OJAG Code 15 before convening a litigation-report or "dual purpose" investigation to determine the appropriate type of investigation to be conducted. JAGMAN at para 0210(a)(2).

<sup>5</sup> JAGMAN at para 0204(b)(4).

<sup>6</sup> *Id.* at para 0210(a)(1) and JAGMAN Appendix A-2-g and A-2-l.

<sup>7</sup> JAGMAN at para 0210(d)(2).

<sup>8</sup> *Id.* at para 0211. Guidance regarding courts and boards of inquiry are found in JAGINST 5830.1(series). Litigation Report Investigations are covered by JAGMAN para 0210.

expected level of professionalism, leadership, judgment, communication, state of material readiness, or other relevant standard.<sup>9</sup> These cases are often accompanied by national public and press interest and significant congressional attention.<sup>10</sup>

In addition to the investigations governed by the JAGMAN, investigations may be required by other regulations.<sup>11</sup> For example:

- a. situation reports prescribed by Articles 0831 and 0851, U.S. Navy Regulations, OPNAVINST 3100.6(series), or other situation reports prescribed by bureau manuals or departmental regulations;
- b. investigations conducted by an inspector general under SECNAVINST 5430.67(series);
- c. investigations of aviation mishaps under OPNAVINST 3750.6(series);
- d. reports concerning security violations prescribed by SECNAVINST M-5510. 36(series);
- e. safety and mishap investigation reports required by OPNAVINST 5102.1(series), or by MCO P5102.1(series);
- f. investigations conducted by Naval Criminal Investigative Service (NCIS) under SECNAVINST 5430.107(series);
- g. investigations of allegations against senior DON officials conducted pursuant to SECNAVINST 5800.12 (series); and
- h. quality assurance reviews required by BUMEDINST6010.13 (series).

### **III. JAGMAN INVESTIGATIONS**

#### **A. THE PRELIMINARY INQUIRY**

A preliminary inquiry serves as an analytical tool to determine whether additional investigation is warranted, and if so, how it is to be conducted.<sup>12</sup> It is an excellent tool for the commander to gather information. It provides a source document from which the commander can make decisions regarding individual responsibility, corrective action, and the requirement for further investigation.

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<sup>9</sup> JAGMAN at Appendix A-2-a, para 9.

<sup>10</sup> *Id.*

<sup>11</sup> See *id.* at para 0201(c).

<sup>12</sup> *Id.* at para. 0203(a).

There are no requirements or restrictions regarding how the preliminary inquiry is to be accomplished. The goal is to take a “quick look” at the particular incident and gather enough information so that the commander can make an informed decision regarding what type of investigation, if any, is required.

Although not required in every case, a preliminary inquiry is required for all line of duty determinations and cases involving the death of a member of the Naval service, or into the death of a civilian aboard a place under Naval control.<sup>13</sup> The preliminary inquiry may be initiated in any manner the commander decides is appropriate. Normally, a commander will direct a preliminary inquiry in writing by an appointing order and will document the outcome in writing.<sup>14</sup> Generally, the preliminary inquiry should be completed within three calendar days of the commander learning of the incident.<sup>15</sup> The JA should be prepared to assist commanders as the JAGMAN specifically states that judge advocates should be consulted whether additional investigation is necessary.<sup>16</sup> A sample preliminary inquiry report and a preliminary inquiry checklist are included in Appendix 5-1. Note that before conducting a preliminary inquiry or convening a full JAGMAN investigation, the commander shall liaise with NCIS, as appropriate, regarding any pending law enforcement (military, federal, or state) or safety investigation.<sup>17</sup>

A preliminary inquiry is concluded when the commander has sufficient information to exercise one of the following options:<sup>18</sup>

1. take no further action;
2. make appropriate medical or dental record Line of Duty (LOD) determination;<sup>19</sup>
3. conduct a command investigation;<sup>20</sup>
4. convene a litigation-report investigation under the direction and supervision of a JA;<sup>21</sup>
5. in cases involving a “major incident”, convene a court or board of inquiry.<sup>22</sup>

<sup>13</sup> JAGMAN at paras 0222(a) and 0225(d)

<sup>14</sup> *Id.* at para 0203(c).

<sup>15</sup> *Id.* at para 0203(e).

<sup>16</sup> *Id.* at para 0203(a).

<sup>17</sup> *Id.* at para 0201(d).

<sup>18</sup> *Id.* at para 0204.

<sup>19</sup> *Id.* at para 0222.

<sup>20</sup> *Id.* at para 0209.

<sup>21</sup> *Id.* at para 0210.

<sup>22</sup> *Id.* at para 0211.

## B. COMMAND INVESTIGATIONS

The commander will convene a command investigation to gather, analyze, and record relevant information about an incident or event of primary interest to the command.<sup>23</sup> Although a convening authority (CA) may use a verbal order or naval message to initially direct an investigating officer (IO) to initiate an investigation, the CA must memorialize the order in writing.<sup>24</sup> See sample convening order included in Appendix 5-2. The convening order shall specify when the report is due, normally within 30 days.<sup>25</sup>

The IO will collect evidence by personal interviews, telephonic inquiries, and written correspondence. Written investigations should follow an established format and include Privacy Act Statements and rights advisements as discussed below. Many IOs mistakenly presume that the reader of the investigation has the same background and knowledge of the facts as the IO. In order to assist the reader, JAs should advise IOs to write their investigation by placing all facts in chronological order as if telling a story from beginning to end. A Command Investigation Sample Report is included in Appendix 5-3.

The general goal of a command investigation is to find out who, what, when, where, how, and why an incident occurred. The IO should decide what the purpose and methodology of his/her investigation is before starting to collect evidence. The IO should review all applicable checklists to determine what specific informational requirements exist.<sup>26</sup> One of the principle advantages of the command investigation is that the IO is not bound by formal rules of evidence. The IO may collect, consider, and include in the record any matter relevant to the investigation that is believable and authentic. Photographs, maps, sketches, etc., are always helpful to reviewing authorities in understanding what has occurred. So too are present sense impressions (e.g., noise, texture, smell, observations) that are not adequately portrayed in other evidence. The IO may record these impressions in a simple memorandum for inclusion in the record.

Each witness should be interviewed separately. Let the witness tell what happened; don't ask questions that suggest answers. Ask for clarification if the

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<sup>23</sup> JAGMAN at para. 0209(a).

<sup>24</sup> *Id.* at para 0206, see also para 0206(c).

<sup>25</sup> *Id.* at para 0206(c)(9).

<sup>26</sup> See JAGMAN Appendices and Naval Justice School's JAGMAN Investigations Handbook. Both of these references contain several checklists.

witness is speaking in broad or vague terms (e.g., "He was drunk"; "What gave you that impression?"; "He had an odor of alcohol about him, his eyes were bloodshot, he was slurring his speech and unable to maintain his balance"). Try to obtain as much information during the interview as possible; the relevance of a particular fact may not become clear until later in the investigation.

A Privacy Act statement is required any time the IO asks an individual to supply personal information (as opposed to information related to performance of duty) which will be included in the investigation report.<sup>27</sup> A Privacy Act advisement format is included in Appendix 5-4. Note that steps should be taken to ensure Personally Identifiable Information (PII) is protected from inappropriate release. Only the minimum amount of PII necessary to investigate the matter should be included in the investigative report.<sup>28</sup>

An Article 31(b), UCMJ, rights advisement is required for any witness whom the IO suspects of an offense chargeable under the UCMJ. The JA should remind the IO that the Article 31(b) advisement threshold is relatively low. Nevertheless, IOs should understand that all witnesses do not require an Article 31(b) rights advisement. An Article 31(b) rights advisement form is included in Appendix 5-5. Ordinarily, an investigation should collect relevant information from all other sources before interviewing persons suspected of an offense, misconduct, or improper performance of duty.<sup>29</sup> The JAGMAN also states that proper liaison with the JA is advised in order to ensure investigators will not impede any criminal investigation.<sup>30</sup>

### **1. *LINE OF DUTY/MISCONDUCT***

Line of Duty/Misconduct (LOD/MIS) determinations are required in every case in which a member of the naval service incurs a disease or injury that

1. Might result in permanent disability; or,
2. results in the member's physical inability to perform duty for a period exceeding 24 hours, as distinguished from a period of hospitalization for evaluation or observation; or,
3. death.<sup>31</sup>

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<sup>27</sup>JAGMAN at para. 0207(e).

<sup>28</sup> See *id.* at para 0207 and SECNAVINST 5211.5(series).

<sup>29</sup> JAGMAN at para 0207(c)(2).

<sup>30</sup> *Id.*

<sup>31</sup> *Id.* at 0212.

All line of duty determinations must begin with a preliminary inquiry.<sup>32</sup> Command investigations are not required if the Marine's commander and the medical officer agree that the injuries occurred in the line of duty and not due to misconduct, and if an appropriate entry to this effect is made in the Marine's health or dental record.<sup>33</sup>

In conducting Line of Duty/Misconduct (LOD/MIS) investigations there are several presumptions that may arise that are dependent on the circumstances. One central presumption is that, as a general rule, injuries or disease suffered by a Marine are presumed to be in the line of duty and not due to the Marine's misconduct.<sup>34</sup>

Along with presumptions, there are specific rules to conducting a LOD/MIS investigation. As an example, for LOD/MIS investigations, any person in the Armed Forces, prior to being asked to sign any statement relating to the origin, incidence, or aggravation of any disease or injury suffered, shall be advised of the right not to sign such a statement.<sup>35</sup> A sample advisement form is included in Appendix 5-6. Note also that "misconduct" can never be "in the line of duty."<sup>36</sup> A finding or determination that an injury was incurred as a result of the member's own misconduct must be accompanied by a finding or determination that the member's injury was incurred "not in the line of duty."<sup>37</sup> Finally, it should also be highlighted that generally, administrative investigations use preponderance of the evidence to arrive at a conclusion. However, in LOD/MIS investigations the following findings require the higher standard of clear and convincing evidence:

1. to rebut the presumption that an injury, disease, or death has been incurred in the line of duty;
2. to rebut the presumption of mental responsibility when the question of a member's mental responsibility has been raised by the facts or by the nature of the incident;
3. to rebut the presumption that an unauthorized absence period of less than 24 hours did not materially interfere with the

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<sup>32</sup> JAGMAN.at para 0222(a).

<sup>33</sup> *Id.* at paras 0222(a)(1) and 0222(c).

<sup>34</sup> *Id.*

<sup>35</sup> See 10 U.S.C. 1219 and JAGMAN para 0212(c).

<sup>36</sup> JAGMAN at para 0217.

<sup>37</sup> *Id.*



- performance of the member's military duties in the line of duty/misconduct cases; or
4. to find that the acts of the deceased service member may have caused harm or loss of life, including the member's own, through intentional acts.<sup>38</sup>

The JAGMAN provides a handy checklist for reviewing LOD/MIS investigations which is found in Appendix 5-7.

## **2. DEATH INVESTIGATIONS**

As a starting point, a preliminary inquiry shall be conducted into the death of a member of the Naval service, or into the death of civilian aboard a place under Naval control.<sup>39</sup> The JA must take a direct and active role in the preparation and review of death investigations, especially deaths that occur as a result of training accidents and operations or on board a naval vessel, aircraft, or military installation.

If death occurs on a naval vessel, aircraft, or military installation, the Naval Criminal Investigative Service (NCIS) must be notified, except when the cause of death is medically attributable to disease or natural causes.<sup>40</sup> It should also be noted that when an investigation into the cause or circumstances surrounding the death of a military member or a DoD civilian employee who becomes a fatality while accompanying military personnel in the field or as a result of military related actions is initiated, the appropriate Military Service Casualty Headquarters Office shall be notified immediately.<sup>41</sup>

As stated above, all death investigations will begin with a preliminary inquiry. Moreover, line of duty determinations are required in all active duty death cases.<sup>42</sup> The requirement to conduct a preliminary inquiry or an investigation is independent of the line of duty determination requirement.<sup>43</sup>

A command investigation is typically used to fully investigate the death of a military service member. The time period for completing the administrative investigation into the death shall normally not exceed 20

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<sup>38</sup> JAGMAN at para 0214.

<sup>39</sup> *Id.* at para. 0226.

<sup>40</sup> *Id.* at para 0225(d).

<sup>41</sup> *Id.* at para 0225(b).

<sup>42</sup> *Id.* at para. 0212(b).

<sup>43</sup> *Id.* at 0226.

calendar days from the date of the death, or its discovery.<sup>44</sup> Note however that normally no command investigation is required if the preliminary inquiry shows that the death was the result of a previously known medical condition and the adequacy of military medical care is not reasonably in question, or the death was the result of enemy action, except for friendly fire.<sup>45</sup>

A full command investigation is required if the preliminary inquiry shows:

1. the case involves civilian or other non-Naval personnel found dead aboard an activity under military control, where the death was apparently caused by suicide or other unusual circumstances;
2. the circumstances surrounding the death place the adequacy of military medical care reasonably at issue;
3. the case involves the death of a military member and probable nexus exists to Naval service, except where the death is as a result of enemy action; or
4. it is unclear if enemy action caused the death, such as in possible “friendly fire” incidents.<sup>46</sup>

A limited investigation is required if the preliminary inquiry shows that the death occurred at a location in the U.S., but not under military control, while the member was off-duty, and the circumstances of the death had no discernable nexus to the Naval service.<sup>47</sup> In these circumstances, the Command shall obtain the results of the investigation of the incident by the civilian authorities and maintain the results as an internal report. The command shall document, in writing, the reasons for making the determination to conduct a limited investigation, attaching the enumerated reasons to the internal report.<sup>48</sup>

As a general rule, death investigations reports/records shall not be released to the public until they are final.<sup>49</sup> However it is DON policy that upon completion of the review the first general/flag officer in the chain of command, the reviewer shall release a copy to the requesting next of kin unless release

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<sup>44</sup> *Id.* at para 0225(e); see also MILPERSMAN 1770-60 for the requirement to submit status reports.

<sup>45</sup> JAGMAN at para 0226. Friendly fire investigations are addressed in Enclosure 3 of DoDI 6055.07, *Mishap Notification, Investigation, Reporting, and Record Keeping*, of June 6, 2011.

<sup>46</sup> *Id.* at 0226(a).

<sup>47</sup> *Id.* at para 0226(c).

<sup>48</sup> *Id.*

<sup>49</sup> *Id.* at para 0225(f)(1).

would violate the law, would harm the command's mission, would interfere with a criminal investigation, or other "good cause" reasons.<sup>50</sup> When releasing the investigation consideration should be given to the potential impact of the report.<sup>51</sup> Graphic photographs should be separately wrapped and labeled. Moreover, whenever possible, the command should hand-deliver the report to the next of kin. As a cautionary note, before release, the JA and the commander with release authority should also refer to the latest version of SECNAVINST 5211(series) for detailed guidance on release decisions. Note also that an advance copy of all death investigations, other than those where only a preliminary inquiry or limited investigation is required, shall be provided to the cognizant Echelon II Commander after the first endorsement.<sup>52</sup>

### 3. AVIATION MISHAPS

Aircraft mishap investigations are investigated by one or more investigative bodies. JAGMAN Appendix A-2-n governs JAGMAN aviation mishaps. OPNAVINST 3750.16(series) governs Aviation Mishap Safety Board (AMSB) investigations. The Marine Corps Assignment, Classification, and Travel System Manual (ACTS Manual) governs the conduct of Field Flight Performance Board (FFPB) investigations.<sup>53</sup> Although the JA should only be directly involved with the JAGMAN investigation, the JA should stay informed on all three investigative bodies.

Safety investigations differ from legal investigations. They are not intended to find fault or establish culpability. Safety investigations determine causal factors and provide recommendations to prevent similar mishaps from recurring. Each investigative body has a separate purpose and governing rules. The AMSB investigation focuses on aircraft mechanical functioning, flight procedures, environmental factors, and pilot/air crew error. FFPBs focus on safety and the qualifications of the pilot/air crew. Finally, the JAGMAN encompasses all areas of investigative action to include safety, command and criminal responsibility, and corrective action. JAGMAN Appendix A-2-n section (b) addresses the relationship among the separate investigations.<sup>54</sup>

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<sup>50</sup> *Id.*

<sup>51</sup> *Id.* at para 0225(f)(2).

<sup>52</sup> JAGMAN at para 0232.

<sup>53</sup> U.S. MARINE CORPS, ORDER P1000.6(SERIES), ASSIGNMENT, CLASSIFICATION, AND TRAVEL SYSTEM MANUAL para. 1214 [hereinafter ACTS MANUAL].

<sup>54</sup> JAGMAN Appendix A-2-n at para (b)(2) emphasizes that "[t]he relationship between the JAGMAN investigation and aircraft safety investigations should be thoroughly understood by all persons involved with

**WARNING:** The JA should advise the IO for each investigation that they should not share information with each other during the course of their inquiries. It should also be specifically noted that statements gathered in the course of the aircraft accident safety investigation are privileged.<sup>55</sup> A statement made before an aviation board cannot be used for any purpose other than mishap prevention.<sup>56</sup>

*a. AVIATION MISHAPS AND JAGMAN INVESTIGATIONS*

A JAGMAN investigation is required when an aircraft mishap results in death or serious injury, extensive damage to government property, or when the possibility of a claim on behalf of or against the government exists.<sup>57</sup> The purpose of the JAGMAN is to determine the cause and responsibility for the mishap, nature and extent of any injuries, description of all damage, and any attendant circumstances.<sup>58</sup> In conducting a JAGMAN investigation no witness shall be questioned regarding information provided to the aviation mishap board under a promise of confidentiality.<sup>59</sup> A JAGMAN investigation is not required for aircraft mishaps incident to direct enemy action.<sup>60</sup> If this initial investigation fails to determine the cause of the mishap, the most prudent advice for the commander is to convene a formal JAGMAN command investigation to determine the cause of the mishap.

An aircraft mishap that is categorized as “Class A” will require several types of investigations, discussed below. Note that as soon as practical, but in no case longer than 60 days after the incident, the convening authority shall determine whether the mishap is a “Class A”.<sup>61</sup> A “Class A” mishap is one in which the total cost of damage to property or aircraft or unmanned aerial vehicle (UAV) exceeds \$1,000,000, or naval aircraft is destroyed or missing, or any fatality or permanent total disability results from the direct involvement of naval aircraft or UAV.<sup>62</sup> Loss of UAV is not a Class A unless the cost is \$1,000,000 or greater.

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investigating any aircraft accident or mishap." See also OPNAVINST 3750.16 (series) which provides specific direction concerning coordination or investigations of aviation mishaps.

<sup>55</sup> JAGMAN at Appendix A-2-n at para (b)(2)

<sup>56</sup> *Id.*

<sup>57</sup> *Id.*

<sup>58</sup> *Id.* at Appendix A-2-n at para (b)(2)

<sup>59</sup> *Id.*

<sup>60</sup> *Id.* At Appendix A-2-n at para(a)(3)

<sup>61</sup> *Id.* at Appendix A-2-n at para (c)(1).

<sup>62</sup> JAGMAN DEFINITIONS Appendix A-2-a at para 2.

“Class A” aircraft mishaps trigger three separate investigative bodies:

- (a) a JAGMAN investigation;
- (b) an aviation mishap safety board (AMSB); and
- (c) a field flight performance board (FFPB).

***b. THE AVIATION MISHAP SAFETY BOARD***

The Headquarters element for the Aviation Combat Element (ACE) should be very familiar with the conduct and procedures for an AMSB. OPNAVINST 3750.6(series) is the governing directive. Several guideposts follow.

Chapter 6 of OPNAVINST 3750.6(series) specifically states that naval aviation mishap safety investigations have but one purpose: to determine why the accident occurred.<sup>63</sup> The mishap investigation looks for causes and undetected hazards. It tries to identify those factors that caused the mishap. It also looks to identify factors that caused any additional damage or injury during the course of the mishap.<sup>64</sup>

Useful AMSB forms include:

- (1) Mishap Category Decision Tree (flight mishap, flight-related mishap, or aviation ground mishap);
- (2) Mishap Severity Decision Tree (Class A, B, or C);
- (3) Mishap Classification Matrix (by mishap category and severity);
- (4) Advice to witnesses with a promise of confidentiality;
- (5) Advice to witnesses without a promise of confidentiality.

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<sup>63</sup> OPNAVINST 3750.6(series) at para 602.

<sup>64</sup> *Id.*

### *c. THE FIELD FLIGHT PERFORMANCE BOARD*

The FFPB is an informal administrative board comprised of qualified naval aviators, navigation flight officers, officer navigators or naval aerial observers, and a naval flight surgeon.<sup>65</sup> The FFPB is a means to uphold established standards in flight performance and to prevent operator error that can be anticipated through early identification of substandard performance. The convening authority will order an FFPB for respondents directly involved in a flight or flight related incident when, in the judgment of the convening authority, their standard of performance is in any way suspect.<sup>66</sup>

Deployment FFPBs require additional consideration. If an FFPB is required during deployment, a dispute may arise over which command should conduct it. Because the squadron in which the mishap occurred cannot conduct the FFPB, the burden falls upon the MAGTF Command Element (CE). Due to the limited number of qualified aviators on a MAGTF CE staff, a standing operating procedure should be established which requires that the Marine Aircraft Group (MAG) over the squadron to conduct the FFPB. The MAG possesses skilled aviators and a wealth of resources not available to the deployed MAGTF.

## **4. GROUND SAFETY INVESTIGATIONS**

The MAGTF Safety Officer has primary responsibility for the conduct and submission of required ground safety investigations. These investigations are governed by the Marine Corps Ground Mishap Investigation and Reporting Manual (Ground Mishap Manual).<sup>67</sup> The Manual states that all commands shall investigate, report, and maintain records of all mishaps as required by the manual, and commands shall identify and analyze mishap causes to develop and track corrective actions to prevent similar mishaps from occurring.<sup>68</sup>

Per paragraph 2002 of the Ground Mishap Manual, mishaps are classified by severity. The classifications are examined below.<sup>69</sup>

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<sup>65</sup> MCO P100.6 (series) ACTS MANUAL at para. 1214.

<sup>66</sup> MCO P100.6 (series) ACTS MANUAL at para. 1214.

<sup>67</sup> U.S. MARINE CORPS, ORDER P5102.1(SERIES), MARINE CORPS GROUNDS MISHAP INVESTIGATION AND REPORTING MANUAL.

<sup>68</sup> *Id.* at para 1003.

<sup>69</sup> *Id.* at para. 2002.

1. Class A Mishap. The resulting total cost of damages to DoD or non-DoD property in an amount of \$1 million or more; a DoD aircraft is destroyed; or an injury and/or occupational illness result in a fatality or permanent total disability.

2. Class B Mishap. The resulting total cost of damages to DoD or non-DoD property is \$200,000 or more, but less than \$1 million. An injury and/or occupational illness result in permanent partial disability or when three or more personnel are hospitalized for inpatient care (beyond observation) as a result of a single mishap.

3. Class C Mishap. The resulting total cost of damages to DoD or non-DoD property is \$20,000 or more, but less than \$200,000; a nonfatal injury that causes any loss of time from work beyond the day or shift on which it occurred; or a nonfatal occupational illness that causes loss of time from work or disability at any time.

There are three types of safety investigations.<sup>70</sup> (1) Unit/Command Safety Investigations (Class B, C, and other reportable mishaps that do not require a safety investigation board (SIB) are investigated at the unit level). (2) Safety Investigation Boards (SIB) (On-duty and off duty on base Class A mishaps require investigation by an SIB. For information on SIBs, see Chapter 6 of the Ground Mishap Manual). (3) Directed Safety Investigations. Note also, that in special cases, Chief of Naval Operations (CNO (N09F)) or Commandant of the Marine Corps, Safety Division (CMC (SD)) may direct an independent safety investigation. These independent investigations do not relieve commanders of their responsibilities for safety investigation and reporting as required by the Ground Mishap Manual.<sup>71</sup>

Much like AMSBs, ground mishap safety investigations differ from JAGMAN investigations in that they are not intended to find fault or establish culpability. Safety investigations determine causal factors and provide recommendations to prevent similar mishaps from recurring. All mishap investigations are conducted solely for safety purposes. Trained safety investigators are available for consultation and investigative assistance.

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<sup>70</sup> MCO P5102.1(SERIES), at Appendix A para 1.

<sup>71</sup> *Id.*

Commanders are tasked to direct the investigation of all mishaps, regardless of severity. Commanders are also tasked, among other things, with reporting mishaps, not investigated by a Safety Investigation Board (SIB), as outlined in Chapter 3 of the Ground Mishap Manual. Moreover, near-mishaps should be investigated and reported via a HAZREP, as outlined in Chapter 4 of the Ground Mishap Manual.<sup>72</sup> Mishaps are defined as unplanned events or a series of events, which interfere with or interrupt a process or procedure and may result in a fatality, injury, or occupational illness to personnel or damage to property.<sup>73</sup> Mishaps occur as a result of failing to identify and reduce or eliminate hazards.<sup>74</sup>

The following mishaps require a Safety Investigation Board.<sup>75</sup>

1. All on-duty Class A mishaps on or off a government installation (while performing official duties); in commissioned and pre-commissioned U.S. Navy ships after delivery; United States Naval Ships (USNS) with federal civilian mariner crews in the Military Sealift Command (MSC); Navy-owned experimental and small craft; and the ship's embarked equipment, boats, and landing craft, or leased boats.<sup>76</sup>
2. Military death that occurs during or as the result of a medical event that occurs within one hour after completion of any command directed remedial physical training (PT), physical readiness test (PRT), combat fitness test (CFT), physical fitness testing (PFT), physical fitness assessment (PFA) or command sponsored activity during normal working hours regardless of any pre-existing medical condition.
3. On-duty injury where death or permanent total disability is likely to occur, or where damage estimates may be expected to exceed one million dollars.

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<sup>72</sup> MCO P5102(series) at para. 1005(8)8(e)

<sup>73</sup> *Id.* at para 2000.

<sup>74</sup> *Id.*

<sup>75</sup> MCO P5102(series) at para. 6002.

<sup>76</sup> *Id.* at Glossary G-1 "Class A Mishap."



4. Hospitalization, beyond observation, of three or more personnel, at least one of who is a DoD civilian, involved in a single mishap.
5. All explosives mishaps, all ordnance impacting off range and all live fire mishaps resulting in an injury.
6. Any mishap that a controlling command (as defined in paragraph 1005.6 of the Ground Mishap Manual) determines requires a more thorough investigation and report, beyond that provided by a command's safety investigator.<sup>77</sup>

A Mishap Reporting Guide Matrix is included in Figure 5-1 of the Ground Mishap Manual. As discussed with aviation mishap safety boards, the JA should strongly caution against the sharing of information. The Headquarters, Marine Corps, Safety Division website contains a wealth of information and updates regarding the proper conduct of a ground safety investigation. See <http://www2.marines.mil/unit/safety/Pages/welcome.aspx>.

#### **IV. OTHER INVESTIGATIONS**

##### **A. EQUAL OPPORTUNITY AND SEXUAL HARASSMENT INVESTIGATIONS**

The JA must be knowledgeable regarding the requirements for equal opportunity (EO) and sexual harassment investigations. All major commands are assigned an equal opportunity advisor (EOA). Because an EOA is often not available in a deployed environment, the JA must be familiar with the Equal Opportunity Manual and specifically with Chapter 3, Commander's Responsibilities, and Chapter 5, Processing Complaints.

The Equal Opportunity Manual specifically notes that the Marine Corps is built on the trust and teamwork shared between individual Marines and their leaders.<sup>78</sup> Moreover, inherent in this trust is the understanding that fair, scrupulous, and unbiased treatment is the Marine Corps leadership standard.<sup>79</sup> Individuals who believe they have been subjected to discrimination or inappropriate behavior should report the incident to the chain of command if

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<sup>77</sup> MCO P5102(series) at para 6002.

<sup>78</sup> MCO P 5354.1(series) Marine Corps Equal Opportunity Manual at para 1000.

<sup>79</sup> *Id.*

they believe they are unable to resolve the problem by themselves or the incident is criminal in nature.<sup>80</sup>

The Marine Corps order on sexual harassment defines the term and directs commanders to take action when harassment is alleged.<sup>81</sup> DON policy on sexual harassment, contained in SECNAVINST 5300.26 and MCO1000.9, requires commanders to take appropriate action in each substantiated incident of sexual harassment.<sup>82</sup> CMC (MPE) is directed to maintain and monitor the Marine Corps Discrimination and Sexual Harassment (DASH) Reporting System. The primary purpose of the system is to advise the CMC of transgressions occurring in the Corps. It is also used to provide statistical data and monitor compliance with complaint timelines.<sup>83</sup> Normally, EOA issues the DASH report with JA input as necessary. The Marine Corps Equal Opportunity Manual provides further detail regarding the timelines and procedures for DASH reports.<sup>84</sup>

## **B. INSPECTOR GENERAL INQUIRIES AND INVESTIGATIONS**

Inspector General (IG) investigations are most often directed by the Inspector General of the Marine Corps (IGMC) in response to a Congressional Inquiry, Hotline Complaint, or other formal complaint. The mission of the Marine Corps IG is to investigate or inquire into allegations of misconduct, impropriety, mismanagement, or violations of law and to provide staff overview for all congressional or other special interest petitions. A copy of a request of an Inspector General complaint form is included in Appendix 5-8. The hotline number is (866) 243-3887. The complete IG Investigations Manual and other useful resources may be found on the IGMC website at [www.marines.mil/unit/hqmc/inspectorgeneral](http://www.marines.mil/unit/hqmc/inspectorgeneral).

## **V. SERIOUS INCIDENT REPORTS**

Marine Corps Order (MCO) 3504.2(Series) details the requirements for release of an OPREP-3 Serious Incident Report (SIR).<sup>85</sup> OPREP-3SIR reportable

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<sup>80</sup> MCO P 5354.1(series).at para 2001, see also . MCO 1700.23 (Request Mast) provides chain of command clarification for EO complaints filed through Request Mast procedures.

<sup>81</sup> U.S. MARINE CORPS, ORDER 1000.9,(SERIES) SEXUAL HARASSMENT.

<sup>82</sup> MCO P 5354.1(Series) Marine Corps Equal Opportunity Manual at para 2002.

<sup>83</sup> *Id.*

<sup>84</sup> MCO P 5354.1(Series) Marine Corps Equal Opportunity Manual

<sup>85</sup> U.S. MARINE CORPS, ORDER 3504.2(SERIES) OPERATIONS EVENT/INCIDENT REPORT (OPREP-3) REPORTING.

events are detailed in enclosure (2) of MCO 3504.2(series), and discussed below. The MAGTF adjutant, in conjunction with the MAGTF Chief of Staff/Executive Officer, should take the lead on the release of an OPREP-3SIR. The JA, however, should provide advice regarding the requirement to collect as much evidence as possible before the release of a SIR. This is especially applicable in cases involving criminal misconduct. Initial reports to the command are not always the final facts of the case.

OPREP-3 SIR provides the Commandant of the Marine Corps, through the Marine Corps Operations Center (MCOC), information on any significant event or incident that is not of national-level interest or otherwise reported under another flagword. When national-level interest has been determined, the originator sends the report directly to the National Military Command Center with the flagword PINNACLE.<sup>86</sup>

Although not an inclusive list, MCO 3504.2(series) notes that reportable incidents include:

- a. Event or incident of a military or political nature, foreign or domestic, that involves Marine Corps personnel, units or installations that may result in a local or national official reaction, United States Congressional interest or media attention.
- b. On-duty event or incident resulting in death or disability of Marine Corps personnel or civilians, or resulting in \$200,000 or more in total property damage. Commands should not delay reporting pending an official determination of disability or cost; if the incident has the potential to cross the threshold a report is required.
- c. Event or incident associated with a Marine Corps operation or training exercise that results in death, or injury that results in lost time or reportable property damage.
- d. Class A, B or C Aircraft Mishap. Commands must not delay reporting pending an official determination of the mishap class. If there is a potential for a “Class C” or greater mishap, OPREP-3 procedures must be initiated. In no case shall the command delay reporting pending notification of any intermediate headquarters.

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<sup>86</sup> *Id.*

- e. Serious criminal event or incident that may result in foreign or domestic criminal jurisdiction over Marine Corps personnel and/or their dependent(s).
- f. Event or incident of large scale civil disorder involving Marine Corps personnel, units or installations. Natural or destructive weather event or incident that threatens life, property, or severely delays or cancels an operation or training exercise.
- g. Loss or compromise of classified information that may compromise operational plans. Event or incident of actual or suspected covert action against any Marine Corps unit or installation.
- h. The actual or presumptive diagnosis of any disease of potential epidemic significance or that may require quarantine.
- i. The diagnosis of any disease or the extensive outbreak of any condition among Marine Corps personnel that may potentially degrade the operational readiness of a unit or installation.
- j. Hazing event or incident that results in death, injury requiring hospitalization or significant property damage.
- k. Racially or ethnically motivated discriminatory event or incident that results in death, injury requiring hospitalization or significant property damage, or adversely affects the equal opportunity climate of a unit or installation.
- l. Things Falling Off Aircraft (TFOA).
- m. Any other event or incident of significant Marine Corps interest not previously reported.<sup>87</sup>

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<sup>87</sup> U.S. MARINE CORPS, ORDER 3504.2(SERIES)

OPREP-3 SIR will be reported to MCOC within 15 minutes of any event or incident, or within 15 minutes of becoming aware of any event or incident reportable under the Directive. An OPREP-3 message report is required within 1 hour of becoming aware of any event or incident that is reportable under the Directive.<sup>88</sup>

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<sup>88</sup> *Id.*

## CHAPTER 6

### CIVIL LAW

#### I. INTRODUCTION

“Civil law” is a broad term encompassing that body of law governing the rights and duties of military organizations with regard to civil authorities.<sup>1</sup> Under this definition, civil law is a cross-cutting discipline with applicability across a wide spectrum of legal support, from military justice to legal assistance to foreign claims. The purpose of this chapter, however, is to focus on three specific areas of civil law not addressed in other chapters. Namely, this chapter will discuss 1) fiscal law; 2) contract law; and 3) overseas environmental law, all from the perspective of a deployed Marine Air-Ground Task Force (MAGTF).

This chapter is not intended to provide an exhaustive description of the complex assortment of statutes, directives, and regulations that comprise fiscal, contract, and environmental law. Rather, this chapter hopes to capture the essential knowledge that a deployed MAGTF judge advocate (JA) should possess in light of those fiscal, contract, and environmental issues likely to be encountered in a deployed setting.

#### II. DEPLOYMENT FISCAL LAW

Most JAs should be familiar with the basic fiscal law mantra of “purpose, time, and amount.” Obligations (incurring a legal liability to pay) and expenditures (actual payment of funds to satisfy an obligation) must be for a proper “purpose,” must occur within a set “time,” and must be within a congressionally authorized “amount.” Disregarding any of these basic controls can be a violation of either the Purpose Statute (applying an appropriation to an improper purpose)<sup>2</sup> or the Antideficiency Act (essentially, authorizing expenditures or incurring obligations in excess of available funds or in advance of appropriations).<sup>3</sup> This fundamental fiscal framework applies to all military activities; there are very few “deployment” or contingency exceptions.

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<sup>1</sup> See U.S. DEP’T OF ARMY, FIELD MANUAL 1-04, LEGAL SUPPORT TO THE OPERATIONAL ARMY (15 Apr. 2009).

<sup>2</sup> 31 U.S.C. § 1301(a) (2010).

<sup>3</sup> 31 U.S.C. §§ 1341(a), 1517 (2010).

Applying this fundamental framework to a specific set of facts, however, can be a daunting task that requires some understanding of how fiscal law works and how the various statutes, directives, and regulations interrelate. The *Operational Law Handbook* is a good basic reference, yet even its efforts to provide a fiscal law overview fill thirty-six detailed pages<sup>4</sup> and might be difficult for a JA to implement in practical terms in the context of a deployed MAGTF. The “What” this section attempts to do is synthesize the guidance found in the *Operational Law Handbook* and various other reference sources into a narrative discussion of how fiscal law concerns might impact MAGTF operations.

### **A. OPERATION AND MAINTENANCE FUNDS AS A DEPLOYMENT FISCAL BASELINE**

A MAGTF JA should approach deployment fiscal law from the following basic premise: unit Operation and Maintenance (O&M) funds pay for the daily costs of operating and maintaining a MAGTF during a deployment. Every year Congress provides the Department of Defense (DOD) the budgetary authority for these funds through statutes—known as appropriations acts and authorization acts—that set forth the parameters for what purposes the funds may be used, during what time period, and up to what amount. For example, a recent Defense appropriations act provides the Marine Corps \$3,945,210 (amount) in O&M funds for fiscal year 2012 (time—1 October 2011 to 30 September 2012) “[f]or expenses, not otherwise provided for, necessary for the operation and maintenance of the Marine Corps” (purpose).<sup>5</sup> The Marine Corps then parcels out these O&M funds to lower levels, formally subdividing the funds to major commands, which in turn informally subdivide these funds into “targets” or “allowances” for units such as a MAGTF.

Unit O&M allowances likely will pay for the vast majority of expenses that a deployed MAGTF will incur. The JA needs to step in, however, whenever an expense arises that might run afoul of the purpose, time, or amount of the generic O&M appropriation or the unit O&M allowance. So long as available funds are expended during the fiscal year for current needs,<sup>6</sup> time and amount will not be a concern. The more common fiscal law concern is purpose. The

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<sup>4</sup> INT’L AND OPERATIONAL LAW DEP’T, THE JUDGE ADVOCATE GENERAL’S SCHOOL, U.S. ARMY, OPERATIONAL LAW HANDBOOK (2010) [hereinafter OPLAW HANDBOOK].

<sup>5</sup> An Act Making appropriations for the Department of Defense for the fiscal year ending September 30, 2012, and for other purposes, Pub. L. No. 112-81) [hereinafter 2010 DOD Appropriation].

<sup>6</sup> See 31 U.S.C. § 1502(a) (2010) (the “bona fide needs” rule).

JA must ensure that unit O&M funds are used only for the purpose Congress intended in the applicable appropriations act. The JA should use the following three-part test to analyze whether an obligation or expenditure fits a proper purpose:

- a. Obligations and expenditures must fit an appropriation or be *necessary and incident* to the general purpose of the appropriation;
- b. Obligations and expenditures must not be prohibited by law; and
- c. Obligations and expenditures must not be provided for otherwise in some other appropriation.<sup>7</sup>

Applying this test to O&M appropriations is easier said than done. Under the first prong, the JA must look to the purpose language in the O&M appropriation: “necessary for the operation and maintenance of the Marine Corps.”<sup>8</sup> What emerges seems to be a tautology: the purpose of O&M funds is to fund operation and maintenance. The JA therefore needs to look outside the statute for an understanding of what constitutes “operation and maintenance.” The Marine Corps Financial Execution Standard Operating Procedure Manual states:

The [Operation and Maintenance, Marine Corps,] appropriation provides funds for: officer and troop training; civilian salaries; recruiting; administration; operation of the supply system; maintenance of equipment; TDY travel and miscellaneous costs; and medical and dental care. It also provides funds for personnel support activities such as: dining facilities, barracks, BOQ’s, service clubs, and commissaries; maintenance and repair of property; operation and purchase of utilities; minor construction; engineering support; and other base services, such as motor transport, communications, security, etc.<sup>9</sup>

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<sup>7</sup> Sec’y of the Interior, B-120676, 34 Comp. Gen. 195 (1954) (emphasis added).

<sup>8</sup> See *supra* text accompanying note 5.

<sup>9</sup> U.S. MARINE CORPS, ORDER P7300.21, MARINE CORPS FINANCIAL EXECUTION STANDARD OPERATING PROCEDURE MANUAL para. 2004(1)(c) (29 Mar. 2001).



Another method for understanding what constitutes operation and maintenance is to define it in the negative; in other words, to state what it is not. The existence of another appropriation for another purpose, as discussed below, is often a clue. For example, separate appropriations exist for purposes such as pay and allowances for military personnel,<sup>10</sup> procurement of investment end items (e.g., aircraft, missiles, ships),<sup>11</sup> and research, development, test, and evaluation.<sup>12</sup> A breakdown of the amounts of money and the purpose for which they have been appropriated can be found in the most current version of the National Defense Authorization Act.

The remaining two prongs require the JA to know what obligations and expenditures are prohibited by law and which are provided for in other appropriations. It is at this point in the analysis that fiscal law can become particularly confusing as the sheer number of statutory and regulatory authorities for funding military operations quickly overwhelms the JA. To help alleviate this confusion, please see the Fiscal Law Deskbook<sup>13</sup> from The Judge Advocate General's Legal Center and School on funding U.S. military operations. This book is helpful in understanding the theory; however, a good practical approach for the MAGTF JA is to have handy a checklist of purposes, such as activities, types of purchases, or specific missions, likely to arise in MAGTF operations that should not be satisfied out of unit O&M allowances—in other words, a checklist of recurring fiscal law red flags.

## **B. DEPARTING FROM THE OPERATION AND MAINTENANCE FUNDS BASELINE: FISCAL LAW RED FLAGS IN MAGTF OPERATIONS**

Recall the basic premise: generally speaking, the MAGTF runs on O&M dollars. Generic O&M appropriations should not be used, however, for certain missions, activities, and purchases. What follows is a nonexhaustive listing of these recurring potential purposes, broken down into seven general categories: 1) Foreign Claims; 2) Humanitarian, Refugee, and Disaster Relief; 3) Logistical Support to Non-MAGTF Personnel; 4) Training and Exercises with Foreign Personnel; 5) Military Construction; 6) Gifts and Entertainment; and 7) Procurement Appropriations. Anytime the MAGTF contemplates the

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<sup>10</sup> 2010 DOD Appropriation, *supra* note 5, at 123 Stat. 3410.

<sup>11</sup> *Id.* at 123 Stat. 3417.

<sup>12</sup> *Id.* at 123 Stat. 3422.

<sup>13</sup> 2012 Fiscal Law Deskbook, Contract and Fiscal Law Dept., The Judge Advocate General's Legal Center and School, at [http://www.loc.gov/rr/frd/Military\\_Law/pdf/fiscal-law-deskbook\\_2012.pdf](http://www.loc.gov/rr/frd/Military_Law/pdf/fiscal-law-deskbook_2012.pdf)

obligation or expenditure of funds for any of these purposes, the JA's senses should be heightened for a potential fiscal law issue, ensuring that the correct appropriation is matched up to its intended purpose.

### ***1. FOREIGN CLAIMS***

Perhaps the most common example for the deployed MAGTF JA of a purpose that should not be paid out of unit O&M funds is foreign claims. This is not because the O&M appropriation is not intended for foreign claims payment—foreign claims actually are paid out of O&M dollars. But a separate O&M fund allocation exists for foreign claims, and the JAGMAN states that this allocation must be used to pay foreign claims.<sup>14</sup> Thus, pursuant to regulation (rather than the Purpose Statute) foreign claims should not be paid out of the unit O&M allowance.

### ***2. HUMANITARIAN, REFUGEE, AND DISASTER RELIEF***

The JA should closely scrutinize any mission, activity, project, or purchase that entails the provision of humanitarian, refugee, or disaster relief. The underlying concern is that humanitarian, refugee, and disaster relief fall within the purview of the Department of State (DOS), not the DOD. Recognizing that the military can play a vital role in such missions, however, Congress has provided various legislative authorities and funding appropriations for DOD participation.<sup>15</sup> The critical point for the MAGTF JA to understand is that, with one exception, unit O&M funds cannot be used to support humanitarian, refugee, or disaster relief activities. If a MAGTF has been assigned one of these missions, the JA should coordinate with the higher command to determine which is the appropriate “pot of money” to use.

The one exception where a MAGTF can use unit O&M funds for these missions is for the provision of *de minimis* humanitarian and civic assistance (HCA).<sup>16</sup> In conjunction with an authorized military operation (to include training and exercises), a MAGTF may provide HCA, defined below, so long as expenditures are minimal. Keep in mind that an activity intended to support the overall military mission that happens to have an incidental benefit to the local

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<sup>14</sup> See U.S. DEP'T OF NAVY, JUDGE ADVOCATE GENERAL INSTR. 5800.7E, MANUAL OF THE JUDGE ADVOCATE GENERAL (JAGMAN) para. 0820(c) (20 Jun 07) [hereinafter JAGMAN] (citing accounting data for foreign claims) For a more detailed discussion of foreign claims in general, see *infra* Chapter 8.

<sup>15</sup> For a more detailed discussion, see Fiscal Law Deskbook, *supra* note 13.

<sup>16</sup> 10 U.S.C. § 401(c)(4) (2002).

population would not constitute HCA. For example, if the mission requires clearing land to establish a base camp, the fact that the local population might also benefit does not mean that the clearing constitutes HCA. If the primary purpose of the activity is to benefit the local population, however, the MAGTF must adhere to strict HCA guidelines. All “HCA”<sup>17</sup> including “de minimus” HCA is limited to:

1. Medical, dental, and veterinary care provided in areas of a country that are rural or are underserved by medical, dental, and veterinary professionals, respectively.
2. Construction of rudimentary surface transportation systems.
3. Well drilling and construction of rudimentary sanitation facilities.
4. Rudimentary construction and repair of public facilities.<sup>18</sup>

Furthermore, DOD support for HCA is limited in scope. All *de minimis* HCA activities must:

1. Be conducted in conjunction with authorized military operations of the U.S. Armed Forces in a foreign country (including deployments for training).
2. Be conducted with the approval of the host nation's national and local civilian authorities.
3. Complement, not duplicate, other forms of social or economic assistance provided to the host nation by other U.S. Departments or Agencies.

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<sup>17</sup> All of the HCA requirements and limitations discussed in this section apply to any form of HCA, not just *de minimis* HCA. HCA other than *de minimis* HCA has an additional requirement, *inter alia*, of obtaining specific Secretary of State approval. 10 U.S.C. § 401(b)(1). *See also* U.S. DEP’T OF DEFENSE, INST. 2205.2, HUMANITARIAN AND CIVIC ASSISTANCE (HCA) ACTIVITIES, para. 4.a(7) (2 Dec 2008) [hereinafter DODI. 2205.2]. “*De minimis*” refers to the cost of the HCA and the possibility of funding the HCA with unit O&M dollars rather than HCA O&M dollars that the combatant command separately budgets for pre-planned HCA activities. *See* 2010 DOD Appropriation, *supra* note 5, at 123 Stat. 3416.

<sup>18</sup> 10 USC 401(e).

4. Serve the basic economic and social needs of the people of the host nation.

5. Promote, as determined by the Secretary of Defense or the Secretary of the Military Department concerned:

(a) The security and foreign policy interests of the United States.

(b) The security interests of the country in which the activities are to be performed.

(c) The specific operational readiness skills of the members of the U.S. Armed Forces who participate in the HCA activities..<sup>19</sup>

If all of these requirements and restrictions are met, the MAGTF may provide HCA amounting to a minimal expenditure. “Minimal expenditure” does not have a statutory definition. DODI 2205.2, an implementing regulation for HCA, however, dictates that unified combatant commanders shall determine what is “minimal.”<sup>20</sup> HCA costs include incremental expenses for consumable materials, supplies, and services, if any, that are reasonably necessary to provide the HCA, but do not include costs likely to be incurred as a result of the overall military operation whether or not the HCA is provided (for example, personnel expenses, transportation, fuel, and equipment repair).<sup>21</sup> A colloquial rule of thumb is “a few Marines, a few dollars, a few hours.”<sup>22</sup> The MAGTF JA should consult with the relevant combatant command to determine what guidelines, if any, exist for minimal HCA expenditures in the area of responsibility. DODI 2205.2 lists two examples of appropriate *de minimis* HCA:

1. A unit doctor’s examination of villagers for a few hours, with the administration of several shots and the issuance of some medicine, but not the deployment of a medical team for the purposes of providing mass inoculations to the local populace.

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<sup>19</sup> *Id.* at paras. 4.a.

<sup>20</sup> *Id.* at Encl 2, Page 8.

<sup>21</sup> *Id.* at para. 4.e(2).

<sup>22</sup> Interview with Major Kevin M. Walker, U.S. Army, Fiscal Law Instructor, The Judge Advocate General’s School, U.S. Army, in Charlottesville, VA (10 May 2002).

2. The opening of an access road through the trees and underbrush for several hundred yards, but not the asphaltting of a roadway.<sup>23</sup>

### ***3. LOGISTICAL SUPPORT TO NON-MAGTF PERSONNEL AND ENTITIES***

Another fiscal law red flag to be aware of is the provision of logistical support to non-MAGTF personnel or entities (in addition to support provided in the humanitarian relief context discussed above). As a general matter, whenever the MAGTF contemplates providing items or services to non-MAGTF personnel or entities, the JA should closely scrutinize the transaction for potential fiscal law issues. The best method for analyzing the relevant fiscal controls is to first categorize the support by the type of supported entity involved and then determine the relevant fiscal controls.

#### ***a. SUPPORT TO ANOTHER U.S. FEDERAL AGENCY***

If the support is to another U.S. federal agency, to include another U.S. military department or Defense agency, the Economy Act<sup>24</sup> provides the authority for federal agencies to order goods and services from other federal agencies. Thus, the MAGTF can order goods and services from another federal agency, and another federal agency can order goods and services from the MAGTF. The requesting agency must reimburse the providing agency. In addition, certain criteria must be met:

1. The requesting unit must have available funds;
2. The head of the requesting agency or unit must decide the order is in the best interest of the U.S. government;
3. The agency or unit to be asked to fill the order must be able to provide the ordered goods or services; and

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<sup>23</sup> DODI 2502.2, *supra* note 17, at Enclosure 2, Page 8.

<sup>24</sup> 15 U.S.C. §§ 1535-36 (2010).

4. The head of the requesting agency or unit must decide that the ordered goods or services cannot be provided as conveniently or economically by a commercial enterprise.<sup>25</sup>

Chapter 3 (“Economy Act Orders”) of Volume 11A of the Department of Defense Financial Management Regulations<sup>26</sup> provides more detailed regulatory guidance. The takeaway for the MAGTF JA is that an Economy Act transaction is one area where the MAGTF may provide reimbursable support to non-MAGTF personnel without violating a legal fiscal control.

***b. SUPPORT TO FOREIGN MILITARIES, FOREIGN GOVERNMENTS,  
AND INTERNATIONAL ORGANIZATIONS***

With a few exceptions discussed below, the general rule for the MAGTF JA is that unit O&M funds and unit articles and services may not be used to provide foreign assistance. Foreign assistance takes one of two forms: security assistance or development assistance. Security assistance involves the provision of military supplies, training, or equipment to foreign entities (militaries, governments, international organizations). Development assistance involves the provision of education, nutrition, agriculture, family planning, health care, environment, and other like support to foreign entities. The underlying rationale for the prohibition against using unit O&M funds and unit articles and services to provide foreign assistance is that such support falls within the purview of the DOS, not the DOD. The DOS provides foreign assistance under the broad authority of the Foreign Assistance Act of 1961 (FAA),<sup>27</sup> as amended. Generally speaking, DOS funds and programs are used to provide security and development assistance. There are, however, occasions when DOD funds and assets can be used.

The critical question for the MAGTF JA is to determine when unit assets may be used to provide foreign assistance. If such support is not authorized, the MAGTF JA must advise either that the unit may not provide assistance or that a separate funding source or program, if available, must be used.

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<sup>25</sup> U.S. DEP’T OF DEFENSE, REG. 7000.14-R, DEPARTMENT OF DEFENSE FINANCIAL MANAGEMENT REGULATIONS, vol. 11A, Reimbursable Operations, Policy and Procedures, para. 030103(A) (Feb 2008).

<sup>26</sup> *Id.*

<sup>27</sup> 22 U.S.C. §§ 2151-2349bb-6 (2010).

One exception to the prohibition against using unit O&M funds to provide foreign assistance has already been discussed: *de minimis* HCA.<sup>28</sup> Here, Congress has specifically authorized the use of unit O&M dollars to provide a minimal level of foreign assistance within certain strict parameters.

Another exception arises when an arrangement exists providing for reimbursement to the DOD by the supported entity. One such arrangement is an order from another U.S. federal agency under the Economy Act, as discussed above.<sup>29</sup> For example, the MAGTF could satisfy a DOS order for services or articles on a reimbursable basis that the DOS could in turn use to provide foreign assistance.<sup>30</sup> Similarly, section 607 of the FAA provides a mechanism to negotiate agreements authorizing the provision of military articles and services to friendly foreign countries and international organizations on an advance of funds or reimbursable basis. Section 607 agreements will not be negotiated at the MAGTF level; the role of the MAGTF JA is to inquire if a 607 agreement exists with the relevant foreign entity before advising that support can be provided.

Perhaps the most common reimbursable arrangement that the MAGTF can use to provide security assistance involves the use of Acquisition and Cross-Servicing Agreements (ACSAs).<sup>31</sup> An ACSA is an international agreement between the DOD and the relevant foreign country, foreign military, or international organization allowing for the acquisition and provision of reciprocal logistical support. Acquisitions and transfers can be on a cash reimbursement, replacement-in-kind, or exchange of value basis. ACSA agreements are typically accompanied by implementation agreements that provide more detailed guidance on the terms of the ACSA. Again, an ACSA will not be negotiated at the MAGTF level, and the role of the JA is to determine if an ACSA exists with the entity in question before advising that support can be received or provided.<sup>32</sup> Furthermore, the JA should closely analyze the terms of both the ACSA and the implementation agreement to ensure that the type of support contemplated is authorized and that no procedural requirements prohibit the transaction.

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<sup>28</sup> See *supra* text accompanying notes 16-24.

<sup>29</sup> See *supra* text accompanying notes 25-27.

<sup>30</sup> The DOS can also request DOD articles and services for the specific purpose of foreign assistance using the statutory authority of section 632 of the FAA. This reimbursable arrangement is very similar to an order under the Economy Act.

<sup>31</sup> See 10 U.S.C. 2341-50 (2010).

<sup>32</sup> For a listing of current ACSAs, see the CLAMO databases at [www.jagcnet.army.mil](http://www.jagcnet.army.mil).

#### ***4. TRAINING OF FOREIGN PERSONNEL***

One aspect of security assistance that is particularly highlighted in the deployed MAGTF context is the general prohibition on using O&M funds to support the training of foreign military forces. MEUs frequently conduct training exercises with foreign militaries as part of their six-month deployments. The issue for the JA is to determine if the MAGTF actually contemplates “training” the foreign military force and, if so, under what authority and with what funding source the training can take place.

The typical MAGTF training exercise probably will not involve “training” of a foreign military force. This is primarily because the General Accounting Office opined in 1986 that interoperability, safety, and familiarization information does not constitute security assistance training.<sup>33</sup> Additionally, it is not considered security assistance training if the primary purpose of the exercise is for MAGTF training and the training benefit to the foreign military force is merely incidental to the exercise.<sup>34</sup> For example, consider the situation where MAGTF Marines provide weapons safety and interoperability training to a foreign military force in preparation for a combined live-fire exercise. This training would not rise to the level of security assistance training, and unit O&M dollars could be used to fund any costs associated with the instruction. On the other hand, suppose the foreign military force had recently purchased military equipment from the U.S. and desired extensive instruction on the equipment’s use. This probably would rise to the level of security assistance training, and therefore the MAGTF would not be able to provide the training with O&M funds.

There are exceptions, however, to the general prohibition on using MAGTF assets to support activities that rise to the level of security assistance training. One exception is reciprocal training under 22 U.S.C. § 2770a. This statutory authority allows the MAGTF to use O&M funds to provide training support to a foreign military force if an international agreement with the relevant country authorizes the training and if the U.S. expects to receive reciprocal training from the country within one year. Another option is to use funds from a presidential emergency drawdown. Pursuant to section 506(a)(1) of the FAA, the President can “drawdown” from DOD resources to provide certain security assistance, to include training foreign forces, in an emergency situation when the assistance cannot otherwise be provided for under the FAA.

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<sup>33</sup> The Hon. Bill Alexander, House of Representatives, B-213137, Jan. 30, 1986 (unpublished GAO opinion).

<sup>34</sup> Gen. Fred F. Woerner, B-230214, Oct. 27, 1988.



If the President has authorized such a drawdown in conjunction with an operation involving the MAGTF, the MAGTF could request through the combatant command that drawdown funds be used for training foreign forces. Lastly, each combatant command maintains a Combatant Command Initiative Fund (CIF) that can be used to support, among other activities, foreign military training.<sup>35</sup> The MAGTF JA could request CIF money from the combatant command to support the training.

## 5. *MILITARY CONSTRUCTION*

Military construction is another fiscal law red flag that the MAGTF JA should consider. The complex array of laws and regulations governing construction funding makes it useful to synthesize the subject into the essential law most pertinent to MAGTF operations.<sup>36</sup> To that end, what follows is a brief outline attempting to synthesize critical concepts for the MAGTF JA, again starting the analysis from an O&M baseline.

I. Unit O&M funds can be used for construction projects up to \$750,000 (\$1.5 million if the project is intended solely to correct a deficiency that threatens life, health, or safety).<sup>37</sup> Any project that will exceed these amounts must be funded by a separate appropriation, and the JA should coordinate with higher command.

A. “Construction” includes 1) erection, installation, or assembly of a new facility; 2) addition, expansion, extension, alteration, conversion, or replacement of an existing facility; 3) relocation of a facility from one site to another; 4) installed equipment made part of the facility; and 5) site preparation, excavation, filling, landscaping, or other land improvements.<sup>38</sup>

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<sup>35</sup> See 10 U.S.C. § 166a(b)(7) (2010).

<sup>36</sup> For an excellent outline on construction funding—too voluminous to include in this publication—see the JAGCNet databases at [www.jagcnet.army.mil](http://www.jagcnet.army.mil) (enter the JAGCNet, then click on “Contract Law” to find the TJAGLCS Fiscal Law Course Deskbook; military construction is Chapter 5).

<sup>37</sup> 10 U.S.C. § 2805(c) (2010).

<sup>38</sup> See 10 U.S.C. § 2801(a); U.S. DEP’T OF NAVY, CHIEF OF NAVAL OPERATIONS INSTR. 11010.20G, FACILITIES PROJECTS MANUAL para. 4.1.1 (14 Oct 2005) [hereinafter OPNAVINST 11010.20].

B. Construction does not include maintenance and repair.

1. “Maintenance” is daily, periodic, or scheduled work required to preserve or return a facility to use for its designated purpose.<sup>39</sup>
2. “Repair” is overhaul, reconstruction, or replacement of constituent parts or materials of a real property facility to return the facility to use for its designated purpose.<sup>40</sup>

C. The \$750,000 threshold includes all funded costs associated with the project.

1. “Funded” costs are essentially expenses necessary to support the project (e.g., materials, civilian labor, fuel); “unfunded” costs are essentially costs that contribute to the overall value of the project but that are not expended out of unit O&M funds (e.g., salaries for military personnel, depreciation of government-owned equipment, gifts and donated materials).<sup>41</sup>
2. Costs associated with the project include all work necessary to produce a complete and usable facility or improvement to a facility; in other words, a unit cannot split a related project into separate increments to avoid reaching the threshold.<sup>42</sup>

II. O&M funds may not be used to construct permanent facilities during OCONUS CJCS exercises; exercise-related construction funds (ERC) must be used instead. O&M funds can be used, however, to construct temporary facilities during an exercise (e.g., tent platforms, range targets, shelters).<sup>43</sup>

III. The Army has opined that O&M funds may be used for construction of facilities during combat or declared contingency operations to meet the

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<sup>39</sup> OPNAVINST 11010.20G, *supra* note 39, at para. 5.1.1.

<sup>40</sup> *Id.* at para. 3.1.1.

<sup>41</sup> *Id.* at para. 2.1.1.b

<sup>42</sup> *Id.* at para. 4.2.1.f.

<sup>43</sup> 10 U.S.C. § 2805(c)(2) (2002). DOD must notify Congress if any exercise construction, to include temporary facilities, is contemplated for such an exercise.

temporary operational needs of the unit, even if the costs exceed the \$750,000 threshold.<sup>44</sup> The Marine Corps has not issued a policy on this matter. If the MAGTF JA finds himself/herself in this situation, the JA should coordinate with higher command.

Keep in mind that this outline is only designed to capture the essential construction funding law that a MAGTF JA should know. This basic guidance should, however, help the JA identify potential construction issues and realize when coordination with and guidance from higher command is necessary.

## **6. GIFTS AND ENTERTAINMENT**

Unit O&M funds cannot be used to purchase gifts, no matter the recipient, nor can these funds be used for entertainment purposes, such as hosting official functions. Deployed MAGTF JAs frequently encounter situations where commanders want to present official mementos to, or host official functions for, foreign dignitaries or foreign military personnel. Using unit O&M funds for these activities would violate the purpose of the generic O&M appropriation. A specifically earmarked fund within the O&M appropriation, however, may be available to the MAGTF. The fund is the Emergency and Extraordinary Expenses (E&E) Fund,<sup>45</sup> which, among other purposes, can be used for “the hosting of official functions and the presentation of command mementos.”<sup>46</sup> E&E funds used for these purposes are known as “Official Representation Funds” (ORF). Prior to deployment, the MAGTF JA should inquire into the amount of ORF available to the MAGTF and, during the deployment, ensure that only ORF dollars are used for ORF purposes.

## **7. PROCUREMENT APPROPRIATIONS**

As a final fiscal law red flag for MAGTF operations, the JA should recognize that unit O&M dollars cannot be used to purchase centrally managed

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<sup>44</sup> See Memorandum, Deputy General Counsel (Ethics and Fiscal), Office of the General Counsel, Department of the Army, subject: Construction of Contingency Facility Requirements (22 Feb. 2000).

<sup>45</sup> 10 U.S.C. § 127 (2010).

<sup>46</sup> U.S. DEP'T OF NAVY, SEC'Y OF THE NAVY INSTR. 7042.7K, GUIDELINES FOR THE USE OF OFFICIAL REPRESENTATION FUNDS (ORF) (14 Mar 2006). ORF may only be used in narrow circumstances where the underlying purpose is to “maintain the standing and prestige of the United States.” *Id.* Accordingly, ORF cannot be used for strictly DOD functions. See *id.* at para.9 (listing activities not appropriate for ORF). For a discussion of unit informal funds and hosting exclusively DOD functions such as the Marine Corps Birthday ball, see *supra* Chapter 6, Section IV.B.

items, discussed below, or items that cost \$250,000<sup>47</sup> or more. Such purchases are made using non-O&M “procurement” appropriations.

A recent Defense appropriations act lists the centrally managed items that the Marine Corps procurement appropriation is intended for:

For expenses necessary for the procurement, manufacture, and modification of missiles, armament, military equipment, spare parts, and accessories therefor; plant equipment, appliances, and machine tools, and installation thereof in public and private plants; reserve plant and Government and contractor-owned equipment layaway; vehicles for the Marine Corps, including the purchase of passenger motor vehicles for replacement only; and expansion of public and private plants, including land necessary therefor. . . .<sup>48</sup>

The MAGTF JA should ensure that unit O&M funds are not used for these procurement appropriation purposes.

### C. CONCLUSION

It bears repeating that the foregoing discussion of fiscal law and fiscal law red flags was not intended to be an exhaustive fiscal law reference for the MAGTF JA. Rather, the goal was to help MAGTF JAs identify recurring fiscal law issues in MAGTF operations and provide guidance on seeking resolution. Very few Marine JAs receive fiscal law training, and anecdotal evidence suggests that JAs often have limited visibility on fiscal matters, relying instead on disbursing and supply officers as the subject matter experts. This discussion should arm the JA with enough knowledge to become more engaged in the fiscal aspects of MAGTF operations. Fiscal law issues can and do arise in MAGTF operations, and the MAGTF JA who ignores fiscal matters does so at the commander’s peril.

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<sup>47</sup> See 2010 DOD Appropriation, *supra* note 5, at 123 Stat. 3436.

<sup>48</sup> *Id.* at 123 Stat. 3420.

### III. DEPLOYMENT CONTRACTING

The MAGTF JA should also become more involved in deployment contracting. Typically, particularly in the case of deployed MEUs, nonlawyer contracting officers (frequently staff noncommissioned officers) handle MAGTF contracting with little JA involvement. Unless the JA takes an active role, significant legal contracting issues may pass unnoticed.

The *Operational Law Handbook* does an excellent job of describing the law applicable to deployment contracting. A more detailed discussion of deployment contracting can be found in the Contract Attorneys Course Deskbook produced by the Contract and Fiscal Law Department of The Judge Advocate General's Legal Center and School, U.S. Army. The MAGTF JA should take the time to peruse these sources, especially with respect to the law governing "simplified acquisition procedures," the streamlined form of contracting applicable the vast majority of the time during a deployment.

Lessons learned from past Marine and Army operations indicate, however, that noncontracting officer JAs do not necessarily need to become experts in the fine details of military contracting and federal acquisitions.<sup>49</sup> Rather, these JAs can and should play a vital role in contract interpretation and drafting, skills that all JAs develop in law school and which some MAGTF contracting officers lack. In the words of one MEU SJA who participated in Operation ENDURING FREEDOM, "[MEU SJAs] need to get into the contracting phase a little better. We have staff sergeants and lieutenants making contracts for thousands of dollars and many [contracts] have less than spectacular breach provisions, limitations, etc. that a second-year law student ought to spot . . . ."<sup>50</sup> To facilitate greater contracting involvement, the JA should coordinate with the MAGTF contracting officer(s) well prior to

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<sup>49</sup> For example, three legal lessons learned compilations published by the Center for Law and Military Operations share a common contracting lesson: JAs should have an understanding of the terms of existing contracts in theater (such as the U.S. Navy's Contingency Construction Capabilities (CONCAP) contracting program) to provide legal advice on contract interpretation and implementation. No mention is made of any pressing need for any specific military contracting or federal acquisitions knowledge. CENTER FOR LAW AND MILITARY OPERATIONS, THE JUDGE ADVOCATE GENERAL'S SCHOOL, U.S. ARMY, LAW AND MILITARY OPERATIONS IN KOSOVO, 1999-2001: LESSONS LEARNED FOR JUDGE ADVOCATES 150 (2001); CENTER FOR LAW AND MILITARY OPERATIONS, THE JUDGE ADVOCATE GENERAL'S SCHOOL, U.S. ARMY, LAW AND MILITARY OPERATIONS IN THE BALKANS, 1995-1998: LESSONS LEARNED FOR JUDGE ADVOCATES 149-50 (1998); CENTER FOR LAW AND MILITARY OPERATIONS, THE JUDGE ADVOCATE GENERAL'S SCHOOL, U.S. ARMY, LAW AND MILITARY OPERATIONS IN HAITI, 1994-1995: LESSONS LEARNED FOR JUDGE ADVOCATES 134-36 (1995).

<sup>50</sup> E-mail from Major Thomas A. Wagoner, USMC, Staff Judge Advocate, 15th Marine Expeditionary Unit, to Major Cody M. Weston, USMC, Marine Representative, Center for Law and Military Operations (CLAMO) (28 Dec. 2001) (on file with CLAMO).

deployment to ensure that the contracting officer knows what services the JA can provide.

#### IV. ENVIRONMENTAL LAW

This section will focus on specific environmental issues that a JA may face in the course of deployed Marine operations or in emergent circumstances when the Amphibious Squadron (PHIBRON) JAG may not be available. This section is not designed to capture the entire body of environmental law, much of which is only applicable domestically,<sup>51</sup> nor does the section include explanations of the application of environmental law to routine Navy operations. The PHIBRON JAG and Navy operators should be familiar with routine Naval operations and the applicable laws and policies addressing environmental protection.<sup>52</sup> Additionally, the numerous environmental laws and policies addressing the operation of installations, both within the U.S. and overseas, are not discussed because, by their very nature, Marine deployments typically will not involve installation operations.<sup>53</sup>

What remains for the Marine JA is a discussion that attempts to strike a balance between the policies of the DOD and DON that on the one hand require Marines to be good environmental stewards<sup>54</sup>—even during overseas operations—and on the other provide little practical guidance for deploying JAs.<sup>55</sup> This section begins with an overview of the Law of War and its

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<sup>51</sup> Two U.S. environmental laws are applicable worldwide—The Endangered Species Act, 16 U.S.C. §§ 1531-41 (2010) and the Marine Mammal Protection Act, 16 U.S.C. § 1371 (2010).

<sup>52</sup> The Navy has an expansive set of regulations and policies addressing environmental protection. *See* Secretary of the Navy Instruction 5090.8, POLICY FOR ENVIRONMENTAL PROTECTION, NATURAL RESOURCES, AND CULTURAL RESOURCES PROGRAMS (30 Jan 2006) [SECNAVINST 5090.8]; U.S. DEP'T OF NAVY, CHIEF OF NAVAL OPERATIONS NAVAL WARFARE PUB. 4-11, ENVIRONMENTAL PROTECTION (Mar. 1999) [hereinafter NWP 4-11];

<sup>53</sup> In contrast to the little guidance available for overseas contingency operations, there is considerable guidance for overseas installation operations. The substantial majority of U.S. MARINE CORPS, ORDER P5090.2A, ENVIRONMENTAL COMPLIANCE AND PROTECTION MANUAL (10 July 1998) [hereinafter MCO P5090.2A] addresses installation operations. MCO P5090.2A, in part, implements U.S. DEP'T OF DEFENSE INSTR. 4715.5, MANAGEMENT OF ENVIRONMENTAL COMPLIANCE AT OVERSEAS INSTALLATIONS (22 Apr. 1996), which states that the requirements applicable to overseas installations are not applicable to “the operations of U.S. military vessels, to the operations of U.S. military aircraft, or to off-installation operational and training deployments.” *Id.* at para. 2.1.4.

<sup>54</sup> *See e.g.*, NWP 4-11, *supra* note 56, at para. 1-1 (“The Navy and Marine Corps strive to lead in environmental protection while effectively carrying out national operations. . . . While carrying out assigned missions, operational commanders have an affirmation obligation to avoid unnecessary damage to the environment.”).

<sup>55</sup> As one author on environmental compliance during Military Operations Other Than War (MOOTW) wrote, “[existing guidance is] of little or no practical value to a combatant commander who is responsible for developing an environmental posture level in MOOTW theater of operations. A clear, concise legal basis for

relationship with the environment. The section continues on to discuss the effect of treaties, SOFAs, and host nation law on environmental protection; the application of U.S. domestic environmental law on operations; and closes with a discussion about remediation requirements in the event of environmental contamination.

## A. THE LAW OF WAR AND THE ENVIRONMENT

Most environmental law questions arising during international armed conflict can be answered using the same analysis JAs are taught to apply for all targeting decisions—namely, the concrete and direct military advantage gained by the military action must outweigh the anticipated damage to property, including damage to the environment.<sup>56</sup> Understanding and applying this traditional calculation, including the effects of military action on the environment in the equation, will solve most environmental issues faced by JAs during war. JAs must also consider that a handful of conventions contain environmental considerations. These conventions include the 1925 Gas Protocol,<sup>57</sup> the 1993 Chemical Weapons Convention,<sup>58</sup> and the 1980 Conventional Weapons Convention.<sup>59</sup>

Protocol I Additional to the Geneva Conventions (GP I)<sup>60</sup> arguably contains the broadest environmental protections during war. Even though applicability of the environment-friendly sections of GP I is unclear, JAs must

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environmental doctrine during MOOTW does not presently exist.” Major Karen V. Fair, *Environmental Compliance in Contingency Operations: In Search of a Standard*, 157 MIL. L. REV. 112 (1998).

<sup>56</sup> See generally Annex to Hague Convention No. IV Respecting the Laws and Customs of War on Land, art. 22, 23, 25, Oct. 18, 1907, 36 Stat. 2277, 205 Consol. T.S. 277 [hereinafter Hague]; U.S. DEPT OF ARMY, FIELD MANUAL 27-10, THE LAW OF LAND WARFARE para. 41 (18 July 1956).

<sup>57</sup> The 1925 Geneva Protocol for the Prohibition of the Use in War of Asphyxiating, Poisonous or Other Gases, and of Bacteriological Methods of Warfare, June 17, 1925, 26 U.S.T. 571, T.I.A.S. No. 8061 [hereinafter Gas Protocol]. The Gas Protocol bans the use of “asphyxiating, poisonous, or other gases, and all analogous liquids, materials, and devices” during war. The United States is a party to this treaty, but asserts that neither herbicides nor riot control agents (RCA) are chemicals, as defined by the Gas Protocol. See Exec. Order 11,850, 40 Fed. Reg. 16187 (1975) (stating U.S. policy on the use of chemical, herbicides, and riot control agents (RCAs) and setting out rules on the use of chemical weapons and herbicides).

<sup>58</sup> Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction, Jan. 13, 1993, 32 I.L.M. 800, 22 U.S.C. 6701 et seq. [hereinafter CWC]. While the CWC regulates many of the same activities as the Gas Protocol, the CWC bans the use of chemical agents, including herbicides and RCAs, as a “method of warfare.” *Id.* at art. II, 1(a).

<sup>59</sup> Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May be Excessively Injurious or Have Indiscriminate Effects, October 10, 1980, 19 I.L.M. 1525 (banning the indiscriminate use (defined as use which may be expected to cause incidental injury to the environment excessive to the military advantage gained) of landmines, booby traps and other devices).

<sup>60</sup> Protocol I Additional to the Geneva Conventions, Dec. 12, 1977, 16 I.L.M. 1391, 1125 U.N.T.S. 3 [hereinafter GP I].

understand the effects of GP I on operations. Articles 35, 54, 55, and 56 of GP I all contain various prohibitions addressing damage to the environment.<sup>61</sup> Because the U.S. has not ratified GP I, only those provisions that reflect customary international law are binding. While portions of GPI seem to restate Hague and Geneva Convention provisions, evincing their status as customary law, other portions are not considered customary. For example, Article 35 of GP I restates the Hague language with respect to means and methods of warfare, noting that the permissible means of injuring the enemy are not unlimited and that parties cannot use weapons that cause unnecessary suffering.<sup>62</sup> The same Article continues on to prohibit means or methods of warfare intended or expected to cause widespread, long-term and severe damage to the environment—language the U.S. considers “too broad and not a part of customary law.”<sup>63</sup> When faced with having to interpret GP I and its effect on Marine operations *vis a vis* the environment, JAs must seek guidance from higher headquarters about the status of the particular GP I article in question.

One final treaty of note is The Convention on the Prohibition of Military or Any Other Hostile Use of Environmental Modification Techniques (ENMOD).<sup>64</sup> The ENMOD prevents engaging in the “hostile use of environmental modification techniques having widespread, long-lasting or severe effects as the means of destruction, damage or injury” to another signatory of the convention.<sup>65</sup> The convention is designed to address actions

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<sup>61</sup> Article 35 states, in part, “It is prohibited to employ methods or means of warfare which are intended, or may be expected, to cause widespread, long-term and severe damage to the natural environment.” *Id.* at art. 35. Article 54 prohibits, with stated exceptions, the attack of civilian crops, drinking water, and other foodstuffs. *Id.* at art. 54. Article 55 states:

Care shall be taken in warfare to protect the natural environment against widespread, long-term and severe damage. This protection includes a prohibition of the use of methods or means of warfare which are intended or may be expected to cause such damage to the natural environment and thereby to prejudice the health or survival of the population.

Attacks against the natural environment by way of reprisals are prohibited.

*Id.* at art. 55. Article 56 is designed to protect works and installations containing dangerous forces, such as dams, dykes, and nuclear generating stations and to prevent the release of dangerous forces from public works and the consequent severe loss to the civilian population. *Id.* at art. 56.

<sup>62</sup> *Id.* at art. 34.

<sup>63</sup> Michael J. Matheson, *Session One: The United States Position on the Relation of Customary International Law to the 1977 Protocols Additional to the 1949 Geneva Conventions*, 2 AM. U. J. INT’L L. & POL’Y 419, 424 (1987).

<sup>64</sup> The Convention on the Prohibition of Military or Any Other Hostile Use of Environmental Modification Techniques, May 18, 1977, 31 U.S.T. 333, 1108 U.N.T.S. 151 [hereinafter ENMOD].

<sup>65</sup> *Id.* at art.1.



that change the processes of nature in order to use nature as a weapon. For example, the ENMOD would prevent altering ocean currents to create tidal waves. This ban is often described as one prohibiting the use of “advanced technology” to manipulate the environment.<sup>66</sup> As the typical MAGTF will not possess technology capable of altering environmental processes, JAs will not likely be faced with interpreting the ENMOD.

## **B. INTERNATIONAL AGREEMENTS, SOFAs, HOST NATION LAW, AND THE ENVIRONMENT**

There are numerous international agreements that address the environment. A list of selected agreements is included in Appendix 6-1. It is impossible to predict which if any of these agreements will have an effect on Marine Corps operations. Some of the agreements are briefly discussed above in the section addressing the law of war and the environment. U.S. environmental treaty obligations are also addressed in existing Navy instructions<sup>67</sup> and Marine Corps orders.<sup>68</sup>

Status of Forces Agreements (SOFAs), a type of international agreement, and port visit clearances may contain provisions affecting U.S. obligations towards the environment in foreign countries.<sup>69</sup> JAs should seek guidance from the unified commands where Marines are operating to determine whether there is an applicable SOFA. Operators and JAs familiar with service directives, which may at times conflict with SOFA provisions, may be confused about which guidance to follow and be tempted to trump unfamiliar SOFA provisions

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<sup>66</sup> See e.g., INT’L & OPERATIONAL LAW DEP’T, THE JUDGE ADVOCATE GENERAL’S SCHOOL, U.S. ARMY, OPERATIONAL LAW HANDBOOK (2002) (The ENMOD does not contain language discussing “advanced technology.” Article II defines the phrase “environmental modification technique” in a manner that allows for the conclusion that advanced technology would be necessary to manipulate natural processes.).

<sup>67</sup> For example, OPNAVINST 5090.1C, at Ch. 21, incorporates the provisions of the Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter, Dec. 29, 1972, 26 U.S.T 2403, 1046 U.N.T.S. 120.

<sup>68</sup> MCO P5090.2A, *supra* note 57.

<sup>69</sup> See, e.g., Agreement to Supplement the Agreement Between the Parties to the North Atlantic Treaty Regarding the Status of their Forces with Respect to Foreign Forces Stations in the Federal Republic of Germany, 29 Mar. 1998 [hereinafter Supplemental Agreement]. The Supplemental Agreement contains provisions requiring the U.S. to “recognize and acknowledge the importance of environmental protection in the context of all the activities of their forces within the Federal Republic.” *Id.* at Art. 54(A)(1). The agreement requires, *inter alia*, U.S. officials to examine as early as possible the environmental compatibility of all projects. The Supplemental Agreement further requires the U.S. to identify, analyze, and evaluate potential effects of environmentally significant projects on persons, animals, plants, soil, water, air, climate and landscape, cultural, and other property. The objective of the examination is to avoid environmental burdens, and, where detrimental effects are unavoidable, offset them by taking appropriate restorative or balancing measures. *Id.* at Art. 54(A)(2).

with the more familiar DON or Marine Corps policies. Most DOD and service directives emphasize the importance of following applicable SOFAs.<sup>70</sup> Even when such cautionary language does not exist, JAs must remember that the requirements of a SOFA are legally binding on the U.S.

In the absence of a SOFA or other applicable international agreement, U.S. forces may be obligated to follow the law of the host nation. Marines will be immune from host nation laws, including environmental laws, during combat operations<sup>71</sup> and when engaged in some United Nations security missions.<sup>72</sup> Absent immunity from host nation law, Marines will be expected to follow the laws of the host nation, including any applicable environmental laws. JAs should coordinate with their unified command to determine the DOD position on the applicability of host nation laws to Marine operations.

### **C. APPLICATION OF DOMESTIC ENVIRONMENTAL LAW TO OPERATIONS OUTSIDE THE UNITED STATES**

Generally domestic environmental law does not have extraterritorial application. Thus the myriad of Congressional environmental enactments, including the National Environmental Protection Act (NEPA),<sup>73</sup> normally applicable to military operations within the U.S., will not apply to overseas military actions by operation of the statutes themselves. By operation of executive order<sup>74</sup> and DOD directive,<sup>75</sup> however, the military may be required to perform NEPA-like environmental documentation overseas under certain

<sup>70</sup> See, e.g., U.S. DEP'T OF DEFENSE, INSTR. 4715.8, ENVIRONMENTAL REMEDIATION FOR DOD ACTIVITIES OVERSEAS, para. 5.3.3 (2 Feb. 1998) (cautioning that international agreements may require environmental remediation beyond that required by DOD policy) [hereinafter DOD INSTR. 4715.8].

<sup>71</sup> This exception is based on a classical application of the Law of the Flag theory. This term is sometimes referred to as "extraterritoriality," and stands for the proposition that a foreign military force that enters a nation through force is immune from the laws of the receiving nation. WILLIAM W. BISHOP, JR., INTERNATIONAL LAW CASES AND MATERIALS 659-61 (3d ed. 1962).

<sup>72</sup> The status of United Nations or multilateral forces depends on the underlying authority allowing the military presence in the receiving state. If forces are present pursuant to a Chapter VII action, absolute immunity from receiving state authority exists. See UN PEACE OPERATIONS: A COLLECTION OF PRIMARY DOCUMENTS AND READINGS GOVERNING THE CONDUCT OF MULTILATERAL PEACE OPERATIONS 223 (Walter Gary Sharp, Sr. ed., 1995). Forces conducting consensual peace operations pursuant to Chapter VI are not absolutely immune from receiving state law. These forces are protected by those privileges and immunities afforded by international law, *ad hoc* arrangements, and specific basing agreements. These protections are not clearly established. *Id.* See also U.N. CHARTER art. 105; Convention on Privileges and Immunities of the United Nations, Feb. 13, 1946, 21 U.S.T.1418, 1 UN.T.S. 15 (entered into force for the U.S. on Apr. 29, 1970).

<sup>73</sup> 42 U.S.C. §§ 4321-70 (2010).

<sup>74</sup> Exec. Order 12114, 44 Fed. Reg. 1,957 (Jan. 4, 1979) [hereinafter EO 12114].

<sup>75</sup> U.S. DEP'T OF DEFENSE, DIR. 6050.7, ENVIRONMENTAL EFFECTS ABROAD OF MAJOR DEPARTMENT OF DEFENSE ACTIONS (31 Mar. 1979) [hereinafter DOD DIR. 6050.7].

circumstances. But, as discussed further below, the typical MAGTF mission will not trigger these executive order requirements.

Executive Order 12114, *Environmental Effects Abroad of Major Federal Actions* (EO 12114), furthers the spirit of NEPA with respect to the environment outside the U.S. by requiring the identification and analysis of potential environmental effects prior to certain proposed federal actions (including military actions). The analysis of the effects of military action on the environment is accomplished through preparation of lengthy documents that can cause significant delays in action. DOD Directive 6050.7 implements the Executive Order.<sup>76</sup> Included within these two framework documents are significant exemptions and exclusions that will relieve the military from having to prepare most environmental documentation. Furthermore, DOD Directive 6050.7 places the burden of preparing the appropriate environmental documentation on the commanders of the unified and specific commands.<sup>77</sup> For this reason, the JA who believes a Marine operation triggers the requirements of EO 12114 must notify the appropriate chain of command.

As discussed below, undertaking a “major federal action”<sup>78</sup> which has a significant effect on a foreign nation<sup>79</sup> or on the global commons<sup>80</sup> triggers EO 12114.<sup>81</sup>

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<sup>76</sup> MCO P5090.2A, *supra* note 57, incorporates the provisions of DOD DIR 6050.7 by reference and reprinting in Annex Q.

<sup>77</sup> DOD DIR. 6050.7, *supra* note 79, at para. 5.4.1 (stating the responsibilities of the Secretaries of the Military Departments, Directors of the Defense Agencies, and Commanders of the Unified and Specified Commands).

<sup>78</sup> A major action is defined as “an action of considerable importance involving substantial expenditures of time, money, and resources, that affects the environment on a large geographic scale or has substantial environmental effects on a more limited geographical area.” *Id.* at para. 3.5. Deployment of ships is not considered a major action. Moreover, previously approved actions that underwent an environmental analysis and that do not constitute a significant departure are not considered major actions. *Id.*

<sup>79</sup> A foreign nation means “any geographic area (land, water, airspace) that is under the jurisdiction of one or more foreign governments; any area under military occupation by the United States alone or jointly with any other foreign government; and any area that is the responsibility of an international organization of governments.” *Id.* at para. 3.3. A foreign nation also includes contiguous zones and fisheries zones of foreign nations. *Id.*

<sup>80</sup> Global commons are “geographical areas that are outside the jurisdiction of any nation, and include the oceans outside territorial limits and Antarctica. Global command do not include contiguous zones and fisheries zones of foreign nations.” *Id.* at para. 3.4.

<sup>81</sup> EO 12,114 states that the following categories of action will require some type of environmental documentation:

- (a) major Federal actions significantly affecting the environment of the global commons outside the jurisdiction of any nation (e.g., the oceans or Antarctica);
- (b) major Federal actions significantly affecting the environment of a foreign nation not participating with the United States and not otherwise involved in the action;

## *1. Application of Domestic Law to Operations in Foreign Nations*

The requirements of EO 12,114 and DOD Dir. 6050.7 are triggered when Marines undertake a major federal action that significantly harms the environment of a foreign nation that is not involved in the action.<sup>82</sup> A MAGTF operation that has a significant impact on a nation participating in the operation does not require documented environmental analysis. This is commonly known as the “participating nation exception.”<sup>83</sup> Because many MAGTF operations, such as multinational training exercises, are conducted in concert with the host nation, EO 12,114 and the implementing Directive are not applicable.<sup>84</sup> The practice within the military is to account for the exercise of the “participating nation exception” through documentation within the environmental appendix to the combatant commander-approved OPLAN. If there is no combatant commander-approved OPLAN, the MAGTF SJA should insure that the combatant commander is notified that the MAGTF is aware of the environmental policies but believes the policies to be inapplicable because of the “participating nation exception.”

Even if the MAGTF operation is not undertaken with a participating nation, other exceptions<sup>85</sup> will capture almost all of the circumstances in which

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(c) major Federal actions significantly affecting the environment of a foreign nation which provide to that nation:

(1) a product, or physical project producing a principal product or an emission or effluent, which is prohibited or strictly regulated by Federal law in the United States because its toxic effects on the environment create a serious public health risk; or

(2) a physical project which in the United States is prohibited or strictly regulated by Federal law to protect the environment against radioactive substances.

(d) major Federal actions outside the United States, its territories and possessions which significantly affect natural or ecological resources of global importance designated for protection under this subsection by the President, or, in the case of such a resource protected by international agreement binding on the United States, by the Secretary of State. Recommendations to the President under this subsection shall be accompanied by the views of the Council on Environmental Quality and the Secretary of State.

EO 12,114, *supra* note 78, at para. 2-3.

<sup>82</sup> DOD DIR. 6050.7, *supra* note 79, at para. E2.2.1.

<sup>83</sup> The “participating nation exception” is not truly an exception. The environmental documentation requirements of EO 12,114 simply do not apply when the host nation is participating with the U.S. The list contained in note 89, *infra*, contains the exceptions to EO 12,114.

<sup>84</sup> JAs should remember that SOFAs or host nation law, further discussed *supra* at text accompanying notes 73-76 may require certain environmental documentation.

<sup>85</sup> The following actions are exempt from EO 12,114:

(i) actions not having a significant effect on the environment outside the United States as determined by [DOD];

a MAGTF operates. Operations involving national security, operations taken in the course of an armed conflict, or operations taken in response to a disaster or for emergency relief, allow for an exception to the policy requiring prior environmental documentation. These exceptions must be granted by SECDEF.<sup>86</sup>

In the unlikely event that a MAGTF operation requires prior environmental documentation, it would typically be in the form of an environmental study (ES) or an environmental review (ER).<sup>87</sup> MAGTF SJAs should not be responsible for the preparation of either of these documents<sup>88</sup> but should be prepared to advise their commanders and chain of command should they believe environmental documentation is required, as preparation of the documents may preclude undertaking the mission.

## ***2. Application of Domestic Law to Operations in the Global Commons***

Operations undertaken by Marine forces within the global commons, most notably the high seas, are also addressed by EO 12,114 and DOD Directive 6050.7. There are no exemptions from preparing environmental impact statements for major federal actions causing significant harm to a global

- (ii) actions taken by the President;
- (iii) actions taken by or pursuant to the direction of the President or Cabinet officer when the national security or interest is involved or when the action occurs in the course of an armed conflict;
- (iv) intelligence activities and arms transfers;
- (v) export licenses or permits or export approvals, and actions relating to nuclear activities except actions providing to a foreign nation a nuclear production or utilization facility as defined in the Atomic Energy Act of 1954, as amended, or a nuclear waste management facility;
- (vi) votes and other actions in international conferences and organizations;
- (vii) disaster and emergency relief action.

EO 12,114, *supra* note 78, at para. 2-5.

<sup>86</sup> Exemptions are granted after coordination with the Department of State. Coordination with the Department of State is conducted by the Assistant SECDEF (International Security Affairs). DOD DIR. 6050.7, *supra* note 79, at para. 4.4. Even though an exemption may exist, commanders still have an obligation to conduct sound analytic planning that considers environmental impacts. The level of detail will depend on available planning time, security, and site access. NWP 1-14, *supra* note 56, at para. 3.3.

<sup>87</sup> There are three types of environmental documents discussed in DOD DIR. 6050.7, *supra* note 79. The environmental study and the environmental review are prepared for major federal actions that significantly harm the environment of a foreign nations. An environmental impact statement, the third type of environmental document, is prepared for major federal actions that significantly harm the global commons.

<sup>88</sup> DOD DIR. 6050.7 places the burden of preparing environmental documents on the secretaries of the military departments, and Commanders of the Unified and Specified Commands. Moreover, the environmental documentation requires input from engineers and others with specialized knowledge about how the operation will affect the environment. *Id.* at para. 5.4.1.

commons. JAs are reminded that the deployment of ships is not a major action under DOD Directive 6050.7.<sup>89</sup> Should a JA believe that a major Marine Corps action would cause significant harm to a global commons, the JA should notify the chain of command.

#### **D. ADDRESSING ENVIRONMENTAL CONTAMINATION**

As noted in the introduction to this section, most routine environmental matters emanating from shipboard operations are not discussed in this section, as the Navy's PHIBRON JAG will be available to address these matters. JAs, however, must be prepared to address environmental contamination, such as oil and hazardous material spills, as these emergency situations may arise when the PHIBRON JAG is unavailable, or they may arise while Marine units are ashore.

The general U.S. policy to "remedy known environmental contamination caused by DOD operations outside the U.S.,"<sup>90</sup> is not applicable to operations connected with "actual or threatened hostilities, security assistance programs, peacekeeping missions, or relief operations."<sup>91</sup> This means that the DOD policy applies during training exercises (not conducted under the foreign assistance program) and while generally afloat.

The DOD policy requires the Navy and Marine Corps to take action to remedy known environmental contamination that poses an "imminent and substantial endangerment to human health and safety."<sup>92</sup> The determination whether an environmental incident poses an imminent and substantial endangerment should be made by the "in-theater commander of the DOD Component" after consulting with medical officers and the DOD Environmental Executive Agent for the respective host nation.<sup>93</sup>

The most important thing to remember is that the Navy and Marine Corps have internal reporting requirements whenever there is an oil or hazardous substance discharge.<sup>94</sup> Commanding officers must immediately report the facts surrounding the spill to their chain of command by voice and follow with an

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<sup>89</sup> See *supra* note 82.

<sup>90</sup> DOD INSTR. 4715.8, *supra* note 74, at para. 3.

<sup>91</sup> *Id.* at para. 2.1.3.

<sup>92</sup> *Id.* at para. 5.3.1.

<sup>93</sup> *Id.* at para. 5.4.1.

<sup>94</sup> See OPNAVINST 5090.1C, *supra* note 71, at para. 10-4.2.3.

official message.<sup>95</sup> For Navy spills, a copy of the message must be sent to the Chief of Naval Operations (CNO)(N45) and the Naval Facilities Engineering Service Center.<sup>96</sup> For Marine Corps spills, the message must be sent to the Commandant of the Marine Corps (ATTN: IL) and copies must be sent to a variety of addressees. A format for Navy and Marine Corps messages addressing oil and hazardous material spills is included in Appendix 6. As additional information on the spill becomes available, the commanding officer must update the initial report with a SITREP message.<sup>97</sup> Following message reporting, commanders should try to control the spread of the spill.<sup>98</sup>

Marine Corps policy requires immediate reporting of oil spills which impact, or may impact, the waters or shoreline of any coastal nation to proper authorities in that nation.<sup>99</sup> JAs should also remember that international agreements with host nations may require remediation even when the environmental threat does not pose an imminent and substantial endangerment to human health and safety.<sup>100</sup>

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<sup>95</sup> *Id.* at para. 10-4.2.3(a)(b).

<sup>96</sup> *Id.* at para 10-4.2.3(d).

<sup>97</sup> *Id.* at para. 10-4.2.3(c).

<sup>98</sup> NWP 4-11, *supra* note 56, at para. 2.3.5.1.

<sup>99</sup> MCO P5090.2A, *supra* note 57, at para 7101(2).

<sup>100</sup> *See* DOD INSTR. 4715.8, *supra* note 74, at para. 5.3.3.

## CHAPTER 7

### FOREIGN AND DEPLOYMENT CLAIMS

#### I. INTRODUCTION

Most judge advocates (JAs) have a basic understanding of the various claims statutes.<sup>1</sup> Few JAs understand, however, the relationships between these statutes, service implementing regulations, international agreements, and single-service claims responsibility. Fewer JAs understand the actual nuts-and-bolts procedures for adjudicating and paying foreign claims. The purpose of this chapter is to provide guidance on these issues in the specific context of foreign claims arising during Marine Air-Ground Task Force (MAGTF) operations.

#### II. FOREIGN CLAIMS

Deployed MAGTF JAs, particularly MEU SJAs, face a unique dilemma when confronted with foreign claims. Commanders want claims resolved quickly before the unit moves out of theater or on to the next port—and expect that their JAs have the legal authority and means to do so. Yet many times the governing claims scheme either disallows payment or calls for a time-consuming administrative process through higher or adjacent claims offices. The MAGTF JA's challenge is to meet the commander's intent for expeditious claims processing without running afoul of the law.

In general, claims against the United States arising in a foreign country are addressed under either the Foreign Claims Act (FCA)<sup>2</sup> or the International Agreements Claims Act (IACA)<sup>3</sup>. The IACA generally precludes the use of the FCA in foreign countries in which the United States and the receiving state have an agreement that “provides for the settlement or adjudication and cost sharing of claims against the United States arising out of the acts or omissions of a member or civilian employee of an armed force of the United States.”<sup>4</sup> Prior to deployment, a MAGTF JA will have to research whether the United States is a party to any international agreements with any states in which the

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<sup>1</sup> An excellent overview of these claims statutes can be found in the OPERATIONAL LAW HANDBOOK, INTERNATIONAL AND OPERATIONAL LAW DEPARTMENT, THE JUDGE ADVOCATE GENERAL'S LEGAL CENTER AND SCHOOL, U.S. ARMY, at 299-326 (2011) [hereinafter OPLAW HANDBOOK].

<sup>2</sup> 10 U. S. C. §2734

<sup>3</sup> 10 U. S. C. §2734a

<sup>4</sup> 10 U. S. C. §2734a



MAGTF may conduct operations, exercises, or liberty visits, and must become familiar with any provisions that address the resolution of claims between the parties.<sup>5</sup> In the absence of an international agreement that addresses claims, the FCA will likely be used to adjudicate a claim arising in a foreign country.

### III. FOREIGN CLAIMS ACT

#### A. PURPOSE

The purpose of the Foreign Claims Act (FCA) is to “promote and maintain friendly relations through the prompt settlement of meritorious claims” that arise in foreign countries.<sup>6</sup> A foreign claim is a demand for payment against the United States, presented by an inhabitant of a foreign country, for property damage, personal injury, or death occurring outside the United States and caused either by a member or civilian employee of the U.S. Armed Forces or by the non-combat activities of these forces in a foreign country.<sup>7</sup> Proof of fault is not required; rather, causation of harm is the primary concern.<sup>8</sup> Meritorious claims should be settled fairly and promptly, without regard to whether the acts giving rise to them are mistaken, negligent, intentional, or criminal.<sup>9</sup>

#### B. CLAIM REQUIREMENTS

A claim submitted pursuant to the FCA must be presented in writing within two years after the incident giving rise to the claims, and must state the time, place, and nature of the incident; the nature and extent of any injury, loss, or damage; and must request compensation in a sum certain.<sup>10</sup> The claim must be signed by the claimant or an authorized agent.<sup>11</sup> A claimant may use Standard Form 95 (SF-95) when filing a claim under the FCA, but no specific format is required.

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<sup>5</sup> The State Department maintains a list of treaties in force on its website at [www.state.gov](http://www.state.gov). Additionally, a *CLAMO SOFA Quick Reference Guide* can be found on The Center for Law and Military Operations (CLAMO) website at

<https://www.jagcnet.army.mil/8525751D00557EFF/0/5E8CD0C5A611B3DD852577620060B8AA?opendocum ent&noly=1>

<sup>6</sup> 10 U. S. C. §2734

<sup>7</sup> JAG Instruction 5800.7E, at para. 0807

<sup>8</sup> Id. at 0808c

<sup>9</sup> Id. at 0808c

<sup>10</sup> JAG Inst 5800.7E at 0809a

<sup>11</sup> JAG Inst 5800.7E at 0809d

## C. CLAIMANTS

Proper claimants under the FCA are political subdivisions or inhabitants of a foreign country.<sup>12</sup> Foreign inhabitants include persons, corporations, or other government or business entities whose normal place of abode or activity is in a foreign country; citizenship or legal domicile are immaterial. The typical foreign claimant during a MAGTF deployment will be a foreign inhabitant as contemplated by the statute, such as a foreign national residing in, or visiting, a foreign country; a foreign government or political subdivision, unless excluded by international agreement; and even a U.S. citizen residing in a foreign country, as long as he or she is not there as a U. S. servicemember, civilian employee, or a sponsored dependent.<sup>13</sup> Perhaps most importantly for the MAGTF JA, claims of foreign military personnel during the conduct of a joint military mission or training exercise are not payable under the FCA.<sup>14</sup>

## D. CLAIMS NOT PAYABLE<sup>15</sup>

- a. Claims of insurers or subrogees;
- b. Claims of sponsored dependents accompanying members and civilian employees of the U.S. armed forces, or U. S. national civilians employed by either the U. S. Government or a civilian contractor performing an agreement with the U.S. Government.
- c. Claims of foreign military personnel suffering injury or death incident to a joint military mission or exercise with U.S. armed forces, or as a result of the actions of a member or civilian employee of the U.S. armed forces, acting within the scope of employment, unless a treaty specifically provides for recovery.
- d. Claims of civilian employees of the United States, including local inhabitants, injured incident to their employment. Compensation for such injuries is separately provided in Federal statutes and agreements with foreign governments.

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<sup>12</sup> 10 U.S.C. §2734

<sup>13</sup> JAG Inst 5800.7E, para. 0810(b)

<sup>14</sup> This is a product of Navy regulation, not the FCA itself. *See* JAG Inst 5800.7E at para. 0811c.

<sup>15</sup> JAG Inst 5800.7E, para 0811

- e. Claims of national governments or their political subdivisions engaging in combat with the U. S. or its allies.
- f. Claims of a national or a nationally controlled corporation of a country engaging in combat with the U.S. or its allies, unless it is determined that the claimant is friendly.
- g. Claims resulting from combat activities, except that claims arising from an accident or malfunction incident to aircraft operations, including airborne ordnance, occurring while preparing for, going to, or returning from a combat mission may be paid.
- h. Claims previously paid or denied.
- i. Claims purely contractual in nature.
- j. Claims involving private contractual and domestic obligations of individuals.
- k. Claims based solely on compassionate grounds.
- l. Claims for paternity or illegitimacy.
- m. Claims payable under other Federal statutes.
- n. Claims for damage caused by Naval vessels, unless payment is specifically authorized by OJAG (Code 11) under section 1216 of JAG Inst 5800.7E.

#### **IV. PROCESSING FOREIGN CLAIMS**

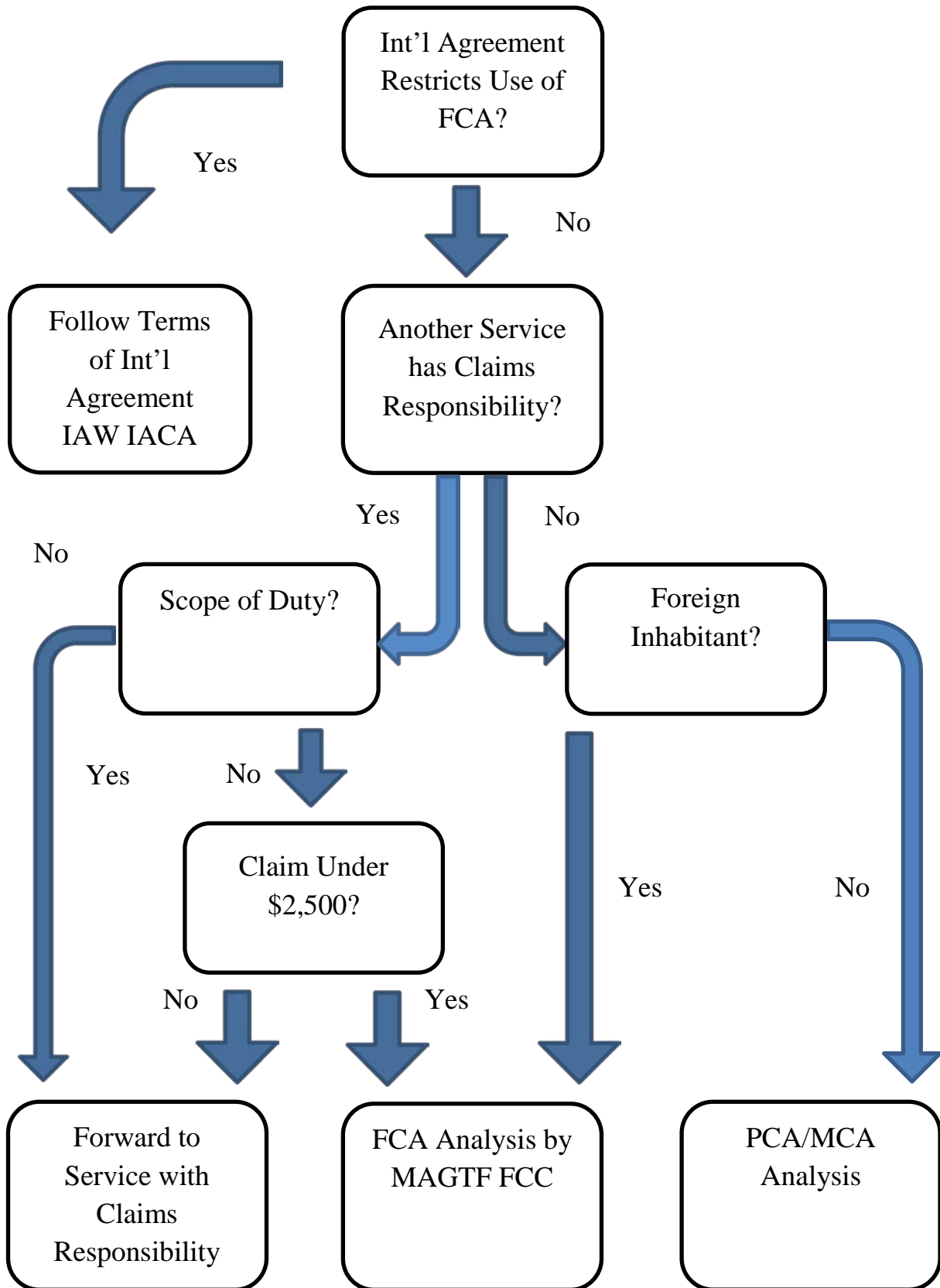
Following the logical flow of the chart in Figure 1, this section discusses the procedures for adjudicating and paying foreign claims.

##### **A. INTERNATIONAL AGREEMENTS**

As previously discussed, the MAGTF SJA must first look to whether an international agreement exists between the United States and the receiving state, and whether such an agreement provides direction regarding how to settle or adjudicate claims. International agreements come in many forms, and may

sometimes be referred to as status of forces agreements (SOFAs), defense cooperation agreements, or diplomatic notes. If an international agreement with claims provisions applies, the SJA must follow the claims guidelines contained therein. Typically, the claim will be forwarded, along with the investigation into the incident giving rise to the claim, to the service with responsibility for adjudicating claims in the receiving state, or directly to the claims receiving authority of the host nation. If there is no international agreement in place that addresses claims, the SJA will next determine whether the Department of Defense (DoD) has assigned claims responsibility.

Figure 1. Foreign Claims Flow Chart



## **B. SINGLE SERVICE CLAIMS RESPONSIBILITY**

DoD Instruction 5515.08, Assignment of Claims Responsibility, assigns exclusive geographical claims adjudication responsibility for certain countries to the Navy, Air Force, or Army.<sup>16</sup> The DoD has not assigned every country a responsible service for claims. If DoD has not assigned single-service claims responsibility for the country in question, then the MAGTF may be able to adjudicate and pay the claim provided the requirements for filing a claim under the FCA are met, as discussed in section II, above. If a service has claims responsibility for the country where the claim in question arose, then the MAGTF JA must next make a “scope” determination.

## **C. SCOPE OF DUTY**

The next step in processing a foreign claim is to determine whether the claim for damages is “scope” or “non-scope” in nature. Because the purpose of the FCA is to “promote and maintain friendly relations through the prompt settlement of meritorious claims”, the FCA does not, generally, distinguish between scope and non-scope claims. However, whether a claim for damages is “scope” or “non-scope” in nature will determine whether it will be adjudicated by the service with claims responsibility or by the MAGTF.

A scope of duty claim is a claim for damages, injury, or death caused by a member of the Department of the Navy (DoN) while in the performance of official duty. Common examples include damage caused by helicopter rotor wash and damage caused by a military vehicle during a training exercise or administrative movement.

A non-scope of duty claim is a claim for damages, injury, or death caused by a member of the DoN while acting in any capacity other than in the performance of official duty. The most common example is damage caused by a Marine while on liberty, such as personal injury or damage to private property incident to a bar brawl.

DoD Instruction 5515.08 generally requires scope of duty claims to be forwarded to the service assigned claims responsibility for the country in which the claim arose. However, there are two exceptions to this rule that are

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<sup>16</sup> U.S. DEP'T OF DEFENSE INST. 5515.08, ASSIGNMENT OF CLAIMS RESPONSIBILITY (11 Nov 2006) [hereinafter DoD INST. 5515.08].

particularly useful for a MAGTF JA. In short, a MAGTF Foreign Claims Commission (FCC) may “settle non-scope of duty claims for less than \$2,500 arising in foreign ports visited by U.S. forces afloat (including ports in those countries where responsibility for processing claims has been assigned to the Departments of the Army and the Air Force).<sup>17</sup> Additionally, even if an international agreement imposes conditions on the adjudication of non-scope claims in a receiving state, a MAGTF FCC may still pay the claim if authorities of the receiving state concur with the adjudication and payment of the claim.<sup>18</sup> These exceptions are key, and allow a MAGTF FCC to pay the vast majority of claims that inevitably arise during liberty port visits.

Of note, the MAGTF JA needs to be aware of any limitations imposed by higher headquarters. For instance, when a MEU is deployed under the operational control (OPCON) of a Navy Fleet, such as U.S. Fifth Fleet, a Fleet Operations Order may require approval of the Fleet Staff Judge Advocate (FJA) before settling claims involving personal injury, or claims for amounts in excess of a sum certain (i.e. \$1,000).

Although scope of duty claims, and non-scope of duty claims in excess of \$2,500, must be forwarded to the assigned single-service claims office for adjudication,<sup>19</sup> the MAGTF JA should, nonetheless, conduct the preliminary processing of the claim by preparing an investigation and assisting the claimant in completing the necessary claims forms.

#### **D. EXAMPLE OF CLAIMS PROVISIONS IN AN INTERNATIONAL AGREEMENT**

An example of an international agreement with common claims provisions is the NATO SOFA.<sup>20</sup> Keep in mind that a MAGTF JA likely will not adjudicate any claims under the NATO SOFA because other services have claims responsibility for the NATO countries,<sup>21</sup> and because the NATO SOFA dictates that all non-scope claims (thus, even non-scope claims under \$2,500 that the MAGTF otherwise could handle under the single-service directive) should first be forwarded to the “office of the receiving state” (the NATO host nation claims office). However, if the claim arises in a country without single-

<sup>17</sup> DOD INST. 5515.08, *supra* note 16, at para. 4.3.1.

<sup>18</sup> DoD Inst 5515.08 at para 4.3.2.

<sup>19</sup> For a listing of addresses, see “TABLES LISTING CLAIMS SERVICES WORLDWIDE” ON THE U. S. ARMY CLAIMS SERVICE WEBSITE AT [HTTPS://WWW.JAGCNET.ARMY.MIL/8525752700444FBA](https://www.jagcnet.army.mil/8525752700444FBA).

<sup>20</sup> Agreement Between the Parties to the North Atlantic Treaty Regarding the Status of Their Forces, June 15, 1951, 4 U.S.T. 1792 [hereinafter NATO SOFA].

<sup>21</sup> See *supra* note 4.

service assignment, and an international agreement with claims provisions exists, it may be a useful illustration at this point to describe how the MAGTF JA should process and adjudicate a claim under an international agreement with claims provisions similar to the NATO SOFA. This illustration is particularly relevant in today's world where the negotiation of many new classified international agreements raises the possibility that claims may arise in countries without assigned single-service claims responsibility. Take the examples of two common claims against MEU forces: 1) helicopter rotor wash damage during a training exercise, and 2) damage to private property resulting from a liberty incident.

The NATO SOFA distinguishes between scope and non-scope claims. Helicopter damages arising during a training exercise are a scope claim. The NATO SOFA goes further to distinguish scope claims between types of claimants. Any scope claims involving damages to the military forces of a "Contracting Party" (a signatory to the SOFA) are waived.<sup>22</sup> Thus, if the helicopter rotor wash damaged the military property of another NATO member, the claim is waived. Scope claims involving damages to nonmilitary property of a Contracting Party are settled by separate agreement or arbitration.<sup>23</sup> Thus, if the helicopter damaged a government building of a Contracting Party, the MAGTF JA should forward the claim to the office of the receiving state for resolution. Scope claims involving damages to a third party other than any of the Contracting Parties are also forwarded to the office of the receiving state, ultimately resulting in a cost-sharing arrangement between the involved Contracting Parties.<sup>24</sup> Thus, if the helicopter rotor wash damaged a NATO host nation civilian home, the MAGTF JA would forward the claim to the office of the receiving state for adjudication.

A claim arising from damage caused during a liberty incident would be considered a non-scope claim. The NATO SOFA dictates that such non-scope claims, regardless of claimant, be forwarded to the office of the receiving state for the preparation of a claims report. This report is then forwarded to the office of the sending state (the relevant U.S. claims office), which can decide whether to offer payment (known as an *ex gratia* payment).<sup>25</sup>

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<sup>22</sup> NATO SOFA, *supra* note 10, at art. VIII, para. 1.

<sup>23</sup> *Id.* at art. VIII, para. 2. This provision of the NATO SOFA waives claims under certain dollar amounts depending upon the claimant Party. There is also a cost-sharing arrangement.

<sup>24</sup> *Id.* at art. VIII, para. 5.

<sup>25</sup> *Id.* at art. VIII, para. 6. It is important to note that such an *ex gratia* payment is not the same as a payment made under the Foreign Claims Act (FCA). While the mechanics of making an *ex gratia* payment may be very similar to the mechanics of making a payment under the FCA, the legal authority for the *ex gratia* payment is



**E. THE FOREIGN CLAIMS ACT IN THE ABSENCE OF BOTH AN INTERNATIONAL AGREEMENT AND SINGLE-SERVICE CLAIMS RESPONSIBILITY**

If no international agreement with claims provisions applies, and if no service has single-service claims responsibility or if the claim is a non-scope claim under \$2,500, the MAGTF JA may be able to adjudicate the claim at the MAGTF level under the FCA or another claims statute. While the most commonly applicable U.S. claims statute in the deployed environment is the FCA, the Military Claims Act (MCA) or the Military Personnel and Civilian Employees Claims Act (PCA) may also be available. To determine which claims act is applicable, the MAGTF JA will look to the status of the claimant and the country in which the claim arose.

**V. FOREIGN CLAIMS COMMISSION**

One of the primary virtues of the FCA is that it allows for prompt payment of claims up to certain dollar amounts without resorting to higher levels of settlement authority or geographically distant claims offices. This is accomplished through the use of a Foreign Claims Commission (FCC). An FCC can be comprised of either one or three commissioned officers, and has the authority to investigate and either deny or pay, in whole or in part, claims in accordance with the following guidelines: a one-officer FCC can deny or pay a claim up to \$5,000; a one-officer judge advocate FCC up to \$10,000; a three-officer FCC up to \$10,000; and a three-officer FCC including at least one judge advocate up to \$20,000.

All Navy and Marine Corps commanding officers have the authority to appoint an FCC unless restricted by a superior commander.<sup>26</sup> Typically, the MEU commander will appoint the MEU SJA as an FCC, although nothing prevents the commander from appointing a non-judge advocate. In fact, the MAGTF JA should recommend the appointment of an FCC aboard the other two ships in the Amphibious Ready Group (ARG) because the ships in the ARG frequently conduct split-ARG operations, simultaneously conducting exercises and making liberty calls in different countries. Having an FCC available and trained ahead of time by the MAGTF JA can prove useful. This

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the terms of the relevant international agreement in conjunction with the International Agreement Claims Act, not the FCA.

<sup>26</sup> *JAG Inst 5800.7E* at para. 0813(b)(1).

appointment should be in writing. A sample FCC appointment letter is included in Appendix 7-1.

Whether or not the claim is within the FCC's adjudicating authority, the FCC should conduct a thorough investigation of the facts underlying the incident. When the amount claimed exceeds the authority of the FCC, the FCC must forward its investigation, along with a payment recommendation, to the appropriate claims authority. A sample foreign claims investigation report format is included in Appendix 7-2.<sup>27</sup> The FCC may need interpreter support to investigate the claim; interpreters oftentimes can be found within the MAGTF or through coordination with local officials or a husbanding agent.

If the claim is within the FCC's adjudicating authority, the next issue is determining the appropriate payment. The laws, standards, and customs of the country where the incident occurred govern the damage computation.<sup>28</sup> However, regardless of local law, compensation shall not include punitive damages, interest, attorney's fees, bail, or similar charges.<sup>29</sup> As appropriate under local law, the FCC may factor in the claimant's negligence when computing damages, either barring the claim entirely (contributory negligence) or reducing the claim proportionately (comparative negligence).<sup>30</sup>

Once the FCC determines the damages it will make a payment to the claimant as a settlement of the claim. The claimant must sign a release form, or settlement agreement, when payment is accepted.<sup>31</sup>

The claimant must be paid in the local currency of the country where the claim arose or, if the claimant resides in a different country at the time of payment, in that country's currency.<sup>32</sup> The MAGTF JA should present all the claims paperwork to the MAGTF disbursing officer<sup>33</sup> and obtain the required

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<sup>27</sup> For a listing of information that the investigation must include, see *id.* at para. 0804(c).

<sup>28</sup> *Id.* at para. 0812(a). Finding these "laws, standards, and customs" may be easier said than done. The FCC may be able to do so by coordinating with local officials or the SJA of the COCOM or numbered Fleet. Absent this, the Library of Congress maintains an excellent web site of national legal materials arranged by country. Law Library of Congress, Nations of the World, at <http://www.loc.gov/law/guide/nations.html> (last visited 4 Mar. 2012).

<sup>29</sup> JAGMAN, *supra* note 17, at para. 0812(b).

<sup>30</sup> *Id.* at para. 0812(f).

<sup>31</sup> *Id.* at para. 0820(d).

<sup>32</sup> *Id.* at para. 0820(f).

<sup>33</sup> Several MEU SJAs have noted that many disbursing officers are unaware of the FCA and the procedures for paying foreign claims, and may resist the notion of providing funds. The SJA should take the time to educate the disbursing officer on claims adjudication and payment procedures well prior to any claims arising.

funds.<sup>34</sup> By cultivating a good working relationship before the deployment, you will find that the disbursing officer will likely want to accompany you when investigating incidents giving rise to foreign claims. This will allow the FCC to pay claims on the spot in certain situations. The MAGTF JA should ensure that the disbursing officer uses the appropriate claims accounting data when preparing the payment voucher.<sup>35</sup>

## **VI. ALTERNATIVE CLAIMS ACTS**

As discussed above, the PCA or MCA may be viable options when the FCA cannot be used to adjudicate a claim arising in a foreign country.

### **A. PERSONNEL CLAIMS ACT**

On occasion a situation may arise in which the MAGTF JA can assist Marines with the filing of a claim under the Personnel Claims Act<sup>36</sup> (PCA) while deployed. The PCA is applicable worldwide, and can be used to adjudicate claims for loss, damage, or destruction of personal property of military personnel and DoD civilian employees that occur incident to service. Examples of claims payable under the PCA while deployed include losses of personal items during transportation or emergency evacuation, and losses due to flood, fire, vandalism, or theft. Negligence on the part of the claimant serves as a bar to payment under the PCA. Claims under the PCA are filed directly with the Navy Office of the Judge Advocate General (OJAG), Claims and Tort Litigation Branch (Code 15). Claims packets and detailed filing directions can be found at the Code 15 website.<sup>37</sup>

### **B. MILITARY CLAIMS ACT**

The Military Claims Act<sup>38</sup> (MCA) is available to U.S. residents who suffer losses caused by an act or omission determined to be negligent, wrongful, or otherwise involving fault of military personnel. . . acting within the scope of their employment, ” or “incident to the noncombat activities of the armed

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<sup>34</sup> MEU disbursing officers typically do not have foreign currency. The JAGMAN is silent on the issue of how best to convert U.S. currency to foreign currency and what exchange rate to use. A recommended course of action is for the SJA to first select an institution that exchanges currency and determine the U.S. dollar amount needed to meet the settled foreign currency damage award. The SJA can then take this dollar figure to the disbursing officer.

<sup>35</sup> JAG Inst 5800.7E at para. 0820.

<sup>36</sup> 31 U. S. C. §3721

<sup>37</sup> [http://www.jag.navy.mil/organization/code\\_15\\_packets\\_forms.htm](http://www.jag.navy.mil/organization/code_15_packets_forms.htm).

<sup>38</sup> 10 U.S.C. §2733

forces.”<sup>39</sup> The MCA is applicable overseas only if a claim cannot be paid under the FCA or PCA. Similar to claims filed under the PCA, claims under the MCA are filed directly with OJAG (Code 15).<sup>40</sup>

## VII. ALTERNATIVES TO FORMAL CLAIMS

### A. PRIVATE SETTLEMENT

When non-scope claims result from the negligent or wrongful acts of Marines, frequently the most expeditious means of resolving the claim is for the individual Marine to simply make a private settlement with the claimant. The MAGTF JA should make every effort to pursue this route before resorting to the formal claims process. If a private voluntary settlement is reached, the MAGTF JA should ensure that a settlement agreement is signed to release the government and the Marine from any future claims arising from the underlying act. Private settlements must be voluntary, and a Marine may not be coerced into paying the claim. Threatening nonjudicial punishment to compel a private settlement is clearly unlawful, though a commander may consider whether the Marine voluntarily paid the claim as a matter of mitigation in determining whether to conduct office hours and what type of punishment, if any, to award. If the Marine did not voluntarily pay the claim and the government had to pay, the commander may also consider awarding forfeitures as a method of recouping government funds.<sup>41</sup>

### B. ARTICLE 139, UCMJ

Another alternative to formal claims processing is an Article 139, UCMJ, claim for redress of damage to property. Article 139 claims provide a mechanism for assessments against the pay of Marines for property damage caused under certain circumstances. First, the damaged property must be privately owned.<sup>42</sup> Second, the damage must have been caused by riotous conduct, willful conduct, or acts showing wanton or reckless disregard for property rights; mere negligence is insufficient.<sup>43</sup> The problem with Article 139 claims, particularly for transient MAGTFs like a MEU that float from port to

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<sup>39</sup> *Id.*

<sup>40</sup> [http://www.jag.navy.mil/organization/code\\_15\\_packets\\_forms.htm](http://www.jag.navy.mil/organization/code_15_packets_forms.htm).

<sup>41</sup> The specific claims fund cite is not reimbursed, however.

<sup>42</sup> JAGMAN, *supra* note 17, at para. 0401.

<sup>43</sup> *Id.*

port, is that procedural requirements make it extremely difficult to pay the claim expeditiously. An investigation must be conducted.<sup>44</sup> The alleged offender is allowed twenty days to respond to the investigation.<sup>45</sup> Moreover, only a general court-martial convening authority can order a pay checkage, and only up to \$5,000.<sup>46</sup>

### **C. SOLATIA**

The MAGTF JA should be aware that solatia payments may be available to compensate individuals in circumstances in which no claims act is applicable. Solatia payments are customary in certain parts of the Far East and Asia. Solatia payments are compensation expressing sympathy or condolence, and are drawn from unit operation and maintenance funds. They are not claims payments, and should not be made without prior coordination with the highest level of command in the area of operations.

### **D. CERP**

Condolence payments may be available under the Commander's Emergency Response Program (CERP), which allows for payments to individual civilians for death or injury resulting from U.S. military operations that are not otherwise compensable under the FCA. Condolence payments under this program were available in Iraq, and are currently only available in Afghanistan.

## **VIII. ADMIRALTY CLAIMS**

The MAGTF JA should also be aware that admiralty incidents constitute an entirely separate claims regime that will necessitate coordination with higher and the likely involvement of admiralty attorneys. An admiralty incident is any tort arising, in whole or in part, from the operation of a vessel upon navigable waters, to include damage occurring ashore caused by a vessel or afloat object.<sup>47</sup> Every admiralty incident must be immediately reported to the Office of the Judge Advocate General to allow admiralty attorneys the opportunity to

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<sup>44</sup> *Id.* at para. 0404(c).

<sup>45</sup> *Id.* at para. 0404(f).

<sup>46</sup> *Id.* at paras. 0405(b). Amounts in excess of \$5,000 must be forwarded to higher authority.

<sup>47</sup> JAGMAN, *supra* note 17, at para. 1203(a).

review the incident and provide necessary guidance.<sup>48</sup> The MAGTF JA should not attempt to unilaterally adjudicate the claim by going through the claims analysis discussed in this chapter.

## **IX. FOREIGN CLAIMS PLANNING CONSIDERATIONS**

A critical component of foreign claims processing is prior planning. Listed below are recommended planning considerations for the MAGTF JA.

### **A. PREPARE A CLAIMS BINDER**

The MAGTF JA should consolidate all claims paperwork—claims forms, investigation forms, settlement agreements—into one binder. The binder should also include appropriate reference material, such as Chapters IV (Article 139 Claims), VIII (General Claims Provisions), and XII (Admiralty Claims) of the JAGMAN, and relevant SOFA claims provisions. Having a binder readily available enables the JA to reach the claimant quicker without spending time searching for relevant claims materials.

### **B. OBTAIN A DIGITAL CAMERA AND SCANNER**

A digital camera and scanner are essential and significantly expedite claims processing. A digital camera can document damages without film developing delays, and photographs are an important and effective part of an investigation. A scanner enables the MAGTF JA to convert documents and photographs to an electronic format that can be attached to e-mails, again expediting processing, particularly when the claims approval authority is geographically distant.

### **C. ENSURE THAT AN FCC IS ALWAYS AVAILABLE DURING PORT VISITS**

Chances are good that the MEU-ARG team will conduct split-ARG operations during a deployment, with each of the three ships making port calls in different countries and MAGTF Marines conducting exercises or operations in different countries. It is imperative that someone be available to process claims as soon as possible after the incident occurs, not only because evidence quickly becomes stale and witnesses disappear, but because a rapid response to

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<sup>48</sup> *Id.* at paras. 1204(a)-(c). While admiralty claims may be handled under the FCA in certain limited circumstances, most admiralty claims are cognizable under either the Suits in Admiralty Act, Public Vessels Act, or Admiralty Jurisdiction Extension Act.

a claim generally results in faster resolution. Prior to deployment, the MAGTF JA should coordinate the training and appointment of an FCC on each ship. If possible, a “duty” FCC should be designated to remain on ship during liberty. Alternatively, the FCC on liberty should carry a cell phone and be prepared to investigate and adjudicate claims on short notice. The MEU and ship duty officers, from all ships in the ARG, should be briefed on how to contact the MAGTF JA and the relevant ship FCC (if a person other than the JA).

#### **D. COORDINATE**

As shipboard MAGTFs transit through different areas of operations (AO), the MAGTF chain of command will change. Before “chopping” to a new AO, the MAGTF JA should coordinate with the HHQ SJA to ensure awareness of all command orders and directives. As previously noted, many times the authorities of a MAGTF JA may be further limited by these local orders. The JA should also coordinate with any claims office exercising single-service claims responsibility or any cognizant receiving or sending state claims offices under an applicable international agreement. Finally, it may be helpful for the JA to liaise with local officials prior to port visits or training exercises. Such officials may be able to provide guidance on interpreter support, obtaining foreign currency, and local laws and customs.

#### **E. PRE-BRIEF MARINES PRIOR TO LIBERTY CALL**

The MAGTF JA should consider briefing Marines prior to the first liberty call in a foreign port. The brief should tell the Marines who to contact in the event of a liberty incident giving rise to a claim, and how to do so. The MAGTF JA might also brief particularly relevant local laws and customs. The brief can be part of the overall ship liberty brief delivered over the ships’ closed circuit television systems. The JA can also include useful phone numbers and claims guidance on a liberty card to be carried by each Marine.

## **CHAPTER 8**

### **LEGAL ASSISTANCE**

#### **I. INTRODUCTION**

This chapter discusses the judge advocate's (JA) role in providing legal assistance services to the members of a deployed Marine Air-Ground Task Force (MAGTF). Unlike many of the legal issues discussed throughout this manual, legal assistance issues transcend boundaries and always play a role in any billet held by a Marine Corps judge advocate. Whether working as a defense counsel, civil law attorney, or the MAGTF JA, members of the command will always have legal assistance issues. While the issue of who is the client will be addressed below, commanders will expect the MAGTF JA to be able to provide legal assistance services. Being able to provide these services competently will increase readiness and lead to earning the command's trust and acceptance. Accordingly, it is essential that the deployed MAGTF judge advocate is properly prepared to deal with the myriad of issues that are encompassed in this area of law.

This chapter is divided into several sections and touches on the basic elements, issues, and resources available to the deployed MAGTF JA. It should not be considered a substitute for or supersede any of the directions or policies as outlined in the controlling publications, most of which are discussed below. Instead, this chapter will serve as a wave-top review of the main issues and concerns to the JA, and assist by providing a quick navigational tool to assist with issue spotting and resolution of the common legal assistance issues encountered by the MAGTF JA. Comprehensive legal discussions of individual issues are left to the numerous publications and references cited throughout this chapter.

#### **PART ONE – LEGAL ASSISTANCE STANDARDS**

#### **II. LEGAL ASSISTANCE APPROACH**

The advent of the Internet and other advanced information mediums has substantially increased the capability of deployed JAs to tap into issue-focused databases and legal resources. One great source is the Judge Advocate Division



(Legal Assistance) sharepoint site.<sup>1</sup> Once the JA has framed the legal issue, finding the law is typically the easy part. In light of the wealth of resources on legal assistance that are available, Part One of this chapter attempts to provide the deployed JA with an approach to the practice of legal assistance without regard to any specific legal issue. At first glance, readers who have not had extensive experience dealing with legal assistance issues may consider Part One somewhat simple; however, after some experience, the recommendations, tips, and suggestions provided below should begin sounding familiar and deserving of a second look.

Before approaching any individual legal assistance issue, JAs must first understand the theory and practice of legal assistance. While the JA must clearly be able to quickly apply the law to the facts of a specific case—the science—so too must the JA be able to craft common sense solutions beyond the legal aspects of the case as an experienced MAGTF officer—the art. As discussed below, pure legal technicians will soon find that the ability to adroitly apply the science to a given issue pales in comparison to the ability to practice the art of legal assistance to achieve positive results for Marines and Sailors.

## **A. LEGAL ASSISTANCE THEORY**

The theory behind deployed JAs providing legal assistance services is that when deployed Marines and Sailors have their legal affairs in order, they are better able to focus on and accomplish the mission. Troublesome legal issues concerning child custody, divorce, civil lawsuits, debt collection, and other issues often have a negative impact on a Marine’s or Sailor’s performance of duty and morale, regardless of rank. When Marines and Sailors are “legally healthy” and understand that they have an available and experienced attorney that can assist them with their legal problems, mission accomplishment can truly be the focus of effort.

## **B. LEGAL ASSISTANCE PRACTICE: BALANCING THE ART AND SCIENCE**

The practice of legal assistance is much more art than science. It is important to understand that by the time the typical Marine or Sailor actually seeks legal assistance, the right “legal” answer may not exist or any appreciable legal remedies that might be available may not be worth pursuing. This does not mean, however, that there is nothing the JA can do to achieve a positive

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<sup>1</sup> <https://ehqmc.usmc.mil/org/sja/default.aspx>

result for the client. If a car has been repossessed, a debt has gone to a collection agency, or a Marine or Sailor has neglected some other obligation or responsibility, the JA may quite simply engage in damage control to prevent further harm, vice initiating a legal offensive oriented toward the opposing party. The scientific approach to many of these legal assistance challenges frequently yields very little; however, in practicing the art of legal assistance, problem solving is broadened beyond mere legal remedies. Frequently, when faced with a legal issue that does not favor the client, the JA's ability to persuade the involved parties to resolve the issue without resorting to a painful and drawn out legal process may be just the solution the client is looking for.

Through education, training, and experience, the Marine Corps JA can serve a couple roles at the same time: the JA as legal technician, who can quickly dispense accurate and timely legal advice, and the JA as counselor, who can see beyond the legal issues to what the client may really be seeking. In other words, clients are not always merely seeking legal advice. Frequently, Marines and Sailors want to discuss the social, moral, and spiritual issues that are typically intertwined with their legal problem. JAs who offer experienced counseling and common sense solutions, not merely nuts and bolts legal advice, will find themselves much more effective and relevant to the MAGTF.

### **III. Leverage and Bargaining Power**

This section discusses the dynamics of persuasion as they relate to the legal and non-legal factors that motivate businesses to resolve disputes in a client's favor. When the JA understands these business motivations, or pressure points, the JA can frequently attain quick and positive results for the client.

#### **A. TELEPHONE CALLS, CORRESPONDENCE, AND BEING POLITE**

When deployed Marines and Sailors experience legal problems with stateside businesses such as financial institutions, car dealerships, and landlords, clients frequently report little or no success when they personally attempt to resolve the dispute by phone or mail with the business directly. When speaking or corresponding with a young Marine or Sailor regarding a dispute, businesses frequently present a rather abrupt, one-sided, and unfavorable set of "options" to the Marine or Sailor that will resolve the dispute in favor of the business. However, upon initial contact with the business's senior management by a JA, businesses often become rather receptive to other

alternatives. The point here is that the JA should pick up the telephone and put the JA's education, training, and title to work for the client. No matter how difficult or trying telephone communications may be while deployed, they can and should be utilized.

When telephone calls are impossible or fail to achieve the desired result, a letter to the opposing party can also achieve quick and favorable results. Frequently, telephone calls from a JA never reach the desired level of management of a business; however, letters addressed to recipients such as "supervisor," "manager," "owner," or "legal department," typically get prompt attention. Note that Chapter 14 of the Marine Corps Manual for Legal Administration (LEGADMINMAN) requires the inclusion of the following disclaimer in all legal assistance correspondence using Marine Corps letterhead:

**"A LEGAL ASSISTANCE ATTORNEY IS A LICENSED ATTORNEY WHO ACTS SOLELY ON BEHALF OF AN INDIVIDUAL CLIENT AND NOT THE UNITED STATES GOVERNMENT."**<sup>2</sup>

Finally, the JA should provide a deployed e-mail address and telephone number on all correspondence, as delays in mail due to the deployment may render moot any time-sensitive legal issues.

The legal assistance JA may have that unique case where the law is completely on the client's side, or at least very close. An important point to emphasize is that the JA should never discard the polite qualities of a gentleman or lady and never become the bully. If the JA adopts the nasty and brutish approach to legal negotiations, the opposing party may be offended to the point of requiring an assertion of the client's legal rights, understanding that this is not easily accomplished from over 3,000 miles away. Adopting the confrontational approach may trigger the innate emotions to fight, regardless of the strength or weakness of the business's or individual's legal footing. Legal superiority should never be thrown in the face of an opposing party. Cordial, assertive, and agonizingly polite communications will accomplish more than verbal sword fighting.

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<sup>2</sup> U.S. MARINE CORPS, ORDER P5800.16A, MARINE CORPS MANUAL FOR LEGAL ADMINISTRATION para. 14005(1) (31 Aug. 1999) [hereinafter LEGADMINMAN].

## **B. THE LAW AND ITS PRACTICAL APPLICATIONS**

Obviously, having the law on the client's side can provide all the persuasive bargaining power needed to influence a favorable outcome for the client. However, bringing this law to bear against the offending business is often the most difficult aspect of practicing legal assistance while deployed. After legal research uncovers favorable law for the client, a telephone call to the offending business can often result in a quick resolution of the dispute. As mentioned above, while businesses frequently give the client the cold shoulder, the mere mention of the JA's status as a military attorney frequently jars managers and supervisors into reality and motivates them beyond their support staff's initial default response to the customer's complaint. If the JA's telephone call does not yield the results anticipated, it has likely established the business's position on the matter, which further refines what the next move on behalf of the client should be.

Sorting through the numerous federal and state laws on any given legal issue often presents a formidable undertaking for the multi-tasked MAGTF JA. Reliance upon the legal assistance offices at bases and stations is an excellent way to lessen the distance between the business and the deployed client's JA, as well as providing a wealth of knowledge concerning the nuances of local laws. Taking a few minutes before deployment to compile a simple list of various legal assistance office points of contact around the globe will yield tremendous results once deployed. A list of legal assistance office websites is included in Appendix 8-1.

Discovery of state and federal laws that favor the client's position is only the beginning. The JA should ask the following question whenever taking on a new client: If the law favors the client and the opposing party is unresponsive, is the client really going to sue in court? For 90% of legal assistance cases, the answer will usually be no. If the JA assumes this proposition as true, something more than favorable law is often needed. The following legal and nonlegal organizations or advocacy groups may provide additional leverage and bargaining power in cases where having the law on the client's side is not enough.

- Federal Trade Commission
- Armed Forces Disciplinary Control Board
- Better Business Bureau

- U.S. & State's Attorney General's Office
- Chamber of Commerce
- State Consumer Protection Office
- State Regulated Industries Office
- Action/Complaint Depts. of Local Print/Broadcast Media Organizations

### **C. MILITARY COMMUNITIES**

A sign often displayed in the offices of many businesses reads: "If We Don't Take Care of Our Customers, Someone Else Will." There is no more simple expression of business motivation than the concept that this statement represents. Good businesses, and there are many, understand and practice this foundational business principle with regularity, even when the law may be in their favor in a dispute. Cities such as Jacksonville, North Carolina; San Diego, California; Quantico, Virginia; and Kaneohe, Hawaii; are predominantly military communities, and businesses in these and other military cities understand who "butters their bread": the military Service member. This point reemphasizes the art and science of legal assistance practice discussed above in the numerous cases where the law will not be in the client's favor. It is not unethical or immoral to remind businesses that the client represents an important customer base in the community and that he or she should be treated fairly and with respect.

### **D. COMPASSION**

A typical client, a young Lance Corporal, purchased a \$30,000 car just before deploying. The finance company really bent over backwards to get this Marine the car he needed: \$25,000 financed at 18% interest over 5 years. Two months into the deployment, the client cannot make the payments. A review of the credit sale contract, finance documents, and applicable state laws concerning the sale reveals nothing in the client's favor. As if all of this was not bad enough, this Lance Corporal is newly married with a four-month-old child. What does the JA do when a case seems so hopeless? First, the JA should realize that this event may likely shape this nineteen-year-old Marine's life and his family for years to come. This deceptively isolated incident may

trigger a divorce, misconduct on the part of the Marine, and a significant loss of productivity to the MAGTF. Second, the JA should get involved. Contacting a business with nothing but a plea for compassion can yield surprisingly good results. Nor should the JA discount or underestimate the generosity and goodwill that resides within much of the business community. The JA should always remember that zealous advocacy extends beyond legal education and training.

#### **IV. PREVENTIVE LAW**

Benjamin Franklin said it best when he coined the phrase, “An ounce of prevention is worth a pound of cure.” An aggressive preventive law program can significantly reduce the detrimental effects of the most common legal assistance pitfalls that deployed Marines and Sailors frequently encounter. Developing a preventive law program prior to deployment is a formidable task for any MAGTF JA, as the various elements of the MAGTF are typically geographically dispersed and extremely busy training for the deployment. However, any effort expended on preventive law, even while deployed, will help Marines and Sailors learn to avoid the common mistakes that seem to be repeated with each successive influx of new MAGTF personnel.

##### **A. DEVELOPING A PREVENTIVE LAW PROGRAM**

Because legal assistance is a part-time job for the MAGTF JA, it is unlikely that he or she will have a mastery of the nuances of state laws, common scams, or businesses with a negative “track record” in the local economy. Additionally, JAs typically find themselves gainfully employed with the numerous operational demands of the MAGTF. The legal assistance office at the base or station often has a preventive law program already developed that can be oriented to the needs of the MAGTF. Arrangements can usually be made to offer the preventive law period of instruction at the legal assistance office on a recurring basis. If this is not feasible, a legal assistance attorney may be able to go directly to the units during block training periods and other times when significant portions of the MAGTF gathers together. If a block of instruction is not made available to the MAGTF JA, consider developing a

handout that can be distributed to our Marines. The handout should highlight the services available at the legal assistance office with an emphasis on the resolving one's legal issues prior to deployment.

The best method for reaching the Marines and Sailors of the MAGTF's many moving parts is the "teach the teacher" method. This method requires units to nominate a representative to receive a period of instruction and return to the unit to conduct further instruction. To lend credibility to this method, staff noncommissioned officers and/or company grade officers are preferred. The importance of getting the MAGTF commander and the major subordinate element commanders behind a preventive law program is key to the program's success. Whether the base or station legal assistance office or the JA conducts this training is unimportant, so long as the information being presented is relevant and timely. Finally, a useful part of a preventive law program can also be the MAGTF's web page. Coordination with the MAGTF's S-6 and Public Affairs Officer (PAO) will quickly educate the JA on the process of establishing a JA section on the web page where preventive law information can be accessed by the MAGTF's Marines, Sailors, and family members.

## **B. PREVENTIVE LAW ISSUES**

Preventive law topics should be oriented toward the legal challenges typically experienced by deployed Marines and Sailors. While issues such as financing an automobile purchase are certainly useful information, it is likely that such topics are more appropriate for an audience that is not rapidly preparing to deploy. The specific legal areas covered in Part Two of this chapter provide an excellent guide to issues that are appropriate for inclusion in any preventive law program. At a minimum, the following preventive law topics should be covered:

- Legal assistance eligibility
- The importance of a will and power of attorney
- SGLI designations
- What to do upon receiving notice of a lawsuit while deployed

- What to do upon receiving notice that a creditor is making a claim of nonpayment or late payment
- Traffic citations immediately prior to deployment
- Civil and criminal court obligations
- Self-storage facilities and the importance of timely payment
- Automobile issues
- Debt/financial management while deployed
- Divorce/separation
- Child/spousal support
- SCRA protections: stay of proceeding; 6% interest cap; eviction protection; reopen default judgments; installment contracts, lease termination, cellular phone contract termination
- Landlord-tenant issues: security deposits; early termination of a lease

## **V. DETERMINING THE CLIENT: CONFIDENTIALITY AND CONFLICTS OF INTEREST**

The MAGTF JA's client is the Department of the Navy (DON). Given this fact, an important issue to consider is whether the JA is authorized to provide legal assistance to the Marines and Sailors of the MAGTF. Certainly as a matter of practice many deployed Marine and Navy command JAs are both advising commanders and simultaneously providing legal assistance to Service members. It is useful at this point, however, to discuss whether such a practice is prudent, let alone ethically sound.

Obviously, the pressing concern is conflicts of interest between the DON client and the legal assistance client. Because the MAGTF JA is not fenced off as a dedicated legal assistance attorney, it is easy to imagine situations where taking on a legal assistance client would conflict with the JA's duties as the commander's legal advisor. The Navy-Marine Corps Legal Assistance Program JAG Instruction notes this potential for conflict:

Attorneys whose primary duties are not legal assistance must be especially sensitive to the possibility that actual conflicts of interest may develop. For example, an SJA may need to advise his commander



concerning allegations of indebtedness, nonsupport, or paternity made against a member of the command; accordingly the SJA should refrain from advising and representing individual command members in such matters.<sup>3</sup>

In analyzing the potential for a conflict of interest, the MAGTF JA should look to the Rules of Professional Conduct governing Marine and Navy JAs, specifically, Rule 1.7.<sup>4</sup> The rule contains two prohibitions. First, a JA shall not represent a client if doing so will be directly adverse to another client, unless, the JA reasonably believes the representation will not adversely affect the relationship to the other client, and each client consents after consultation.<sup>5</sup> Second, a JA shall not represent a client if the representation will be materially limited by responsibilities to another client, unless, the JA reasonably believes the representation will not be adversely affected, and the client consents after consultation.<sup>6</sup>

Guided by Rule 1.7, the MAGTF JA should be very careful before deciding to offer legal assistance advice to Marines and Sailors. Certain conflicts clearly stand out, such as representing a member of the command in a disciplinary proceeding or providing advice to a Service member facing an office hours proceeding under Article 15, UCMJ. In the realm of legal assistance, however, the conflicts can be less clear. On the one hand, providing counsel for the preparation of wills and powers of attorney seems appropriate. On the other hand, issues of nonsupport of dependents and indebtedness may raise potential conflict issues. The JA should closely scrutinize the facts of each case before undertaking representation. Furthermore, because the JA often will not know of a conflict until some point during the initial interview, the JA should consider advising the prospective client of the JA's preexisting duties to

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<sup>3</sup> U.S. DEP'T OF NAVY, OFFICE OF THE JUDGE ADVOCATE GENERAL INSTR 5801.2A, NAVY-MARINE CORPS LEGAL ASSISTANCE PROGRAM encl. 1, para. 5-1(e)(7) (26 Oct. 2005).

<sup>4</sup> U.S. DEP'T OF NAVY, OFFICE OF THE JUDGE ADVOCATE GENERAL INSTR. 5803.1C, PROFESSIONAL CONDUCT OF ATTORNEYS PRACTICING UNDER THE COGNIZANCE AND SUPERVISION OF THE JUDGE ADVOCATE GENERAL encl. 1, para. 7 (9 Nov 2004) [hereinafter JAGINST 5803.1C] (The Rules of Professional Conduct are contained in Enclosure 1).

<sup>5</sup> Id. at para. 7(a) (emphasis added).

<sup>6</sup> Id. at para. 7(b) (emphasis added).

the DON as a first order of business before the client begins revealing any information.<sup>7</sup>

If the JA does decide to take on a legal assistance client, the next issue is whether an attorney-client relationship with its concomitant obligations of confidentiality forms. While it may be possible to provide legal assistance without forming an attorney-client relationship,<sup>8</sup> the better practice is to assume that the relationship has been formed rather than trying to walk a fine line between representing the DON client and merely offering advice to the Service member seeking legal assistance. Avoiding the technical formation of an attorney-client relationship should not be employed as a method for circumventing an actual or potential conflict of interest situation.

If the JA cannot provide legal assistance because of a conflict with the DON client, other options remain available. Improved technology makes telephonic or electronic communication with legal assistance offices in theater or back in CONUS a viable recourse. A Navy command JA may be available who may not have the same conflict issues as the Marine JA; for instance, each Amphibious Squadron that transports a MEU has a Navy JA on the staff. Additionally, as discussed above, many legal assistance matters can be resolved nonlegally, and the Service member's chain of command can ably assist, perhaps with generic, non-fact-specific advice from the JA.

## **VI. KEY REFERENCES**

### **A. JAGMAN AND LEGADMINMAN**

There are numerous legal assistance references with which the deployed MAGTF JA must be familiar to ensure the effective and ethical practice of legal

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<sup>7</sup> See *infra* note 9 and accompanying text.

<sup>8</sup> The LEGADMINMAN states that legal assistance “will normally involve entering into an attorney-client relationship,” suggesting that perhaps there are situations where a JA can provide legal assistance without forming a relationship. LEGADMINMAN, *supra* note 2, at para. 14003 (emphasis added). One current MEU SJA uses a written consent and waiver form to clearly memorialize the fact that legal assistance is being provided without forming an attorney-client relationship. Such a waiver may be particularly useful for initial interviews with prospective clients as a method of putting the client on notice of the JA's responsibilities to the DON. The form is included in Appendix 9-2.

assistance while deployed. However, above all other references, the JA should specifically review the Manual of the Judge Advocate General (JAGMAN)<sup>9</sup> and the LEGADMINMAN<sup>10</sup> chapters governing the practice of legal assistance before assisting clients. JAGMAN Chapter VII and LEGADMINMAN Chapter 14 provide mandatory and recommended guidance for all legal assistance practitioners, regardless of the JA's primary duties, and describe the scope of legal assistance practice in the Marine Corps. By beginning with the review of these two important chapters, the JA quickly has a roadmap of the legal assistance issues he or she will likely encounter. Further, both chapters provide indispensable information on the who, what, when, why, and how of legal assistance practice. These two references are frequently overlooked, as new JAs quickly jump into the multidisciplinary practice of being a MAGTF JA. Taking a few minutes to review these chapters prior to providing legal assistance services will result in a more comprehensive understanding and approach to the practice of legal assistance as a whole.

## **B. INDIVIDUAL TRAINING STANDARDS**

One of the more elusive or unknown references pertaining to the practice of law in the Marine Corps is the Individual Training Standards (ITS) System for Legal Services, Occupational Field 44 (OCCFLD).<sup>11</sup> ITS are developed for all OCCFLDs to ensure standardized training, measure effectiveness, and to focus Marines on the essential core competencies of their respective MOSs. ITS for legal services provide a useful review of many of the basic competencies of military legal practice. While the legal services ITS include required competencies and standards for all legal MOSs, the sections that provide standards for JAs practicing legal assistance and other related areas of law are particularly helpful. The following is a partial list of relevant tasks included in the ITS that pertain to the practice of legal assistance: perform legal research; draft legal memorandum; provide instruction in legal matters; demonstrate negotiating and interviewing skills; prepare domestic relations documents;

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<sup>9</sup> U.S. DEPT OF NAVY, OFFICE OF THE JUDGE ADVOCATE GENERAL INSTR. 5800.7E, MANUAL OF THE JUDGE ADVOCATE GENERAL (JAGMAN) (16 Sep 2008) [hereinafter JAGMAN].

<sup>10</sup> LEGADMINMAN, *supra* note 2.

<sup>11</sup> U.S. MARINE CORPS, ORDER 1510.51B, INDIVIDUAL TRAINING STANDARDS (ITS) SYSTEM FOR LEGAL SERVICES, OCCUPATIONAL FIELD (OCCFLD) 44 (23 June 1999).

advise on consumer affairs; negotiate noncommercial contracts; advise on dependent support obligations; and advise on disputed indebtedness. ITS do not provide the JA with answers to legal assistance issues; however, when the JA reviews them prior to meeting with clients for the first time, ITS do provide an excellent overview of legal assistance issues and some of the many tasks with which the SJA must be competent.

## **PART TWO – DEPLOYED LEGAL ASSISTANCE**

### **VII. COMMON DEPLOYED MAGTF LEGAL ASSISTANCE ISSUES**

While numerous excellent resources exist on legal assistance issues, Part Two attempts to identify the more common issues encountered by deployed Marines and Sailors and provide some useful recommendations concerning how to effectively handle these issues. Where appropriate, recommended references and examples provided in the appendices to this chapter will be highlighted to focus the reader's research.

#### **A. DEBT COLLECTION, FINANCIAL MANAGEMENT, AND CONSUMER RIGHTS**

Debt collection, financial management, and consumer rights issues present some of the most common problems for deployed Marines and Sailors, and MAGTF JAs will likely encounter these issues frequently. Between Naval Justice School (NJS) and The Judge Advocate General's Legal Center and School, U.S. Army (TJAGLCS) publications, there are well over 1,000 pages of relevant and focused research on these related topics. Without reproducing the content of these excellent resources, the intent of this section is to provide an overview of debt collection, financial management, and consumer rights issues and discuss some particularly useful insight into the artistic practice of legal assistance in these areas.

##### **1. DEBT COLLECTION**

Collecting debts is an interesting trade and certainly a trade with its fair share of smoke and mirrors. Understanding some basics about this profession

and how to effectively navigate through the various collection agencies and businesses is an important first step. A debt collector is a business or individual who is in the business of collecting debts. A creditor is the business or individual to whom the debt is originally owed. The distinctions between these two entities are important, as state and federal laws often establish different laws based on the status and relationship with the debtor. For example, the Fair Debt Collection Practices Act (FDCPA)<sup>12</sup> prohibits a debt collector from contacting an unrelated third party concerning the debt, i.e., commanding officer or sergeant major; however, laws pertaining to creditor contact with third parties may permit such contact.

A typical debt collection fact pattern may look like the following:

Lance Corporal Doe's company First Sergeant recently received a letter from Debts-R-Us Credit Agency. LCpl Doe was late on a few of his car loan payments and the account was sent from the lender to the collection agency two months ago. The First Sergeant contacts the JA asking for assistance. Upon review of the collections notice, the JA reads the following: "Mr. Doe, your credit account with Lemmon Loan Inc., has been sent to our agency for collection because you have failed to make timely payments. The remaining balance of \$5,000 on your loan is due to this company within 30 days of receipt of this letter. We will not accept partial payments. If you fail to pay this amount in full within 30 days, we will sue you in court and collect our attorney's fees and court costs. Additionally, your command will be notified and you will lose your rank and your career will be in serious jeopardy. We are very good at collecting debts! If you pay the full amount of your

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<sup>12</sup> 15 U.S.C. §§ 1692-92 (2002).

debt within 30 days, we will not report this debt to a collection reporting agency.”

This fact pattern raises many issues. Does the credit agency’s contact with the command constitute an improper/illegal contact of a third party in an attempt to collect a debt? Is the language used in the collection agency’s demand letter too strong, such that it constitutes a violation of collections laws? Will the collection agency really take the Lance Corporal to court if he does not pay the entire \$5,000 balance within 30 days? Research and common sense will lead the JA to the right answers. While this example combines many of the more blatant debt collection violations, JAs will likely encounter many similar violations during their tenure.

Most debt collection cases that the JA will encounter are justified, in that the client has likely failed to meet his or her obligations with regard to credit. Despite the client’s responsibility in the creation of what may have become a monumental debt emergency, permitting debt collection agencies to violate laws to collect what may be a valid debt is unacceptable. Where the debt is determined to be valid, the JA should make all efforts to use collection violations to the benefit of the client. Collection agencies frequently become very receptive to alternatives when violations are brought to their attention that may affect their ability to be in the business at all. Where the debt is not valid or is denied by the client, the course of action for the JA will be straightforward upon cursory review of the many references.

While most debt collection agencies are very reputable and follow the law to the letter, many agencies cross the line in their collection efforts with regularity. As illustrated in the fact pattern above, disreputable agencies often resort to half-truths or lies to coerce debtors into paying. Reviewing some commonly advertised debt collection myths is in order:

Myth 1: The collection agency will only accept full payment of the debt.

Myth 1 dispelled: While it may sound peculiar for a business to buy debt, that is likely what the collection agency has done, i.e., purchased the debt from

the original creditor, often for pennies on the dollar. If the collection agency collects any amount above the reduced amount they paid for the debt, the agency pockets the money. Agencies will typically give the gloom and doom pitch to the client regarding the absolute requirement of immediate full payment, or else. However, when the JA enters the picture, agencies frequently are willing to settle the account for 70%, 60%, 50%, or less, of the original amount of the debt. JAs may find that through persistence, a \$5,000 debt properly sent to a collection agency might quickly be settled if the client was able to offer a \$2,000 to \$2,500 immediate payment. Finally, collection agencies frequently do accept monthly payments.

Practice pointer 1: If a settlement is selected by the client as the best course of action, the settlement amount is often closely correlated to the number and significance of any collections violations the JA can bring to the attention of the collection agency. While violations of collections laws can be pursued through the courts and other means, violations are often more appropriate as negotiating tools.

Myth 2: If you pay in full now, we won't report to a credit reporting agency.

Myth 2 dispelled: If a client's account has justifiably found its way to a debt collection agency, it has almost certainly been reported to one of the three major credit reporting agencies (Experian, Equifax, Trans Union). Further, the original creditor has also likely reported any payment delinquencies to a credit reporting agency prior to transferring the debt to a collection agency. Some disreputable collection agencies use this method as a manipulative incentive for the debtor to pay the debt promptly, and it is likely a violation of collections laws.

Practice pointer 2: When communicating with collection agencies, the JA should inform them that the JA understands the debt collection industry and of the consequences for substantiated violations of applicable laws. The JA should attempt to speak or correspond with the senior management of the collection agency, as the lower level employees often have been assigned a

large number of accounts and have been instructed to collect the debts aggressively.

Myth 3: Once a debt is sent from the creditor to a collection agency, the original creditor has nothing more to do with the matter.

Myth 3 Dispelled: Creditors and debt collectors alike often bring this perceived fact to the attention of the debtor since the debt collection agency is the preferred single point of contact for debt collection. However, if the debt rightfully should have never been sent to collections in the first place or the creditor is contacted shortly after the account has been sent to collections, debts can be transferred back to the original creditor.

Practice pointer 3: Lower-level employees of the creditor or debt collection agency may be sincere in believing that the creditor really cannot retrieve the debt that it has transferred to a collection agency. If the JA can communicate with more senior managers or supervisors, credit accounts can often be returned to the original creditor if properly negotiated and caught early enough in the chain of events. It is infinitely better for the client to have the account with the original creditor than with a collection agency. If the account has recently been sent to the collection agency, the JA should speak first with the creditor, as the debt collection agency has likely purchased the debt and will not entertain attempts to return the debt to the creditor. The first response from the creditor is typically that they no longer have anything to do with the debt; however, if the JA can offer a substantial balloon payment on behalf of the client and the account has recently been sent to collection, they may be willing to pull it back. Detailing collection law violations is also a powerful incentive for the creditor to pull the account back. Finally, sincere and honest communications with the creditor regarding the situation of the young Marine or Sailor is always appropriate, and the ability to establish allotments or other assured means of payments frequently persuades the creditor to retrieve the account from the debt collection agency.



Debt collection cases for deployed Marines and Sailors are often very similar from case to case. The set of questions provided below may prove useful to the JA upon initial screening of debt collection cases.

- Does the state where the collection agency is attempting to collect a debt require collection agency registration before collection attempts commence? If the state has such a law, has the agency in question registered?
- Has there been any improper contact of third parties?
- Has the collection agency complied with the requirements of the FDCPA and other state and federal laws governing the collection of debts (unfair or deceptive acts and practices (UDAP) statutes)?
- Has the original creditor properly sent the account to the collection agency?
- Has the original creditor complied with laws such as: Fair Credit Billing Act (FCBA), Truth in Lending Act (TILA); UDAP?
- Will the original creditor entertain retrieval of the account from collection agency under any circumstances?

## ***2. FINANCIAL MANAGEMENT***

Financial management is truly the key to avoiding many of the pitfalls of credit accounts and other financial obligations for Marines and Sailors. In a deployed status, half the battle simply rests with the ability of the Service member to consistently pay just debts in a timely manner. While this topic is most appropriately addressed at the unit level by concerned and knowledgeable staff noncommissioned officers, preventive law programs and unit briefs should make mention of financial management. Base or station Family Service Centers (FSC) often have regularly scheduled classes on financial management. Legal assistance offices also may offer similar classes. With the advent of online banking and bill paying services being offered by most banks, there really is no excuse for Marines' and Sailors' inability to make payments in a timely fashion. Predeployment establishment of such services is simple, provided the Service members are aware of such options. It is important to remember that late payments often evolve into debt collection scenarios.

Finally, late payment charges are frequently forgiven with a simple telephone call or letter from the client or JA. When requesting that late payment charges be removed, the JA should inform the business that the Marine or Sailor is deployed and use key words such as, “as a one-time courtesy on this account, could you please forgive the late payment charge?”

### **3. *CONSUMER RIGHTS: SCAMS***

The authoritative reference on consumer rights issues is the TJAGLCS Consumer Law Guide. Its nearly 500 pages are superbly organized and when viewed on CD ROM, bookmarks make navigation very simple. Consumer laws are numerous and run the gamut from product warranty issues to door-to-door sales transactions. Almost any time Marines or Sailors purchase a product, there is a consumer law that governs the transaction. For the purposes of this section, the discussion is restricted to the issue of consumer scams that frequently prey upon the young and inexperienced Marine or Sailor.

While most scams usually occur in CONUS, the Marines or Sailors who were “taken” generally do not become aware of this fact until they have deployed. Contacting the local legal assistance office, base inspector’s office, state’s attorney general’s office on consumer protection, and the Federal Trade Commission are all excellent ways to discover whether the client has been the subject of a scam. These offices frequently track scam activity and can provide useful information on what steps the JA should take if they suspect their client has been scammed. All bases and stations have stringent solicitation rules pertaining to on-base sales activity that should be researched in cases where transactions were initiated or conducted on base.

### **B. SEPARATION AND DIVORCE**

Separation and divorce issues are some of the most frequent legal issues that the JA will encounter while deployed. Marital discord is often very debilitating to deployed Marines and Sailors and thus the JA must be well-versed in common military separation and divorce scenarios and know where to look for answers. The typical deployed separation or divorce scenario often

begins several months into the deployment. While there is no single cause for the marital discord, geographic separation of the husband and wife, often for long periods of time, is always a contributing factor and the cause for much frustration on the part of a deployed Marine or Sailor.

### **1. *COUNSELING***

Experienced and sincere counseling is one of the most important roles of the JA in separation and divorce cases. Clients are often blinded by anger or despair and the ability of the JA to provide some semblance of order to the situation is often the first important step in the right direction. As discussed in Part One of this chapter, clients are often seeking much more than a step-by-step review of the legal aspects of their case. JAs should view themselves as part of an integrated and concerned team of players who can help the Marine or Sailor sort through marital problems. The client often will not know what they want or their wants will change frequently from immediate divorce to reconciliation and back again. Where appropriate and after consent of the client, the JA may enlist the aid of the unit chaplain, select members of the client's chain of command, and the deployed Navy psychologist/psychiatrist.

These comments should not be confused for implying that the JA should wholly abandon the primary role as the duty expert on the law; rather, the JA should incorporate the client's education on the law and process as part of the JA's counseling. Base and station legal assistance offices are often the best resource for researching applicable state laws and procedural requirements. There are excellent websites where the JA can download divorce laws for all fifty states to ensure that both the JA and the client can clearly see the road ahead.

### **2. *SEPARATION AGREEMENTS***

Marital separation in a military context is somewhat simplistic and should not be confused with court-ordered separations. Separation agreements are completely voluntary and instances where one party does not wish to enter into the separation agreement will stop the process in its tracks. Separations

begin with the client's preparation of a separation agreement worksheet. Due to the jurisdictional differences associated with family law, it is recommended that a legal assistance office in the Service member's jurisdiction be contacted for a state specific worksheet. The separation agreement worksheet will often be a useful measure of whether the couple is really serious about becoming separated or divorced or whether the strains of the deployment are merely causing marital hardship. Additionally, the separation agreement worksheet will give the JA and client the important first indication of whether the husband and wife can agree on serious matters such as property and asset/debt distribution, child custody, and whether they are candidates for an uncontested divorce.

While the separation agreement is an enforceable contract, taking legal action against the non-Service member spouse in response to violations of its provisions is usually unrealistic. Instead, where the non-Service member spouse violates the terms of the agreement, the Service member will likely determine that an uncontested divorce may no longer be possible and that divorce proceedings should be initiated. Ensuring that the Service member spouse adheres to the terms of the agreement is much easier, since the command now has the authority to issue lawful orders to obey separation agreements under the LEGADMINMAN.<sup>13</sup>

Once the separation agreement worksheet is completed, the JA drafts the separation agreement and each party notarizes it. Difficulty and delay in mailing documents back and forth between husband and wife often frustrate the process. Many states require a separation period before the couple can be divorced. If the Service member is seeking a rapid divorce, commencing any required state separation period while deployed can often facilitate an immediate divorce upon completion of the deployment.

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<sup>13</sup> 16 LEGADMINMAN, supra note 2, at para. 15001.7.

### **3. DIVORCE**

JAs will likely find that initiating a divorce while a Service member is in a deployed status is unlikely. Retaining counsel, court appearances, and other obstacles make meaningful progress difficult. However, with the JA's assistance, the client can effectively set the conditions for a divorce upon the client's return to CONUS. Reviewing applicable divorce laws pertaining to the anticipated divorce issues of the case should be discussed with the client to ensure the ability to take action on the divorce when time and location permit. If the divorce appears to be uncontested and relatively amicable between the parties, the nondeployed spouse can often effect the divorce by mailing required consent and waiver forms to the deployed spouse. Typically, however, the deployed Marine or Sailor must wait for a return to the States to initiate divorce proceedings due to geographic constraints and the work demands of the MAGTF.

#### **C. NON-SUPPORT OF DEPENDENTS**

Claims of nonsupport of dependents against a deployed Marine or Sailor will likely get the attention of the command very quickly. As the sole legal advisor to the MAGTF commander, nonsupport claims should get the attention of the JA as well. The nondeployed spouse typically initiates nonsupport claims by letters to the command, complaints to congressional representatives, or via a legal assistance attorney.

Nonsupport issues raise a precarious ethical question for the JA: Can the JA properly advise both the MAGTF commander and the Marine or Sailor that is the subject of the nonsupport claim? The essence of this dilemma is addressed at length in the conflicts of interest section in Part One to this chapter<sup>14</sup> but is deserving of discussion in this section as well. Recalling that the MAGTF JA's client is the DON, representing a Marine or Sailor on a nonsupport claim presents a very likely conflict of interest: the command wants the matter settled and off the skyline, while the Marine or Sailor may want to

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<sup>14</sup> See *supra* Section V.

contest the claim or provide minimal levels of support, and looming over all is the possibility of a disciplinary proceeding against the Service member for failure to provide adequate support. The JA should tread very carefully before taking on such a legal assistance case. The more prudent course would be to obtain telephonic or electronic legal assistance for the Marine or Sailor from a dedicated legal assistance attorney. The JA may, however, be able to provide basic counseling on Marine support requirements, discussed below, without forming an attorney-client relationship.

Nonsupport of Marine dependents is addressed at length in Chapter 15 of the LEGADMINMAN; however, a quick overview is useful here. Chapter 15 sets the stage for discussion by providing the following guidance: “The Marine Corps will not be a haven for personnel who disregard or evade their obligations to their families. All Marines are expected to provide adequate and continuous support for their lawful dependents and comply with the terms of separation agreements and court orders.”<sup>15</sup> Chapter 15 establishes two general categories: situations where there is a separation agreement or court order, and situations where there is not such an agreement. When there is a separation agreement or court order, the JA should simply compare the facts of the case to the obligations established in the documents. In cases where a complaint of nonsupport is received and no separation agreement or court order exists, the command will determine whether the individual is providing the required degree of support pursuant to the LEGADMINMAN. If adequate support is not being provided, the command will order the Marine to pay the proper degree of support after consulting with the JA. Complaints against Sailors in the command will be handled under the provisions of MILPERSMAN 1754-030.

#### **D. SERVICEMEMBERS CIVIL RELIEF ACT**

The Servicemembers Civil Relief Act (SCRA)<sup>16</sup> is one of the more powerful and useful federal laws that can be brought to bear on behalf of military Service members, and knowledge of its many parts can reap significant rewards for your clients. While numerous in-depth references are available on

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<sup>15</sup> LEGADMINMAN, *supra* note 2, at para. 15001.1.

<sup>16</sup> 50 U.S.C. App. §§ 501-96 (2010).

the SCRA from NJS and TJAGLCS, two fact patterns typically arise in a deployed setting.

### **1. *STAY OF PROCEEDINGS***

Once deployed, it is inevitable that some Marines and Sailors will receive notice that they are party to a lawsuit and the court requires their presence at a trial or hearing during the deployment. Barring extenuating circumstances, leave will likely not be granted. Section 202 of the SCRA provides the following that a court shall stay the proceedings for at least 90 days if a Service member's military service materially affects the Service member's ability to appear.<sup>17</sup>

The key to taking advantage of this beneficial provision of the SCRA is the client's timely notification of the JA. Notice of lawsuits and civil court hearings are sent directly to the client or the client is notified by friends or family members that have received court documents. The JA will likely not be aware of any court appearance issues for Marines or Sailors unless they bring the issue to the JA's attention. Raising this issue at preventive law briefs, pre-deployment briefs, and unit family nights is imperative, for many Marines and Sailors are not aware of the SCRA's protection in this area.

Once a court appearance issue has been brought to the attention of the JA, the JA's actions are rather simple. With the counsel of the JA, the MAGTF commander should first determine if it is feasible to have the Marine or Sailor personally appear at the court hearing. In determining whether personal appearance is appropriate, commanders should consider several factors, including the location of the MAGTF, the role of the client in ongoing operations, and the nature of the court hearing. As an example, if the trial or hearing involves an egregious failure to provide child support on the part of a Marine or Sailor, commanders may determine that personal appearance is appropriate and that leave shall be granted. In most cases, however, it is likely that a deployed Marine or Sailor will be "materially affected" by virtue of their

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<sup>17</sup> 50 U.S.C. App. § 522 (2010).

deployed status and will not be granted leave to personally appear at the trial or hearing. If leave is not granted to attend the trial or hearing, the JA should draft two letters.

The first letter is for the MAGTF commanding officer's signature. The letter should be addressed to the particular court requesting the Marine's or Sailor's appearance. The purpose of the commander's letter to the court, vice a letter from the JA, is to ensure that the court does not construe the letter from an attorney as an appearance on behalf of the client. A sample letter is included in Appendix 8-2.

The second letter should be from the individual Service member to the court requesting a stay under the SCRA. A sample letter is included in Appendix 8-3. It is imperative to follow-up on the status of the stay request to ensure that the court does not proceed in the matter to the detriment of the client. Courts must appoint an attorney to represent the absent Service member. If so, the JA and client should contact the court-appointed attorney and provide relevant information to ensure that the attorney is capable of adequately representing the interests of the client. Finally, if for any reason the stay is not granted and the court grants a default judgment to the opposing party, be aware that the SCRA may be used to reopen default judgments in certain instances.

## ***2. MAXIMUM RATE OF INTEREST***

A simple way to save Marines' and Sailors' money is by continually educating them about the SCRA's benefits as they pertain to the maximum rate of interest. Section 207 of the SCRA permits Marines and Sailors to reduce interest rates on debts that were incurred prior to entering active military service if military service has materially affected their ability to pay the obligation.<sup>18</sup> If Marines or Sailors came on to active duty with a credit card, car loan, or almost any other type of financial obligation, it is likely that the JA will be able to reduce the interest rate of the obligation to 6%. To take advantage of this provision of the SCRA, the JA should simply mail the creditor a letter

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<sup>18</sup> 50 U.S.C. App. § 527 (2010).



requesting a reduction in the interest rate to 6%, accompanied by service record documents that verify the date of entry into active military service. This simple process potentially can save Marines and Sailors hundreds of dollars per year, depending on the size of the debt. A sample letter is included in Appendix 8-4.

## **E. ESTATE PLANNING**

In a deployed context, estate planning is essentially reduced to the preparation of two major estate planning documents: the will and the power of attorney. While most Marines and Sailors receive their wills and powers of attorney from the local legal assistance office prior to deployment, many will want to execute these documents while deployed.

### **1. *WILLS***

The drafting and execution of a simple will is a relatively easy process. The process begins by educating the Marines and Sailors on simple estate planning information and identifying those who are the likely candidates for obtaining a will. At the completion of this class, the JA should provide a will worksheet to those interested in receiving a will. The JA should personally review the will worksheet with the client. This personal contact ensures the worksheet is filled out correctly, permits the client to ask questions, and satisfies the JA's professional responsibility requirements. A sample will worksheet is included in Appendix 8-5.

Once the worksheet is complete, the JA's legal clerk typically drafts the document using the DL Wills program. Upon completion of the will, thorough JA editing is required to ensure correctness and compliance with relevant state laws. The JA should meet with the client again to review the will and answer any further questions. Finally, the will is executed with the JA personally guiding the execution.

Wills that exceed the capabilities of the DL Wills program and the experience of the JA should be avoided. Complex wills are not only a potential

hotbed for malpractice but are a disservice to the innocent client who relies upon the perceived experience of the JA.

## **2. *POWERS OF ATTORNEY***

Drafting and executing a power of attorney (POA) requires the same process as wills, including the personal interaction between JA and client. POAs are by far the most useful tool for deployed Marines and Sailors, and clients frequently request this document while deployed for many different reasons. A sample general POA and special POA are included in Appendix 8-6. The special POA is preferred and can be drafted to suit the individual needs of the client. Whether it may be the authority to register a car, purchase a house, or access bank accounts, special POAs present fewer problems than general POAs. It is a failure of the JA's fiduciary duties and likely an ethical violation to provide the client with a powerful general POA without first explaining the sizeable authority the client is extending to the designated attorney-in-fact. The Marine or Sailor must fully understand that the designated attorney-in-fact can truly conduct almost any business or execute any transaction in the client's name. Some useful suggestions are as follows:

- Ensure clients understand the purpose and effect of the special and general POA
- Ask the client whether special POA can accomplish the same goal
- Provide stark examples of ways in which the general POA can be abused
- Provide relevant sample special and general POAs for your clients to consider
- Ensure the client understands the process of revoking a POA (a sample POA revocation is included in Appendix 8-7)

## **3. *WILL AND POWER OF ATTORNEY NOTARIZATIONS***

The performance of notarial acts pursuant to 10 U.S.C. § 1044a does not require the use of a seal. Despite this federal exemption for the use of a seal, businesses occasionally may not recognize a POA unless it has a seal. While a

seal provides no more legal efficacy to legal documents notarized by a military member, many businesses have become accustomed to seeing a seal on documents that purport to be “legal.” The lesson for the JA is to have and use a seal whenever practicable. Many legal assistance offices use a simple metal seal with an eagle, globe, and anchor design. The fact that there is a seal, regardless of what the seal is, usually ensures the POA is accepted without question.

## **F. AUTOMOBILES**

Marines and Sailors are certainly not immune from the temptations of wanting to drive the finest automobiles that money or credit can offer. With the love of automobiles, however, comes the hardship of responsibility and ownership.

### **1. REPOSSESSION**

JAs will likely encounter repossession issues while deployed. Typically, a repossession occurs due to the inability of the client to properly manage an automobile loan. With a few minor exceptions, once a car has been repossessed, neither the client nor the JA will likely have much success in getting the car back into the possession of the client, as repossessed cars are usually resold rather quickly. If a client’s car has been repossessed, the JA should determine whether the circumstances of the repossession were proper under the law. Section 302 of the SCRA governs installment contracts and may be very useful in repossession cases, depending on when the Service member entered into the installment contract for the automobile. If the installment contract for an automobile was entered into before the Service member came on active duty, the repossessing agent must have first been granted repossession approval by a court.<sup>19</sup> However, as is often the case, any installment contract for a car loan is likely entered into after the Service member has begun active military service.

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<sup>19</sup> 50 U.S.C. App. § 531 (2002).

Bases and stations often have stringent orders pertaining to the repossession of automobiles aboard the military installation. JAs should ensure that they discuss repossessions that occurred on base with the base inspector's office and the legal assistance office. At the very least, the JA should review repossession documents provided by the loan company to ensure that the repossession was legally proper. If the repossession was proper, the car will likely be sold at auction or at a significantly reduced price. Resale of a repossessed automobile must also be closely monitored. In a repossession cases, a car that was purchased in October for \$15,000 was repossessed in December for nonpayment and was sold in January for \$7,000. This means that the client is likely responsible for nearly \$10,000 by the time he or she is done paying for the remaining debt. While purchasing a car seems like a simple and fun event for a young Marine or Sailor, the consequences of such a purchase may quickly turn into a debt collection nightmare, cause marital discord, and lead to a significant disciplinary challenge for the client and the command.

## ***2. AUTOMOBILES AND CREDIT***

“Will Finance E-1 and Up” is a sign strategically and prominently displayed in front of many car dealerships outside military bases. Credit sale contracts for automobiles are one of the most frequent causes for Marines and Sailors visiting the JA. It is not uncommon to find young Lance Corporals driving a \$20,000 car that has been financed at 18% interest over five years. There really is no more ripe preventive law issue than that of loans that are associated with automobiles. Dealerships big and small know that Marines and Sailors of all ranks can obtain financing for almost any car due to their guaranteed salaries.

The following illustration drives home the insanity involved in buying a car for most young Service members. [To a young Marine selected from the audience] “As an officer of Marines, you should trust me. I’m very good at investing, and I’ve helped several Marines double their money within a short period of time.” [After some further self-promotion] “Will you give me \$5,000 right here on the spot so I can double your money, too?” The young Marine would usually smile, pause, and eventually provide the right answer—NO. The

entire audience was then queried what they would require before providing a total stranger \$5,000. The answers were absolutely brilliant. Who are you? What documentation do you have to prove that you are a good investor? How do you invest our money? Where do you invest our money? What references can you provide us so that we can check your track record? At the completion of this set-up, the audience was then told that, statistically, many of the Marines who had just asked such intelligent questions would stop at a car dealership in the next year, be asked to invest over \$20,000 for a shiny new car, and never ask any questions similar to the ones they had just suggested. While this story does not provide any useful tips on how to deal with automobile problems that have already occurred, it should provide some incentive for inclusion of this topic in a preventive law program.

## **G. LANDLORD/TENANT**

Landlord/tenant problems are another common issue that frequently arise several months into the deployment. While many deployed Marines and Sailors have spouses that can take care of landlord/tenant problems by visiting the local legal assistance office, many Service members are not represented by family members back home and must rely on the MAGTF JA for assistance. The typical landlord/tenant issues for the JA deal with security deposits and termination of leases due to the deployment.

### **1. SECURITY DEPOSITS**

Depending on the amount of the security deposit, its loss can be either significant or inconsequential. Security deposits in many locations total well over \$1,000, and while a senior staff noncommissioned officer or officer might be able to financially absorb its loss, the loss of a security deposit for many young Marines and Sailors and their families spells disaster. All states have specific laws governing the proper amount and use of security deposits. All states have websites that provide state laws pertaining to landlord/tenant issues. In many states, upon proper termination of the lease, security deposits must be returned within a required amount of time, or a full accounting of security deposit deductions must be provided in writing to the tenant. If the landlord

does not meet prescribed timelines, the entire amount of the security deposit may be returned to the tenant, regardless of whether the landlord may have justification to make certain deductions. As discussed in Part One to this chapter, if the client has terminated the lease improperly, or the landlord is truly entitled to the security deposit, be polite, sincere, and request that the landlord consider its return. Included in Appendix 8-8 is one such compassionate plea that quickly resulted in the return of the full amount of the security deposit, despite the landlord's right to retain it.

## **2. LEASE TERMINATION**

The proper termination of a lease can come in many different forms. Termination by expiration of the lease term is the most common means and one that generally does not present many legal problems. However, leases that are terminated early frequently present problems if they are not handled correctly. Preventive law programs should address early termination issues. Section 305 of the SCRA allows for the termination of a residential or motor vehicle lease. A residential lease can be terminated if a Service member receives orders for a permanent change of station or to deploy with a military unit for a period of 90 days or more. Many leases already contain a military lease clause detailing the circumstances of when an early termination of the lease is permitted, however, due to the SCRA, such a clause is not necessary. The SCRA spells out the manner, timing, and notification requirements for lease termination.

## **H. IMMIGRATION AND NATURALIZATION**

In-depth immigration issues while deployed are uncommon, as the JA's pool of potential clients are almost exclusively U.S. citizens. However, when issues regarding citizenship do arise they usually concern the naturalization of what is termed a lawful permanent resident (LPR). Generally, LPRs must live continuously in the U.S. for five years before they become eligible for naturalization.<sup>20</sup> However, recent legislation provides the opportunity for naturalization upon active military service of at least three years or military

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<sup>20</sup> See U.S. DEP'T OF JUST., IMMIGR. AND NATURALIZATION SERVICE, A GUIDE TO NATURALIZATION 18 (Dec. 2000), available at <http://www.ins.usdoj.gov/graphics/services/natz/English.pdf>.

service in a designated war or conflict. The most difficult obstacle for Service members interested in naturalization is the application process and processing timeline that often takes years before citizenship is granted. Relatively new laws provide expedited and consolidated processing for qualified Service members that significantly streamlines the entire process.

Marines and Sailors who approach the JA for advice on citizenship are likely inquiring about naturalization based upon residency or military service requirements of an LPR. The JA's role is to determine whether it is in the client's best interest to apply for naturalization based on five years of qualifying residency or to wait until the Service member meets the three years of active military service requirement. If the Service member is nearing three years of active military service, the consensus is that it is clearly better to wait until the Service member meets the three-year requirement for expedited processing. However, if the Service member will not meet the three-year military service requirement for naturalization for some time and the Service member meets the five-year LPR residency requirements, it is advisable for the client to begin the lengthy application process. Several useful immigration and naturalization military guides are available online.

## CHAPTER 9

# RESOURCES NECESSARY IN A DEPLOYED ENVIRONMENT

### I. INTRODUCTION

The ultimate function of the MAGTF judge advocate (JA) within the staff of any given unit is to generate and maintain tempo by informing and advising the commander on the legal aspects of all operations conducted by the unit. To do this, JAs must be able to access and digest vast arrays of information, and provide advice in a form which is easily understood by the commander and staff who ultimately apply that advice in the planning and execution of operations. Much of the JAs' abilities in this regard are a product of the environment in which they work, and that environment is structured largely by the JA prior to deployment or embarkation with the unit.

In many cases, the unit to which the MAGTF JA is assigned will have limited experience in working with JAs. While members of the unit, in particular the commander and staff, will have expectations about the level of service the JA may be able to provide, they are unlikely to be familiar with the resources MAGTF JAs require to perform their work. As such, the MAGTF JA's task of advising the commander and staff on those resource requirements begins well in advance of the unit's departure.

Once deployed, transience and isolation will be hallmarks of unit operations, and will require judge advocates to coordinate and plan for appropriate resources. Taking the time to consider the equipment, technology, and research materials necessary to provide legal advice prior to deployment will prevent scrambling for necessary items once afloat. This chapter discusses resources, as identified by prior deployed JAs, which are necessary for providing support.

No publication can foresee all of the possible required materials, but this chapter provides a baseline from which JAs can tailor their resources for specific missions. This chapter also provides useful websites, both unclassified and classified, to assist deployed JAs needing to perform research in a deployed environment.



## **II. ACCESS**

While computers, equipment, and communications are vital, they're useless without access. For starters, JAs require access to the unclassified but "sensitive" Internet Protocol Router Network (NIPRNET, commonly referred to as "NIPR"). A properly-functioning Common Access Card (CAC), functional passwords and current system authorizations will ensure that the JA has access to unclassified computers and networks which are necessary for the coordination of pre-deployment efforts. However, a significant portion of the work performed by JAs in a deployed environment is classified, and access to classified information requires much closer coordination.

To properly advise commanders and staff, JA's should have a TOP SECRET clearance. Although not always necessary, depending on the MAGTF's mission, access to sensitive compartmented information will be required. While a TOP SECRET clearance may be granted on an "interim" basis, a TS/SCI clearance may not. The background investigations required to obtain the necessary clearance may take several months, so a discussion about required clearances, investigations and associated requests should factor into a JA's selection for a MAGTF or occur very soon after joining the command.

Once clearance level and required investigations have been addressed, the JA will need to be able to handle and store classified material and have access to the Secret Internet Protocol Router Network (SIPRNET). This capability is vital to legal operations. The JA will need to have either a dedicated computer capable of processing classified information or, if appropriately authorized, a removable hard drive dedicated to classified materials which can be stored with other classified information within the command. Close coordination with the unit intelligence officer is essential, both in establishing access and in observing proper storage and handling procedures.

## **III. EQUIPMENT**

### **A. COMPUTERS**

Every Marine is a rifleman, but your main T/O weapon in most cases is a laptop. Judge advocates will require two-one for processing and storing unclassified materials, and another for classified SIPR tasks. Additional computers may be required for other classified coalition systems, like

CENTRIX. The requirement for multiple computers dedicated for legal operations is essential. Much of the advice JAs provide is rendered in the context of rapidly-emerging situations during which all other machines with similar capabilities will be occupied by other members of the staff. The JA must be able to perform duties related to those emerging situations simultaneously with the execution of other staff functions in order to avoid “down time” and corresponding loss of tempo.

These laptop computers must have sufficient processor and memory capabilities to interact with other computers and networks aboard ship or ashore, conduct efficient research from electronic databases, and store a large volume of legal references, documents, imagery and training materials. To the maximum extent practicable, the computer should be equipped with the latest versions of Microsoft software which enable word processing, spreadsheet, PowerPoint and form-filler capabilities. The software needs to be compatible with both the computer operating system as well as with the computer systems being used by the other staff sections. Close coordination with S/G-6 is important in order to see that your issued equipment is the same as that to be used by other staff. In that regard, it’s often unproductive to use personal programs or newer materials which might not be supported by the platform you will use in theater.

## **B. DATA STORAGE**

Because JAs need access to large amounts of data on a regular basis, the best method of storage and transport is the detachable hard disk drive (HDD). Much of the information used by JAs includes data-hungry applications such as pictures, map imagery and a variety of other information that eats up disk space quickly. Detachable hard drives with storage capabilities of at least one terabyte (TB) are readily available, and are very well-suited to this purpose.

Your issued laptop should also be equipped with a CD/DVD reader and writer, both to aid in the transfer of large amounts of data, and also to consult reference materials contained on disks. It is significant to note that a single-layer DVD generally holds only 4.7 GB of data, and the disks are prone to damage, while the drives are vulnerable to dust. Both CD-ROM and DVD formats are limited in the amount of storage space, and many cannot be overwritten, even assuming that the writer in the computer is functional. Use CD-ROMs and DVDs sparingly, and build a library of any references provided to you on CD or DVD by transferring those files to a detachable HDD which

you can use on any machine. You may not receive any of your computers until arrival in the theater of operations or the ship - on that note, it's best to have access to the programs, files and data you may need by loading them onto your detachable HDD.

In addition to standard data storage for unclassified functions, the JA will also require access to a variety of documents, images and other information which is classified. To facilitate the storage, transportation and use of this data, JA's should plan to have a detachable HDD for classified materials. Over time, this detachable HDD becomes the JA's "library", and contains materials ranging from classified references to presentations, training materials, operations orders, and even emails. As an aid to sharing information *from* NIPR *to* SIPR (and NEVER the other way around<sup>1</sup>), the JA can build a NIPR library on one HDD, and subsequently transfer that entire library to the second HDD prior to properly marking it as classified and using it on SIPR systems. Such cross-platform "upsharing" can assist in building more robust reference resources on SIPR platforms, as discussed in greater detail below.

Whether NIPR or SIPR, the detachable HDD capabilities also offer the collateral benefit of enhanced task-organization with respect to data storage. Given the high capacity of these devices, JAs can easily afford to store data in more than one place. For example, a folder labeled "references" could contain a complete list, organized by functional area, of all laws, regulations, orders, directives and other information relevant to that functional area. The same reference or publication might also appear in a folder labeled "investigations", which also contained electronic and scanned copies of all investigations conducted by the command during a deployment or float. The additional storage capacity offers the additional space required to store in more than one place, and thereby shorten the amount of time spent searching for and using specific information on any given task.

**WARNING:** Prior to plugging any detachable HDD into any government system, even an unclassified system, make sure you have the appropriate authorization from your S-6.

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<sup>1</sup> Transferring unclassified data from SIPR networks to NIPR networks using detachable media is usually referred to as "air gapping," and is strictly prohibited. Don't do it. Instead, submit the material through the intelligence officer to the Foreign Disclosure Officer (FDO) for review. Once approved, you may subsequently transfer the data to NIPR.

## C. PERIPHERALS

Additional peripheral equipment is also necessary for the Marine JA to operate while deployed. At a minimum, JAs require the following:

- Digital camera: essential for investigations, including claims, alleged war crimes and JAGMAN investigations.
- Portable scanner<sup>2</sup>: necessary to store electronic copies of signed documents. Coordination with unit intelligence professionals (J-2, G-2, or S-2) may be required to scan documents which are classified, or to scan unclassified documents and load them electronically into classified systems.
- Portable printer: essential for preparation of documents that require signatures, and forms such as rights advisements which will be used in later proceedings.
- Handheld digital voice recorder: useful for recording interviews and taking notes. Doesn't take up much space or require significant battery use, and permits the JA to conduct an extensive interview while recording in instances where detailed written statements are difficult or impossible to retain.

The “portable” nature of this equipment is usually limited by your logistics capabilities. If you have room to transport it, it's portable. This portability is necessary for operations aboard vessels, as well as when the JA is operating independently ashore, as when investigating foreign claims. All of this equipment will need to operate on various electrical currents depending on the locations in which the JA will be operating. Under optimal conditions, the equipment should also be capable of running on battery power.

These computer capabilities<sup>3</sup> are readily available off-the-shelf; however, don't expect to fall in on a set of this equipment when reporting to the unit. The JA will need to ensure the equipment will be available by coordinating with the unit communications and logistics staff or the higher headquarters (HHQ) SJA. Coordination with HHQ can pay additional benefits in that it helps your unit's

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<sup>2</sup> Scanners often obviate the need for a fax; scanning and saving pays huge tempo dividends later when documents are lost, missing or needed for viewing by more than one person.

<sup>3</sup> The Army has incorporated this computer package into its doctrine, calling it the Rucksack Deployable Law Office and Library (RDL). See U.S. DEP'T OF ARMY, FIELD MANUAL 27-100, LEGAL SUPPORT TO OPERATIONS at 4-27 (1 Mar. 2000).

J-6/G-6/S-6 to justify the request. If the requirement has been identified for JA's throughout the theater or within a larger unit, that requirement may be incorporated into the planning process at HHQ, in which case the gear is easier to obtain.

#### **D. MAINTENANCE**

Given the harsh environments in which most operations are conducted, preventative maintenance on all computer equipment is essential. This is particularly important when operating ashore in harsh environments. Compressed air "dusters" help to remove dusty buildup that degrades computer performance. When canned air is unavailable, a soft paintbrush keeps dust from accumulating and working into keyboards, hard drives, and other portions of the computer. Detachable HDD's can be protected by placing them in clear Ziploc bags (or even beverage bags from MRE's) that permit ready identification of any classification markings, although care must be taken in extremely hot weather to ensure that the HDD has adequate ventilation. Under extremely dusty conditions, JAs have found it necessary to use plastic covers on all of their computer equipment or to use pantyhose to cover smaller components and at a minimum the vents on larger components.

#### **E. DATA SECURITY**

Given the large amounts of data reviewed, analyzed and transmitted by JAs, it would be easy to become complacent with the storage and handling of these materials. Even the inadvertent loss of a drive containing Personally-Identifiable Information (PII) or Privacy Act data can result in very real problems (both for the person who lost the material, and the person whose private information has been lost). This threat is compounded exponentially in the case of the loss or compromise of classified data, referred to as a "spillage". You'll only do it once, and the resulting investigation will sap your command of tempo, subject you to extensive scrutiny, and may subject the offending party to a range of administrative and criminal penalties. Be sure to communicate with other staff about the potential need for NIPR and SIPR storage, transportation, scanning and routing capabilities, and discuss and conduct training on the protocols required for accomplishing those tasks.

Likewise, know who your Foreign Disclosure Officer (FDO) is, and how to get documents reviewed if necessary for transfer from SIPR to NIPR platforms. In this connection, the real value of a CD/DVD burner is not data

storage or transfer-it's NIPR to SIPR platform jumping (NEVER the other way), because your detachable media (even if you paid for the unclassified HDD) will immediately *become* classified if you plug it into a computer classified as SECRET or above. In sum, despite the tempo, temperature and variety of other factors generating friction, taking all required steps in observing classification markings and the proper handling of those materials are core responsibilities that cannot be overlooked or given short shrift.

#### **IV. TECHNOLOGY**

##### **A. UNCLASSIFIED INTERNET**

Judge advocates are likely to have access to NIPR when operating both on ship and in the field, although frequent outages (planned and otherwise) should be anticipated. The NIPRNET is the unclassified Internet system with which all Marines should already be familiar, and permits general access to the Internet. Searches conducted on NIPR will often allow JA's to locate the information and resources necessary to answer most questions, obtain forms, and communicate via email. Likewise, many Morale, Welfare and Recreation (MWR) centers provide access to the Internet for Marines and other service members who communicate with their families via email or video chat programs such as Skype.

While NIPR is an excellent resource, it also carries significant risk. "Data management" happens at all levels, and not always the good kind. The explosive success of social networking websites such as FaceBook, Twitter, MySpace, and similar platforms gives rise to a very real concern in the conduct of operations. Prior to deployment, the JA should coordinate with the commander and staff to determine whether there is a need for a command operational security (OpSec) policy addressing these concerns and, if so, the JA should be prepared to participate actively in the drafting of an order which is enforceable against both civilian and military personnel attached to the command. Plan for OpSec and data control in your pre-deployment training, with the understanding that junior Marines are very tech-savvy and understand networking very well.

In particular, the Marines attached to your command will likely have many different kinds of data storage with them (cameras, video recording devices, laptops, iPods, MP3 players, etc.), all of which have extraordinary storage capacity, and some of which contain data transmission devices which

can be monitored from a distance (Blue Tooth, wireless platforms, infrared transmitters, etc.). Review the current Marine Corps policy on the restrictions placed on the use of many of these personal items. Ensure that your unit is aware of these limitations and the potential repercussions.

## **B. SEARCH ENGINES**

Not all Internet search engines are created equal. Many companies offering search engines base the findings of a search on advertising or on the number of times a particular word appears on a web page. Google is particularly useful because it bases its search findings on an algorithm that not only looks for keywords inside of Web pages, but also gauges the importance of a search result based on the number and popularity of other sites that link to the page.<sup>4</sup>

## **C. COMMONLY-USED WEBSITES**

Prior to deploying, JAs should build a list of commonly used Web pages into a “favorites” folder on the Web browser. In the event that a computer is not issued prior to deployment, create a separate document or presentation and store it in an easily-accessible folder on a detachable HDD-if you move to another machine, those valuable links travel with the HDD and are still accessible, regardless of whether you have ever used the machine you’re using at that moment. There is a helpful list of web pages at the end of the chapter.

Most fleets and commands maintain Web pages that have articles and documents of current interest. In addition, many International Organizations and Non-governmental organizations, with which Marines increasingly find themselves working, maintain Web pages of current operations. Some Web pages require prior registration and issue passwords for access. Make sure that you carry passwords for commonly used legal research sites, like Lexis and Westlaw, with you on deployment.

## **D. MILITARY WEBSITES NECESSARY FOR THE PERFORMANCE OF JA DUTIES**

Some duties common to JAs, including processing of claims under the Foreign Claims Act (FCA), require access to official government websites. In particular, take the time necessary to register and become familiar with the

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<sup>4</sup> Search engine available at [www.google.com](http://www.google.com).

databases maintained by the Center for Law and Military Operations (CLAMO). For example, all FCA claims arising in Afghanistan are now required to be processed using the automated FCA database maintained by the Army, which is the agency designated with FCA responsibility in Afghanistan.

CLAMO has also created a multitude of databases with more than 2,600 primary source documents, directives, regulations, country law studies, graphic presentations, photographs, and legal work product accessible via the Internet at [www.jagcnet2.army.mil/clamo](http://www.jagcnet2.army.mil/clamo). These products are only available to registered users, and some also require the user to establish an Army Knowledge Online (AKO) account.

### **To access the CLAMO databases:**

If you are a first time user (do not have or have lost your JAGCNet user name and/or password):

- *Go to [www.jagcnet2.army.mil](http://www.jagcnet2.army.mil) web site.*
- *Click the “Access” tab.*
- *Click the “Request an Account” button.*
- *Follow the instructions.*

If you already have a JAGCNet user name and password:

- *Go to the CLAMO home page site directly at [www.jagcnet2.army.mil/clamo](http://www.jagcnet2.army.mil/clamo) OR go to the [www.jagcnet2.army.mil](http://www.jagcnet2.army.mil) web site and click the “Center for Law and Military Operations” button under the Legal Center and School Tab.*

## **E. CLASSIFIED WEBSITES ON SIPRNET**

Almost all operational information is transmitted on classified platforms. Accordingly, Marine JAs will need access to the SIPRNET. The SIPRNET is a “stand-alone”, encrypted network entirely separate from NIPR. Recent operations have seen an explosion in the use of the SIPRNET. Given the need for operational data and its use in warfighting, the SIPRNET is functional more often than the NIPRNET when deployed, and operational lawyers are increasingly using only SIPRNET for all e-mail traffic, whether classified or not. The S/G-6 can assist in obtaining a SIPRNET account and gaining



SIPRNET access-issues which should be addressed and access verified *prior to* deploying.

While the SIPR and NIPR platforms use many of the same software types and there are many other similarities, SIPR search engines are not nearly as “user-friendly” as their NIPR counterparts. To successfully navigate the SIPR web, Marines will often need to know the actual web address rather than rely on searches. Many of these sites require prior registration, so JAs may find it important to register prior to deployment. At a minimum, identify the main classified sites maintained by the combatant commands and major operational commands in your area of operations, and generate a list of those websites for storage in an easily-accessed document or folder on a classified detachable HDD that can be used on any machine with the proper classification markings. A list of useful SIPR Web pages is at the end of the chapter.

Despite the proliferation of SIPR as a communications, reporting and analysis tool, it is important for deployed JAs to recognize that many classified documents are simply not available online. Moreover, there are very few centralized repositories for Operational Law resources. In an attempt to fill this void, CLAMO has established a SIPR database. The database is controlled by the Army and requires two separate registration procedures that may take several days to finalize.

**To access the classified databases, send SIPR email requests for information and assistance to: [clamo.clamotjaglcs@us.army.smil.mil](mailto:clamo.clamotjaglcs@us.army.smil.mil).**

## **F. SHAREPOINT**

Most commands now maintain a SIPR “SharePoint” site dedicated to that echelon of command, and linked to higher, adjacent and subordinate elements. These sites normally contain orders, directives, and information relevant to the command and control of the unit, and are organized by staff function. They also contain important contact information for key personnel within the command, which speeds the JA’s ability to contact other elements of the MAGTF when the situation requires. SharePoint sites can be restricted to viewing by certain personnel only, and the platform used to authorize viewing of any given site is integrated with other Microsoft applications already used, including but not limited to Outlook. The software also permits project collaboration by necessary staff members, which is highly useful in areas such as Detainee Operations, where multiple personnel have independent duties

which, while separate functions, are closely related, and all team members have a direct need to know the status of other team functions on a continuing basis.

Sharepoint sites also enhance the JA's ability to share local data with other commands by posting or "hanging" information relevant to the JA's command on that command's own sharepoint site.<sup>5</sup> These sites also facilitate the JA's performance of duty by ensuring that documents are properly shared, and that email accounts are not overwhelmed by attachments which are better reduced to a link in the email which permits recipients to access the document, if necessary, on the relevant SharePoint site. Note, however, that the site is only as useful as the information posted to it, and the manner in which that information is organized and presented. A good working library is a useful tool; a jumble of dissociated references without a proper naming convention is a doorstop in cyberspace and won't be used.

Finally, and perhaps most important, SharePoint facilitates the passage of lessons learned in a billet or area of operations from one JA to the next. Loading key documents and work product onto a SharePoint site permits the outbound JA's work product to remain resident within the area after the outbound JA departs.

## **G. EMAIL**

Email is ubiquitous, and can be a sound force multiplier. It can also be annoying. In particular, note that most members of a staff receive several (sometimes hundreds) of emails daily and your addition to that traffic will likely be unwelcome if it isn't planned and worded properly. Be concise, professional and direct, recalling that the email will remain as an electronic record indefinitely.

That said, JAs should also understand that many other Marines have few resources to communicate other than email itself. Email traffic may contain tasks from higher commands, important notices on significant recent developments, or even intelligence information relevant to your commander. The resulting email "chains" are often important records that document the means by which a command decision is made. As a result, it's important to ensure that the information contained in those emails is preserved for future

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<sup>5</sup> Good practice and sound professional courtesy for the other members of the staff dictate that, prior to posting, the person posting ensure that items posted to the SharePoint are relevant, necessary and properly staffed or otherwise in accordance with established command policies on the matter.

reference. In short, *never* delete an email. Store it in a .pst folder using a naming convention or method which will permit you to locate the email quickly if and when the need arises.

Account management of email includes, at a minimum, proper tracking of emails by command and personnel. This is another collateral benefit of detachable HDD's: the user can establish .pst folders with extensive storage capacity. Those folders, once established on the detachable HDD, may be transported to other computers. In this way, the JA can ensure that, provided the detachable HDD is available, all relevant communications and documents on any given issue are also available.

Microsoft OneNote is a program available on most DoD platforms which allows a user to integrate emails, documents, calendars and other resources in an electronic "filing cabinet". All of these programs can be used together to build an integrated electronic workspace that can be used to enhance the JA's ability to render timely advice and facilitate the unit's mission. To use these resources effectively, JAs should strongly consider conducting training prior to deployment, and establish a sound mode of operating these tools so as to maximize performance while minimizing "noise".

## **H. NATO COUNTERPARTS AND "FIVE EYES" ACCESS TO CLASSIFIED ALLIED INFORMATION**

Many modern operations are conducted in coordination with the armed forces of allied nations. Most recently, United States forces have been commanded by NATO commanders. As a result, much of the JA's role as an operational law advisor will involve the close study of rules of engagement and tactical directives issued by commanders who are speaking to a broad range of military commanders who use terms not commonly used in the U.S. military, or use the same or similar terms with different meaning. The deployed JA must become familiar with those rules, directives and terms in order to properly advise and train the unit to which he/she is attached. The NATO allies with which the U.S. currently operates in Afghanistan maintain their own classified network, CENTRIX. This additional stand-alone, secure web is accessible by JA's with a need to know the information contained on that network. Where feasible, JAs should coordinate with their intelligence officer and responsible allied officials in order to establish access to those resources and thereby broaden their utility to the command.

Similarly, an exchange of classified material may occur when exercises or operations are conducted with our “Five Eyes” partners (U.S., U.K., Canada, Australia, and New Zealand). They also operate on a stand-alone classified system that will require time to learn how to use. Again, the JA must become familiar with the rules, directives, and terms of the intelligence exchange so as not to compromise classified information.

## **V. RESEARCH MATERIALS**

Much of the daily duty of any JA is comprised of advising the commander and staff on compliance with law and regulation, whether in the context of planning future operations or determining proper response to an event. To do so, the JA needs “fingertip” access to the applicable reference which governs that planning or response and, given that the military is the most highly-regulated community in existence, there may be multiple laws or regulations that apply to any given course of action. While many if not all of these resources are available in electronic format, JAs should carry hard copies of some frequently used materials in a mount-out box.

### **A. RESOURCES**

Three resources are critical for the Deployed Marine JA. The first is the Operational Law Handbook.<sup>6</sup> The Operational Law Handbook, published by the International and Operational Law Department, The Judge Advocate General’s Legal Center and School, U.S. Army (TJAGLCS), is a “how to” guide for JAs practicing operational law. It provides references and describes tactics and techniques for the practice of operational law.

The second critical resource is the Deployed Judge Advocate Resource Library DVD, produced by CLAMO. This resource contains, among other items, all of the treaties, statutes, DOD Directives/Instructions/Manuals, CJCS Instructions, Joint Publications, Regulations, and Field Manuals referenced in the OPLAW Handbook.

The third essential reference for deploying JAs is the Electronic Judge Advocate Warfighter System Resource Digital Library (eJAWS). This reference is contained on a series of DVDs and includes doctrinal and regulatory

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<sup>6</sup> INT’L & OPERATIONAL LAW DEP’T, THE JUDGE ADVOCATE GENERAL’S LEGAL CENTER AND SCHOOL, U.S. ARMY, OPERATIONAL LAW HANDBOOK (2012).

publications from the Department of Defense and major combatant commands, forms used throughout DoD and its components, software applications, and a variety of other reference materials. Go to the “Publications” tab on the JAGCNET website.

CLAMO has also published other materials that will assist deployed Marine JAs. These include the Rule of Law Handbook,<sup>7</sup> the Domestic Operational Law Handbook,<sup>8</sup> Forged in the Fire, Tip of the Spear, and Lessons Learned from operations in Iraq, Afghanistan, Haiti,<sup>9</sup> Bosnia,<sup>10</sup> Kosovo,<sup>11</sup> and from relief efforts in Central America in response to Hurricane Mitch.<sup>12</sup> All of the CLAMO materials are available on JAGCNET and on the Deployed JA DVD.

The deployed JA can also use the Marine Representative at CLAMO as a resource. CLAMO’s Marine Representative is located at TJAGLCS giving him access to the faculty of the Army’s JAG School. Moreover, the Marine Representative is in constant contact with the International and Operational Law Branch, Judge Advocate Division, Headquarters, U.S. Marine Corps (JAO). He can be reached at CLAMO’s organization email: [usarmy.pentagon.hqda-tjaglcs.mbx.clamo-tjaglcs@mail.mil](mailto:usarmy.pentagon.hqda-tjaglcs.mbx.clamo-tjaglcs@mail.mil).

## **B. HARD COPIES**

Some references are consulted so frequently that they merit space in your pack. The Marine JA should carry hard copies of the Manual for Courts-Martial, JAGMAN, MARCORSEPSMAN, and the LEGADMINMAN because the JA may double as the unit legal officer in smaller MAGTFs.

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<sup>7</sup> CENTER FOR LAW AND MILITARY OPERATIONS, THE JUDGE ADVOCATE GENERAL’S LEGAL CENTER AND SCHOOL, U.S. ARMY, RULE OF LAW HANDBOOK (2011).

<sup>8</sup> CENTER FOR LAW AND MILITARY OPERATIONS, THE JUDGE ADVOCATE GENERAL’S LEGAL CENTER AND SCHOOL, U.S. ARMY, DOMESTIC OPERATIONAL LAW HANDBOOK (2011).

<sup>9</sup> CENTER FOR LAW AND MILITARY OPERATIONS, THE JUDGE ADVOCATE GENERAL’S LEGAL CENTER AND SCHOOL, U.S. ARMY, LAW AND MILITARY OPERATIONS IN HAITI, 1994-1995: LESSONS LEARNED FOR JUDGE ADVOCATES (1995).

<sup>10</sup> CENTER FOR LAW AND MILITARY OPERATIONS, THE JUDGE ADVOCATE GENERAL’S LEGAL CENTER AND SCHOOL, U.S. ARMY, LAW AND MILITARY OPERATIONS IN THE BALKANS, 1995-1998: LESSONS LEARNED FOR JUDGE ADVOCATES (1998).

<sup>11</sup> CENTER FOR LAW AND MILITARY OPERATIONS, THE JUDGE ADVOCATE GENERAL’S LEGAL CENTER AND SCHOOL, U.S. ARMY, LAW AND MILITARY OPERATIONS IN KOSOVO, 1999-2001: LESSONS LEARNED FOR JUDGE ADVOCATES (2001).

<sup>12</sup> CENTER FOR LAW AND MILITARY OPERATIONS, THE JUDGE ADVOCATE GENERAL’S LEGAL CENTER AND SCHOOL, U.S. ARMY, LAW AND MILITARY OPERATIONS IN CENTRAL AMERICA: HURRICANE MITCH RELIEF EFFORTS, 1998-1999: LESSONS LEARNED FOR JUDGE ADVOCATES (2000).

While there are several unclassified publications which are useful in print form, some classified publications are useful in that form as well. Hard copies of the Standing Rules of Engagement promulgated by the Chairman of the Joint Chiefs of Staff (CJCS SROE),<sup>13</sup> NATO Rules of Engagement (MC 362),<sup>14</sup> and any Tactical Directives issued by the operational commander are consulted frequently, especially in the case of operations conducted with the armed forces of allied nations. These classified documents must be stored in a properly-marked secure location. Other documents and materials, not necessarily legal, may also be useful. These include customs forms, federal absentee ballots, and ROE card paper in various colors.

While preparing to deploy, the Marine JA should consider the anticipated port call and training exercise locations of the upcoming deployment. The JA will need to determine if Status of Forces Agreements (SOFAs) or other arrangements governing status of forces or claims exist for these various locations and obtain copies of those agreements. Most SOFAs are contained on the electronic resources available in disk form from CLAMO.

## **VI. HUMAN RESOURCES**

Pre-deployment planning considerations must include personnel. This issue is divided between those personnel required for the performance of the legal function in any given unit, and the personnel whom the JA may be required to contact in garrison to facilitate tasks which require action CONUS.

Prior to deployment, the JA should consider requesting the assignment of an appropriate number of clerks or other enlisted personnel to support the JA in the provision of legal services to the command. Particularly in commands which should, by mission or size, anticipate significant administrative tasks, the assignment of a junior NCO<sup>15</sup> permits the JA to delegate data management and other tasks, provides an additional interviewer in processing claims, and can also provide additional security at claims payment events when the JA may be part of a detail carrying large amounts of cash.

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<sup>13</sup> CHAIRMAN, JOINT CHIEFS OF STAFF, INSTR. 3121.01A, STANDING RULES OF ENGAGEMENT FOR U.S. FORCES (15 Jan. 2000) (partially classified document).

<sup>14</sup> North Atlantic Military Committee, MC 362 encl. 1, NATO Rules of Engagement (9 Nov. 1999).

<sup>15</sup> Preferably a 4421 or other Marine with basic legal training, including research skills, data management, drafting correspondence, and interviewing skills.

Another resource to consider prior to deployment is the JAs who remain in garrison. Given the austerity of many operating environments, it may be prohibitively difficult for the JA to engage in adequate representation of a Marine attached to the command on a legal assistance issue. While you may be able to offer procedural advice and rudimentary document drafting, the client may require further services that fall outside the JA's deployed capabilities. Prior coordination with the legal assistance section at the LSSS or law center may do a great service to the client who needs more involved assistance than you can provide (i.e. actually sending or faxing an SCRA letter to a judge in order to obtain a stay of proceedings).

## **VII. PRE-PACKAGED SOLUTIONS**

Several types of processes will be commonplace, and therefore warrant the prior preparation of an electronic document and training package. Preliminary inquiries, command investigations, and detainee handling are all "process-driven" models which conform to a specific and sequenced set of rules with objective standards, and the JA can save considerable time and effort for all concerned by having a standard package pre-loaded into a folder which can be emailed or transferred to a disk or detachable HDD when an investigating officer needs it.

### **A. PROCESSES**

For administrative investigations conducted under the JAGMAN, the JA should have a prepackaged set of documents which provide the following:

- A short reference or guide on how to complete the tasks;
- The "long-form" actual reference from which the shorter guidance is derived (i.e. chapter 2 of the JAGMAN);
- Preformatted electronic samples of an investigation, to include numbered formatting for references, enclosures, and paragraphs, that can be modified to include the subject of that particular action;
- Any and all forms associated with the process, specifically including witness statement forms, rights advisements (both Article 31(b) and JAGMAN section 0122), and Privacy Act forms;
- A PowerPoint training presentation explaining the basics of investigative techniques, the purposes of administrative investigations, and common pitfalls.

Similar packages can be built for Detainee handling, another process which is subject to stringent requirements but also involves standard forms that can be generated at any location.

## **B. Forms**

While not used frequently, the Marine Corps Administrative Publications and Forms Electronic Library (MCPEL) is a highly valuable resource. The MCPEL contains Marine Corps Directives, Orders and forms, as well as NAVMC forms, bulletins, fillable PDF forms and country studies and profiles. The MCPEL is available in disk form by mail from Headquarters Marine Corps, Administration and Resource Management Division, or by emailing [smb.hqmc.arde@usmc.mil](mailto:smb.hqmc.arde@usmc.mil).



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## Appendices

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## **APPENDIX 4-1: SAMPLE LEGAL CARD**

### **Art 31b/Search “Legal Card”**

#### **Front**

##### **Article 31b**

If you suspect a service member of a crime, you must read this rights waiver prior to questioning:

You are suspected of \_\_\_\_\_ (list crime(s)).

You have the right to remain silent.

If you choose to make a statement, it could be used against you at a later court-martial.

You have the right to consult with a lawyer prior to further questioning, a military lawyer, and if you desire, a lawyer retained by you, at your own expense.

You have the right to have military counsel or your retained counsel present at any interview.

You have the right to terminate the interview at any time. Further, if you decide to speak with me, you can give a statement and/or respond to questions. You can make a statement either orally, or in writing.

(Note: Ensure the suspect fully understands the above rights, and if possible, reduce their decision on the above to written form)

#### **Back**

##### **Search and Seizure**

Marines and Sailors have a “reasonable expectation of privacy” in their personal spaces (e.g. barracks, automobile, troop lockers, person). The following types of searches may apply:

Command Authorized: The Commanding Officer (Bn/Sqdn or equivalent) can authorize search of personal space if there is probable cause that a crime has been committed and evidence of the crime exists in the place to be searched. Authorization can be verbal/written. “Acting” cannot grant. Reliability of person supplying information will be questioned.

Exigent Circumstances: If you have probable cause, and delay will result in removal, destruction or concealment. Applies to motor vehicles.

Lawful Apprehension: You are authorized to search person and immediate vicinity for weapons if you take member into custody.

Consent: If the suspect who “holds access” to the space authorizes, you can search. Important that you not “coerce” member to granting consent

Plain View: If you see it, you can seize it.

Inspections: Not a search, must be scheduled, cannot use to search for evidence of specific crime.

**APPENDIX 4-2: SAMPLE LEGAL REPORT**

**Legal Report for UNITNAME of DATE**

**Military Justice**

**NJP**

**-Pending**

<b>Name</b>	<b>Charge</b>
LCpl L.M. Bonitz	Art 92
Cpl I.M. Gone	Art 86

**-Complete (Since last report)**

<b>Name</b>	<b>Charge</b>	<b>Disposition</b>
Pvt. C. U. Later	Art 121	45/45 Red Pvt

**Court-Martial**

<b>Name</b>	<b>Charge</b>
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**Article 32**

<b>Name</b>	<b>Charge</b>
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**Administrative Separations**

<b>Name</b>	<b>Basis</b>	<b>Status</b>
B.Y. Bye	Drug Use	Board Pending

**JAGMAN Investigations**

<b>Incident</b>	<b>IO</b>	<b>Status</b>
Boat accident	Lt Schmuck	Due 14 Feb

**APPENDIX 4-3: NON-JUDICIAL PUNISHMENT LIMITATIONS**

Imposed by	Imposed on	Confinement on B&W or DIMRATS (2)	Correctional Custody (3)	Arrest in Quarters (1)	Forfeiture (5) (6)	Reduction (6)(8)(9)	Extra Duties (4)	Restriction to Limits (4)	Admonition (6)	Reprimand (6)
General Officers in Command	Officers	No	No	30 days	½ one mon for 2 mos	No	No	60 days	Yes	Yes
	E-4 to E-9	No	No	No	½ one mon for 2 mos	1 grade	45 days	60 days	Yes	Yes
	E-1 to E-3	3 days	30 days	No	½ one mon for 2 mos	1 grade	45 days	60 days	Yes	Yes
O-4 to O-6 COs	Officers	No	No	No	No	No	No	30 days	Yes	Yes
	E-4 to E-9	No	No	No	½ one mon for 2 mos	1 grade	45 days	60 days	Yes	Yes
	E-1 to E-3	3 days	30 days	No	½ one mon for 2 mos	1 grade	45 days	60 days	Yes	Yes
O-3 & below COs and OICs (7)	Officers	No	No	No	No	No	No	15 days	Yes	Yes
	E-4 to E-9	No	No	No	7 days	1 grade	14 days	14 days	Yes	Yes
	E-1 to E-3	3 days	7 days	No	7 days	1 grade	14 days	14 days	Yes	Yes

(1) May not be combined with restriction  
 (2) May be awarded only if attached to/embarked in a vessel and may not be combined with any other restraint punishment or extra duties  
 (3) May not be combined with restriction or extra duties  
 (4) Restriction and extra duties may be combined to run concurrently but the combination may not exceed the maximum inposable for extra duties  
 (5) Shall be expressed in whole dollar amounts only  
 (6) May be imposed in addition to or in lieu of all other punishments  
 (7) OICs have NJP authority over enlisted personnel only  
 (8) CPOs (E-7 through E-9) may not be reduced at NJP in the Navy; Marine Corps NCOs (E-6 through E-9) may not be reduced at NJP. (O-3 Company Commanders in the Marine Corps general only have authority to reduce E-1 through E-3 because E-4 and E-5 are not within their promotion authority.)  
 (9) OICs may not reduce personnel because they currently have no advancement authority.

**APPENDIX 4-4: REQUEST FOR DESIGNATION AS OFFICER-IN-CHARGE WITH NONJUDICIAL PUNISHMENT AUTHORITY**

LETTERHEAD

From: Commanding Officer  
To: Commanding General, GCM COMMAND (SJA)  
Subj: REQUEST FOR DESIGNATION AS COMMANDING OFFICER  
OF TROOPS (OFFICER IN CHARGE)  
Ref: (a) JAGMAN 0106  
(b) MCM, 2012 edition

1. Per the references, request the following officers be designated as Commanding Officers of Troops (Officer in Charge) for the indicated ships during deployment of the 11th Marine Expeditionary Unit.

Rank	Name	SSN/MOS	Ship
LtCol	Full Name	123 45 6799	USS Name (LHA-#)
LtCol	Full Name	222 33 4444	USS Name (LPD-#)
Capt	Full Name	444 55 6666	USS Name (LSD-#)

2. Point of contact for this is Name/Number

SIGNATURE BLOCK

**APPENDIX 4-5: OVERSEAS LIBERTY RISK PROGRAM**

LETTERHEAD

From: Commanding Officer

To: Distribution List

Subj: 26th MEU OVERSEAS LIBERTY RISK PROGRAM

Ref: (a) Article 802, U.S. Navy Regulations, 1990

(b) MCO P1050.3H

(c) Section 0104, JAGMAN

(d) OPNAVINST 3120.32C

(e) COMSIXTHFLTINST 5000.1M

Encl: (1) Sample Liberty Risk List

(2) Sample Liberty Risk Class "A" Letter

(3) Sample Liberty Risk Class "B" Letter

(4) Sample Liberty Risk Class "C" Letter

(5) Sample Escort of Liberty Risk Letter

1. Purpose. To establish throughout the 26th MEU a flexible, lawful, commonly understood and implemented overseas liberty risk program in accordance with the references.

2. Basis. The underlying rationale of the liberty risk program is the essential protection of the foreign relations of the United States. A Marine or sailor whose conduct demonstrates a lack of ability to properly represent the United States ashore is a LIBERTY RISK. Commanders have substantial discretion in deciding to place a member on liberty risk; however, the decision should generally be limited to those cases involving a potential serious breach of the peace or flagrant discredit to the armed forces. This program ONLY applies overseas, either in a foreign country or in foreign territorial waters.

3. Due Process. Only Commanding Officers may assign an individual to a liberty risk status. This authority will not be delegated. The commander must afford adequate administrative due process safeguards. After reviewing each case individually, the commander should advise the member in writing of assignment to the program, the basis for the action, and of the opportunity to respond (e.g., request mast). The commander must review each assignment prior to each port visit in order to assess whether continued curtailment of liberty is justified. The commander should consider an incremental approach, determining whether less restrictive

## DEPLOYED MAGTF JUDGE ADVOCATE HANDBOOK

means will be effective in a given case before curtailing all liberty.

4. Liberty Risk Classes. Listed below are the standardized MEU liberty risk program limitations categories. These categories are guidelines only, and are intended only to facilitate reporting to higher those personnel on liberty risk.

a. Class "A" - Personnel may be granted liberty that expires not later than 2200.

b. Class "B" -- Personnel may be granted liberty that expires not later than 2000 and such personnel must have as an NCO or higher-ranking individual as his liberty buddy.

c. Class "C" -- No liberty authorized.

5. Procedure. The overseas liberty risk program is administrative, NOT punitive. Thus, regardless of whether charges are pending at NJP or a court-martial, a service member may have his liberty curtailed. By the same token, members punished at NJP or a court-martial should not be automatically placed on liberty risk unless their offense and predilections otherwise justify that assignment. No service record entries are made. Members on liberty risk cannot be required to muster or work with members undergoing punitive restriction. To reemphasize, the program is an administrative limitation on liberty; it is not to be confused with pretrial restriction or restriction as the result of a disciplinary proceeding.

6. Other Lawful Limitations on Liberty. Other legitimate bases for liberty limitations exist outside the military justice system and outside the overseas liberty risk program. Such bases include: safety or security of personnel, medical reasons, operational necessity, command integrity, bona fide training, and properly conducted extra military instruction (EMI). Liberty may also be denied if a member's appearance is contentious, lewd, inflammatory, or unlawful.

7. Action

a. Commanders will:

(1) Ensure that they administer the overseas liberty risk program in accordance with the guidelines of this Policy Letter.



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(2) Review each liberty risk assignment prior to each port visit in order to assess whether continued curtailment of liberty is justified

(3) Ensure that designation as liberty risk will be accompanied by appropriate collateral action designed to help solve the problem (e.g. alcohol rehab, counseling, medical treatment, etc.)

b. The MEU CE and MSEs will maintain a current roster of liberty risk personnel and provide a copy to the Command Duty Officer, as well as each OOD and DNCO manning the Quarterdeck.

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DEPLOYED MAGTF JUDGE ADVOCATE HANDBOOK

LETTERHEAD

MEMORANDUM

From: Commanding Officer  
To: Command Duty Officer

Subj: LIBERTY RISK LIST

Ref: CO Liberty Risk Policy Letter, dtd

1. The following personnel have been placed in the Liberty Risk program in accordance with reference (a):

NAME	RANK	UNIT/SECT	LIBERTY RISK CLASSIFICATION	START DATE
------	------	-----------	--------------------------------	---------------

2. Personnel listed above have been advised of their status in accordance with the reference. The Officer of the Day is charged with the responsibility of monitoring the status of the personnel listed above and notifying the Command Duty Officer of any violation of the Liberty Risk Policy. Personnel listed, as Classification "B" must have an Approved Liberty Risk Escort chit with the name of a qualified escort.

CLASS DEFINITION

Class A	Liberty to expire at 2200 hours
Class B	Liberty to expire at 2000 hours: With NCO or higher as Liberty Buddy
Class C	No Liberty

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DEPLOYED MAGTF JUDGE ADVOCATE HANDBOOK

LETTERHEAD

From: Commanding Officer  
To:

Subj: ADMINISTRATIVE DEPRIVATION OF LIBERTY (LIBERTY RISK PROGRAM)

Ref: CO Liberty Risk Policy Letter, dtd

1. In accordance with the provisions of the reference, you are hereby placed in Liberty Risk Class "A" effective.
2. You have been placed in this status because of your conduct ashore.
3. As a Class "A" the following liberty will be granted to you during the below stated period.

**LIBERTY WILL EXPIRE ON BOARD THE USS SAIPAN AT 2200 HOURS.**

4. Your liberty status will be reevaluated in two weeks or prior to arrival in the next liberty port, whichever comes first. If further deprivations of your liberty are recommended and approved by me, you will be informed by letter. A copy of all Liberty Risk Program letters will be retained in your service record for the duration of the 26th Marine Expeditionary Unit's deployment. Upon completion of this deployment, this letter(s), will be removed from your service record and destroyed.
5. You are encouraged to review your past conduct ashore in an effort to preclude further deprivations of liberty in the future.
6. Should you have any questions concerning this action you should follow the normal chain of command.
7. Failure to comply with this letter of acknowledgment could result in the further administrative action of violation of Article 92, UCMJ, "Failure to obey a lawful order or regulation."

## DEPLOYED MAGTF JUDGE ADVOCATE HANDBOOK

### LETTERHEAD

From: Commanding Officer

To:

Subj: ADMINISTRATIVE DEPRIVATION OF LIBERTY (LIBERTY RISK PROGRAM)

Ref: CO Liberty Risk Policy Letter, dtd

1. In accordance with the provisions of the reference, you are hereby placed in Liberty Risk Class "B" effective.
2. You have been placed in this status because of your conduct ashore.
3. As a Class "B" the following liberty will be granted to you during the below stated period.

**LIBERTY WILL EXPIRE ON BOARD THE USS SAIPAN AT 2000 HOURS.**

Your liberty buddy must be an NCO, SNCO or Officer. You are responsible for arranging for a liberty buddy of appropriate rank.

4. Your liberty status will be reevaluated in two weeks or prior to arrival in the next liberty port, whichever comes first. If further deprivations of your liberty are recommended and approved by me, you will be informed by letter. A copy of all Liberty Risk Program letters will be retained in your service record for the duration of the 26th Marine Expeditionary Unit's deployment. Upon completion of this deployment, this letter(s), will be removed from your service record and destroyed.

5. You are encouraged to review your past conduct ashore in an effort to preclude further deprivations of liberty in the future.

6. Should you have any questions concerning this action you should follow the normal chain of command.

7. Failure to comply with this letter of acknowledgment could result in the further administrative action of violation of Article 92, UCMJ, "Failure to obey a lawful order or regulation."

## DEPLOYED MAGTF JUDGE ADVOCATE HANDBOOK

### LETTERHEAD

From: Commanding Officer

To:

Subj: ADMINISTRATIVE DEPRIVATION OF LIBERTY (LIBERTY RISK PROGRAM)

Ref: CO Liberty Risk Policy Letter, dtd

1. In accordance with the provisions of the reference, you are hereby placed in Liberty Risk Class "C" effective.
2. You have been placed in this status because of your conduct ashore.
3. As a Class "C" the following liberty will be granted to you during the below stated period.

#### **NO LIBERTY**

4. Your liberty status will be reevaluated in two weeks or prior to arrival in the next liberty port, whichever comes first. If further deprivations of your liberty are recommended and approved by me, you will be informed by letter. A copy of all Liberty Risk Program letters will be retained in your service record for the duration of the 26th Marine Expeditionary Unit's deployment. Upon completion of this deployment, this letter(s), will be removed from your service record and destroyed.
5. You are encouraged to review your past conduct ashore in an effort to preclude further deprivations of liberty in the future.
6. Should you have any questions concerning this action you should follow the normal chain of command.
7. Failure to comply with this letter of acknowledgment could result in the further administrative action of violation of Article 92, UCMJ, "Failure to obey a lawful order or regulation."

DEPLOYED MAGTF JUDGE ADVOCATE HANDBOOK

LETTERHEAD

From: \_\_\_\_\_ Section OIC  
To: Commanding Officer  
Via: Commander of Troops

Subj: ESCORT OF LIBERTY RISK

Ref: CO Liberty Risk Policy Letter, dtd

1. It is requested that \_\_\_\_\_ be authorized to escort \_\_\_\_\_, who is currently in a class \_\_\_\_\_ liberty risk status. Assigned escort understands that class \_\_\_\_\_ liberty risk status is required to conform with instructions outlined in his/her Liberty Risk letter dated: \_\_\_\_\_.

2. Reason for request:

\_\_\_\_\_  
\_\_\_\_\_.

3. I, \_\_\_\_\_, fully understand the guidelines of the class \_\_\_\_\_ liberty risk policy. I will remain with the above named individual for the entire period of time he/she is authorized on shore. I understand that I am personally responsible for the member's conduct ashore and his/her timely return at 2000. I also understand that failure to adhere to this policy could result in disciplinary action.

ESCORT SIGNATURE \_\_\_\_\_

4. Recommendation:

SNCOIC	Approve/Disapprove _____	INTLS
OIC	Approve/Disapprove _____	INTLS
SGTMAJ	Approve/Disapprove _____	INTLS

Approved/Disapproved: \_\_\_\_\_  
Commanding Officer

5. Departed:  
Time \_\_\_\_\_ Date \_\_\_\_\_ DNCO \_\_\_\_\_

Returned:  
Time \_\_\_\_\_ Date \_\_\_\_\_ DNCO \_\_\_\_\_

**APPENDIX 4-6: SAMPLE FRATERNIZATION  
AND PERSONAL RELATIONS POLICY**

From: Commanding Officer  
To: Distribution List

Subj: POLICY ON FRATERNIZATION AND PERSONAL RELATIONS BETWEEN  
SERVICE MEMBERS

Ref: (a) U.S. Navy Regulations  
(b) OPNAVINST 5370.2B, "Navy Fraternization Policy"  
(c) MCO P5353.1C Marine Corps Equal Opportunity Manual

1. Purpose. To Promulgate the UNITNAME policy on fraternization and personal relations for the members of the UNITNAME.

2. Applicability. This policy applies to all UNITNAME personnel, to include all Marine and Navy personnel, all attachments and detachments, and all military ship riders supporting the UNITNAME.

3. Punitive Nature. This policy is punitive in nature. Failure to comply with the policy and guidance contained in this instruction will result in administrative and/or punitive action under the Uniform Code of Military Justice.

4. Policy

a. Fraternization

(1) Fraternization is an improper personal or business relationship among Marines and/or Sailors of different ranks and positions, which violates the customary bonds of acceptable senior-subordinate behavior. Such offenses undermine good order and discipline, weaken the chain of command, and bring discredit to the Naval Service.

(2) Although it has most commonly been applied to officer-enlisted relationship, fraternization also includes improper relationships and social interactions between officers as well as between enlisted members.

(3) Fraternization is a gender-neutral concept. Its focus is on the detriment to good order and discipline resulting from the erosion of respect for authority inherent in an unduly familiar senior-subordinate relationship.

(4) A relationship is considered unduly familiar and inappropriate, thus subjecting the member to disciplinary action, when the relationship is prejudicial to good order and discipline; or brings discredit to the Naval Service. The prohibition against

## DEPLOYED MAGTF JUDGE ADVOCATE HANDBOOK

unduly familiar and inappropriate relationships as detailed in references (a) and (b) are incorporated by reference into this policy.

### b. Personal Relationships

(1) UNITNAME personnel are prohibited from touching each other; any member of ships' crew, to include ships' company, attachments or detachments; any member of the Amphibious Squadron (PHIBRON) staff; and, any military or civilian ship rider, in any manner tending to show affection or undue familiarity, such as hand-holding, hugging, kissing, or fondling while on any ship, or pier or command sponsored events or activities, while in uniform.

(2) Personnel will not engage in sexual relations, under any circumstances, with any persons, to include spouses, fiancées, boyfriends or girlfriends, while on any ship, or pier, or during command-sponsored events or activities.

(3) All personnel will conduct themselves professionally at all times, whether aboard ship or ashore. Relationships that violate paragraph 4(a) above, or that violate references (a) and (b) are prohibited (e.g. a Marine Sergeant "dating" a Navy Seaman or Marine Lance Corporal on liberty is prohibited).

c. Off-Limits Spaces. The following locations are OFF LIMITS as places for males and females to occupy concurrently:

(1) Behind locked doors in an otherwise unmanned space, unless the door must be locked for duty reasons (e.g. classified spaces).

(2) Berthing areas or lounge of members of the opposite sex. However, members of the opposite sex may enter berthing spaces on official business. Entrance is announced by stating: "MALE ON DECK" or "FEMALE ON DECK" as applicable. In addition, whenever feasible, service members conducting official business should be escorted by a member of the opposite sex.

(3) After darkenship, in remote places such as sponsons, flight deck, catwalks, fo'c's'le, air conditioned rooms or fan rooms, ship's boats, hanger bay, vehicle stowage, well deck, etc.

d. Sexual Harassment. As defined in reference (c), sexual harassment is a form of discrimination that involves unwelcome sexual advances, requests for sexual favors, making offensive gestures, statements, and jokes, and discipline, and degrades mission readiness. I will not tolerate the sexual harassment of Marines, Sailors or civilians.

## 6. Action/Responsibility

a. Leaders throughout the chain of command will:



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(1) Be especially attentive to their personal associations such that their actions and the actions of their subordinates are supportive of the military chain of command and good order and discipline. Since circumstances are important in determining whether personal relationships constitute fraternization, seniors must have provided guidance on appropriate relationships that build cohesion and morale.

(2) Ensure all members of the chain of command are aware of the policies and prohibitions set forth herein. Training must be conducted to specifically advise the members of your unit or section of the guidelines and prohibitions contained in this policy.

(3) Address offending conduct by taking immediate and appropriate action, to include counseling, issuing punitive or non-punitive letters of caution, comments on fitness reports or performance evaluations, reassignment, and if necessary, appropriate disciplinary action.

(4) Compliance with this policy is the responsibility of all UNITNAME personnel. Leaders at all levels must set the proper example. All personnel will be held accountable for their conduct.

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**APPENDIX 4-7: SAMPLE INTERNET AND LAN USAGE POLICY**

From: Commanding Officer  
To: Distribution List

Subj: [UNIT] INTERNET AND UNCLASSIFIED LAN USAGE POLICY

Ref: (a) MARADMIN 541/99, Information Assurance Bulletin 2-99  
(b) MARADMIN 162/00, Information Assurance Bulletin 2-00

1. Per the references the [UNIT] policy for worldwide web access and unclassified LAN usage is outlined below.

2. Punitive Nature. This instruction is punitive in nature. Failure to comply with the policy and guidance contained in this instruction can result in administrative and/or punitive action under the Uniform Code of Military Justice (UCMJ).

3. Official Use. Official Internet and unclassified LAN use is defined as that which is not prohibited by law, regulation, instruction, or command policy, to include:

a. Obtaining information to support the [UNIT] mission.

b. Obtaining information to enhance the professional skills of Marine Corps and Navy personnel.

4. Access Privileges. All personnel in the [UNIT] are permitted to have an official Marine Corps Enterprise Network (MCEN) e-mail account on the unclassified LAN. In garrison, all personnel will be permitted access to the Internet. Access to the Internet aboard ship may be limited due to bandwidth restrictions. If that is the case the [UNIT] S-6 will recommend personnel authorized to get Internet access to the [UNIT] Commander.

5. Prohibited Use. The following uses of the Internet and unclassified LAN are PROHIBITED:

a. Illegal, fraudulent, or malicious activities.

b. Introducing classified information into an unclassified system or environment.

c. Accessing, storing, processing, displaying, distributing, transmitting, or viewing material that is pornographic, racist, promotes hate crimes, or is subversive in nature.

d. Storing, accessing, processing, or distributing classified, proprietary, sensitive, for official use only, or privacy act protected information in violation of established security and information release policies.

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- e. Obtaining, installing, copying, pasting, transferring, or using software or other materials obtained in violation of the appropriate vendor's patent, copyright, trade secret or license agreement.
- f. Knowingly writing, coding, compiling, storing, transmitting or transferring malicious software code, to include but not limited to: viruses, logic bombs, worms, and macro viruses.
- g. Partisan political activity, religious lobbying, or advocacy of activities on behalf of organizations having no affiliation with the Marine Corps, DON or DOD.
- h. Disseminating religious materials outside an established command religious program.
- i. Fund raising activities, either for profit or non-profit, unless the activity is specifically approved by the command (i.e., CFC and NMCRS).
- j. Gambling, wagering, or placing of any bets.
- k. Writing, forwarding, or participating in chain letters.
- l. Posting personal home pages.
- m. Participating in on-line video gaming.
- n. Accessing and logging into commercial e-mail accounts, such as hotmail, AOL, or yahoo in garrison. Under no circumstances, whether in garrison or aboard ship, will official government correspondence or data files be sent, forwarded to, or created on commercial services of any kind.

6. Permitted Uses. The following uses of the Internet and unclassified LAN are permitted:

- a. Exchange of email between MCEN and commercial e-mail accounts ashore.
- b. Use of the Internet to view catalogs, purchase personal items, and access financial services on designated computer workstations.
- c. Use of the Internet for surfing entertainment sites not in violation of paragraph 5 on designated computer workstations.
- d. When embarked aboard ship and using shipboard networks, use of Internet chat rooms for morale purposes in accordance with paragraph 5 of this policy.

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e. When embarked aboard ship and using shipboard networks, accessing and logging in to commercial e-mail accounts for morale purpose in accordance with paragraph 5 of this policy.

7. Software. All software requires licensing. All software and drivers will be held, inventoried, and loaded by S-6 personnel. Downloading and installing of software without a proper license is unauthorized and will not be performed by the S-6 or any individual.

8. Privacy. All users are reminded they have no expectation of privacy in their use of government information systems. As a general rule, S-6 personnel will not read personal email. However, use of the Internet and e-mail over the MCEN is subject to monitoring, interception, and recording by [UNIT] S-6 personnel and/or any other government agent.

9. Action. Commanders will ensure all members of their command are aware of the policies and prohibitions set forth in this instruction. Any violation of the above will result in the immediate suspension of Internet privileges and/or e-mail accounts and may result in administrative and/or disciplinary action. Training must be conducted to specifically advise the members of your unit or section of the policies and prohibitions contained herein to preclude any misunderstanding of this policy.

10. Points of contact for this matter are the [UNIT] S-6 and S-6A.

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**APPENDIX 5-1: SAMPLE PRELIMINARY INQUIRY REPORT  
AND CHECKLIST**

**SAMPLE PRELIMINARY INQUIRY REPORT**

LETTERHEAD

From: (Name and rank of individual conducting preliminary inquiry)

To: (Title of authority ordering preliminary inquiry)

Subj: PRELIMINARY INQUIRY INTO (DESCRIPTION OF INCIDENT)

Ref: (a) JAGMAN Section 0204

1. This reports completion of the preliminary inquiry conducted in accordance with reference (a) into (description of incident).
2. Personnel contacted: (List individuals with name, rank, title, unit, and telephone number).
3. Materials reviewed: (List documents, objects, materials, tangibles reviewed and, if of probable evidentiary value, where stored together with name of the custodian of such material and that person's phone number).
4. Summary of findings: (Summary should not extend beyond one paragraph and should summarize both what is known and unknown about the event in question).
5. Recommendation: (Choose one: consult a judge advocate; no further investigation warranted; command investigation; litigation-report investigation; board of inquiry; or court of inquiry).

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(Note: attachments may be added to the report as desired.)

## DEPLOYED MAGTF JUDGE ADVOCATE HANDBOOK

### PRELIMINARY INQUIRY CHECKLIST

\_\_\_ CA appoints a preliminary inquiry officer.

\_\_\_ Begin work on the inquiry immediately upon hearing that you are to be appointed, whether or not you have received an appointing order in writing.

\_\_\_ Decide what the purpose and methodology of your inquiry will be.

\_\_\_ Can this preliminary inquiry be completed in three working days? If not, you may be trying to do too much. Further clarification from the CA may be necessary.

\_\_\_ Has this incident involved a member of the command and/or occurred within the command? If not, are you the appropriate command to conduct the preliminary inquiry and/or any administrative investigation?

\_\_\_ Is this incident under investigation by NCIS, the FBI, or local civilian law enforcement agencies? (If yes, refer to JAGMAN 0204c).

\_\_\_ Is this considered a "major" incident? (Refer to JAGMAN Appendix A-2-a for a definition of a "major" incident.)

\_\_\_ If believed to be a "major" incident, refer to JAGMAN 0204g, 0204h, 0205a(1), and 0211e(1).

\_\_\_ Obtain any available documentation pertaining to the inquiry, i.e. copies of rules and regulations, instructions, correspondence and messages, logs, standard operating procedures, personnel records, medical records, official reports, vehicle accident report forms, etc.

\_\_\_ Locate and preserve evidence, i.e. real objects (firearms, bullets, etc.) and note physical locations (accident sites, etc).

\_\_\_ Draw up a list of possible witnesses.

\_\_\_ Conduct an interview of any witness you deem relevant to your inquiry, those that will provide you with enough information to understand what occurred and enable you to make an informed recommendation to the CA.

\_\_\_ If a witness is not physically available, an interview may be conducted via telephone or message.

\_\_\_ Advise any military witness who may be suspected of an offense, misconduct, or improper performance of duty, of his/her rights under Article 31, UCMJ. (Refer to page VIII-1 of this handbook for a sample form.)

## DEPLOYED MAGTF JUDGE ADVOCATE HANDBOOK

\_\_\_\_\_ Advise each witness prior to signing any statement relating to the origin, incident, or aggravation of any disease or injury that he/she has suffered, of his/her right not to sign such a statement. (Refer to page VIII-2 of this handbook for a sample form). See JAGMAN 0221b.

\_\_\_\_\_ Is a Privacy Act statement required for any witness interviewed? JAGMAN 0216 requires that Privacy Act statements be obtained from each witness from whom personal information is taken. (Refer to page VIII-3 of this handbook for a sample form.)

\_\_\_\_\_ Does the CA desire/require the outcome to be documented in writing? (If yes, refer to page II-5 of this handbook for sample format.)

\_\_\_\_\_ The preliminary inquiry officer makes his/her report to the CA.

\_\_\_\_\_ Which of the command options does the CA choose in light of the preliminary inquiry?

\_\_\_\_\_ No further action.

\_\_\_\_\_ Command investigation.

\_\_\_\_\_ Litigation-report investigation.

\_\_\_\_\_ Recommend court/board of inquiry to GCMCA.

\_\_\_\_\_ CA reports the result of the PI to the ISIC.

\_\_\_\_\_ Preserve all evidence, witness statements, documentation gathered during the preliminary inquiry, for possible use in any administrative investigation that may be subsequently convened.

**APPENDIX 5-2: SAMPLE COMMAND INVESTIGATION  
CONVENING ORDER**

LETTERHEAD

From: Commanding Officer  
To: [Investigating Officer]

Subj: COMMAND INVESTIGATION OF THE INCIDENT THAT OCCURRED AT  
LOCATION ON DATE

Ref: (a) JAG Manual

1. This appoints you, per chapter II of reference (a), to inquire into the facts and circumstances surrounding the [incident that occurred at location on date].

2. Investigate the cause of the incident, resulting injuries and damages, and any fault, neglect, or responsibility therefor, and recommend appropriate administrative or disciplinary action. Report your findings of fact, opinions, and recommendations in letter form by \_\_\_\_\_, unless an extension of time is granted. If you have not previously done so, read chapter II of reference (a) in its entirety before beginning your investigation.

3. You may seek legal advice from \_\_\_\_\_ during the course of your investigation.

4. By copy of this appointing order, \_\_\_\_\_, is directed to furnish necessary clerical assistance.

SIGNATURE BLOCK



**APPENDIX 5-3: SAMPLE COMMAND INVESTIGATION REPORT**

LETTERHEAD

From: [Investigating Officer]  
To: [Convening Authority]

Subj: SAME AS SUBJECT ON CONVENING ORDER

Encl: (1) Convening order and any modifications thereto  
(2) Summary (or verbatim) of sworn (or unsworn) testimony of  
(a witness)  
(3) Statement of , signed by witness  
(4) Description of (evidence found at scene of the accident)  
(5) Photograph of depicting

**NOTE: Testimony of each witness, observations of the investigator, photographs, diagrams, and suitable reproductions of tangible evidence should be listed and attached as enclosures to the investigative report. The location of all original evidence, such as logs, charts, tangible items, and so forth, and the name and phone number of the official responsible for its safekeeping must be stated in the report, either on each enclosure or in the preliminary statement.**

Preliminary Statement

1. Paragraph 1 of an investigative report must contain information in the form of a "preliminary statement." Contents may require continuation in one or more additional paragraphs. In general, see JAGMAN 0217(c) for required contents. Where applicable, an investigating officer should indicate the name and organization of any judge advocate consulted. Extensions of time to complete the report should be noted here. Also state in appropriate cases that the matter was first referred to NCIS and NCIS expressed no objection to proceeding with the investigation.

Findings of Fact

1. [encls ( ), ( )]
2. [encls ( ), ( )]
3. [encls ( ), ( )]

**Note: Findings of fact constitute an investigating officer's description of details of events based on evidence. Findings must be as specific as possible about time, places, and persons involved. Each fact may be made a separate finding. An investigating officer may determine the most effective presentation for a particular case. Each fact must be supported by testimony of a witness, statement of the investigative officer, documentary evidence, or tangible (real)**

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**evidence attached to the investigative report as an enclosure. Each finding of fact must reference each enclosure that supports it.**

### Opinions

1. [FF ( )]
2. [FF ( )]
3. [FF ( )]

**Note: An opinion is a reasonable evaluation, reference, or conclusion based on facts found. Each opinion must be supported by findings of fact. Determination of line of duty and misconduct is properly stated as an opinion.**

### Recommendations

- 1.
- 2.
- 3.

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**APPENDIX 5-4: PRIVACY ACT STATEMENT FORM**

**PRIVACY ACT STATEMENT**

Name:  
Rank/Rate:  
Activity:  
Unit:  
Telephone number:

Today, \_\_\_\_\_, 20\_\_\_\_, I acknowledge that I have received the following advisement under the guidelines of the Privacy Act.

This statement is provided in compliance with the provisions of the Privacy Act of 1974 (Public Law 93-579) which requires that Federal agencies must inform individuals who are requested to furnish personal information about themselves as to certain facts regarding the information requested below.

1. AUTHORITY: 5 U.S.C. 301; 10 U.S.C. 972, 1201-1221, 2733, 2734-2734b., 2737, 5013, 5031-5036, 5131-5150, 5947, 6148, 7205, 7622-7623; 28 U.S.C. 1346, 2671-2680; 31 U.S.C. 240-243, 3521-3531, 3701-3702, 3717-3718; 37 U.S.C. 802; 38 U.S.C. 105; 42 U.S.C. 2651-2653; 44 U.S.C. 3101; 49 U.S.C. 1901.

2. PRINCIPAL PURPOSES. The information which will be solicited is intended principally and may be used for the following purposes:

- a. Determinations on the status of personnel regarding entitlements to pay during disability, disability benefits, severance pay, retirement pay, increases of pay for longevity, survivor's benefits, involuntary extensions of enlistments, date of expiration of active obligated service, and accrual of annual leave.
- b. Determinations on disciplinary or punitive action.
- c. Determinations on liability of personnel for losses of, or damage to, public funds or property.
- d. Evaluation of petitions, grievances, and complaints.
- e. Adjudication, pursuit, or defense of claims for or against the Government or among private parties.
- f. Other determinations, as required, in the course of naval administration.
- g. Public information releases.
- h. Evaluation of procedures, operations, material, and designs by the Navy and contractors, with a view to improving the efficiency and safety of the Department of the Navy.

3. ROUTINE USES: In addition to being used within the Department of the Navy and Defense for the purpose(s) indicated above, records of investigations are routinely furnished, as appropriate, to the

## DEPLOYED MAGTF JUDGE ADVOCATE HANDBOOK

Department of Veterans Affairs for use in determinations concerning entitlement to veterans' and survivors' benefits; to Servicemen's Group Life Insurance administrators for determinations concerning payment of life insurance proceeds; to the U.S. General Accounting Office for purposes of determinations concerning relief of accountable personnel from liability for losses of public funds and related fiscal matters; and to the Department of Justice for use in litigation involving the Government. Additionally, such investigations are sometimes furnished to agencies of the Department of Justice and to State or local law enforcement and court authorities for use in connection with civilian criminal and civil court proceedings. The records of investigations are provided to agents and authorized representatives of persons involved in the incident, for use in legal or administrative matters. The records are provided to contractors for use in connection with settlements, adjudication, or defense of claims by or against the Government, and for use in design and evaluation of products, services, and systems. The records are also furnished to agencies of the Federal, State, or local law enforcement authorities, and regulatory authorities, for use in connection with civilian and military criminal, civil, administrative, and regulatory proceedings and actions.

#### 4. MANDATORY/VOLUNTARY DISCLOSURE, CONSEQUENCES OF REFUSING TO DISCLOSE:

a. Where an individual is a subject of an investigation for purpose 2a or 2b, above: Disclosure is voluntary. You are advised that you are initially presumed to be entitled to have the [personnel determination] [disciplinary determinations] in paragraph 2, above, resolved in your favor, but the final determination will be based on all the evidence in the investigative record. If you do not provide the requested information, you will be entitled to a favorable determination if the record does not contain sufficient evidence to overcome the presumption in your favor. If the completed record does contain sufficient evidence to overcome the presumption in your favor, however, your election not to provide the requested information possible could prevent the investigation from obtaining evidence which may be needed to support a favorable determination.

b. Where an individual is a subject of an investigation for purpose 2c, above: Disclosure is voluntary, and if you do not provide the requested information, any determination as to whether you should be held pecuniarily liable for repayment of the Government's loss would be based on the other evidence in the investigative record, which possibly might not support a favorable determination.

c. Where the individual is a claimant or potential claimant in an investigation for purpose 2e, above: Disclosure is voluntary, but refusal to disclose the requested information could prevent the investigation from obtaining sufficient information to substantiate any claim which you have make or may make against the Government as a result of the incident under investigation.

d. Where the individual was treated at Government expense for injuries caused by third parties in connection with a matter being investigated for purpose 2e, above: Disclosure is voluntary, but refusal to disclose the requested information could result in a requirement for you to assign to the Government your medical care claims against third parties in connection with the incident, or authorize withholding of the records of your treatment in naval medical facilities.

e. In any other case: Disclosure is voluntary, and if you do not provide the requested information, and determinations or evaluations made as a result of the investigation will be made on the basis of the evidence that is contained in the investigative record.

(Signature and date)

**APPENDIX 5-5: ARTICLE 31B RIGHTS ADVISEMENT FORM**

**ARTICLE 31 RIGHTS**

Name:  
Rank/Rate:  
Activity:  
Unit:  
Telephone number:

I have been advised that I may be suspected of the offense(s) of:

\_\_\_\_\_

and that:

- I have the right to remain silent.
- Any statements I do make may be used as evidence against me in trial by court-martial.
- I have the right to consult with lawyer counsel prior to any questioning. This lawyer counsel may be a civilian lawyer retained by me at my own expenses, a military lawyer appointed to act as my counsel without cost to me, or both.
- I have the right to have such retained civilian lawyer and/or appointed military lawyer present during this interview.
- I have the right to terminate this interview at any time.

**WAIVER OF RIGHTS**

- I further certify and acknowledge that I have read the above statement of my rights and fully understand them, and that:
  - I expressly desire to waive my right to remain silent.
  - I expressly desire to make a statement.
  - I expressly do not desire to consult with either a civilian lawyer retained by me or a military lawyer appointed as my counsel without cost to me prior to questioning.
  - I expressly do not desire to have such a lawyer present with me during this interview.
  - This acknowledgment and waiver of rights is made freely and voluntarily by me, and without any promises or threats having been made to me or pressure or coercion of any kind having been used against me.

\_\_\_\_\_  
(Member's signature and date)

\_\_\_\_\_  
(Witness's signature and date)

Understanding my rights under U.C.M.J. Article 31, I wish to make the following statement:

**APPENDIX 5-6: JAGMAN 0221 LOD/MIS ADVISEMENT FORM**

**WARNING ADVISEMENT ABOUT STATEMENTS REGARDING ORIGIN OF DISEASE OR INJURY COMPLIANCE WITH SECTION 0221 OF THE JAG MANUAL**

I, \_\_\_\_\_, have been advised that:

- questions have arisen concerning whether or not my injury/disease, sustained or discovered on \_\_\_\_\_, was incurred in the line of duty or as a result of my own misconduct;

- in the event such injury/disease is determined to have been incurred not in the line of duty or as a result of my own misconduct, I will be required to serve for an additional period beyond my present enlistment to make up for the duty time lost;

- lost duty time will not count as creditable service for pay entitlement purposes;

- I may be required to forfeit some pay (where absence from duty in excess of one day immediately follows intemperate use of liquor or habit-forming drugs);

- if I am permanently disabled and that disability is determined to have been the result of misconduct or was incurred not in the line of duty, I may be barred from receiving disability pay or allowances, as well as veteran's benefits;

- I may *not* be required to give a statement relating to the origin, incidence, or aggravation of any disease/injury that I may have.

**I do/do not desire to submit a statement.**

\_\_\_\_\_

Signature/ Date

\_\_\_\_\_

Witness Signature/Date

Witness Name/Rate/Grade/Unit/Telephone Number

**APPENDIX 5-7: JAGMAN 0221 LOD/MIS INVESTIGATION**  
**CHECKLIST**

- \_\_\_ Is a LOD/misconduct determination required?
  - \_\_\_ Possible permanent disability?
  - \_\_\_ Physical inability to perform duties for 24 hours or more?
  
- \_\_\_ A PI must be conducted.
- \_\_\_ See PI Section of JAGMAN Handbook.
- \_\_\_ The results of the PI are reported to the GCMCA via the Personnel Casualty Report (MILPERSMAN 4210100).
- \_\_\_ Ensure medical receives a copy of the PI.
- \_\_\_ If the CA determines this injury was incurred "in the line of duty, not due to misconduct," ensure medical record entries stating as such are made.
  
- \_\_\_ A command must convene a CI when:
  - \_\_\_ The results of the PI indicate that the injury was incurred under circumstances which suggest a finding of "misconduct" might result. These circumstances include, but are not limited to, all cases in which the injury was incurred:
    - \_\_\_ while the member was using illegal drugs;
    - \_\_\_ while the member's blood alcohol content was of .10 percent by volume or greater. This does not preclude the convening of an investigation if the blood-alcohol percentage is lower than .10, if the circumstances so indicate;
    - \_\_\_ as a result of a bona fide suicide attempt; and
    - \_\_\_ while the member was acting recklessly or with willful neglect.
  - \_\_\_ The results of the PI indicate that the injury was incurred under circumstances that suggest a finding of "not in line of duty" might result.
    - \_\_\_ Was the service member in a desertion status at the time of injury?
    - \_\_\_ Was the service member UA at the time of injury?
    - \_\_\_ Was the service member in the Brig with a dishonorable discharge at the time of the injury?
    - \_\_\_ Was the service member in jail as a result of a felony conviction at the time of the injury?
  
- \_\_\_ There is a reasonable chance of permanent disability and the commanding officer considers the convening of an investigation essential to ensure an adequate official record is made concerning the circumstances surrounding the incident.
  
- \_\_\_ The injured member is in the Naval Reserve or the Marine Corps Reserve and the commanding officer considers an investigation essential to ensure an adequate official record is made concerning the circumstances surround the incident.

**If a CI is necessary, the following information must be included in the final report. See CI Section of JAGMAN Handbook.**

- \_\_\_\_\_ Identifying data of all persons, military or civilian, killed or injured.
- \_\_\_\_\_ Name, sex, age.
- \_\_\_\_\_ Military grade or rate, regular or reserve, armed force, station or residence.
- \_\_\_\_\_ Experience/expertise, where relevant.
- \_\_\_\_\_ Civilian title, business or occupation, address.
- \_\_\_\_\_ Experience/expertise, where relevant.
- \_\_\_\_\_ All relevant records must be obtained, including: military or civilian police accident reports, pertinent hospitalization or clinical records, death certificates, autopsy reports, records of coroners' inquest or medical examiners' reports, and pathological, histological, and toxicological studies.
- \_\_\_\_\_ Place of injury occurrence, the site and terrain, to include photographs, maps, charts, diagrams or other relevant exhibits.
- \_\_\_\_\_ Duty status of injured person: leave, liberty, unauthorized absence (UA), active duty, active duty for training, or inactive duty for training at time of injury.
- \_\_\_\_\_ Whether any UA status at time of injury materially interfered with his/her military duty.
- \_\_\_\_\_ Nature/extent of injuries, including description of body parts injured.
- \_\_\_\_\_ Extent of hospitalization.
- \_\_\_\_\_ Cost from any civilian medical facilities.
- \_\_\_\_\_ Amount of time "lost."
- \_\_\_\_\_ Physical factors and impairment.
- \_\_\_\_\_ Tired (working excessive hours), hungry, on medication (prescribed or unauthorized), ill or experiencing dizziness, headaches or nausea, exposed to severe environmental extremes.
- \_\_\_\_\_ Any alcohol or habit-forming drug impairment.
- \_\_\_\_\_ Individual's general appearance, behavior, rationality of speech, and muscular coordination.
- \_\_\_\_\_ Quantity and nature of intoxicating agent used.
- \_\_\_\_\_ Period of time in which consumed.
- \_\_\_\_\_ Results of blood, breath, urine or tissue test for intoxicating agents.
- \_\_\_\_\_ Lawfulness of intoxicating agent.
- \_\_\_\_\_ Mental factors.
- \_\_\_\_\_ Emotionally upset (angry, depressed, moody, tense).
- \_\_\_\_\_ Mentally preoccupied with unrelated matters.
- \_\_\_\_\_ Motivation.
- \_\_\_\_\_ Attempted suicide (genuine intent to die v. gesture or malingering). *See JAGMAN 0226.*
- \_\_\_\_\_ Mental disease or defect. Psychiatric evaluation warranted?

**The CI must clearly document all facts leading up to and connected with the injury or death. Some of the information to be addressed might include:**

- \_\_\_\_\_ Training.
- \_\_\_\_\_ Formal/on the job.



DEPLOYED MAGTF JUDGE ADVOCATE HANDBOOK

- \_\_\_\_\_ Adequacy.
- \_\_\_\_\_ Engaged in tasks different from those in which trained.
- \_\_\_\_\_ Engaged in tasks too difficult for skill level.
- \_\_\_\_\_ Emergency responses/reaction time.
- \_\_\_\_\_ Supervision (adequate/lax/absent).
- \_\_\_\_\_ Design factors.
- \_\_\_\_\_ Equipment's condition, working order.
- \_\_\_\_\_ Operating unfamiliar equipment/controls.
- \_\_\_\_\_ Operating equipment with controls that function differently than expected due to lack of standardization.
- \_\_\_\_\_ Unable to reach all controls from his/her work station and see and hear all displays, signals, and communications.
- \_\_\_\_\_ Provided insufficient support manuals.
- \_\_\_\_\_ Using support equipment which was not clearly identified and likely to be confused with similar but non-compatible equipment.
- \_\_\_\_\_ Environmental factors.
- \_\_\_\_\_ Harmful dusts, fumes, gases without proper ventilation.
- \_\_\_\_\_ Working in a hazardous environment without personal protective equipment or a line-tender.
- \_\_\_\_\_ Unable to hear and see all communications and signals.
- \_\_\_\_\_ Exposed to temperature extremes that could degrade efficiency, cause faintness, stroke or numbness.
- \_\_\_\_\_ Suffering from eye fatigue due to inadequate lighting or glare.
- \_\_\_\_\_ Visually restricted by dense fog, rain, smoke or snow.
- \_\_\_\_\_ Darkened ship lighting conditions.
- \_\_\_\_\_ Exposed to excessive noise/vibration levels.
- \_\_\_\_\_ Personnel protective equipment.
- \_\_\_\_\_ Using required equipment for the job (e.g., seatbelts, safety glasses, hearing protectors).
- \_\_\_\_\_ Not using proper equipment due to lack of availability (identify).
- \_\_\_\_\_ Not using proper equipment due to lack of comfort or personal image (identify).
- \_\_\_\_\_ Using protective equipment that failed and caused additional injuries (identify).
- \_\_\_\_\_ Hazardous conditions.
- \_\_\_\_\_ Inadequate/missing guards, handrail, ladder treads, protective mats, safety devices/switches, skid proofing.
- \_\_\_\_\_ Jury-rigged equipment.
- \_\_\_\_\_ Use of improper non-insulated tools.
- \_\_\_\_\_ Incorrectly installed equipment.
- \_\_\_\_\_ Defective/improperly maintained equipment.
- \_\_\_\_\_ Slippery decks or ladders, obstructions.
- \_\_\_\_\_ Improper clothing (leather heels, conventional shoes vice steel-toed shoes, loose fitting clothes, no shirt, conventional eyeglasses vice safety glasses).

**Remember to consult other applicable checklists for information requirements. For example, if a Marine injured himself in a motor vehicle accident, the IO would also need to gather that information listed in JAGMAN 0243c for inclusion in the final CI.**

**APPENDIX 5-8: INSPECTOR GENERAL COMPLAINT FORM**

Electronic Form Available at:

**[HTTP://WWW.HQMC.MARINES.MIL/PORTALS/146/DOCS/4%20STEP/HHOTLIN%20COMPLAIN%20FORM.PDF](http://www.hqmc.marines.mil/portals/146/docs/4%20step/hhotlin%20complaint%20form.pdf)**

**INSPECTOR GENERAL OF THE MARINE CORPS COMPLAINT FORM**

Email: [orgmb.igmc.hotline@usmc.mil](mailto:orgmb.igmc.hotline@usmc.mil) FAX #: (703) 604-7021

Mail: HQMC Code IG, 701 S. Courthouse Rd, Suite 1200, Arlington, VA 22204-2485

This form is provided for individuals to provide an outline of information the IGMC requires to conduct an analysis of the complaint. The complaint can be sent via e-mail, FAX, or by mail. You may print this form, fill in all of the requested information, and send it to a Command Inspector General (see list of Command Inspector General Offices for command fax numbers). Frequently Asked Questions can be found at the IGMC website:

Date: \_\_\_\_\_

**1. Do you wish to remain anonymous?**

Yes \_\_\_\_\_ No \_\_\_\_\_

(If yes, do not identify yourself below)

**2. If no, do you want confidentiality?**

Yes \_\_\_\_\_ No \_\_\_\_\_

(If yes, identify yourself below. We will make every effort to protect your identity from disclosure; however, we cannot guarantee confidentiality since disclosure may be required during an investigation or in the course of corrective action.)

**3. Are you willing to be interviewed?**

Yes \_\_\_\_\_ No \_\_\_\_\_

**4. Have you previously or do you intend to contact a Command Inspector General, Department of Defense Inspector General or any US Congressmen's Office concerning this complaint?**

Yes \_\_\_\_\_ No \_\_\_\_\_

Command Inspector General contacted: \_\_\_\_\_ Date: \_\_\_\_\_

DoD Inspector General contacted: \_\_\_\_\_ Date: \_\_\_\_\_

Congressional Office contacted: \_\_\_\_\_ Date: \_\_\_\_\_

Provide the action taken by the office listed above, if any:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**5. Your Name: (no nicknames, include maiden name if applicable)**

First: \_\_\_\_\_ MI: \_\_\_\_\_ Last: \_\_\_\_\_ Rank/Grade: \_\_\_\_\_

Mailing Address:

Address: \_\_\_\_\_ City: \_\_\_\_\_ State: \_\_\_\_\_

Zip code: \_\_\_\_\_ Country: \_\_\_\_\_

Home Telephone: (Area Code & number) (Include country code, if applicable)

Work Telephone: (Area Code & number) (Include DSN and/or country code, if applicable)

\_\_\_\_\_  
E-Mail Address: \_\_\_\_\_

**INSPECTOR GENERAL OF THE MARINE CORPS COMPLAINT FORM**

Email: [orgmb.igmc.hotline@usmc.mil](mailto:orgmb.igmc.hotline@usmc.mil) FAX #: (703) 604-7021

Mail: HQMC Code IG, 701 S. Courthouse Rd, Suite 1200, Arlington, VA 22204-2485

**6. Who is involved?** Include everyone's first and last names, rank/pay grade, and duty station/place of employment. (Attach additional sheets if necessary)

**Subject(s):** Who performed the wrongdoing?

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**Witness(es):** Who are the witnesses?

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**7. What did the subject do or fail to do that was wrong?**

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**8. What rule, regulation or law do you think the subject(s) violated?**

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**9. When did the incident occur?** Provide dates and times or "Early 2002," etc.

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**10. Where did the incident take place?** What location, command, etc.?

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**11. Why do you think the incident took place?**

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**12. How have you tried to resolve the problem?** Have you contacted your chain of command? Have you contacted your local Command Inspector General? Have you tried to resolve your complaint using an established process such as Bureau of Corrections of Naval Records, Informal Resolution System, EO/EEO or legal system?

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**13. What would you like the IG to do?**

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**14. Signature/Acknowledgement.**

I certify that all of the statements made in this complaint are true, complete, and correct, to the best of my knowledge. I understand that a false statement or concealment of a material fact is a criminal offense (18 U.S.C. § 1001; Inspector General Act of 1978, As Amended, §7).

Signature or Acknowledgement: \_\_\_\_\_ Date \_\_\_\_\_

## **APPENDIX 6-2: LIST OF SELECTED INTERNATIONAL ENVIRONMENTAL AGREEMENTS**

(From CIA World Factbook)

### **Air Pollution**

see Convention on Long-Range Transboundary Air Pollution

### **Air Pollution-Nitrogen Oxides**

see Protocol to the 1979 Convention on Long-Range Transboundary Air Pollution Concerning the Control of Emissions of Nitrogen Oxides or Their Transboundary Fluxes

### **Air Pollution-Persistent Organic Pollutants**

see Protocol to the 1979 Convention on Long-Range Transboundary Air Pollution on Persistent Organic Pollutants

### **Air Pollution-Sulphur 85**

see Protocol to the 1979 Convention on Long-Range Transboundary Air Pollution on the Reduction of Sulphur Emissions or Their Transboundary Fluxes by at least 30%

### **Air Pollution-Sulphur 94**

see Protocol to the 1979 Convention on Long-Range Transboundary Air Pollution on Further Reduction of Sulphur Emissions

### **Air Pollution-Volatile Organic Compounds**

see Protocol to the 1979 Convention on Long-Range Transboundary Air Pollution Concerning the Control of Emissions of Volatile Organic Compounds or Their Transboundary Fluxes

### **Antarctic - Environmental Protocol**

see Protocol on Environmental Protection to the Antarctic Treaty

### **Antarctic Treaty**

opened for signature - 1 December 1959

entered into force - 23 June 1961

objective - to ensure that Antarctica is used for peaceful purposes only (such as international cooperation in scientific research); to defer the question of territorial claims asserted by some nations and not recognized by others; to provide an international forum for management of the region; applies to land and ice shelves south of 60 degrees south latitude

parties - (46) Argentina, Australia, Austria, Belarus, Belgium, Brazil, Bulgaria, Canada, Chile, China, Colombia, Cuba, Czech Republic, Denmark, Ecuador, Estonia, Finland, France, Germany, Greece, Guatemala, Hungary, India, Italy, Japan, North Korea, South Korea, Netherlands, NZ, Norway, Papua New Guinea, Peru, Poland, Romania, Russia, Slovakia, South Africa, Spain, Sweden, Switzerland, Turkey, Ukraine, UK, US, Uruguay, Venezuela

### **Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal**

note - abbreviated as Hazardous Wastes

opened for signature - 22 March 1989

entered into force - 5 May 1992

objective - to reduce transboundary movements of wastes subject to the Convention to a minimum consistent with the environmentally sound and efficient management of such wastes; to minimize the amount and toxicity of wastes generated and ensure their environmentally sound management as closely as possible to the source of generation; and to assist LDCs in environmentally sound management of the hazardous and other wastes they generate

parties - (172) Albania, Algeria, Andorra, Antigua and Barbuda, Argentina, Armenia, Australia, Austria, Azerbaijan, The Bahamas, Bahrain, Bangladesh, Barbados, Belarus, Belgium, Belize, Benin, Bhutan, Bolivia, Bosnia and Herzegovina, Botswana, Brazil, Brunei, Bulgaria, Burkina Faso, Burundi, Cambodia, Cameroon, Canada, Cape Verde, Central African Republic, Chad, Chile, China, Colombia, Comoros, Democratic Republic of the Congo, Republic of the Congo, Cook Islands, Costa Rica, Cote d'Ivoire, Croatia, Cuba, Cyprus, Czech Republic, Denmark, Djibouti, Dominica, Dominican Republic, Ecuador, Egypt, El Salvador, Equatorial Guinea, Eritrea, Estonia, Ethiopia, EU, Finland, France, Gabon, The Gambia, Georgia, Germany, Ghana, Greece, Guatemala, Guinea, Guinea-Bissau, Guyana, Honduras, Hungary, Iceland, India, Indonesia, Iran, Ireland, Israel, Italy, Jamaica, Japan, Jordan, Kazakhstan, Kenya, Kiribati, North Korea, South Korea, Kuwait, Kyrgyzstan, Latvia, Lebanon, Lesotho, Liberia, Libya, Liechtenstein, Lithuania, Luxembourg, Macedonia, Madagascar, Malawi, Malaysia, Maldives, Mali, Malta, Marshall Islands, Mauritania, Mauritius, Mexico, Federated States of Micronesia, Moldova, Monaco, Mongolia, Montenegro, Morocco, Mozambique, Namibia, Nauru, Nepal, Netherlands, NZ, Nicaragua, Niger, Nigeria, Norway, Oman, Pakistan, Panama, Papua New Guinea, Paraguay, Peru, Philippines, Poland, Portugal, Qatar, Romania, Russia, Rwanda, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Samoa, Saudi Arabia, Senegal, Serbia, Seychelles, Singapore, Slovakia, Slovenia, South Africa, Spain, Sri Lanka, Sudan, Swaziland, Sweden, Switzerland, Syria, Tanzania, Thailand, Trinidad and Tobago, Tunisia, Turkey, Turkmenistan, Uganda, Ukraine, UAE, UK, Uruguay, Uzbekistan, Venezuela, Vietnam, Yemen, Zambia

countries that have signed, but not yet ratified - (3) Afghanistan, Haiti, US

### **Biodiversity**

see Convention on Biological Diversity

### **Climate Change**

see United Nations Framework Convention on Climate Change

### **Climate Change-Kyoto Protocol**

see Kyoto Protocol to the United Nations Framework Convention on Climate Change

### **Convention for the Conservation of Antarctic Seals**

note - abbreviated as Antarctic Seals

opened for signature - 1 June 1972

entered into force - 11 March 1978

objective - to promote and achieve the protection, scientific study, and rational use of Antarctic seals, and to maintain a satisfactory balance within the ecological system of Antarctica

parties - (16) Argentina, Australia, Belgium, Brazil, Canada, Chile, France, Germany, Italy, Japan, Norway, Poland, Russia, South Africa, UK, US

countries that have signed, but not yet ratified - (1) NZ

**Convention on Biological Diversity**

note - abbreviated as Biodiversity

opened for signature - 5 June 1992

entered into force - 29 December 1993

objective - to develop national strategies for the conservation and sustainable use of biological diversity

parties - (191) Afghanistan, Albania, Algeria, Andorra, Angola, Antigua and Barbuda, Argentina, Armenia, Australia, Austria, Azerbaijan, The Bahamas, Bahrain, Bangladesh, Barbados, Belarus, Belgium, Belize, Benin, Bhutan, Bolivia, Bosnia and Herzegovina, Botswana, Brazil, Brunei, Bulgaria, Burkina Faso, Burma, Burundi, Cambodia, Cameroon, Canada, Cape Verde, Central African Republic, Chad, Chile, China, Colombia, Comoros, Democratic Republic of the Congo, Republic of the Congo, Cook Islands, Costa Rica, Cote d'Ivoire, Croatia, Cuba, Cyprus, Czech Republic, Denmark, Djibouti, Dominica, Dominican Republic, Ecuador, Egypt, El Salvador, Equatorial Guinea, Eritrea, Estonia, Ethiopia, EU, Fiji, Finland, France, Gabon, The Gambia, Georgia, Germany, Ghana, Greece, Grenada, Guatemala, Guinea, Guinea-Bissau, Guyana, Haiti, Honduras, Hungary, Iceland, India, Indonesia, Iran, Ireland, Israel, Italy, Jamaica, Japan, Jordan, Kazakhstan, Kenya, Kiribati, North Korea, South Korea, Kuwait, Kyrgyzstan, Laos, Latvia, Lebanon, Lesotho, Liberia, Libya, Liechtenstein, Lithuania, Luxembourg, Macedonia, Madagascar, Malawi, Malaysia, Maldives, Mali, Malta, Marshall Islands, Mauritania, Mauritius, Mexico, Federated States of Micronesia, Moldova, Monaco, Mongolia, Montenegro, Morocco, Mozambique, Namibia, Nauru, Nepal, Netherlands, NZ, Nicaragua, Niger, Nigeria, Niue, Norway, Oman, Pakistan, Palau, Panama, Papua New Guinea, Paraguay, Peru, Philippines, Poland, Portugal, Qatar, Romania, Russia, Rwanda, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Samoa, San Marino, Sao Tome and Principe, Saudi Arabia, Senegal, Serbia, Seychelles, Sierra Leone, Singapore, Slovakia, Slovenia, Solomon Islands, South Africa, Spain, Sri Lanka, Sudan, Suriname, Swaziland, Sweden, Switzerland, Syria, Tajikistan, Tanzania, Thailand, Timor-Leste, Togo, Tonga, Trinidad and Tobago, Tunisia, Turkey, Turkmenistan, Tuvalu, Uganda, Ukraine, UAE, UK, Uruguay, Uzbekistan, Vanuatu, Venezuela, Vietnam, Yemen, Zambia, Zimbabwe

countries that have signed, but not yet ratified - (1) US

**Convention on Fishing and Conservation of Living Resources of the High Seas**

note - abbreviated as Marine Life Conservation

opened for signature - 29 April 1958

entered into force - 20 March 1966

objective - to solve through international cooperation the problems involved in the conservation of living resources of the high seas, considering that because of the development of modern technology some of these resources are in danger of being overexploited

parties - (38) Australia, Belgium, Bosnia and Herzegovina, Burkina Faso, Cambodia, Colombia, Denmark, Dominican Republic, Fiji, Finland, France, Haiti, Jamaica, Kenya, Lesotho, Madagascar, Malawi, Malaysia, Mauritius, Mexico, Montenegro, Netherlands, Nigeria, Portugal, Senegal, Serbia, Sierra Leone, Solomon Islands, South Africa, Spain, Switzerland, Thailand, Tonga, Trinidad and Tobago, Uganda, UK, US, Venezuela

countries that have signed, but not yet ratified - (21) Afghanistan, Argentina, Bolivia, Canada, Costa Rica, Cuba, Ghana, Iceland, Indonesia, Iran, Ireland, Israel, Lebanon, Liberia, Nepal, NZ, Pakistan, Panama, Sri Lanka, Tunisia, Uruguay

**Convention on Long-Range Transboundary Air Pollution**

note - abbreviated as Air Pollution

opened for signature - 13 November 1979

entered into force - 16 March 1983

objective - to protect the human environment against air pollution and to gradually reduce and prevent air pollution, including long-range transboundary air pollution

parties - (51) Albania, Armenia, Austria, Azerbaijan, Belarus, Belgium, Bosnia and Herzegovina, Bulgaria, Canada, Croatia, Cyprus, Czech Republic, Denmark, Estonia, EU, Finland, France, Georgia, Germany, Greece, Hungary, Iceland, Ireland, Italy, Kazakhstan, Kyrgyzstan, Latvia, Liechtenstein, Lithuania, Luxembourg, Macedonia, Malta, Moldova, Monaco, Montenegro, Netherlands, Norway, Poland, Portugal, Romania, Russia, Serbia, Slovakia, Slovenia, Spain, Sweden, Switzerland, Turkey, Ukraine, UK, US

countries that have signed, but not yet ratified - (2) Holy See, San Marino

**Convention on Wetlands of International Importance Especially as Waterfowl Habitat (Ramsar)**

note - abbreviated as Wetlands

opened for signature - 2 February 1971

entered into force - 21 December 1975

objective - to stem the progressive encroachment on and loss of wetlands now and in the future, recognizing the fundamental ecological functions of wetlands and their economic, cultural, scientific, and recreational value

parties - (154) Albania, Algeria, Antigua and Barbuda, Argentina, Armenia, Australia, Austria, Azerbaijan, The Bahamas, Bahrain, Bangladesh, Barbados, Belarus, Belgium, Belize, Benin, Bolivia, Bosnia and Herzegovina, Botswana, Brazil, Bulgaria, Burkina Faso, Burma, Burundi, Cambodia, Cameroon, Canada, Cape Verde, Central African Republic, Chad, Chile, China, Colombia, Comoros, Democratic Republic of the Congo, Republic of the Congo, Costa Rica, Cote d'Ivoire, Croatia, Cuba, Cyprus, Czech Republic, Denmark, Djibouti, Dominican Republic, Ecuador, Egypt, El Salvador, Equatorial Guinea, Estonia, Fiji, Finland, France, Gabon, The Gambia, Georgia, Germany, Ghana, Greece, Guatemala, Guinea, Guinea-Bissau, Honduras, Hungary, Iceland, India, Indonesia, Iran, Ireland, Israel, Italy, Jamaica, Japan, Jordan, Kazakhstan, Kenya, South Korea, Kyrgyzstan, Latvia, Lebanon, Lesotho, Liberia, Libya, Liechtenstein, Lithuania, Luxembourg, Macedonia, Madagascar, Malawi, Malaysia, Mali, Malta, Marshall Islands, Mauritania, Mauritius, Mexico, Moldova, Monaco, Mongolia, Morocco, Mozambique, Namibia, Nepal, Netherlands, NZ, Nicaragua, Niger, Nigeria, Norway, Pakistan, Palau, Panama, Papua New Guinea, Paraguay, Peru, Philippines, Poland, Portugal, Romania, Russia, Rwanda, Saint Lucia, Samoa, Sao Tome and Principe, Senegal, Serbia, Seychelles, Sierra Leone, Slovakia, Slovenia, South Africa, Spain, Sri Lanka, Sudan, Suriname, Sweden, Switzerland, Syria, Tanzania, Tajikistan, Thailand, Togo, Trinidad and Tobago, Tunisia, Turkey, Uganda, Ukraine, UK, US, Uruguay, Uzbekistan, Venezuela, Vietnam, Zambia

**Convention on the Conservation of Antarctic Marine Living Resources**

note - abbreviated as Antarctic-Marine Living Resources

opened for signature - 5 May 1980  
entered into force - 7 April 1982

objective - to safeguard the environment and protect the integrity of the ecosystem of the seas surrounding Antarctica, and to conserve Antarctic marine living resources

parties - (31) Argentina, Australia, Belgium, Brazil, Bulgaria, Canada, Chile, EU, Finland, France, Germany, Greece, India, Italy, Japan, South Korea, Mauritius, Namibia, Netherlands, NZ, Norway, Peru, Poland, Russia, South Africa, Spain, Sweden, Ukraine, UK, US, Uruguay, Vanuatu

**Convention on the International Trade in Endangered Species of Wild Flora and Fauna (CITES)**

note - abbreviated as Endangered Species  
opened for signature - 3 March 1973  
entered into force - 1 July 1975

objective - to protect certain endangered species from overexploitation by means of a system of import/export permits

parties - (170) Afghanistan, Albania, Algeria, Antigua and Barbuda, Argentina, Australia, Austria, Azerbaijan, The Bahamas, Bangladesh, Barbados, Belarus, Belgium, Belize, Benin, Bhutan, Bolivia, Botswana, Brazil, Brunei, Bulgaria, Burkina Faso, Burma, Burundi, Cambodia, Cameroon, Canada, Cape Verde, Central African Republic, Chad, Chile, China, Colombia, Comoros, Democratic Republic of the Congo, Republic of the Congo, Costa Rica, Cote d'Ivoire, Croatia, Cuba, Cyprus, Czech Republic, Denmark, Djibouti, Dominica, Dominican Republic, Ecuador, Egypt, El Salvador, Equatorial Guinea, Eritrea, Estonia, Ethiopia, Fiji, Finland, France, Gabon, The Gambia, Georgia, Germany, Ghana, Greece, Grenada, Guatemala, Guinea, Guinea-Bissau, Guyana, Honduras, Hungary, Iceland, India, Indonesia, Iran, Ireland, Israel, Italy, Jamaica, Japan, Jordan, Kazakhstan, Kenya, South Korea, Kuwait, Laos, Latvia, Lesotho, Liberia, Libya, Liechtenstein, Lithuania, Luxembourg, Macedonia, Madagascar, Malawi, Malaysia, Mali, Malta, Mauritania, Mauritius, Mexico, Moldova, Monaco, Mongolia, Montenegro, Morocco, Mozambique, Namibia, Nepal, Netherlands, NZ, Nicaragua, Niger, Nigeria, Norway, Palau, Pakistan, Panama, Papua New Guinea, Paraguay, Peru, Philippines, Poland, Portugal, Qatar, Romania, Russia, Rwanda, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Samoa, San Marino, Sao Tome and Principe, Saudi Arabia, Senegal, Serbia, Seychelles, Sierra Leone, Singapore, Slovakia, Slovenia, Somalia, South Africa, Spain, Sri Lanka, Sudan, Suriname, Swaziland, Sweden, Switzerland, Syria, Tanzania, Thailand, Togo, Trinidad and Tobago, Tunisia, Turkey, Uganda, Ukraine, UAE, UK, US, Uruguay, Uzbekistan, Vanuatu, Venezuela, Vietnam, Yemen, Zambia, Zimbabwe

**Convention on the Prevention of Marine Pollution by Dumping Wastes and Other Matter (London Convention)**

note - abbreviated as Marine Dumping  
opened for signature - 29 December 1972  
entered into force - 30 August 1975

objective - to control pollution of the sea by dumping and to encourage regional agreements supplementary to the Convention; the London Convention came into force in 1996

parties - (88) Afghanistan, Angola, Antigua and Barbuda, Argentina, Australia, Azerbaijan, Barbados, Belarus, Belgium, Bolivia, Brazil, Bulgaria, Canada, Cape Verde, Chile, China, Democratic Republic of the Congo, Costa Rica, Cote d'Ivoire, Croatia, Cuba, Cyprus, Denmark, Dominican Republic,



Egypt, Equatorial Guinea, Finland, France, Gabon, Germany, Greece, Guatemala, Haiti, Honduras, Hong Kong (associate member), Hungary, Iceland, Iran, Ireland, Italy, Jamaica, Japan, Jordan, Kenya, Kiribati, South Korea, Libya, Luxembourg, Malta, Mexico, Monaco, Montenegro, Morocco, Nauru, Netherlands, NZ, Nigeria, Norway, Oman, Pakistan, Panama, Papua New Guinea, Peru, Philippines, Poland, Portugal, Russia, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Saudi Arabia, Serbia, Seychelles, Slovenia, Solomon Islands, South Africa, Spain, Suriname, Sweden, Switzerland, Tonga, Trinidad and Tobago, Tunisia, Ukraine, UAE, UK, US, Vanuatu

associate members to the London Convention - (2) Faroe Islands, Macau  
countries that have signed, but not yet ratified - (3) Chad, Kuwait, Uruguay

**Convention on the Prohibition of Military or Any Other Hostile Use of Environmental Modification Techniques**

note - abbreviated as Environmental Modification  
opened for signature - 10 December 1976  
entered into force - 5 October 1978

objective - to prohibit the military or other hostile use of environmental modification techniques in order to further world peace and trust among nations

parties - (73) Afghanistan, Algeria, Antigua and Barbuda, Argentina, Armenia, Australia, Austria, Bangladesh, Belarus, Belgium, Benin, Brazil, Bulgaria, Canada, Cape Verde, Chile, China, Costa Rica, Cuba, Cyprus, Czech Republic, Denmark, Dominica, Egypt, Finland, Germany, Ghana, Greece, Guatemala, Hungary, India, Ireland, Italy, Japan, Kazakhstan, North Korea, South Korea, Kuwait, Laos, Lithuania, Malawi, Mauritius, Mongolia, Netherlands, NZ, Nicaragua, Niger, Norway, Pakistan, Panama, Papua New Guinea, Poland, Romania, Russia, Saint Lucia, Saint Vincent and the Grenadines, Sao Tome and Principe, Slovakia, Slovenia, Solomon Islands, Spain, Sri Lanka, Sweden, Switzerland, Tajikistan, Tunisia, Ukraine, UK, US, Uruguay, Uzbekistan, Vietnam, Yemen

countries that have signed, but not yet ratified - (16) Bolivia, Democratic Republic of the Congo, Ethiopia, Holy See, Iceland, Iran, Iraq, Lebanon, Liberia, Luxembourg, Morocco, Portugal, Sierra Leone, Syria, Turkey, Uganda

**Desertification**

see United Nations Convention to Combat Desertification in those Countries Experiencing Serious Drought and/or Desertification, Particularly in Africa

**Endangered Species**

see Convention on the International Trade in Endangered Species of Wild Flora and Fauna (CITES)

**Environmental Modification**

see Convention on the Prohibition of Military or Any Other Hostile Use of Environmental Modification Techniques

**Hazardous Wastes**

see Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal

**International Convention for the Regulation of Whaling**

note - abbreviated as Whaling

opened for signature - 2 December 1946  
entered into force - 10 November 1948

objective - to protect all species of whales from overhunting; to establish a system of international regulation for the whale fisheries to ensure proper conservation and development of whale stocks; and to safeguard for future generations the great natural resources represented by whale stocks

parties - (84) Antigua and Barbuda, Argentina, Australia, Austria, Belgium, Belize, Benin, Brazil, Cambodia, Cameroon, Chile, China, Republic of the Congo, Costa Rica, Cote D'Ivoire, Croatia, Cyprus, Czech Republic, Denmark, Dominica, Ecuador, Eritrea, Estonia, Finland, France, Gabon, The Gambia, Germany, Greece, Grenada, Guatemala, Guinea, Guinea-Bissau, Hungary, Iceland, India, Ireland, Israel, Italy, Japan, Kenya, Kiribati, South Korea, Laos, Lithuania, Luxembourg, Mali, Marshall Islands, Mauritania, Mexico, Monaco, Mongolia, Morocco, Nauru, Netherlands, NZ, Nicaragua, Norway, Oman, Palau, Panama, Peru, Portugal, Romania, Russia, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, San Marino, Senegal, Slovakia, Slovenia, Solomon Islands, South Africa, Spain, Suriname, Sweden, Switzerland, Tanzania, Togo, Tuvalu, UK, US, Uruguay

**International Tropical Timber Agreement, 1983**

note - abbreviated as Tropical Timber 83  
opened for signature - 18 November 1983  
entered into force - 1 April 1985; this agreement expired when the International Tropical Timber Agreement, 1994, went into force

objective - to provide an effective framework for cooperation between tropical timber producers and consumers and to encourage the development of national policies aimed at sustainable utilization and conservation of tropical forests and their genetic resources

parties - (59) Australia, Austria, Belgium, Bolivia, Brazil, Burma, Cambodia, Cameroon, Canada, Central African Republic, China, Colombia, Democratic Republic of the Congo, Republic of the Congo, Cote d'Ivoire, Denmark, Ecuador, Egypt, EU, Fiji, Finland, France, Gabon, Germany, Ghana, Greece, Guatemala, Guyana, Honduras, India, Indonesia, Ireland, Italy, Japan, South Korea, Liberia, Luxembourg, Malaysia, Mexico, Nepal, Netherlands, NZ, Nigeria, Norway, Panama, Papua New Guinea, Peru, Philippines, Portugal, Russia, Spain, Suriname, Sweden, Switzerland, Thailand, Togo, Trinidad and Tobago, UK, US, Vanuatu, Venezuela

**International Tropical Timber Agreement, 1994**

note - abbreviated as Tropical Timber 94  
opened for signature - 26 January 1994  
entered into force - 1 January 1997

objective - to ensure that by the year 2000 exports of tropical timber originate from sustainably managed sources; to establish a fund to assist tropical timber producers in obtaining the resources necessary to reach this objective

parties - (61) Australia, Austria, Belgium, Bolivia, Brazil, Burma, Cambodia, Cameroon, Canada, Central African Republic, China, Colombia, Democratic Republic of the Congo, Republic of the Congo, Cote d'Ivoire, Denmark, Ecuador, Egypt, EU, Fiji, Finland, France, Gabon, Germany, Ghana, Greece, Guatemala, Guyana, Honduras, India, Indonesia, Ireland, Italy, Japan, South Korea, Liberia, Luxembourg, Malaysia, Mexico, Nepal, Netherlands, NZ, Nigeria, Norway, Panama, Papua New

Guinea, Peru, Philippines, Poland, Portugal, Spain, Suriname, Sweden, Switzerland, Thailand, Togo, Trinidad and Tobago, UK, US, Vanuatu, Venezuela

**Kyoto Protocol to the United Nations Framework Convention on Climate Change**

note - abbreviated as Climate Change-Kyoto Protocol

opened for signature - 16 March 1998

entered into force - 23 February 2005

objective - to further reduce greenhouse gas emissions by enhancing the national programs of developed countries aimed at this goal and by establishing percentage reduction targets for the developed countries

parties - (184) Albania, Algeria, Angola, Antigua and Barbuda, Argentina, Armenia, Australia, Austria, Azerbaijan, The Bahamas, Bahrain, Bangladesh, Barbados, Belarus, Belgium, Belize, Benin, Bhutan, Bolivia, Bosnia and Herzegovina, Botswana, Brazil, Bulgaria, Burkina Faso, Burma, Burundi, Cambodia, Cameroon, Cape Verde, Central African Republic, Chile, China, Colombia, Comoros, Democratic Republic of the Congo, Republic of the Congo, Cook Island, Costa Rica, Cote d'Ivoire, Croatia, Cuba, Cyprus, Czech Republic, Denmark, Djibouti, Dominica, Dominican Republic, Ecuador, Egypt, El Salvador, Equatorial Guinea, Eritrea, Estonia, Ethiopia, EU, Fiji, Finland, France, Gabon, The Gambia, Georgia, Germany, Ghana, Greece, Grenada, Guatemala, Guinea, Guinea-Bissau, Guyana, Haiti, Honduras, Hungary, Iceland, India, Indonesia, Iran, Ireland, Israel, Italy, Jamaica, Japan, Jordan, Kenya, Kiribati, North Korea, South Korea, Kuwait, Kyrgyzstan, Laos, Latvia, Lebanon, Lesotho, Liberia, Libya, Liechtenstein, Lithuania, Luxembourg, Macedonia, Madagascar, Malawi, Malaysia, Maldives, Mali, Malta, Marshall Islands, Mauritania, Mauritius, Mexico, Federated States of Micronesia, Moldova, Monaco, Mongolia, Montenegro, Morocco, Mozambique, Namibia, Nauru, Nepal, Netherlands, NZ, Nicaragua, Niger, Nigeria, Niue, Norway, Oman, Pakistan, Palau, Panama, Papua New Guinea, Paraguay, Peru, Philippines, Poland, Portugal, Qatar, Romania, Russia, Rwanda, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Samoa, Sao Tome and Principe, Saudi Arabia, Senegal, Serbia, Seychelles, Sierra Leone, Singapore, Slovakia, Slovenia, Solomon Islands, South Africa, Spain, Sri Lanka, Sudan, Suriname, Swaziland, Sweden, Switzerland, Syria, Tajikistan, Tanzania, Thailand, Timor-Leste, Togo, Tonga, Trinidad and Tobago, Tunisia, Turkmenistan, Tuvalu, Uganda, Ukraine, UAE, UK, Uruguay, Uzbekistan, Vanuatu, Venezuela, Vietnam, Yemen, Zambia

countries that have signed, but not yet ratified - (2) Kazakhstan, US

**Law of the Sea**

see United Nations Convention on the Law of the Sea (LOS)

**Marine Dumping**

see Convention on the Prevention of Marine Pollution by Dumping Wastes and Other Matter (London Convention)

**Marine Life Conservation**

see Convention on Fishing and Conservation of Living Resources of the High Seas

**Montreal Protocol on Substances That Deplete the Ozone Layer**

note - abbreviated as Ozone Layer Protection

opened for signature - 16 September 1987

entered into force - 1 January 1989

objective - to protect the ozone layer by controlling emissions of substances that deplete it

parties - (194) Afghanistan, Albania, Algeria, Andorra, Angola, Antigua and Barbuda, Argentina, Armenia, Australia, Austria, Azerbaijan, The Bahamas, Bahrain, Bangladesh, Barbados, Belarus, Belgium, Belize, Benin, Bhutan, Bolivia, Bosnia and Herzegovina, Botswana, Brazil, Brunei, Bulgaria, Burkina Faso, Burma, Burundi, Cambodia, Cameroon, Canada, Cape Verde, Central African Republic, Chad, Chile, China, Colombia, Comoros, Democratic Republic of the Congo, Republic of the Congo, Cook Islands, Costa Rica, Cote d'Ivoire, Croatia, Cuba, Cyprus, Czech Republic, Denmark, Djibouti, Dominica, Dominican Republic, Ecuador, Egypt, El Salvador, Equatorial Guinea, Eritrea, Estonia, Ethiopia, EU, Fiji, Finland, France, Gabon, The Gambia, Georgia, Germany, Ghana, Greece, Grenada, Guatemala, Guinea, Guinea-Bissau, Guyana, Haiti, Holy See, Honduras, Hungary, Iceland, India, Indonesia, Iran, Iraq, Ireland, Israel, Italy, Jamaica, Japan, Jordan, Kazakhstan, Kenya, Kiribati, North Korea, South Korea, Kuwait, Kyrgyzstan, Laos, Latvia, Lebanon, Lesotho, Liberia, Libya, Liechtenstein, Lithuania, Luxembourg, Macedonia, Madagascar, Malawi, Malaysia, Maldives, Mali, Malta, Marshall Islands, Mauritania, Mauritius, Mexico, Federated States of Micronesia, Moldova, Monaco, Mongolia, Montenegro, Morocco, Mozambique, Namibia, Nauru, Nepal, Netherlands, NZ, Nicaragua, Niger, Nigeria, Niue, Norway, Oman, Pakistan, Palau, Panama, Papua New Guinea, Paraguay, Peru, Philippines, Poland, Portugal, Qatar, Romania, Russia, Rwanda, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Samoa, Sao Tome and Principe, Saudi Arabia, Senegal, Serbia, Seychelles, Sierra Leone, Singapore, Slovakia, Slovenia, Solomon Islands, Somalia, South Africa, Spain, Sri Lanka, Sudan, Suriname, Swaziland, Sweden, Switzerland, Syria, Tajikistan, Tanzania, Thailand, Togo, Tonga, Trinidad and Tobago, Tunisia, Turkey, Turkmenistan, Tuvalu, Uganda, Ukraine, UAE, UK, US, Uruguay, Uzbekistan, Vanuatu, Venezuela, Vietnam, Yemen, Zambia, Zimbabwe

**Nuclear Test Ban**

see Treaty Banning Nuclear Weapons Tests in the Atmosphere, in Outer Space, and Under Water

**Ozone Layer Protection**

see Montreal Protocol on Substances That Deplete the Ozone Layer

**Protocol of 1978 Relating to the International Convention for the Prevention of Pollution From Ships, 1973 (MARPOL)**

note - abbreviated as Ship Pollution

opened for signature - 17 February 1978

entered into force - 2 October 1983

objective - to preserve the marine environment through the complete elimination of pollution by oil and other harmful substances and the minimization of accidental discharge of such substances

parties - (139) Algeria, Angola, Antigua and Barbuda, Argentina, Australia, Austria, Azerbaijan, The Bahamas, Bangladesh, Barbados, Belarus, Belgium, Belize, Benin, Bolivia, Brazil, Brunei, Bulgaria, Burma, Cambodia, Canada, Cape Verde, Chile, China, Colombia, Comoros, Republic of Congo, Cote d'Ivoire, Croatia, Cuba, Cyprus, Czech Republic, Denmark, Djibouti, Dominica, Dominican Republic, Ecuador, Egypt, Equatorial Guinea, Estonia, Faroe Islands, Finland, France, Gabon, The Gambia, Georgia, Germany, Ghana, Greece, Guatemala, Guinea, Guyana, Honduras, Hong Kong, Hungary, Iceland, India, Indonesia, Iran, Ireland, Israel, Italy, Jamaica, Japan, Kazakhstan, Kenya, North Korea, South Korea, Latvia, Lebanon, Liberia, Lithuania, Luxembourg, Libya, Macau, Madagascar, Malawi, Malaysia, Maldives, Malta, Marshall Islands, Mauritania, Mauritius, Mexico, Moldova, Monaco, Mongolia, Montenegro, Morocco, Mozambique, Netherlands, NZ, Nicaragua, Nigeria, Norway, Oman, Pakistan, Panama, Papua New Guinea, Peru, Philippines, Poland, Portugal,

Qatar Romania, Russia, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Samoa, Sao Tome and Principe, Saudi Arabia, Senegal, Serbia, Seychelles, Sierra Leone, Singapore, Slovakia, Slovenia, South Africa, Spain, Sri Lanka, Suriname, Sweden, Switzerland, Syria, Togo, Tonga, Trinidad and Tobago, Tunisia, Turkey, Tuvalu, Ukraine, UK, US, Uruguay, Vanuatu, Venezuela, Vietnam

**Protocol on Environmental Protection to the Antarctic Treaty**

note - abbreviated as Antarctic-Environmental Protocol

opened for signature - 4 October 1991

entered into force - 14 January 1998

objective - to provide for comprehensive protection of the Antarctic environment and dependent and associated ecosystems; applies to the area covered by the Antarctic Treaty

consultative parties - (31) Argentina, Australia, Belgium, Brazil, Bulgaria, Canada, Chile, China, Czech Republic, Ecuador, Finland, France, Germany, India, Italy, Japan, South Korea, Netherlands, NZ, Norway, Peru, Poland, Romania, Russia, South Africa, Spain, Sweden, Ukraine, UK, US, Uruguay

non consultative parties - (12) Austria, Colombia, Cuba, Denmark, Greece, Guatemala, Hungary, North Korea, Papua New Guinea, Slovakia, Switzerland, Turkey

**Protocol to the 1979 Convention on Long-Range Transboundary Air Pollution Concerning the Control of Emissions of Nitrogen Oxides or Their Transboundary Fluxes**

note - abbreviated as Air Pollution-Nitrogen Oxides

opened for signature - 31 October 1988

entered into force - 14 February 1991

objective - to provide for the control or reduction of nitrogen oxides and their transboundary fluxes

parties - (32) Austria, Belarus, Belgium, Bulgaria, Canada, Croatia, Cyprus, Czech Republic, Denmark, Estonia, EU, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Liechtenstein, Lithuania, Luxembourg, Netherlands, Norway, Russia, Slovakia, Slovenia, Spain, Sweden, Switzerland, Ukraine, UK, US

countries that have signed, but not yet ratified - (1) Poland

**Protocol to the 1979 Convention on Long-Range Transboundary Air Pollution Concerning the Control of Emissions of Volatile Organic Compounds or Their Transboundary Fluxes**

note - abbreviated as Air Pollution-Volatile Organic Compounds

opened for signature - 18 November 1991

entered into force - 29 September 1997

objective - to provide for the control and reduction of emissions of volatile organic compounds in order to reduce their transboundary fluxes so as to protect human health and the environment from adverse effects

parties - (23) Austria, Belgium, Bulgaria, Croatia, Czech Republic, Denmark, Estonia, Finland, France, Germany, Hungary, Italy, Liechtenstein, Lithuania, Luxembourg, Monaco, Netherlands, Norway, Slovakia, Spain, Sweden, Switzerland, UK

countries that have signed, but not yet ratified - (6) Canada, EU, Greece, Portugal, Ukraine, US

**Protocol to the 1979 Convention on Long-Range Transboundary Air Pollution on Further Reduction of Sulphur Emissions**

note - abbreviated as Air Pollution-Sulphur 94

opened for signature - 14 June 1994

entered into force - 5 August 1998

objective - to provide for a further reduction in sulfur emissions or transboundary fluxes

parties - (28) Austria, Belgium, Bulgaria, Canada, Croatia, Cyprus, Czech Republic, Denmark, EU, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Liechtenstein, Lithuania, Luxembourg, Monaco, Netherlands, Norway, Slovakia, Slovenia, Spain, Sweden, Switzerland, UK

countries that have signed, but not yet ratified - (3) Poland, Russia, Ukraine

**Protocol to the 1979 Convention on Long-Range Transboundary Air Pollution on Persistent Organic Pollutants**

note - abbreviated as Air Pollution-Persistent Organic Pollutants

opened for signature - 24 June 1998

entered into force - 23 October 2003

objective - to provide for the control and reduction of emissions of persistent organic pollutants in order to reduce their transboundary fluxes so as to protect human health and the environment from adverse effects

parties - (29) Austria, Belgium, Bulgaria, Canada, Croatia, Cyprus, Czech Republic, Denmark, Estonia, EU, Finland, France, Germany, Hungary, Iceland, Italy, Latvia, Liechtenstein, Lithuania, Luxembourg, Moldova, Netherlands, Norway, Romania, Slovakia, Slovenia, Sweden, Switzerland, UK

countries that have signed, but not yet ratified - (8) Armenia, Greece, Ireland, Poland, Portugal, Spain, Ukraine, US

**Protocol to the 1979 Convention on Long-Range Transboundary Air Pollution on the Reduction of Sulphur Emissions or Their Transboundary Fluxes by at Least 30%**

note - abbreviated as Air Pollution-Sulphur 85

opened for signature - 8 July 1985

entered into force - 2 September 1987

objective - to provide for a 30% reduction in sulfur emissions or transboundary fluxes by 1993

parties - (23) Austria, Belarus, Belgium, Bulgaria, Canada, Czech Republic, Denmark, Estonia, Finland, France, Germany, Hungary, Italy, Liechtenstein, Lithuania, Luxembourg, Netherlands, Norway, Russia, Slovakia, Sweden, Switzerland, Ukraine

**Ship Pollution**

see Protocol of 1978 Relating to the International Convention for the Prevention of Pollution From Ships, 1973 (MARPOL)

**Treaty Banning Nuclear Weapon Tests in the Atmosphere, in Outer Space, and Under Water**

note - abbreviated as Nuclear Test Ban  
opened for signature - 5 August 1963  
entered into force - 10 October 1963

objective - to obtain an agreement on general and complete disarmament under strict international control in accordance with the objectives of the United Nations; to put an end to the armaments race and eliminate incentives for the production and testing of all kinds of weapons, including nuclear weapons

parties - (113) Afghanistan, Antigua and Barbuda, Argentina, Armenia, Australia, Austria, The Bahamas, Bangladesh, Belgium, Benin, Bhutan, Bolivia, Bosnia and Herzegovina, Botswana, Brazil, Bulgaria, Burma, Canada, Central African Republic, Chad, China, Colombia, Democratic Republic of the Congo, Costa Rica, Cote d'Ivoire, Croatia, Cyprus, Czech Republic, Denmark, Dominican Republic, Ecuador, Egypt, El Salvador, Fiji, Finland, Gabon, The Gambia, Germany, Ghana, Greece, Guatemala, Honduras, Hungary, Iceland, India, Indonesia, Iran, Iraq, Ireland, Israel, Italy, Jamaica, Japan, Jordan, Kenya, South Korea, Kuwait, Laos, Lebanon, Liberia, Luxembourg, Madagascar, Malawi, Malaysia, Malta, Mauritania, Mauritius, Mexico, Morocco, Nepal, Netherlands, NZ, Nicaragua, Niger, Nigeria, Norway, Panama, Papua New Guinea, Peru, Philippines, Poland, Romania, Russia, Rwanda, Samoa, San Marino, Senegal, Serbia, Seychelles, Sierra Leone, Singapore, Slovakia, Slovenia, South Africa, Spain, Sri Lanka, Sudan, Suriname, Swaziland, Sweden, Switzerland, Syria, Thailand, Togo, Tonga, Trinidad and Tobago, Tunisia, Turkey, Uganda, UK, US, Venezuela, Zambia

countries that have signed, but not yet ratified - (17) Algeria, Burkina Faso, Burundi, Cameroon, Chile, Ethiopia, Haiti, Libya, Mali, Pakistan, Paraguay, Portugal, Somalia, Tanzania, Uruguay, Vietnam, Yemen

**Tropical Timber 83**

see International Tropical Timber Agreement, 1983

**Tropical Timber 94**

see International Tropical Timber Agreement, 1994

**United Nations Convention on the Law of the Sea (LOS)**

note - abbreviated as Law of the Sea  
opened for signature - 10 December 1982  
entered into force - 16 November 1994

objective - to set up a comprehensive new legal regime for the sea and oceans; to include rules concerning environmental standards as well as enforcement provisions dealing with pollution of the marine environment

parties - (157) Albania, Algeria, Angola, Antigua and Barbuda, Argentina, Armenia, Australia, Austria, The Bahamas, Bahrain, Bangladesh, Barbados, Belarus, Belgium, Belize, Benin, Bolivia, Bosnia and Herzegovina, Botswana, Brazil, Brunei, Bulgaria, Burkina Faso, Burma, Cameroon, Canada, Cape Verde, Chile, China, Comoros, Democratic Republic of the Congo, Republic of the Congo, Cook Islands, Costa Rica, Cote d'Ivoire, Croatia, Cuba, Cyprus, Czech Republic, Denmark, Djibouti, Dominica, Egypt, Equatorial Guinea, Estonia, EU, Fiji, Finland, France, Gabon, The Gambia, Georgia, Germany, Ghana, Greece, Grenada, Guatemala, Guinea, Guinea-Bissau, Guyana, Haiti, Honduras, Hungary, Iceland, India, Indonesia, Iraq, Ireland, Italy, Jamaica, Japan, Jordan, Kenya, Kiribati, South Korea, Kuwait, Laos, Latvia, Lebanon, Lesotho, Liberia, Lithuania,

Luxembourg, Macedonia, Madagascar, Malaysia, Maldives, Mali, Malta, Marshall Islands, Mauritania, Mauritius, Mexico, Federated States of Micronesia, Moldova, Monaco, Mongolia, Montenegro, Morocco, Mozambique, Namibia, Nauru, Nepal, Netherlands, NZ, Nicaragua, Nigeria, Niue, Norway, Oman, Pakistan, Palau, Panama, Papua New Guinea, Paraguay, Philippines, Poland, Portugal, Qatar, Romania, Russia, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Samoa, Sao Tome and Principe, Saudi Arabia, Senegal, Serbia, Seychelles, Sierra Leone, Singapore, Slovakia, Slovenia, Solomon Islands, Somalia, South Africa, Spain, Sri Lanka, Sudan, Suriname, Sweden, Tanzania, Togo, Tonga, Trinidad and Tobago, Tunisia, Tuvalu, Uganda, Ukraine, UK, Uruguay, Vanuatu, Vietnam, Yemen, Zambia, Zimbabwe

countries that have signed, but not yet ratified - (21) Afghanistan, Bhutan, Burundi, Cambodia, Central African Republic, Chad, Colombia, Dominican Republic, El Salvador, Ethiopia, Iran, North Korea, Libya, Liechtenstein, Malawi, Niger, Rwanda, Swaziland, Switzerland, Thailand, UAE

**United Nations Convention to Combat Desertification in Those Countries Experiencing Serious Drought and/or Desertification, Particularly in Africa**

note - abbreviated as Desertification

opened for signature - 14 October 1994

entered into force - 26 December 1996

objective - to combat desertification and mitigate the effects of drought through national action programs that incorporate long-term strategies supported by international cooperation and partnership arrangements

parties - (193) Afghanistan, Albania, Algeria, Andorra, Angola, Antigua and Barbuda, Argentina, Armenia, Australia, Austria, Azerbaijan, The Bahamas, Bahrain, Bangladesh, Barbados, Belarus, Belgium, Belize, Benin, Bhutan, Bolivia, Bosnia and Herzegovina, Botswana, Brazil, Brunei, Bulgaria, Burkina Faso, Burma, Burundi, Cambodia, Cameroon, Canada, Cape Verde, Central African Republic, Chad, Chile, China, Colombia, Comoros, Democratic Republic of the Congo, Republic of the Congo, Cook Islands, Costa Rica, Cote d'Ivoire, Croatia, Cuba, Cyprus, Czech Republic, Denmark, Djibouti, Dominica, Dominican Republic, Ecuador, Egypt, El Salvador, Equatorial Guinea, Eritrea, Ethiopia, EU, Fiji, Finland, France, Gabon, The Gambia, Georgia, Germany, Ghana, Greece, Grenada, Guatemala, Guinea, Guinea-Bissau, Guyana, Haiti, Honduras, Hungary, Iceland, India, Indonesia, Iran, Ireland, Israel, Italy, Jamaica, Japan, Jordan, Kazakhstan, Kenya, Kiribati, North Korea, South Korea, Kuwait, Kyrgyzstan, Laos, Latvia, Lebanon, Lesotho, Liberia, Libya, Liechtenstein, Lithuania, Luxembourg, Macedonia, Madagascar, Malawi, Malaysia, Maldives, Mali, Malta, Marshall Islands, Mauritania, Mauritius, Mexico, Federated States of Micronesia, Moldova, Monaco, Mongolia, Montenegro, Morocco, Mozambique, Namibia, Nauru, Nepal, Netherlands, NZ, Nicaragua, Niger, Nigeria, Niue, Norway, Oman, Pakistan, Palau, Panama, Papua New Guinea, Paraguay, Peru, Philippines, Poland, Portugal, Qatar, Romania, Russia, Rwanda, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Samoa, San Marino, Sao Tome and Principe, Saudi Arabia, Senegal, Serbia, Seychelles, Sierra Leone, Singapore, Slovakia, Slovenia, Solomon Islands, Somalia, South Africa, Spain, Sri Lanka, Sudan, Suriname, Swaziland, Sweden, Switzerland, Syria, Tajikistan, Thailand, Tanzania, Timor-Leste, Togo, Tonga, Trinidad and Tobago, Tunisia, Turkey, Turkmenistan, Tuvalu, Uganda, Ukraine, UAE, UK, US, Uruguay, Uzbekistan, Vanuatu, Venezuela, Vietnam, Yemen, Zambia, Zimbabwe

**United Nations Framework Convention on Climate Change**

note - abbreviated as Climate Change

opened for signature - 9 May 1992

entered into force - 21 March 1994



objective - to achieve stabilization of greenhouse gas concentrations in the atmosphere at a low enough level to prevent dangerous anthropogenic interference with the climate system

parties - (192) Afghanistan, Albania, Algeria, Angola, Antigua and Barbuda, Argentina, Armenia, Australia, Austria, Azerbaijan, The Bahamas, Bahrain, Bangladesh, Barbados, Belarus, Belgium, Belize, Benin, Bhutan, Bolivia, Bosnia and Herzegovina, Botswana, Brazil, Brunei, Bulgaria, Burkina Faso, Burma, Burundi, Cambodia, Cameroon, Canada, Cape Verde, Central African Republic, Chad, Chile, China, Colombia, Comoros, Democratic Republic of the Congo, Republic of the Congo, Cook Islands, Costa Rica, Cote d'Ivoire, Croatia, Cuba, Cyprus, Czech Republic, Denmark, Djibouti, Dominica, Dominican Republic, Ecuador, Egypt, El Salvador, Equatorial Guinea, Eritrea, Estonia, Ethiopia, EU, Fiji, Finland, France, Gabon, The Gambia, Georgia, Germany, Ghana, Greece, Grenada, Guatemala, Guinea, Guinea-Bissau, Guyana, Haiti, Honduras, Hungary, Iceland, India, Indonesia, Iran, Ireland, Israel, Italy, Jamaica, Japan, Jordan, Kazakhstan, Kenya, Kiribati, North Korea, South Korea, Kuwait, Kyrgyzstan, Laos, Latvia, Lebanon, Lesotho, Liberia, Libya, Liechtenstein, Lithuania, Luxembourg, Macedonia, Madagascar, Malawi, Malaysia, Maldives, Mali, Malta, Marshall Islands, Mauritania, Mauritius, Mexico, Federated States of Micronesia, Moldova, Monaco, Mongolia, Montenegro, Morocco, Mozambique, Namibia, Nauru, Nepal, Netherlands, NZ, Nicaragua, Niger, Nigeria, Niue, Norway, Oman, Pakistan, Palau, Panama, Papua New Guinea, Paraguay, Peru, Philippines, Poland, Portugal, Qatar, Romania, Russia, Rwanda, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Samoa, San Marino, Sao Tome and Principe, Saudi Arabia, Senegal, Serbia, Seychelles, Sierra Leone, Singapore, Slovakia, Slovenia, Solomon Islands, South Africa, Spain, Sri Lanka, Sudan, Suriname, Swaziland, Sweden, Switzerland, Syria, Tajikistan, Tanzania, Thailand, Timor-Leste, Togo, Tonga, Trinidad and Tobago, Tunisia, Turkey, Turkmenistan, Tuvalu, Uganda, Ukraine, UAE, UK, US, Uruguay, Uzbekistan, Vanuatu, Venezuela, Vietnam, Yemen, Zambia, Zimbabwe

**Wetlands**

see Convention on Wetlands of International Importance Especially As Waterfowl Habitat (Ramsar)

**Whaling**

see International Convention for the Regulation of Whaling

## **APPENDIX 6-3: NAVY AND MARINE CORPS OIL DISCHARGE AND HAZARDOUS SUBSTANCE RELEASE REPORTS MESSAGE FORMATS**

### **NAVY OIL SPILL REPORT (MESSAGE FORMAT)**

**1. Precedence (for messages only).** Provided that prior voice reports have been made both to the US Coast Guard National Response Center and the reporting command's Chain of Command, use "Routine" precedence for Oil Spill Report Messages. If either voice report has not been made, use "Priority" precedence.

**2. Classification or Special Handling Marks.** Oil Spill Report Messages are unclassified and do not warrant special handling marks unless classified or sensitive business information must be incorporated. Avoid inclusion of such information to the maximum extent possible to allow Oil Spill Report Messages to be handled on a solely unclassified basis.

**3. Spill Volume Classification:** To better advise the Navy On-Scene Coordinator and Navy leadership of the magnitude of each oil spill, the Subject line of an Oil Spill Report Message should bear a volume estimate of the spill, if known, in the following format:

- OIL SPILL REPORT, X GALLONS, [ACTIVITY NAME] (MINIMIZE CONSIDERED); or
- OIL SPILL REPORT, UNKNOWN VOLUME, [ACTIVITY NAME] (MINIMIZE CONSIDERED); or
- OIL SPILL REPORT, SHEEN SIGHTING (MINIMIZE CONSIDERED).

**4. Updating Oil Spill Report Messages:** Oil Spill Report Messages should be updated with a follow-up SITREP message as soon as the reporting activity becomes aware of new information concerning the origin, quantity, type, operation under way or cause of the spill. Similarly, *if the final estimate of the amount spilled differs substantially from the amount initially reported*, the reporting activity must send a SITREP update message to all action and info addresses on the original spill message.

#### **5. Action and Info Addressees:**

FM: Navy Activity or Ship responsible for or discovering the spill

TO: Navy On-Scene Coordinator  
Chain of Command

INFO: Area Environmental Coordinator  
Host Activity  
CNO WASHINGTON DC//N45//  
CHINFO WASHINGTON DC//JJJ//  
COMNAVSEASYS COM WASHINGTON DC//00C//  
NFESC PORT HUENEME CA//424//  
NAVPETOFF ALEXANDRIA VA//JJJ//

[Add the following Info Addressee for spills into or upon the navigable waters of the United States, its contiguous zone (generally within 12 nautical miles of US shores) and adjacent shorelines.]

COGARD NATIONAL RESPONSE CENTER WASHINGTON DC//JJJ//

**6. Body of Report:** Use the following format for the body of all Oil Spill Report Messages:

## DEPLOYED MAGTF JUDGE ADVOCATE HANDBOOK

UNCLAS//NO5090//

SUBJ: OIL SPILL REPORT, X GALLONS, [ACTIVITY NAME] (MINIMIZE CONSIDERED) or OIL SPILL REPORT, UNKNOWN VOLUME, [ACTIVITY NAME] (MINIMIZE CONSIDERED) or OIL SPILL SHEEN SIGHTING, (MINIMIZE CONSIDERED)  
MSGID/GENADMIN/ORIGINATOR//  
RMKS/

### 1. LOCAL TIME AND DATE SPILL [OCCURRED/DISCOVERED].

### 2. [FACILITY/VESSEL] ORIGINATING SPILL:

- For Navy ships, list ship name, hull number and unit identification code (UIC).
- For Navy shore facilities, list facility name and UIC.
- For non-Navy spills, list name of responsible party, if known.
- For organizations under contract to Navy, list firm name and contracting Navy activity.
- If source unknown at time of this report, list only “Unknown” until such time as definitively established.

### 3. SPILL LOCATION:

- For spills at sea, list latitude, longitude and distance to nearest land.
- For spills in port, list port name, host naval command (NAVSTA, Shipyard) and specific location (pier or mooring designation).
- For spills ashore, list city, state, facility name and specific location (building designation).

### 4. VOLUME SPILLED IN GALLONS:

- Estimates must be made by examining loss at source: i.e. sounding tank, calculating flow rate of spill.
- If amount unknown at time of this report, list only “Unknown” until such time as definitively established.
- Estimating volume by visual observation of oil on water can be very unreliable.
- If volume estimate can only be made by visual observation of oil on water, do not report estimate here.
- If oil/water mixture, indicate percent oil.

### 5. TYPE OF OIL SPILLED:

- List whether diesel fuel marine (DFM); naval distillate; jet fuel (JP-4 or 5); aviation/automotive gasoline; automotive diesel; heating fuels (grade 1 or 2, kerosene); residual burner fuel (grade 4, 5 or 6); lubricating oil; hydraulic oil; oil/oil mixture (including slops and waste oil); oil/water mixture (including bilge waste).
- If type unknown at time of this report, list only “Unknown” until such time as definitively established.

### 6. OPERATION UNDER WAY WHEN SPILL [OCCURRED/DISCOVERED]:

- If fueling/defueling, list whether underway or in port by pipeline, truck or barge.
- Whether conducting internal fuel oil transfer operations (including movement from one storage tank to another); pumping bilges; conducting salvage operations; aircraft operations; or “Other” (specify).
- If operation unknown at time of this report, list only “Unknown” until such time as definitively established.

### 7. SPILL CAUSE:

## DEPLOYED MAGTF JUDGE ADVOCATE HANDBOOK

- Classify the cause of the spill by citing one or more of the following categories and then provide a narrative description of specific spill cause: Structural; electrical; hose; valve/fitting; tank level indicator; oil/water separator/oil content monitor; other equipment (specify component that failed); collision, grounding, or sinking; valve misalignment; monitoring error; procedural/communications error; chronic/recurring; or weather related.
- If cause unknown at time of this report, list only “Unknown” until such time as definitively established.

### 8. SLICK DESCRIPTION AND MOVEMENT:

- Size: length and width (yards or nm) and percentage of that area covered.
- Color: silver transparent, gray, rainbow, blue, dull brown, dark brown, black, brown orange mousse.
- Odor: noxious, light, undetectable.
- Slick movement: set (degrees true toward) and drift (knots).

### 9. SPILL ENVIRONMENT:

- Weather: clear, overcast, partly-cloudy, rain, snow, etc.
- Prevailing wind at scene: direction (degrees true from), speed (knots), fetch (yards or nautical miles).
- Air and water temperature: indicate ice cover.
- Sea state: Beaufort Force number.
- Tide: high, low, ebb, flood or slack / Current: set (degrees true toward) and drift (knots).

### 10. AREAS DAMAGED OR THREATENED:

- Body of water, area or resources threatened or affected.
- Nature and extent of damage to property, wildlife or other natural resources (if any).

### 11. TELEPHONIC REPORT TO NATIONAL RESPONSE CENTER [WAS/WAS NOT] MADE:

- If not made, provide reason why: beyond 12 nm from US shores, no threat to navigable water, etc.
- If made, list: DTG of telephonic report; NRC report/case number; name of NRC official taking report; and
- Navy Command making telephonic report.

### 12. SAMPLES [WERE/WERE NOT] TAKEN:

- If taken, identify location(s) from which taken: tanks, hoses, piping, slip, jetty, etc.
- If taken, identify collecting officer by name, rank and agency.

### 13. CONTAINMENT METHOD [PLANNED/USED]:

- If none, state reason.
- Otherwise, indicate equipment utilized: boom; ship's hull; camel; water spray; chemical agent.

### 14. SPILL REMOVAL METHOD [PLANNED/USED]:

- If none, state reason.
- Equipment planned/used: used: Rapid Response Skimmer or Dip 3001 skimmer; portable skimmer, absorbent materials (oil absorbent pads, chips, etc.); dispersants; vacuum trucks/pumps; other (specify).

### 15. VOLUME OF PRODUCT RECOVERED IN GALLONS: (Decanted pure product.)

## DEPLOYED MAGTF JUDGE ADVOCATE HANDBOOK

### 16. PARTIES PERFORMING SPILL REMOVAL:

- Identify lead organization in charge: Navy Command; USCG; EPA.
- Identify all other parties involved: commercial firms; supporting Navy activities; State or local agencies.

### 17. FEDERAL, STATE OR LOCAL REGULATORY ACTIVITY DURING THIS INCIDENT:

- Identify by name and agency any official attending on-scene or making telephonic inquiry.
- Note whether officials boarded vessel and include date, time and spaces inspected.

### 18. ASSISTANCE REQUIRED/ADDITIONAL COMMENTS:

19. LESSONS LEARNED: How could this spill have been avoided?

20. ACTIVITY CONTACT FOR ADDITIONAL INFORMATION: List name, rank/rate, command, code, DSN and/or commercial telephone numbers. //

**NAVY HAZARDOUS SUBSTANCE RELEASE REPORT  
(MESSAGE FORMAT)**

**1. Precedence (for messages only).** Provided that prior voice reports have been made to the US Coast Guard National Response Center and the reporting command's Chain of Command, use "Routine Precedence" for Hazardous Substance (HS) Release Report Messages not classified as an "Extremely Hazardous Substance." If either voice report has not been made, use "Priority Precedence". If Extremely Hazardous Substance, always use "Priority Precedence."

**2. Classification or Special Handling Marks.** HS Release Report Messages are unclassified and do not warrant special handling marks unless classified or sensitive business information must be incorporated. Avoid inclusion of such information to the maximum extent possible to allow HS Release Report Messages to be handled on a solely unclassified basis.

**3. Correcting HS Release Report Messages:** HS Release Report Messages should be updated with a follow-up SITREP Message as soon as the reporting activity becomes aware of new information concerning the origin, amount, nature of substance, type of operation at source or cause of release. Similarly, *if the final estimate of the amount released differs substantially from the amount initially reported*, the reporting activity must send a SITREP update message to all action and info addresses on the original message.

**4. Action and Info Addressees:**

FM: Navy Activity or Ship responsible for or discovering the spill  
TO: Navy On-Scene Coordinator  
Chain of Command  
INFO: Area Environmental Coordinator  
Host Activity  
CNO WASHINGTON DC//N45//  
CHINFO WASHINGTON DC//JJJ//  
COMNAVSEASYS COM WASHINGTON DC//00C//  
NFESC PORT HUENEME CA//424//  
LEGSVSSUPGRU OGC//ELO//

[Add the following Info Addressee for releases into or upon the navigable waters of the United States, its contiguous zone (generally within 12 nautical miles of US shores) and adjacent shorelines.]  
COGARD NATIONAL RESPONSE CENTER WASHINGTON DC//JJJ//

**5. Body of Report:** Use the following format for the body of all HS Release Report Messages:

UNCLAS//N05090//  
SUBJ: HAZARDOUS SUBSTANCE RELEASE REPORT (REPORT SYMBOL OPNAV 5090-3)  
(MIN: CONSIDERED)  
MSGID/GENADMIN/ORIGINATOR//  
RMKS/

1. LOCAL TIME AND DATE RELEASE [OCCURRED/DISCOVERED]:

2. [FACILITY/VESSEL] ORIGINATING RELEASE:

- For Navy ships, list ship name, hull number and unit identification code (UIC).
- For Navy shore facilities, list facility name and UIC.
- For release occurring during transportation, list name of activity responsible for shipment.

## DEPLOYED MAGTF JUDGE ADVOCATE HANDBOOK

- For non-Navy spills, list name of responsible party, if known.
- For organizations under contract to Navy, list firm name and contracting Navy activity.
- If source unknown at time of this report, **list only “Unknown”** until such time as definitively established.

### 3. RELEASE LOCATION:

- For release at sea, list latitude, longitude and distance to nearest land.
- For release in port, list port name, host naval command (NAVSTA, Shipyard) and specific location.
- For release ashore, list city, state, facility name and specific location (building designation).
- For release during transportation, give exact location (highway mile marker or street number and city).

### 4. AMOUNT RELEASED:

- Use convenient units of weight or volume (kg, lb., gallons, liters, etc.).
- For continuous release, estimate rate of release and amount left in container.
- Estimates should be made by examining loss at source: sounding tank, calculating flow rate of spill.
- ***Unreliable estimates of volume using visual observation of HS on water may not be reported here.***
- If amount unknown at time of this report, **list only “Unknown”** until such time as definitively established.

### 5. HAZARDOUS SUBSTANCE RELEASED:

- If Extremely Hazardous Substance, headline this paragraph “EXTREMELY HAZARDOUS SUBSTANCE RELEASED:” See chapter 10, subsection 10-4.2 for additional notification requirements.
- Consult container labels, user directions, reference books, expert advice.
- Provide chemical/product names, formula, synonym, physical/chemical characteristics, and inherent hazards.
- “Container label identifies substance as acrylonitrile. Synonyms: cyanethylene, vintleyanide.
- Characteristics/hazards: poisonous liquid and vapor, skin irritant, highly reactive/flammable.”
- Describe appearance, physical/chemical characteristics, actual/potential hazards observed.
- For Example: “Substance released is colorless to light yellow unidentified liquid; highly irritating to eyes and nose; smells like kernels of peach pits; vaporizing quickly, posing ignition problem.”

6. TYPE OF OPERATION AT SOURCE: Plating shop, painting shop, hazardous waste (HW) facility, truck, ship, pipeline, ship rebuilding, entomology shop, etc.

### 7. CAUSE OF RELEASE:

- Provide narrative description of specific cause of release.
- Account for personnel error, equipment failure, etc. directly contributing to release.
- For example: “Railing supporting 55-gal drums on a flatbed truck gave way because it was not securely fastened, causing seven drums to fall and rupture.”
- If cause unknown at time of this report, **list only “Unknown”** until such time as definitively established.

### 8. TYPE OF CONTAINER FROM WHICH SUBSTANCE ESCAPED:

- 55-gal drums, 5-lb. bags, tank truck, storage tank, can, etc.
- Estimate number of containers damaged or dangerously exposed.

## DEPLOYED MAGTF JUDGE ADVOCATE HANDBOOK

### 9. RELEASE ENVIRONMENT:

- Describe scene of release.
- Include information on physical characteristics, size and complexity of release and weather conditions.
- For Example: "Solvent released formed shallow pool covering area about 30 ft by 45 ft of bare concrete. Solvent slowly running into storm drain. Pool emitting highly toxic, flammable vapors. Dark clouds threatening rain. Light wind drifting vapors northbound to residential area about 30 ft above ground."

### 10. AREAS DAMAGED OR THREATENED:

- Describe actual and potential danger or damage to surrounding environment,
- Identify body of water, area or resources threatened or affected.
- Nature and extent of damage to property, wildlife or other natural resources (if any).

### 11. NOTIFICATIONS MADE AND ASSISTANCE REQUESTED:

- List all organizations informed of release within and beyond Navy jurisdiction.
- Include Navy, federal, state, and local authorities, response teams, fire departments, hospitals, etc.
- Specify type of assistance requested from these organizations.
- If telephonic report to National Response Center made, list: DTG of telephonic report; NRC report/case number; name of NRC official taking report; and Navy Command making telephonic report.

### 12. FIELD TESTING:

- Indicate findings and conclusions as to concentration, pH, etc.

### 13. CONTROL AND CONTAINMENT ACTIONS [PLANNED /TAKEN]:

- If none, explain why.
- Specify method used to control and contain release.
- For example: "Gas barriers used to control and contain vapor emissions. Runoff contained by excavating ditch circumscribing affected area."

### 14. CLEAN-UP ACTIONS [PLANNED /TAKEN]:

- If none, explain why.
- Identify on-site or off-site treatment, method used, parties involved in clean-up/removal and disposal area.
- For example: "No clean-up action taken. Toxic vapors present, potential danger to clean-up crew. Contaminated soil will be excavated and shipped by NAS personnel to Class I HW disposal site in Portstown, CA when conditions allow."

### 15. AMOUNT OF SUBSTANCE RECOVERED [VOLUME/WEIGHT] (Pure product.):

### 16. PARTIES PERFORMING [CONTAINMENT/CLEAN-UP] ACTIVITIES:

- Identify lead organization in charge: Navy Command; USCG; EPA.
- Identify all other parties involved: commercial firms; supporting Navy activities; State or local agencies.

### 17. FEDERAL, STATE OR LOCAL REGULATORY ACTIVITY DURING THIS INCIDENT:

- Identify by name and agency any regulatory official attending on-scene or making telephonic inquiry.



## DEPLOYED MAGTF JUDGE ADVOCATE HANDBOOK

- Note whether officials boarded vessel and include date, time and spaces inspected.

18. ASSISTANCE REQUIRED/ADDITIONAL COMMENTS.

19. LESSONS LEARNED: How could this release have been avoided?

20. ACTIVITY CONTACT FOR ADDITIONAL INFORMATION: List name, rank/rate, command, code, DSN and/or commercial telephone numbers.//

**MARINE CORPS OIL AND HAZARDOUS SUBSTANCE RELEASE REPORT  
(MESSAGE FORMAT)**

A. TRANSMITTAL PRECEDENCE. Send oil discharge and hazardous substance (HS) release report messages by routine precedence. Use priority precedence if the release is very large, threatens human health, requires evacuation of the local populace, is expected to result in significant environmental harm, or is expected to generate adverse publicity.

B. CLASSIFICATION OR SPECIAL HANDLING MARKING. Do not include classified or sensitive unclassified information in the report, unless necessary for operational reasons. Report symbol DD-5090-10 applies.

C. OUTSIDE THE CONTINENTAL UNITED STATES REPORTS. For releases occurring outside the United States, its territories, and its possessions, delete the Coast Guard District and the Environmental Protection Agency (EPA) region organizations from the addressee and information blocks in the message. Instead, add the appropriate higher headquarters to the list of addressees.

D. MESSAGE DATA ELEMENTS. The essential data elements for reporting oil spills and HS releases are provided below

FM: ACTIVITY/COMMAND//CODE//

TO: CMC WASHINGTON DC//I-L//

COMDT COGARD WASHINGTON DC (U.S. SPILLS ONLY)

COGARD MSO AREA COORDINATOR (MARINE U.S. SPILLS ONLY)

COAST GUARD DISTRICT COMMANDER (MARINE U.S. SPILLS ONLY)

EPA REGIONAL OFFICE (INLAND U.S. SPILLS ONLY)

INFO: HIGHER HEADQUARTERS (IF APPLICABLE)

COMNAVFACENGCOM ALEXANDRIA VA

COGNIZANT ENGINEERING FIELD DIVISION

NFESC PORT HUENEME CA

UNCLAS //N06280//

PASS TO LFL

SUBJ: OIL SPILL REPORT, REPORT SYMBOL DD-5090-10

RMKS/1. DATE TIME GROUP IN WHICH SPILL OCCURRED

2. ACTIVITY ORIGINATING SPILL (INSTALLATION; UIC)

3. SOURCE (FUEL TANK, BARGE, PIPELINE, RAIL CAR, VEHICLE, AIRCRAFT, ETC.)

4. LOCATION (AREA, BUILDING DESIGNATION, PIER, ETC.)

5. AMOUNT (BARRELS, GALLONS, LITERS) IF UNKNOWN, INDICATE DIMENSIONS OF CONTAMINATED AREA

6. TYPE (JP-5, GASOLINE, DIESEL, LUBE OIL, ETC.)

7. CONTAINER FROM WHICH RELEASE OCCURRED (DRUM, STORAGE TANK, ETC.)

8. SAMPLES TAKEN (YES/NO; SPECIFY ANALYSES REQUESTED/PERFORMED)

9. CAUSE OF RELEASE (EQUIPMENT FAILURE, PERSONNEL ERROR, ACCIDENT, ETC.)

DEPLOYED MAGTF JUDGE ADVOCATE HANDBOOK

10. RELEASE SCENE DESCRIPTION (OIL SLICK, CONTAMINATED AREA, ETC.)
  11. ACTION TAKEN/PLANNED:
    - A. CONTAINMENT EFFORTS (BOOM, ABSORBENT PADS, DRY SWEEP, ETC.)
    - B. RECOVERY EFFORTS (SUCTION TRUCK/PUMPS, SOIL EXCAVATION, ETC.)
    - C. RESIDUALS DISPOSAL (DRUMS TO DRMO, SOIL BIOREMEDIATION, ETC.)
    - D. RESPONSE/RECOVERY UNIT (TACTICAL UNIT, FIRE DEPT., ORSO, USGC, ETC.)
  12. ON-SCENE WEATHER/WIND (TEMPERATURE, HUMIDITY, WIND VELOCITY, VISIBILITY)
  13. AREAS THREATENED/DAMAGED (BEACH, WETLANDS, WATER INTAKE, AQUIFER, ETC.)
  14. POTENTIAL DANGERS (FIRE, EXPLOSION, OILED WILDLIFE, ETC.)
  15. NOTIFICATIONS MADE (NRC, COAST GUARD MSO, EPA REGION, STATE, LOCAL AGENCY, ETC.)
  16. TELEPHONIC REPORT TO NRC WAS/WAS NOT MADE (NRC POC/REPORT NUMBER)
  17. POC FOR REPORT (PERSON, ACTIVITY/CODE, TELEPHONE [DSN AND COMMERCIAL])
  18. ASSISTANCE REQUIRED/COMMENTS
- //BT

FM: ACTIVITY/COMMAND//CODE//

TO: CMC WASHINGTON DC//I-L//

COMDT COGARD WASHINGTON DC (U.S. SPILLS ONLY)

COGARD MSO AREA COORDINATOR (MARINE U.S. SPILLS ONLY)

COAST GUARD DISTRICT COMMANDER (MARINE U.S. SPILLS ONLY)

EPA REGIONAL OFFICE (INLAND U.S. SPILLS ONLY)

INFO: HIGHER HEADQUARTERS (IF APPLICABLE)

COMNAVFACENGCOM ALEXANDRIA VA

COGNIZANT ENGINEERING FIELD DIVISION

NFESC PORT HUENEME CA

UNCLAS //N06280//

PASS TO LFL

SUBJ: HAZARDOUS SUBSTANCE RELEASE REPORT, REPORT SYMBOL DD-5090-10

RMKS/1. DATE TIME GROUP IN WHICH RELEASE OCCURRED

2. ACTIVITY ORIGINATING RELEASE (INSTALLATION; UIC)

3. SOURCE (STORAGE AREA, SHOP, VEHICLE, ETC.)

4. LOCATION (BUILDING DESIGNATION, PIER, HIGHWAY, RANGE, ETC.)

5. AMOUNT (GALLONS/LITERS, POUNDS/KILOGRAMS)

IF UNKNOWN, INDICATE DIMENSIONS OF CONTAMINATED AREA

6. TYPE (PESTICIDES, CORROSIVE LIQUIDS, TOXIC SUBSTANCES, EXPLOSIVES, ETC.)

7. CONTAINER INVOLVED (DRUM, BAG, STORAGE TANK, RAIL CAR, PLATING TANK, ETC.)

8. SAMPLES TAKEN (YES/NO; SPECIFY ANALYSES REQUESTED/PERFORMED)

9. CAUSE OF RELEASE (EQUIPMENT FAILURE, PERSONNEL ERROR, ACCIDENT, ETC.)
10. RELEASE SCENE DESCRIPTION (CONTAMINATED AREA, PATH OF RELEASE, ETC.)
11. ACTION TAKEN/PLANNED:
  - A. CONTAINMENT EFFORTS (BOOM, ABSORBENT PADS, DRY SWEEP, ETC.)
  - B. RECOVERY EFFORTS (SUCTION TRUCK/PUMPS, SOIL EXCAVATION, ETC.)
  - C. RESIDUALS DISPOSAL (DRUMS TO DRMO, SOIL BIOREMEDIATION, ETC.)
  - D. RESPONSE/RECOVERY UNIT (TACTICAL UNIT, FIRE DEPT., ORSO, USGC, ETC.)
12. ON-SCENE WEATHER/WIND (TEMPERATURE, HUMIDITY, WIND VELOCITY, VISIBILITY)
13. AREAS THREATENED/DAMAGED (BEACH, WETLANDS, WATER INTAKE, AQUIFER, ETC.)
14. POTENTIAL DANGERS (FIRE, EXPLOSION, TOXIC VAPOR, ETC.)
15. NOTIFICATIONS MADE (NRC, COAST GUARD MSO, EPA REGION, STATE, LOCAL AGENCY, ETC.)
16. TELEPHONIC REPORT TO NRC WAS/WAS NOT MADE (NRC POC/REPORT NUMBER)
17. POC FOR REPORT (PERSON, ACTIVITY/CODE, TELEPHONE [DSN AND COMMERCIAL])
18. ASSISTANCE REQUIRED/COMMENTS

//BT

**APPENDIX 7-2: SAMPLE FOREIGN CLAIMS COMMISSION**  
**APPOINTMENT LETTER**

LETTERHEAD

From: Commanding Officer, 26th Marine Expeditionary Unit  
To: Staff Judge Advocate, 26th Marine Expeditionary Unit

Subj: APPOINTMENT OF FOREIGN CLAIMS COMMISSION

Ref: (a) JAG MANUAL Ch VIII  
(b) 10 USC 2734  
(c) COMSIXTHFLTINST 5800.1F (LEGMAN)

1. Pursuant to reference (a), you are hereby appointed a Foreign Claims Commission. The Commanding Officer, 26th Marine Expeditionary Unit will convene this commission when required to consider claims submitted for adjudication under the provisions of reference (b).

2. The jurisdiction, scope, and duties of a Foreign Claims Commission are set forth in references (b) and (c) and the Commission shall act in conformity therewith. Forms employed by the Commission shall be in accordance with the Appendixes to paragraphs 701 through 709 of reference (c).

3. A brief, concise, and complete record of all proceedings conducted shall be maintained as prescribed in reference (a).

SIGNATURE BLOCK

**APPENDIX 7-3: SAMPLE FOREIGN CLAIMS INVESTIGATION  
REPORT**

**CLAIMS OFFICER'S INVESTIGATION REPORT**

(Use additional sheets if necessary)

\_\_\_\_\_  
(Ship or unit)

\_\_\_\_\_  
(Date of investigation)

**1. TYPE OF INCIDENT OR ACCIDENT**

Brief description (include name(s) and address(es) of potential claimant(s))

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**2. TIME AND PLACE**

Date, time, and location

\_\_\_\_\_  
\_\_\_\_\_

**3. PROPERTY AND PERSONNEL INVOLVED**

a. Government property or personnel. Identify property. Personnel - name, grade, serial number. If motor vehicle or other equipment, name of operator.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

b. Private property or persons. Identify property. Persons - names, addresses and relation to incident. (Include name and address of insurance company and coverage.)

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**4. SCOPE OF EMPLOYMENT**

Was the individual involved acting within scope of employment? Yes or no (State basic for answer.)

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

5. DAMAGE TO PROPERTY

a. Government property.

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b. Private property.

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6. PERSONS INJURED OR KILLED.

a. Government personnel.

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b. Private persons.

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7. WITNESSES (Attached signed statement(s))

NAMES	ADDRESSES
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<hr/>	<hr/>
<hr/>	<hr/>
<hr/>	<hr/>
<hr/>	<hr/>

8. POLICE INVESTIGATION (Show arrests and attach copy of police report).

9. ADDITIONAL FACTS

a. Give in narrative form full details not otherwise covered herein.

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DEPLOYED MAGTF JUDGE ADVOCATE HANDBOOK

b. The following inaccuracies in previous reports have been established as a result of this investigation:

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10. EXHIBITS (List and attach exhibits)

- A. \_\_\_\_\_
- B. \_\_\_\_\_
- C. \_\_\_\_\_
- D. \_\_\_\_\_
- E. \_\_\_\_\_
- F. \_\_\_\_\_

11. ACTION RECOMMENDED

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12. DATE OF REPORT \_\_\_\_\_

13. SIGNATURE OF INVESTIGATING OFFICER

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14. TITLE OF INVESTIGATING OFFICER

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15. COMMENTS ON ACTION RECOMMENDED

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**APPENDIX 8-1: LEGAL ASSISTANCE WEBSITES**

HQMC, SJA to CMC

<http://www.hqmc.marines.mil/sja/UnitHome.aspx>

<https://ehqmc.usmc.mil/org/sja/default.aspx>

HQMC, Judge Advocate Division, Legal Assistance Branch (JAL)

[http://www.hqmc.marines.mil/sja/Branches/LegalAssistanceBranch\(JAL\).aspx](http://www.hqmc.marines.mil/sja/Branches/LegalAssistanceBranch(JAL).aspx)

<https://ehqmc.usmc.mil/org/sja/LA/LegalAssistance/default.aspx>

U.S. Navy JAG Corps

<http://www.jag.navy.mil>

U.S. Army JAG Corps

<https://www.jagcnet.army.mil>

<https://www.jagcnet2.army.mil>

U.S. Air Force JAG Corps

<http://www.afjag.af.mil>

<https://aflegalassistance.law.af.mil/lass/lass.html>

Legal Research and Advice

<http://www.findlaw.com>

<http://www.nolo.com>

<http://www.freeadvice.com>

<http://law.freeadvice.com/resources/smallclaimscourts.htm>

Credit Reports

<https://www.annualcreditreport.com>

<http://www.experian.com>

<http://www.transunion.com>

<http://www.equifax.com>

Immigration

<http://www.uscis.gov>

Taxes

<http://www.irs.gov>

Estate Planning

<http://www.estateplanninglinks.com>

<http://www.aaepa.com>

Consumer Protection

<http://www.ftc.gov>

<http://www.bbb.org>

<http://www.consumer.gov>

<http://www.consumerreports.org>

Automobiles

<http://www.kbb.com>

<http://www.edmunds.com>

Landlord-Tenant

<http://www.rentlaw.com>

Divorce/Separation/Child Custody

<http://divorcehelp.com>

<http://www.divorcesource.com>

Adoption

<http://www.adopting.org>

<http://www.adoption.com>

**APPENDIX 8-2: SAMPLE SCRA COMMANDER'S LETTER  
FOR STAY OF PROCEEDINGS**

Date

Clerk of the Court  
Court Address

Re: REQUEST FOR STAY OF COURT PROCEEDINGS FOR [CLIENT, DOCKET #]

Dear Sir or Madam,

I am writing as the Commanding Officer of [client] who has been summoned to appear/answer a complaint in your court. Due to military commitments, [client] is not able to appear and defend in this action because he is currently deployed \_\_\_\_\_ with [UNIT].

He will not be granted leave or liberty to attend any scheduled proceedings until \_\_\_\_\_. He should be able to appear in court after \_\_\_\_\_ when we return from our deployment.

Pursuant to the Servicemembers' Civil Relief Act (50 U.S.C. 522), I respectfully request that you grant a postponement in the proceedings until [client] can appear in court.

Thank you for your prompt attention to this matter. Point of contact in this matter is my Staff Judge Advocate, Major I. M. Attorney, email, phone number.

Sincerely,

COMMANDING OFFICER  
Colonel  
U.S. Marine Corps  
Commanding Officer

Enclosure:  
Summons

Copy to:  
[client]  
[Attorney for opposing party]

**APPENDIX 8-2: SAMPLE SCRA SERVICEMEMBER'S LETTER  
FOR STAY OF PROCEEDINGS**

DATE

SERVICE MEMBER RANK, FULL NAME  
SERVICE MEMBER ADDRESS

To Whom It May Concern:

My current military duty requirements materially affect my ability to appear in the following manner:

I am currently serving as (STATE YOUR STATUS AND WHY YOU CANNOT ATTEND THE HEARING). My tour of duty is for (TOUR OF DUTY LENGTH) days, beginning (TOUR OF DUTY START DATE). I requested leave in order to attend the hearing. This was denied by my commander.

I need to be personally present in court for my hearing that is currently scheduled for (HEARING DATE). I will be available to appear on or after (AVAILABLE DATE).

---

Service Member Rank, Full Name

**APPENDIX 8-4: SAMPLE SCRA INTEREST RATE REDUCTION  
REQUEST LETTER**

Date

NAME AND ADDRESS OF FINANCIAL INSTITUTION

Re: John Doe Acct# 1234567

Dear Sir or Madam:

John Doe has requested my assistance as a Legal Assistance Attorney concerning the above referenced debt. Pursuant to 50 U.S.C. § 527 of the Servicemembers' Civil Relief Act, herein after referred to as the SCRA, John Doe requests that interest on the above referenced debt be reduced to 6%.

John Doe entered active duty on \_\_\_\_\_ and is presently on active duty assigned to \_\_\_\_\_ which is presently deployed to Afghanistan in support of Operation Enduring Freedom.

I understand that John Doe incurred this debt prior to his entry into the Armed Forces, at a time when he was earning substantially more than he is now. John Doe's entry into military service has substantially affected his ability to meet this obligation at the original interest rate. The SCRA sets a 6% per annum ceiling on interest charges (including service charges, renewal charges and fees) during the period of a service member's military service for obligations made prior to the date of entry onto active duty when the active duty materially affects the ability to pay. Since entering active duty, John Doe has experienced a decrease in salary, adversely affecting his ability to pay. Thus, the balance of his/her obligation may not have interest charged at a rate greater than 6% per annum. Interest above 6% must be forgiven and not accrued.

Please ensure that your records reflect this statutory ceiling and that any excess charge is withdrawn.

Thank you, in advance, for your cooperation in this matter.

Sincerely,

\_\_\_\_\_  
I. M. ATTORNEY  
Major, U.S. Marine Corps  
Attorney at Law

Copy to:  
John Doe  
File

*This letter is written by a legal assistance attorney on behalf of an individual client, and does not represent an official position of the Marine Corps or the United States Government*

**APPENDIX 8-5: SAMPLE WILL WORKSHEET**

PRIVACY ACT STATEMENT: Individuals seeking legal assistance are asked to complete this worksheet. The information requested is voluntary. It will be used by the staff of the Legal Assistance Office to assign counsel to you, to answer your questions, to prepare necessary documents for you, to monitor the progress of your case, and to prepare periodic statistical reports on the caseload of this office. The authority for requesting and maintaining this information is found in 5 U.S.C. 301 and 44 U.S.C. 3101. If you choose not to provide this information, the legal staff may not be able to assist you.

Please ensure that the following questionnaire is filled out completely and accurately. All information must be PRINTED NEATLY. Once your paper work is prepared, the attorney will contact you to set upon appointment to sign the documents. WILL QUESTIONNAIRE

1) Name: \_\_\_\_\_  Male  Female  
 Address: \_\_\_\_\_

Telephone Number: cell: (\_\_\_\_) \_\_\_\_ - \_\_\_\_\_ work: (\_\_\_\_) \_\_\_\_ - \_\_\_\_\_

State of Residence\*: \_\_\_\_\_

\*We must determine which state law to write the will under. This could be your current state of residence, your home of record, the state where you own real property, etc. If you think you may wish to have your will probated in a state different from your state of residence, speak with an attorney and we can explore your options.

2) Are you a U.S. citizen?  Yes  No

3) Marital Status:  Married, and never married previously  
 Married, but was previously married to another person  
 Widow(er)  
 Divorced  
 Single

4) Name of spouse: \_\_\_\_\_

5) Is your spouse a U.S. citizen?  Yes  No

6) Military Status:  Active Duty Member (Rank \_\_\_\_\_)  
 Spouse of Active Duty Member  
 Retired  
 Spouse of Retiree

7) Is the estimated combined value of your (and your spouse's) estate over \$1,000,000?  Yes  No

8) Enter the name(s) of your child(ren):

	Name	Age	Gender	Natural	Step	Adopted
1.	_____	_____	M / F	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2.	_____	_____	M / F	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
3.	_____	_____	M / F	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
4.	_____	_____	M / F	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
5.	_____	_____	M / F	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
6.	_____	_____	M / F	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

DEPLOYED MAGTF JUDGE ADVOCATE HANDBOOK

9) Do you own any real property (land or house) that you intend to dispose of in your will?

- Yes  No

If yes, please provide:

\*Address of Property: \_\_\_\_\_

\*Description of the Property (eg vacant land, house, etc):

\_\_\_\_\_

10) How is title to the real property held?

- Single Owner  
 Joint Tenancy (with \_\_\_\_\_)  
 Tenancy in Common (with \_\_\_\_\_)  
 Other \_\_\_\_\_

NOTE: In most states land that is titled as Joint Tenancy means the property will automatically pass to the surviving person(s) listed on the title in the event of your death, without regard to any disposition made in your will.

11) If yes to question 9, how do you intend to devise (leave) the real property?

- All to my spouse  
 To one or more different beneficiaries  
 All real property will pass as part of my residuary estate (see Question 15)  
 Other

12) How do you intend to devise your personal effects or other tangible personal property?

- All to my spouse  
 As per a schedule of specific bequests (with items not listed passing to my spouse)  
 As per a schedule of specific bequests (with items not listed passing as part of my residuary estate)  
 As provided with regard to my residuary estate (see Question 15)

13) SPECIFIC BEQUEST(S): You may elect to make specific bequests (gifts) of cash, real estate, or personal property to specific people or charities in your will (e.g., wedding ring to daughter, 1957 Chevy to friend, etc.). These bequests will be distributed first and may deplete your estate. Also, specific bequests may complicate the probate of your estate if the property given cannot be found at your death. Therefore, if you make any specific bequests, you should only give property that you are reasonably sure you will possess at the time of your death. If you make no specific bequests, all of your property will pass to your primary beneficiaries.

If you wish to give a specific item to a family member or other individual, indicate below the name of the beneficiary (person receiving the gift) and the type of gift. If you need more space than is provided below, inform a legal assistance clerk.

Gift Beneficiary & Relationship

Type of Gift (be specific)

1. _____	_____
_____	_____
2. _____	_____
_____	_____
3. _____	_____
_____	_____

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14) CASH BEQUEST(S): If you make a cash bequest and you do not possess the funds at your death, or your cash beneficiary predeceases you, such cash bequest would lapse. Additionally, if you possess joint bank accounts with your spouse, these accounts will NOT pass through your will, but rather will automatically go to your spouse; therefore, cash bequests from these accounts will lapse as well. Do you wish to make any cash bequests?

NOTE: LIFE INSURANCE/SGLI DOES NOT PASS THROUGH THE WILL

The designated beneficiary on the life insurance/SGLI form is controlling. A will designation cannot override life insurance contract. Also, if you wish to make a cash gift of unknown amount (for example: "I give whatever amount is in my Navy Fed checking account #12345 at my death to X"), you may do so in the specific bequest section under question 13.

If you wish to make a cash bequest, indicate below to whom and how much.

Cash Beneficiary & Relationship	Amount
1. _____	\$ _____
2. _____	\$ _____
3. _____	\$ _____
4. _____	\$ _____

15) Your "residuary estate" is whatever property remains in your estate after your lawful debts, taxes, expenses of administration have been paid and after any specific gifts from above have been given away. How do you intend to devise your residuary estate?

- All to my spouse, then to my child(ren) if my spouse predeceases me
- A minimum to my spouse, with the balance going to my children or other beneficiaries
- Various other types of dispositions

If you wish to give your residuary estate to more than one person, indicate below to whom and what percentage each beneficiary will receive. The percentages must add up to 100 percent.

Residuary Estate Beneficiary & Relationship	Percentage
1. _____	_____ %
2. _____	_____ %
3. _____	_____ %
4. _____	_____ %

16) A beneficiary must have attained what age to be entitled to receive a bequest outright? (Optional)

- 18
- 21
- 25
- 30
- Other

17) How do you want your adopted children (if any) to be treated in this will?

- Expressly included
- Expressly excluded
- This will is to be silent on the subject.
- This question is not applicable



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18) How do you want your step children (if any) to be treated in this will?

- Expressly included
- Expressly excluded
- This will is to be silent on the subject.
- This question is not applicable

19) If all the beneficiaries you named above do not survive you, do you wish to name alternate beneficiaries(s)?

- Yes  No

20) If yes to the question above, indicate below the name(s) of your alternative beneficiary(ies).

Name of Alternate Beneficiary	Relation to You	% of Your Estate
1. _____	_____	_____ %
2. _____	_____	_____ %
3. _____	_____	_____ %
4. _____	_____	_____ %

21) Is there anyone who you specifically do not want to receive anything from your estate?

- Yes  No

22) If yes to the question above, indicate below the name and relation to you.

Name of Person to be Disinherited	Relation to You
1. _____	_____
2. _____	_____

23) EXECUTOR: An "Executor" is the individual (or individuals) who will administer your estate upon your death. The Executor will be responsible for gathering all your belongings and assets, paying your debts and any taxes that you owe out of your estate, and ensuring that the remainder of your estate is properly distributed to your intended beneficiaries. A successor is a person who will serve in the event that the first named individual is unable or unwilling to serve.

Any adult (18 or older) may serve as your Executor, although many states have a preference for or require an Executor to be a legal resident of the state where the will is probated. Therefore, you should select family members or responsible friends who are residents of the same state where you claim to be your legal residence or the state where you own real property.

Who do you want to appoint as your Executor (required)?

- My spouse and a successor Executor
- My spouse and a co-Executor (to act jointly)
- My spouse alone
- One Executor other than my spouse (please list below)
- Other (please list below)

If you have successor Executors or co-Executors, indicate below.

Name of Executor (in order of succession)	Relation to You
1. _____	_____
2. _____	_____
3. _____	_____

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24) If you and the other natural parent of your child(ren) die while your child(ren) are still minors, do you wish to appoint a Guardian to take care of your minor child(ren)?

- Yes, one Guardian for any minor child(ren)
- Yes, one Guardian and a successor guardian(s)
- Yes, two co-Guardians (with or without any successors)
- No, I do not wish to appoint a Guardian under this will

*Parents should agree on the guardians for minor children to avoid conflicting designations*

Name of Guardian (in order of succession)	Relation to You
1. _____	_____
2. _____	_____
3. _____	_____

25) Some states allow you to appoint a Conservator (or Custodian), who will care for the property of a minor child until they turn 18 or whichever age you indicated above. The Conservator and the Guardian may be the same person, or they may be different individuals. Do you wish to appoint a Conservator?

- Yes  No

26) If yes to the above question, indicate the name(s) of your Conservator(s) below (or simply write, "same as guardian" in the space below).

Name of Conservator (in order of succession)	Gender	Relation to You
1. _____	M / F	_____
2. _____	M / F	_____
3. _____	M / F	_____

27) Instead of giving your estate directly to a minor beneficiary, you may elect to give your estate to a person designated as a Trustee, who will hold the estate IN TRUST for the benefit of your beneficiary(ies) until such beneficiary(ies) reach the age you designate. The Trustee will manage the trust under court supervision. Although the Trustee's primary purpose is to safeguard the inheritance, the money may also be used for any beneficiary's health, education, welfare, or maintenance, at the Trustee's discretion. Your Trustee should be responsible, well organized, trustworthy, and experienced in maintaining books and records.

An alternative to a trust is a bequest under the Uniform Transfers to Minors Act ("UTMA"), whereby the inheritance is given to the Guardian or Conservator to use for the benefit of the minor beneficiary(ies). In this scenario, the inheritance would be initially controlled by the Executor, and after probate, to the Guardian or Conservator of the minor beneficiary(ies). This arrangement may be preferable to a trust because it is ordinarily less complicated and less expensive than establishing a trust.

If a child of yours is a minor at the time of your death, the bequests to that child shall be:

- Paid to the child's Guardian or Conservator ("UTMA")
- Held in trust by a TRUSTEE until the child attains majority
- Held in trust by the EXECUTOR until the child attains majority

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**\*\*If you do not elect the property to be held in trust, please skip to the next page\*\***

A single trust forces the oldest child to wait until all the other children reach the specified age before the oldest child may receive his/her share of the trust's principle. This may pose a problem if there is a large age disparity between the oldest child and youngest child. On the other hand, a separate trust for each child is cumbersome and likely to be expensive to maintain.

28) If you wish to establish a trust, do you want the bequests of all your minor children to be held in a single trust, rather than have a separate trust for each minor child?

Yes  No

29) If you wish to establish a trust, do you want to appoint:

- One Trustee
- Two Co-Trustees
- One Trustee and a successor Trustee

30) Indicate the name(s) of your Trustee(s) below.

Name of Trustee (in order of succession)	Relation to You
1. _____	_____
2. _____	_____
3. _____	_____

31) Do you want the Trustee to have the power to dissolve the trust if it becomes uneconomical to maintain it?  Yes  No

32) Do you want the Trustee to have the power to dissolve the trust if the trust falls below a specific amount?  Yes  No

33) If yes to the question above, what amount? \$ \_\_\_\_\_

LIVING WILL QUESTIONNAIRE

A Living Will is a declaration that if you were terminally ill or in vegetative state where your survival is not possible without the use of life support, certain medical treatment should NOT be given to prolong your life. A Living Will is often accompanied by a Durable Power of Attorney for Health Care (or Advanced Medical Directive), which permits you to appoint another person (or persons) to make health care decisions on your behalf when you can no longer make such decisions yourself. The scope of the health agent's powers may be very broad (e.g., changing doctors or hospitals, authorizing certain medical treatment, or terminating all medical treatment). Complete this Questionnaire if you would like a Living Will and a Durable Power of Attorney for Healthcare prepared for you. You should note that a Living Will, although oftentimes prepared in conjunction with a will, is a separate document and is NOT a part of your Last Will and Testament.

- 1) Do you want a living will?  Yes  No
- 2) Do you want a Durable Power of Attorney for health care?  
 Yes  No

**\*\*If no please skip to Question 8\*\***

- 3) Who do you want to designate as your health care agent?  
 My spouse  
 My spouse and a successor agent who is named below  
 Someone who is not my spouse, and who is named below

Name/ Relation: \_\_\_\_\_  
Address: \_\_\_\_\_  
Phone: (\_\_\_\_) \_\_\_\_\_ - \_\_\_\_\_

- 4) With regard to the appointment of a second agent to make health care decisions:  
 A second agent is NOT to be designated  
 A second agent is to be designated, and either agent can act independently  
 A second agent is to be designated, and the agents must act jointly unless one is incapacitated  
 A second agent is to be designated, and the second agent is to act as a successor only in the event the first is incapacitated

If you wish to designate a secondary agent, indicate below the name of your second agent.

Name/ Relation: \_\_\_\_\_  
Address: \_\_\_\_\_  
Phone: (\_\_\_\_) \_\_\_\_\_ - \_\_\_\_\_

- 5) Is your agent authorized to donate your organs for transplant?  
 Yes  No

**\*\*If no, please skip to Question 7\*\***

- 6) Is the authority to donate organs to include not just transplants but also the donation of organs and tissue for other medical, educational or scientific purposes?  
 Yes  No

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7) Do you wish to express a preference to die at home rather than in a hospital (only applicable for living will document)?

Yes  No

8) Do you have a funeral preference?

Cremated

To be buried at a specific location: \_\_\_\_\_

Burial at sea

Other: \_\_\_\_\_

No preference

9) Do you want to be buried with full military honors?

Yes  No

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DURABLE POWER OF ATTORNEY-FINANCIAL

A durable power of attorney is a reliable way to arrange for someone to make your financial decisions should you become unable to do so yourself. The durable power of attorney does not go into effect unless a doctor certifies that you have become incapacitated (a vegetative state, for example if you are in a coma). This is called a “springing” durable power of attorney. This document will only come into effect if and when you are unable to make decisions for yourself. This is important because most other powers of attorney cease to be effective if and when you become incapacitated.

1) Do you want a Power of Attorney for Finances?

Yes  No (stop here)

2) 1st CHOICE (person who has the powers when you become incapacitated):

Name/ Relation: \_\_\_\_\_

Address: \_\_\_\_\_

Phone: (\_\_\_\_) \_\_\_\_\_ - \_\_\_\_\_

3) 2nd CHOICE (if the first choice is unwilling or unable to serve):

Name/ Relation: \_\_\_\_\_

Address: \_\_\_\_\_

Phone: (\_\_\_\_) \_\_\_\_\_ - \_\_\_\_\_

Below is a list of powers you can generally expect to see associated with a Durable Power of Attorney:

Real Property (acquire, transfer, change title)

Tangible Personal Property (acquire, transfer, maintain and sell)

Securities (stocks, bonds, mutual funds)

Commodity futures & options (commodity future contracts & put options)

Financial Institutions (open account, write checks, borrow \$, safe deposit boxes)

Business Operations (partnership, sole proprietorship, business ventures)

Resignation from Fiduciary positions (executor, trustee, attorney in fact, guardian)

Claims & Legal Proceedings (litigate, arbitrate, defend lawsuit, bankruptcy)

Tax Matters (IRS proceedings, tax returns, refunds)

Estate, Trust & Other Beneficiary Transactions

Government Benefits (social security, civil benefits, military benefits)

**APPENDIX 8-6: SAMPLE GENERAL AND SPECIAL POWERS OF ATTORNEY**

**GENERAL POWER OF ATTORNEY**

PREAMBLE: This is a MILITARY POWER OF ATTORNEY prepared pursuant to Title 10 United States Code, Section 1044b, and executed by a person authorized to receive legal assistance from the military services. Federal law exempts this power of attorney from any requirement of form, substance, formality, or recording that is prescribed for powers of attorney by the laws of a state, the District of Columbia, or a territory, commonwealth, or possession of the United States. Federal law specifies that this power of attorney shall be given the same legal effect as a power of attorney prepared and executed in accordance with the laws of the jurisdiction where it is presented.

KNOW ALL PERSONS BY THESE PRESENTS: That I, \_\_\_\_\_, currently residing at \_\_\_\_\_, do hereby appoint \_\_\_\_\_ (*Name of Agent*) my true and lawful attorney-in-fact to manage and conduct all my affairs and act in all matters in my name and on my behalf. Such acts shall include:

1. To lease, sell, use, establish title to, register, insure, transfer, mortgage, maintain, manage, pledge, exchange or otherwise dispose of or encumber any and all of my property, real, personal, or mixed, including motor vehicles of any kind, and to execute and deliver good and sufficient deeds or other instruments for the lease, conveyance, mortgage, maintenance, or transfer of the same.
2. To buy, receive, lease, accept or otherwise acquire in my name and for my account, property, real, personal or mixed upon such terms, considerations and conditions as my attorney-in-fact shall deem appropriate.
3. To transact all business of mine on my behalf including entering into contracts and the making of such investments as my attorney-in-fact shall deem sound.
4. To institute and prosecute, or to appear and defend, or to settle, any claims or litigation involving me or my interests. This shall include, but not be limited to, the authority to present a claim against the United States for damage to or loss of personal property.
5. To prepare, execute, sign, and file all tax returns and to receive and negotiate all tax refund checks.
6. To execute all documents needed for travel of my family members and transportation or storage of my property, as authorized by law and military regulations; to sign for and clear government or other quarters in the best interests of my family members and in accordance with law and military regulations.
7. To demand, act to recover, and receive, all sums of money which are now or will become owing or belonging to me, and to institute accounts on my behalf and to deposit, draw upon, or expend such funds of mine as are necessary in furtherance of the powers granted herein. This shall include, but not be limited to, the authority to receive, endorse, cash, or deposit negotiable instruments made payable to me and drawn upon the Treasurer, or other fiscal officer or depository, of the United States.
8. Generally to do, execute, and perform any other act, deed, matter, or thing, that in the opinion of my attorney-in-fact ought to be done, executed, or performed, in conjunction with this power of attorney.

NOTWITHSTANDING any language to the contrary in this instrument, my attorney-in-fact is specifically NOT granted the following powers:

- a. To cancel or change the beneficiary of any policy of life insurance owned by me.

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- b. To exercise any rights or powers with respect to any person, matter, transaction or property in my name or in my custody as a trustee, custodian, personal representative or other fiduciary capacity for someone else.

I hereby give and grant unto my attorney-in-fact full power and authority to do and perform each and every act and matter concerning my estate, property, and affairs as fully and effectually to all intents and purposes as I could do legally if I were present.

I hereby authorize my attorney-in-fact to indemnify and hold harmless any third party who accepts and acts under or in accordance with this power of attorney.

I intend for this to be a DURABLE Power of Attorney. This Power of Attorney will continue to be effective if I become disabled, incapacitated, or incompetent. All acts done by my Attorney-in-Fact hereunder shall have the same effect and inure to the benefit of and bind myself and my heirs as if I were competent, and not disabled, incapacitated, or incompetent.

I shall be considered disabled or incapacitated for purposes of this Power of Attorney if a physician, based on that physician's examination, certifies in writing at a date subsequent to the date which this Power of Attorney is executed, that I am disabled from or incapable of exercising control over my person, property, personal affairs, or financial affairs. I authorize the physician who so certifies, to disclose my physical or mental condition to another person for purposes of this Power of Attorney. A third party who accepts this Power of Attorney, endorsed by proper physician certification of my disability or incapacity, is held harmless and fully protected from any action taken under this Power of Attorney.

I hereby ratify all that my attorney-in-fact shall lawfully do or cause to be done by this document.

This Power of Attorney shall become effective when I sign and execute it below. Unless sooner revoked or terminated by me, this Power of Attorney shall become NULL and VOID on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_. (expiration date).

Notwithstanding my inclusion of a specific expiration date herein, if on or before the above-specified expiration date, I should be or have been determined by the United States Government to be in a military status of "missing," "missing in action," or "prisoner of war," or if I should be or have been properly certified, in writing, by a physician to be disabled from or incapable of exercising control over my person, property, personal affairs, or financial affairs, then this Power of Attorney shall remain valid and in full effect until sixty (60) days after I have returned to United States military control following termination of such status or sixty (60) days after I have recovered from such disability unless sooner revoked or terminated by me.

All business transacted hereunder for me or for my account shall be transacted in my name, and all endorsements and instruments executed by my attorney for the purpose of carrying out the foregoing powers shall contain my name, followed by that of my attorney and the designation "attorney-in-fact."

IN WITNESS WHEREOF, I sign, seal, declare, publish, make and constitute this as and for my Power of Attorney at \_\_\_\_\_ on this the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_. (today's date)

\_\_\_\_\_  
Signature of Grantor

:



**ACKNOWLEDGEMENT**

With the United States Armed Forces

On this the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before the undersigned officer, personally appeared \_\_\_\_\_, satisfactorily proven to be (a) serving in or retired from the Armed Forces of the United States, or (b) a lawful dependent of a person serving in or retired from the Armed Forces of the United States, or (c) a person serving with, employed by, or accompanying the Armed Forces of the United States outside the United States and outside the Canal Zone, Puerto Rico, Guam, and the Virgin Islands, and to be the person whose name is subscribed to the within instrument and acknowledged that he or she executed the same. And the undersigned does further certify that he or she is at the date of this certificate an officer of the Armed Forces of the United States having the general powers of a notary public under the provisions of Section 936 or 1044a of Title 10 of the United States Code (Public Law 90-632 and 101-510).

AUTHORIZED TO ACT AS A NOTARY  
PUBLIC UNDER THE PROVISIONS OF  
SECTION 1044a OF TITLE 10 OF THE  
UNITED STATES CODE.  
NO SEAL REQUIRED BY LAW.

\_\_\_\_\_  
Signature of Notary

Name of Officer and Position:  
Grade and Branch of Service:  
Command or Organization:

## SPECIAL POWER OF ATTORNEY

PREAMBLE: This is a MILITARY POWER OF ATTORNEY prepared pursuant to Title 10, United States Code, Section 1044b, and executed by a person authorized to receive legal assistance from the military services. Federal law exempts this power of attorney from any requirement of form, substance, formality, or recording that is prescribed for powers of attorney by the laws of a state, the District of Columbia, or a territory, commonwealth, or possession of the United States. Federal law specifies that this power of attorney shall be given the same legal effect as a power of attorney prepared and executed in accordance with the laws of the jurisdiction where it is presented.

KNOW ALL PERSONS BY THESE PRESENTS: That I, \_\_\_\_\_,  
currently residing at \_\_\_\_\_ (address),  
do hereby appoint \_\_\_\_\_ as my agent (attorney-in-  
fact) to act for me in any lawful way with respect to the following matters that have been signed by me:

**TO GRANT ONE OR MORE OF THE FOLLOWING POWERS,  
SIGN THE LINE IN FRONT OF EACH POWER YOU ARE GRANTING.  
TO WITHHOLD A POWER, DO NOT SIGN THE LINE IN FRONT OF IT.  
YOU MAY, BUT NEED NOT, CROSS OUT EACH POWER WITHHELD.**

**A. TO TAKE POSSESSION OF MY HOUSEHOLD GOODS AND SHIP THEM TO A DIFFERENT LOCATION:** To take possession and order the removal and shipment of my household goods, personal baggage, or other personal property and cause it to be shipped to any warehouse, depot, dock, or other place of storage or safekeeping, government or private, directed by orders of appropriate U.S. Government transportation officials, and to execute and deliver all necessary forms, papers, certificates and receipts to carry out the foregoing.

**B. TO ACCEPT DELIVERY OF MY HOUSEHOLD GOODS:** To accept delivery of, receipt for, and/or clear through customs, my household goods and/or unaccompanied baggage, and to sign any and all documents, release, voucher, receipt, shipping ticket or other instrument necessary or convenient for such purpose.

**C. TO ACCEPT MILITARY QUARTERS ON MY BEHALF:** To accept military quarters assigned to me or my family members at any military installation; to sign for me and take possession of such quarters in my name; and sign for and take possession of any furniture, appliances, and equipment that may be authorized for use in or with such quarters as I may be assigned; to execute all necessary documents, instruments or papers and perform all acts necessary to carry out the foregoing.

**D. TO TERMINATE MILITARY QUARTERS ON MY BEHALF:** To effect the termination of U.S. Government quarters assigned to me or my family members, to procure or return any and all U.S. government property used in or for such quarters; and to sign any and all documents and do all acts necessary and proper to terminate my responsibility for such quarters.

**E. TO PREPARE AND FILE MY FEDERAL AND STATE INCOME TAXES:** To prepare, execute, sign and file my Federal and State tax returns for the State(s) of \_\_\_\_\_ for the tax year 20\_\_\_\_.

**F. TO PERFORM BANKING TRANSACTIONS ON MY BEHALF:** To draft checks and other negotiable instruments in my name and to otherwise withdraw from and/or deposit into my \_\_\_\_\_ account number(s) \_\_\_\_\_ with

\_\_\_\_\_ (name of bank or financial institution); to endorse, cash and receive the proceeds of any check or other negotiable instrument, which is, made payable to me.

**G. TO HANDLE ANY LAWSUIT OR OTHER LEGAL ACTION THAT I MAY HAVE AN INTEREST IN:** To institute and prosecute, or to appear and defend, any claims or litigation involving me or my interest; to demand, act to recover, and receive all sums of money and all other things which are now or will become owing or belonging to me as a result of such claims; and to institute accounts on my behalf, and to deposit, draw upon or expend such funds of mine as are necessary in furtherance of powers granted herein.

**H. TO SELL MY REAL ESTATE ON MY BEHALF:** To bargain, sell, assign, and convey, using the standard of a reasonable seller under no compulsion to sell and engaging in an arms-length bargaining transaction, to any person of my attorney's choice, all my right, title and interest in my property at \_\_\_\_\_ (*address of property*), and to convey by deed or general warranty with the customary covenants; to receive on my behalf payment of the purchase money for the real property described above in any manner that my attorney shall deem wise; to transmit these moneys to me, and to sign, seal, execute and deliver any and all deeds, contracts, or other documents necessary to carry out the foregoing.

**I. TO PURCHASE REAL ESTATE IN MY NAME:** To purchase in my name and for my use any real property in the City of \_\_\_\_\_, County of \_\_\_\_\_, State of \_\_\_\_\_, and for that purpose to make, indorse, accept, receive, sign, seal, execute, acknowledge, and deliver any application forms, documents, instruments, or paper necessary or convenient to enter into both a contract and mortgage or deed of trust upon said real estate for such price, at such rate of interest, and upon such terms as my agent shall deem best.

**J. TO USE, OPERATE, AND REGISTER MY MOTOR VEHICLE(S):** To use, operate, insure, title, license, and register, in my name, with any state or governmental agency any and all vehicles of which I am or may become the registered or legal owner.

**K. TO SELL MY MOTOR VEHICLE:** To sell my motor vehicle upon such terms, considerations and conditions as my agent shall think proper. Further, to execute and deliver to the proper persons and authority all documents, instruments, and papers necessary to affect the sale and transfer of registration and license of the said vehicle. To take possession of, operate, and maintain this automobile and to execute and deliver all necessary forms, papers, statements of ownership, and receipt to carry out the foregoing.

**L. TO PURCHASE MOTOR VEHICLES IN MY NAME:** To purchase motor vehicles in my name and upon such terms, considerations and conditions as my agent shall think proper. Further, to execute and deliver to the proper persons and authority all documents, instruments, and papers necessary to register and license such motor vehicles. To further execute any documents necessary to have repairs my agent deems necessary made on this automobile before I am able to take possession of the automobile. To take possession of, operate, and maintain this automobile and to execute and deliver all necessary forms, papers, statements of ownership, and receipt to carry out the foregoing.

**M. TO SHIP MY VEHICLE:** To take possession of my vehicle, for the purpose of its removal and shipment from wherever it may be located, and to execute any release, voucher, receipt or any other instrument necessary or convenient for such purpose and to execute and deliver to the proper persons and authority, any and all documents, instruments and papers necessary to effect proper registration, insurance and license, in my name, of such automobile.

**N. TO TAKE POSSESSION OF MY VEHICLE AFTER SHIPMENT:** To take possession of my vehicle, after shipment and delivery to any port, warehouse, depot, dock, or other place of storage or safekeeping, government or private; to execute and deliver any release, voucher, receipt, shipping ticket, certificate or other instrument necessary or convenient for such

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purpose and to execute and deliver to the proper persons and authority, any and all documents, instruments and papers necessary to register, insure and license, such vehicle in my name, and to transport the vehicle to me or any location which I direct in writing.

[Empty box for signature]

**O. TO TERMINATE MY RESIDENTIAL LEASE:** To execute any and all documents and do all other things necessary or convenient to terminate any and all leases or rental agreements in my name.

[Empty box for signature]

**P. TO LEASE MY HOUSE/APARTMENT TO OTHERS AND ACT AS MY LANDLORD/PROPERTY MANAGER:** To manage, control, lease, sublease, and otherwise act concerning my interest in my residential property; to collect and receive rents or income therefrom; pay taxes, charges and assessments on the same; repair, maintain, protect, preserve, alter and improve the same; commit my resources and contract on my behalf regarding the same; and to do all things necessary or expedient to be done in my agent's judgment in connection with the property.

[Empty box for signature]

**Q. TO ENROLL MY LAWFUL DEPENDENTS IN MILITARY BENEFITS PROGRAMS:** To enroll my lawful dependents in DEERS, TRICARE, SMILECARE, or any other benefits program to which I am or my dependents are entitled by virtue of my military affiliation. To do all things necessary, and to execute and deliver to the proper persons and authority, any and all documents, instruments, and papers necessary and expedient to carry out the foregoing.

[Empty box for signature]

**R. FOR MY SPOUSE TO RECEIVE NMCRS ASSISTANCE:** If my spouse is my attorney-in-fact and I am deployed, I authorize my spouse, \_\_\_\_\_ (name of spouse) to receive necessary financial assistance from the Navy-Marine Corps Relief Society (NMCRS) without my specific approval in the amount of \_\_\_\_\_ (not to exceed \$3,000). I also authorize my spouse and NMCRS to initiate an allotment in my name for repayment of the loan. I understand that assistance will be provided depending on the merits of the situation and the policies of NMCRS.

[Empty box for signature]

**S. MISCELLANEOUS:** To do the following on my behalf:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

I hereby give and grant unto my attorney-in-fact full power and authority to do and perform each and every act and matter concerning the subject of this document as fully and effectually to all intents and purposes as I could do legally if I were present.

I hereby authorize my attorney-in-fact to indemnify and hold harmless any third party who accepts and acts under or in accordance with this power of attorney.

I hereby ratify all that my attorney-in-fact shall lawfully do or cause to be done by this document.

I intend for this to be a DURABLE Power of Attorney. This Power of Attorney will continue to be effective if I become disabled, incapacitated, or incompetent. All acts done by my attorney-in-fact hereunder shall have the same effect and inure to the benefit of and bind myself and my heirs as if I were competent, and not disabled, incapacitated, or incompetent.

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I shall be considered disabled or incapacitated for purposes of this Power of Attorney if a physician, based on that physician's examination, certifies in writing at a date subsequent to the date which this Power of Attorney is executed, that I am disabled from or incapable of exercising control over my person, property, personal affairs, or financial affairs. I authorize the physician who so certifies, to disclose my physical or mental condition to another person for purposes of this Power of Attorney. A third party who accepts this Power of Attorney, endorsed by proper physician certification of my disability or incapacity, is held harmless and fully protected from any action taken under this Power of Attorney.

This Power of Attorney shall become effective when I sign and execute it below. Unless sooner revoked or terminated by me, this Power of Attorney shall become NULL and VOID on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_. (expiration date).

Notwithstanding my inclusion of a specific expiration date herein, if on or before the above-specified expiration date, I should be or have been determined by the United States Government to be in a military status of "missing," "missing in action," or "prisoner of war," or if I should be or have been properly certified, in writing, by a physician to be disabled from or incapable of exercising control over my person, property, personal affairs, or financial affairs, then this Power of Attorney shall remain valid and in full effect until sixty (60) days after I have returned to United States military control following termination of such status or sixty (60) days after I have recovered from such disability unless sooner revoked or terminated by me.

All business transacted hereunder for me or for my account shall be transacted in my name, and all endorsements and instruments executed by my attorney for the purpose of carrying out the foregoing powers shall contain my name, followed by that of my attorney and the designation "attorney-in-fact."

IN WITNESS WHEREOF, I sign, seal, declare, publish, make and constitute this as and for my Power of Attorney at Henderson Hall, Virginia, on this the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_. (today's date).

\_\_\_\_\_  
Signature of Grantor

**ACKNOWLEDGEMENT**

With the United States Armed Forces

On this the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, before the undersigned officer, personally appeared \_\_\_\_\_, satisfactorily proven to be (a) serving in or retired from the Armed Forces of the United States, or (b) a lawful dependent of a person serving in or retired from the Armed Forces of the United States, or (c) a person serving with, employed by, or accompanying the Armed Forces of the United States outside the United States and outside the Canal Zone, Puerto Rico, Guam, and the Virgin Islands, and to be the person whose name is subscribed to the within instrument and acknowledged that he or she executed the same. And the undersigned does further certify that he or she is at the date of this certificate an officer of the Armed Forces of the United States having the general powers of a notary public under the provisions of Section 936 or 1044a of Title 10 of the United States Code (Public Law 90-632 and 101-510).

AUTHORIZED TO ACT AS A NOTARY  
PUBLIC UNDER THE PROVISIONS OF  
SECTION 1044a OF TITLE 10 OF THE  
UNITED STATES CODE.  
NO SEAL REQUIRED BY LAW.

\_\_\_\_\_  
Signature of Notary  
Name of Officer and Position:  
Grade and Branch of Service:  
Command or Organization:

**APPENDIX 8-7: SAMPLE REVOCATION OF POWER OF ATTORNEY**

**REVOCATION OF POWER OF ATTORNEY**

KNOW ALL MEN BY THESE PRESENTS:

That I, \_\_\_\_\_ currently residing at \_\_\_\_\_ do hereby absolutely revoke, cancel, countermand, annul and make void any and all General Powers Of Attorney heretofore executed by me, wherein and whereby I did appoint

\_\_\_\_\_, residing at \_\_\_\_\_ for the purpose in said power of attorney set forth.

IN WITNESS WHEREOF, I have hereunto set my hand and seal on this day,

\_\_\_\_\_.

\_\_\_\_\_  
Signature

**ACKNOWLEDGEMENT**

With the United States Armed Forces

On this the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, before the undersigned officer, personally appeared \_\_\_\_\_, satisfactorily proven to be (a) serving in or retired from the Armed Forces of the United States, or (b) a lawful dependent of a person serving in or retired from the Armed Forces of the United States, or (c) a person serving with, employed by, or accompanying the Armed Forces of the United States outside the United States and outside the Canal Zone, Puerto Rico, Guam, and the Virgin Islands, and to be the person whose name is subscribed to the within instrument and acknowledged that he or she executed the same. And the undersigned does further certify that he or she is at the date of this certificate an officer of the Armed Forces of the United States having the general powers of a notary public under the provisions of Section 936 or 1044a of Title 10 of the United States Code (Public Law 90-632 and 101-510).

AUTHORIZED TO ACT AS A NOTARY PUBLIC UNDER THE PROVISIONS OF SECTION 1044a OF TITLE 10 OF THE UNITED STATES CODE.  
NO SEAL REQUIRED BY LAW.

\_\_\_\_\_  
Signature of Notary  
Name of Officer and Position:  
Grade and Branch of Service:  
Command or Organization:

**APPENDIX 8-8: SAMPLE REQUEST FOR RETURN OF SECURITY DEPOSIT**

**LETTER FROM SERVICE MEMBER TO LANDLORD**

DATE

SERVICE MEMBER NAME  
ADDRESS  
CITY, STATE, ZIP

LANDLORD NAME  
ADDRESS  
CITY, STATE, ZIP

RE: RETURN OF SECURITY DEPOSIT FOR THE PREMISES AT (ADDRESS).

Dear Landlord:

I am writing to request the return of my security deposit. This notice is made pursuant to 50 U.S.C. § 535 of the Servicemembers Civil Relief Act (the "SCRA") as legislated by the United States Congress and signed into law in December 2003.

The lease, for the premises referenced above, was lawfully terminated on (DATE) under the SCRA, 50 U.S.C. § 535. You have failed to return my security deposit in a timely fashion. The security deposit was to be returned to me no later than (DATE) (within thirty days of the termination date of the lease).

Please note that 50 U.S.C. § 535(h) (1) of the SCRA states:

*"Any person who knowingly seizes, holds, or detains the personal effects, security deposit, or other property of a service member or a service member's dependent who lawfully terminates a lease covered by this section, or who knowingly interferes with the removal of such property from premises covered by such lease, for the purpose of subjecting or attempting to subject any of such property to a claim for rent accruing subsequent to the date of termination of such lease, or attempts to do so, shall be fined as provided in title 18, United States Code, or imprisoned for not more than one year, or both."*

YOU MAY MAIL THE SECURITY DEPOSIT TO:

(INSERT FORWARDING ADDRESS)

Should you have any questions, you may contact me at the address listed above. Thank you for your understanding and support in this matter.

Sincerely,

Service Member Name Rank, Service Branch