

# The Large Utility of “Little T”: Conducting Interoperability, Safety, and Familiarization Training

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## I. Introduction

You are the brigade judge advocate (BJA) for a brigade combat team that is scheduled to take part in a large multinational training exercise consisting of thousands of Soldiers from your brigade and three other allied nations in Africa. U.S. Army Africa recently issued your brigade a warning order<sup>1</sup> (WARNORD) stating that this exercise is part of a three-month deployment to Senegal.<sup>2</sup> The WARNORD describes a number of situational training exercises<sup>3</sup> and live-fire ranges focusing on combat operations in an urban environment.

The brigade staff is all-hands-on-deck as they begin analyzing the WARNORD and working through the military decision-making process.<sup>4</sup> Since you took the military operations elective at the graduate course,<sup>5</sup> you know the Army’s planning process emphasizes collaboration within the whole staff to analyze the operational environment and plan for mission success.<sup>6</sup> Therefore, you take the initiative and stay late to work with the rest of the staff.

You first go to the S-3 shop<sup>7</sup> and find the team

brainstorming. There are sticky notes covering the walls with ideas about what may be necessary to carry out the combined exercises. Among the notes, you see references to training African soldiers in battle-drill six,<sup>8</sup> detainee operations, and combat lifesaver skills.<sup>9</sup> Your mind flashes back to your fiscal law classes and you remember that training foreign soldiers is considered foreign security assistance, which normally requires special funding.<sup>10</sup>

You re-read the WARNORD and notice that it does not discuss any separate funding sources for this mission. You tell the S-3 that training foreign soldiers may create fiscal law problems and that there will be a lot of uncertainty until we receive more funding information from higher headquarters. The S-3 turns to you and asks, “What options can you give me for reducing that uncertainty, lawyer?”<sup>11</sup>

This scenario is not relatively common. For years, the United States has increased its focus on strengthening ties with regional allies across the globe.<sup>12</sup> Regionally-aligned brigades are being tasked with maintaining their standard mission skill-sets, while also rotating through their assigned regions to increase the capacity of ally forces and ensure they

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<sup>1</sup> The commander and staff issue a warning order to subordinate units in order to provide them with information necessary to begin preparations while the higher headquarters finishes the planning process. U.S. DEP’T OF ARMY, FIELD MANUAL 6-0, COMMANDER AND STAFF ORGANIZATION AND OPERATIONS para. 9-81 (5 May 2014) [hereinafter FM 6-0].

<sup>2</sup> Foreign assistance operations are normally planned at the combatant command level, which then sends orders down the chain of command to regionally-aligned brigades. See U.S. GOV’T ACCOUNTABILITY OFF., GAO-15-568, REGIONALLY ALIGNED FORCES: DoD COULD ENHANCE ARMY BRIGADES’ EFFORTS IN AFRICA BY IMPROVING ACTIVITY COORDINATION AND MISSION-SPECIFIC PREPARATION (2015) [hereinafter GAO-15-568] (discussing the Government Accountability Office’s (GAO) review of planning procedures for foreign assistance operations in Africa).

<sup>3</sup> Situational training exercises are short, scenario-driven, mission-oriented, limited exercises designed to train one collective task, or a group of related tasks or battle drills, through practice. U.S. DEP’T OF ARMY, TRAINING CIRCULAR 25-10, A LEADER’S GUIDE TO LANE TRAINING para. 1-3b (Aug. 1996) [hereinafter TC 25-10].

<sup>4</sup> The military decision-making process is an iterative planning methodology used by Army staffs to understand the situation and mission, develop a course of action, and produce an operation plan or order. U.S. DEP’T OF ARMY, ARMY DOCTRINE PUBLICATION 5-0, THE OPERATIONS PROCESS para. 32 (17 May 2012) [hereinafter ADP 5-0].

<sup>5</sup> The Judge Advocate Gen.’s Legal Ctr. & Sch., U.S. Army, 64th Graduate Course Elective Descriptions 17 (Aug. 2015).

<sup>6</sup> See ADP 5-0, *supra* note 4, para. 7.

<sup>7</sup> The S-3, or operations officer, is the principal staff officer responsible for all matters concerning training, operations and plans, and force development and modernization. FM 6-0, *supra* note 1, para. 2-46.

<sup>8</sup> A battle-drill is a collective action that a unit practices regularly in order to rapidly execute it without applying a deliberate decision-making process. U.S. DEP’T OF ARMY, FIELD MANUAL 7-8, INFANTRY RIFLE PLATOON AND SQUAD para. 4-1 (22 Apr. 1992). Battle-drill six is the common name for the collective action of entering and clearing a room and building. *Id.* para. 4-2.

<sup>9</sup> Combat life-saver training is a bridge between the first aid training given to all Soldiers during basic training and the medical training given to combat medics. *Medical Simulation Training Center*, FORT CARSON, <http://www.carson.army.mil/mstc/cls.html> (last visited Aug. 15, 2016) [hereinafter *Medical Simulation Training Center*].

<sup>10</sup> The Foreign Assistance Act of 1961, Pub. L. No. 87-195, 75 Stat. 424 (codified as amended at 22 U.S.C.S. § 2151(2015)).

<sup>11</sup> Uncertainty is always present during military operations and the staff must continually reassess the environment to plan for and reduce that uncertainty. See ADP 5-0, *supra* note 4, para. 1-1.

<sup>12</sup> See Gen. Raymond T. Odierno, *CSA Lays Out Strategic Priorities for Uncertain Future*, U.S. ARMY (Oct. 16, 2013), [http://www.army.mil/article/113256/CSA\\_lays\\_out\\_strategic\\_priorities\\_for\\_uncertain\\_future/](http://www.army.mil/article/113256/CSA_lays_out_strategic_priorities_for_uncertain_future/).

can conduct combined operations.<sup>13</sup> This dual focus creates fiscal concerns related to when a command can use its operation & maintenance (O&M) funds and when an event requires the use of funds specifically designated for foreign assistance.

Although Congress has increased statutory authority and funding for military foreign assistance,<sup>14</sup> it is imperative that judge advocates be able to distinguish between foreign assistance and training that is specifically designed to ensure our own safety and interoperability with foreign forces. This type of interoperability training, commonly called “little t” training, may utilize O&M funds.<sup>15</sup> Understanding the little t paradigm is crucial for providing your commander and staff flexibility to plan and fund necessary training at the local level.

This article will briefly discuss the general fiscal issues related to the Department of Defense (DoD) conducting foreign assistance. It will then provide a detailed analysis of the U.S. Government Accountability Office (GAO) opinion that created the little t framework<sup>16</sup> and apply that framework to common scenarios faced by U.S. forces across the globe.

## II. Background

On August 1, 1961, President John F. Kennedy signed into law the Foreign Assistance Act, which unified foreign assistance efforts under the Department of State (DoS).<sup>17</sup> President Kennedy further affirmed the DoS’s lead role in Executive Order Number 10973, which delegated foreign assistance authorities to the DoS and specifically withheld them from the DoD.<sup>18</sup> Foreign assistance includes financial support, logistics support, security assistance, and

humanitarian assistance that is provided to foreign governments, forces, and populations.<sup>19</sup> As a baseline rule, the DoD does not have authority to conduct these types of missions.<sup>20</sup>

Despite this baseline rule, the DoD has unique capabilities and skills that make it the rational choice for conducting many types of foreign assistance.<sup>21</sup> Congress has acknowledged this reality by granting statutory exceptions for certain types of DoD foreign assistance.<sup>22</sup> The most prominent statutory exceptions include authorizations for building the capacity of allied military forces,<sup>23</sup> conducting humanitarian assistance missions,<sup>24</sup> and conducting foreign assistance related to counterterrorism.<sup>25</sup> In recent years, Congress has expanded some of these authorizations to provide the DoD with increased authority and funding to support our allies and combat terrorism in today’s dynamic strategic environment.<sup>26</sup>

Despite the increase in authorizations, these foreign assistance funding sources have limitations. The expanded authorities still require coordination with the DoS<sup>27</sup> and considerable congressional oversight.<sup>28</sup> Another potential limitation is that today’s austere fiscal environment could always reduce or remove these additional funding sources.<sup>29</sup>

## III. The Birth of Little T Training

On April 7, 1954, President Dwight D. Eisenhower coined the term “domino theory” to convey the concern that, unless stopped, communist countries would spread communism to neighboring states.<sup>30</sup> This fear of communist expansion shaped U.S. foreign policy for decades after

<sup>13</sup> GAO-15-568, *supra* note 2.

<sup>14</sup> See, e.g., Major Ryan W. Leary, *A Big Change to Limitations on “Big T” Training: The New Authority to Conduct Security Assistance Training with Allied Forces*, ARMY LAW., Feb. 2014, at 23 (discussing the recent expansion of “big t” training authority under § 1203 of the 2014 National Defense Authorization Act (NDAA)).

<sup>15</sup> CONT. & FISCAL LAW DEP’T, THE JUDGE ADVOCATE GEN.’S LEGAL CTR. & SCH., U.S. ARMY, THE FISCAL LAW DESKBOOK 10-6 (2015) [hereinafter THE FISCAL LAW DESKBOOK].

<sup>16</sup> Hon. Bill Alexander, 63 Comp. Gen. 422 (1984).

<sup>17</sup> The Foreign Assistance Act of 1961, Pub. L. No. 87-195, 75 Stat. 424 (codified as amended at 22 U.S.C.S. § 2151(2015)).

<sup>18</sup> Exec. Order No. 10,973, 26 C.F.R. § 639 (1961) [hereinafter Exec. Order No. 10,973].

<sup>19</sup> Foreign Assistance Act.

<sup>20</sup> *Id.* See also Exec. Order No. 10,973, *supra* note 18.

<sup>21</sup> See generally U.S. DEP’T OF ST., FOREIGN MILITARY TRAINING REPORT FISCAL YEARS 2014 AND 2015 (2015), <http://www.state.gov/t/pm/rls/rpt/fmtrpt/2015/index.htm> [hereinafter FOREIGN MILITARY TRAINING REPORT].

<sup>22</sup> See, e.g., 10 U.S.C. § 1050 (2012) (authorizing the Secretary of Defense to pay the travel, subsistence, and other special compensations to members

of Latin American militaries in order to support Latin American cooperation). See also National Defense Authorization Act for Fiscal Year 2015, Pub. L. No. 113-291, § 1206, 128 Stat. 3292, 3536-3537 (2014) (authorizing the military to spend its own appropriations to train and equip foreign militaries to conduct counterterrorism or stability operations).

<sup>23</sup> See, e.g., 10 U.S.C. § 2282 (2016).

<sup>24</sup> See, e.g., 10 U.S.C. § 2561 (2016).

<sup>25</sup> See, e.g., National Defense Authorization Act for Fiscal Year 2015, Pub. L. No. 113-219, § 1236, 128 Stat. 3292, 3558 (2014).

<sup>26</sup> Leary, *supra* note 14, at 23.

<sup>27</sup> See, e.g., National Defense Authorization Act for Fiscal Year 2014, Pub. L. No. 113-66, § 1203(a)(2), 127 Stat. 894 (2013).

<sup>28</sup> *Id.* § 1203(d).

<sup>29</sup> Jeremy Herb, *Defense Budget Fight Hits House Floor*, POLITICO (May 14, 2015, 5:08 AM), <http://www.politico.com/story/2015/05/defense-budget-fight-hits-house-floor-thornberry-117931> (discussing the powerful factions within the federal government that wish to decrease DoD funding).

<sup>30</sup> Eisenhower Gives Famous “Domino Theory” Speech, HISTORY, <http://www.history.com/this-day-in-history/eisenhower-gives-famous-domino-theory-speech> (last visited Aug. 15, 2015).

President Eisenhower's speech.<sup>31</sup>

In 1979, a communist guerilla movement overthrew the Nicaraguan dictator, General Anastasio Somoza De Bayle.<sup>32</sup> To prevent communist expansion into neighboring Honduras, the U.S. military conducted a series of operations in Honduras beginning in February 1983.<sup>33</sup> These operations included: 1) joint training and maneuvers with the Honduran military; 2) military and civilian construction projects; 3) deployment of key military equipment; and 4) medical and veterinary care for thousands of civilians and animals.<sup>34</sup> The U.S. Army used O&M funds for all of the operations.<sup>35</sup>

In response to congressional concerns about the military build-up along the Nicaragua-Honduras border, the comptroller general investigated the military's fiscal authority to conduct these foreign operations.<sup>36</sup> The investigation determined that many of the activities, including the training of Honduran soldiers, violated fiscal law principles and amounted to unauthorized foreign assistance.<sup>37</sup> However, the GAO opinion did acknowledge that certain types of small scale interoperability, safety, and familiarization activities that are required for combined operations do not constitute foreign assistance.<sup>38</sup>

The military calls these small scale activities little t training.<sup>39</sup> Little t training is often described as an exception to the general prohibition against DoD foreign assistance.<sup>40</sup> However, a review of the original GAO language shows that this description is somewhat misleading:

Whenever combined military exercises are conducted, it is natural (and indeed desirable) that there be a transfer of information and skills between the armed forces of the participating countries. In addition, where there is a marked disparity of military sophistication between the two nations' armed forces, it is not surprising that this transfer is principally in one direction, i.e. to the benefit of the less-developed military force. In addition, as emphasized by the Defense Department,

some degree of familiarization and safety instruction is necessary before combined-forces activities are undertaken, in order to ensure "interoperability" of the two forces. At the same time, where familiarization and safety instruction prior to combined exercises rise to a level of formal training comparable to that normally provided by security assistance projects, it is our view that those activities fall within the scope of security assistance, for which comprehensive legislative programs (and specific appropriation categories) have been established by Congress. Where such extensive "interoperability" training is in fact necessary, combined exercises should not be conducted without the formal training needed to equalize the participating forces.<sup>41</sup>

As the language demonstrates, little t training is not an exception to the rule. Instead, it is a type of limited interoperability and safety instruction that does not rise to the level of formal training defined in the Foreign Assistance Act.<sup>42</sup> Therefore, the only exception to the general prohibition against foreign assistance remains express statutory authorization. Judge advocates must understand this distinction and ensure little t events remain narrow in scope.

Little t training may be funded with O&M appropriations because it satisfies the three basic tenants of selecting a proper funding source: 1) it is reasonably related to the purpose of the appropriation;<sup>43</sup> 2) it is not prohibited by law;<sup>44</sup> and 3) it does not fall within the scope of some other category of appropriation.<sup>45</sup>

The interoperability and safety instruction described by the GAO is reasonably related to the purpose of O&M funds, because it is necessary for the safe operation of the military during a combined exercise.<sup>46</sup> By not rising to the level of formal training, little t training is neither prohibited by the Foreign Assistance Act nor properly within the scope of one

<sup>31</sup> See generally FRANK NINKOVICH, MODERNITY AND POWER: A HISTORY OF THE DOMINO THEORY IN THE TWENTIETH CENTURY 203-40 (1994).

<sup>32</sup> HOOVER PRESS, COMMUNISM IN CENTRAL AMERICA AND THE CARIBBEAN 53 (Robert Wesson ed. 1982).

<sup>33</sup> *Id.* See also THOMAS M. LEONARD, THE HISTORY OF HONDURAS 156 (2011).

<sup>34</sup> Hon. Bill Alexander, *supra* note 16, at 8.

<sup>35</sup> *Id.* at 9.

<sup>36</sup> *Id.* at 1.

<sup>37</sup> *Id.* at 42.

<sup>38</sup> *Id.* at 44-45.

<sup>39</sup> THE FISCAL LAW DESKBOOK, *supra* note 15.

<sup>40</sup> *Id.*

<sup>41</sup> Hon. Bill Alexander, *supra* note 16, at 44-45.

<sup>42</sup> *Id.*

<sup>43</sup> 65 Comp. Gen. 738, 740 (1986).

<sup>44</sup> 38 Comp. Gen. 758 (1959) (discussing how the necessary expense test cannot overcome a statutory prohibition).

<sup>45</sup> *Id.* (discussing how the necessary expense test cannot overcome a legislative mandate to use a specific fund).

<sup>46</sup> The use of operation and maintenance funds is authorized for "expenses, not otherwise provided for, necessary for the operation and maintenance of the Army." See generally Consolidated and Further Continuing Appropriations Act of 2015, Pub. L. No. 113-235, 28 Stat. 2130 (2014).

of the other statutory authorizations.<sup>47</sup>

## A. Analysis Factors

The GAO identified three types of training being conducted by U.S. forces in Honduras: 1) artillery training provided by the 3-319th Field Artillery Battalion; 2) medical training provided by the 41st Combat Support Hospital; and 3) field training being conducted by U.S. Special Forces.<sup>48</sup> For purposes of little t analysis, this article will only discuss the first two events.<sup>49</sup>

When reviewing the artillery and medical training, the GAO focused on five factors: 1) whether the event supported a combined exercise; 2) whether the event gave the foreign forces a skill set they did not previously possess; 3) the number of U.S. service members involved in the training; 4) the cost of the training; and 5) the duration of the training.<sup>50</sup>

### 1. Application to Artillery Training

The artillery training was conducted to prepare the Honduran forces for combined exercises with 105mm artillery guns. The training lasted 22 days and consisted of teams of two to three U.S. Soldiers working with crews of eight to twelve Honduran soldiers.<sup>51</sup> Half of each U.S. team spoke Spanish.<sup>52</sup> The Honduran military had recently received 105mm artillery through the U.S. Foreign Military Sales (FMS) Program<sup>53</sup> and had no previous experience with this weapon.<sup>54</sup> The GAO found that if the Honduran government had purchased comparable training through the FMS program, the cost would have been \$250,000 to \$500,000.<sup>55</sup>

When reviewing the five analysis factors, the GAO determined that the nature of this event was not interoperability but rather a formal training period necessary to teach Honduran soldiers how to use a new piece of

equipment. The GAO agreed with the Army's assertion that this training was necessary to prepare the Honduran forces for the combined exercise.<sup>56</sup> The GAO emphasized, however, that interoperability instruction cannot be used as a replacement for the formal training that is necessary to give foreign forces the minimum skills necessary to operate with the U.S. military.<sup>57</sup> If a foreign partner requires a new skill set to participate in combined operations, it is the responsibility of the U.S. military to plan for formal training sessions.<sup>58</sup>

The rest of the analysis factors corroborated the GAO's concerns about providing the Honduran forces a new skill set. The training was organized in a formal manner, with small U.S. teams training larger Honduran groups.<sup>59</sup> The high price and long duration of the event also substantiated the formal nature of the training and the GAO's ultimate conclusion that this instruction constituted foreign security assistance.<sup>60</sup>

### 2. Application to Medical Training

The 41st Combat Support Hospital conducted a five-week combat medical training course for approximately 100 Hondurans.<sup>61</sup> Unlike the artillery training, the DoD did not specifically argue that the training was necessary for interoperability in a combined exercise.<sup>62</sup> Instead, the DoD classified the training as humanitarian-based instruction provided by off-duty Soldiers.<sup>63</sup> The DoD justified its use of O&M funds with the idea that the event increased the readiness of the U.S. forces by exposing them to indigenous methods of operation and culture.<sup>64</sup>

The GAO dismissed the DoD's arguments related to off-duty Soldiers because service members are considered on-duty, unless on leave.<sup>65</sup> The DoD cannot circumvent the prohibition on foreign assistance simply by having the instructors volunteer for the task.<sup>66</sup> The GAO also stressed that formal training provided to foreign personnel is foreign assistance, regardless of whether the DoD classifies it as

<sup>47</sup> Hon. Bill Alexander, *supra* note 16, at 44.

<sup>48</sup> *Id.* at 42-43.

<sup>49</sup> One of the United States Special Forces' critical tasks is to train foreign forces and build their warfighting capabilities. U.S. DEP'T OF ARMY, ARMY DOCTRINE PUBLICATION 3-05, SPECIAL OPERATIONS para. 32 (31 Aug. 2012). The GAO issued a follow-up opinion specifically concerning special forces security assistance in Honduras and found no violation of fiscal principals due to their unique mission. See Hon. Bill Alexander, 63 Comp. Gen. 422 (1986).

<sup>50</sup> Hon. Bill Alexander, *supra* note 16, at 42-49.

<sup>51</sup> *Id.* at 43.

<sup>52</sup> *Id.*

<sup>53</sup> The Foreign Military Sales program is the responsibility of the Department of State and facilitates the sale of military equipment to a foreign government when it is in the best interest of U.S. security. Exec. Order No. 11,958, 3 C.F.R. § 79 (1977). See also *Foreign Military Sales*, DEF. SEC. COOPERATION AGENCY, <http://dscs.mil/programs/foreign-military-sales-fms> (last visited Aug. 15, 2016).

<sup>54</sup> Hon. Bill Alexander, *supra* note 16, at 43.

<sup>55</sup> *Id.* at 42-44.

<sup>56</sup> *Id.* at 48.

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

<sup>58</sup> *Id.* at 49.

<sup>59</sup> *Id.* at 43.

<sup>60</sup> *Id.* at 48.

<sup>61</sup> *Id.* at 43.

<sup>62</sup> *Id.* at 48.

<sup>63</sup> *Id.*

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

<sup>65</sup> *Id.*

<sup>66</sup> *Id.*

security-based or humanitarian in nature.<sup>67</sup>

The GAO also disagreed with the DoD's justification that the event contributed to the U.S. forces' readiness. The "mere fact that an activity carried out by [DoD] has a readiness or operational benefit does not mean that it may automatically be financed with O&M appropriations."<sup>68</sup> The true test is whether the analysis factors indicate the training event is "comparable to that normally provided by security assistance projects."<sup>69</sup> In this case, the GAO classified this long-duration, formal medical training as foreign assistance and concluded that O&M funds were improper.<sup>70</sup>

#### B. The Sliding Scale of Analysis Factors

The GAO's analysis of the Honduran training events and dismissal of the Army's counterarguments make it clear that the pre-requisite factor for little t training is whether the training supports a combined exercise. If the DoD does not present evidence that the training supported a combined exercise, as was the case for the Honduran medical training, it will be impossible to classify the event as little t.<sup>71</sup>

Once the military establishes that an event supports a combined exercise, the next key factor is whether the training provides the foreign force with a new skill necessary for the ally to participate in the exercise.<sup>72</sup> When the GAO found that the Honduran artillery would have been unable to operate their own weapons without the training event, it used the remaining analysis factors to confirm the formality of the training.<sup>73</sup> Therefore, the fact that the Honduran Army required a new skill set raised the level of scrutiny and required a more thorough analysis of the cost, duration, and personnel factors.

The GAO's treatment of the Honduran events demonstrates that little t analysis can be viewed as a sliding scale based on the foreign force's level of sophistication. Combined exercises inherently involve a sharing of information between forces.<sup>74</sup> The more sophisticated a

foreign force, the more likely that sharing of information will be mutual and focused exclusively on interoperability and safety. In this scenario, the remaining factors become less decisive.

The less sophisticated a foreign force, the more likely the sharing of information will be one-directional and involve the transfer of new skill sets to the foreign force.<sup>75</sup> In this situation, the remaining analysis factors become crucial in determining whether the training rises to the level of formality requiring specific statutory authority.

#### IV. Traditional Example Application

Since the creation of the little t paradigm, the classic scenario used to explain its application is safety and interoperability training conducted as part of a combined airborne operation.<sup>76</sup> Before any airborne operation, units conduct pre-jump training to remind paratroopers of proper procedures and safety techniques.<sup>77</sup> Before conducting a combined airborne operation with foreign paratroopers, U.S. commanders will likely want the foreign paratroopers to participate in the U.S. pre-jump training. This pre-jump training satisfies the pre-requisite factor for little t, because it is necessary to support a combined airborne operation.

Pre-jump training serves as an easy example of little t training, because a foreign military conducting a combined airborne operation will normally be sophisticated enough to have paratroopers who are fully trained to jump out of an aircraft.<sup>78</sup> Unlike the Honduran artillery soldiers, the purpose of including foreign paratroopers in pre-jump training is not to give them the basic skills necessary for the combined exercise. Instead, it is necessary to ensure that U.S. and foreign paratroopers understand each other's procedures and safety practices.<sup>79</sup> If paratroopers do not understand these procedures, it greatly increases the risk of an accident during the jump.<sup>80</sup> Therefore, pre-jump training is critical for the mutual sharing of information necessary to safely and

<sup>67</sup> *Id.* at 47.

<sup>68</sup> *Id.* at 46-47.

<sup>69</sup> *Id.* at 44.

<sup>70</sup> *Id.* at 49.

<sup>71</sup> *Id.* at 47.

<sup>72</sup> *Id.* at 44.

<sup>73</sup> *Id.* at 47.

<sup>74</sup> *Id.* at 44.

<sup>75</sup> *Id.*

<sup>76</sup> THE FISCAL LAW DESKBOOK, *supra* note 15, at 10-17.

<sup>77</sup> See U.S. ARMY AIRBORNE SCH., PRE-JUMP TRAINING (MC-7) (Apr. 2011) [hereinafter PRE-JUMP TRAINING] (providing an example pre-jump training description for the MC-7 parachute).

<sup>78</sup> SGT Brandon Anderson, *Task Force Brawler and Dutch Soldiers Participate in Noble Jump*, DEF. MEDIA ACTIVITY (June 18, 2015), [https://www.dvidshub.net/news/167112/task-force-brawler-and-dutch-soldiers-participate-noble-jump#.VgVmc\\_4w\\_4g](https://www.dvidshub.net/news/167112/task-force-brawler-and-dutch-soldiers-participate-noble-jump#.VgVmc_4w_4g) (discussing joint airborne operations with Dutch Soldiers).

<sup>79</sup> Michelle Tan, *British Invasion: Huge Paratrooper Jump Today Over Bragg*, ARMY TIMES (Apr. 13, 2015), [http://www.lexis.com/research/retrieve?\\_m=09ceef89b3d3f7bb88419bc935e6b678&csvc=fr&cform=searchForm&\\_fmtstr=FULL&docnum=1&\\_startdoc=1&wchp=dGLbVzkzSkAW&\\_md5=294656573e1d88429178930c3e559142](http://www.lexis.com/research/retrieve?_m=09ceef89b3d3f7bb88419bc935e6b678&csvc=fr&cform=searchForm&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVzkzSkAW&_md5=294656573e1d88429178930c3e559142) (discussing the unique challenges created by the fact that the British and U.S. paratroopers use different equipment).

<sup>80</sup> Adam Ashton, *Army "VIP Culture" Led to Parachute Accident that Killed Former JBLM Officer*, THE NEWS TRIBUNE (Jul. 31, 2014), <http://www.thenewstribune.com/news/local/military/article25874407.html> (discussing how the failure to conduct pre-jump safety training contributed to an accident).

effectively operate together.

The other analysis factors support the small-scale nature of pre-jump training. Normal pre-jump training is relatively short in duration, low cost, and is traditionally conducted on the same day as the airborne operation.<sup>81</sup> The number of U.S. personnel is also not a problem because all paratroopers, regardless of nationality, participate in the training.<sup>82</sup>

However, the analysis becomes more problematic when the foreign forces are less sophisticated and require more than basic familiarity and safety training. The more the event resembles the cost, duration, and organization of basic airborne school,<sup>83</sup> the more likely it is to be classified as foreign assistance.

## V. Application to a Near-Peer Ally<sup>84</sup>

As shown in the airborne example, it is easier to apply the little t paradigm to combined operations with relatively advanced foreign militaries. The more capable the allied military, the less likely interoperability training will be perceived as a subterfuge for formal training.<sup>85</sup> An excellent example of this dynamic is combined operations with the United Kingdom (U.K.).

For this example, a U.K. infantry brigade travels to Fort Bragg to conduct a series of combined operations focusing on airborne insertion, urban warfare, and evacuation of civilians from a warzone or natural disaster.<sup>86</sup> The ultimate goal of the exercises is to ensure the U.K. brigade can seamlessly integrate into the command and control structure of the 82d Airborne Division.<sup>87</sup>

To prepare for the combined exercises, the U.S. and U.K. brigades conduct interoperability training focused on a wide range of issues, including: 1) proper rigging of U.K. and U.S. heavy equipment for airborne insertion from each other's aircraft;<sup>88</sup> 2) integration of U.S. and U.K. communication systems; and 3) familiarization with the other force's weapons. The U.S. brigade uses O&M funds for all of the

fuel, food, water, ammunition, and other supplies needed for these events.

### A. Little T Analysis

The U.K. military is one of the most technically and tactically capable forces in the world.<sup>89</sup> These combined exercises would naturally be less about enhancing one side's capabilities and more about ensuring both armies could effectively operate together. As a result, the GAO's concerns about using little t as a replacement for formal training are less likely to apply to a scenario with the United Kingdom because very little training is necessary to equalize our forces. However, the level of formality remains fact-dependent and full analysis is always required.

#### 1. *The Foundational Factors: Combined Exercise and Skill Set*

In this hypothetical, the interoperability training satisfies the two foundational little t factors: 1) support of a combined exercise and 2) no transfer of a new skill set. The British Parachute Regiment possesses all the basic airborne and infantry skill sets of the 82d Airborne Division.<sup>90</sup> Unlike the far less sophisticated Honduran military, the U.K. military does not need to substantially improve its capabilities in order to conduct combined operations with the United States.

The intent of the heavy-rigging training would not be to teach U.K. forces the skill of dropping heavy equipment during an airborne operation. Instead, this interoperability training is an extension of the classic airborne little t example. This training is necessary to ensure the two fully-trained forces understand each other's rigging and safety practices.<sup>91</sup>

The same initial analysis is true for the communications and weapons familiarity. Unlike the Honduran soldiers, who needed extra training just to operate their own artillery pieces, the U.K. soldiers would already be fully proficient with their own equipment.<sup>92</sup> The communication training would be

(demonstrating the complicated and technically demanding task for preparing heavy equipment for airborne insertion).

<sup>89</sup> *United Kingdom*, GLOBAL FIREPOWER, [http://www.globalfirepower.com/country-military-strength-detail.asp?country\\_id=United-Kingdom](http://www.globalfirepower.com/country-military-strength-detail.asp?country_id=United-Kingdom) (last visited Aug. 15 2016) (detailing the wide range of factors that make the British military one of the world's most capable forces).

<sup>90</sup> The official website of the British Army describes the battle-tested capabilities and modern equipment of the British Parachute Regiment. *The Parachute Regiment*, U.K. ARMY, <http://www.army.mod.uk/infantry/regiments/23304.aspx> (last visited Aug. 16, 2016); see also *82d Airborne Division History*, FT. BRAGG, <http://www.bragg.army.mil/82nd/Pages/History.aspx> (last visited Aug. 16, 2016).

<sup>91</sup> Tan, *supra* note 79.

<sup>92</sup> *Id.*

<sup>81</sup> PRE-JUMP TRAINING, *supra* note 77.

<sup>82</sup> U.S. ARMY JUMPMASER SCH., STUDENT STUDY GUIDE 6 (Oct. 2014).

<sup>83</sup> *Basic Airborne Course*, FT. BENNING, <http://www.benning.army.mil/infantry/rbt/1-507th/airborne/> (last visited Aug. 16, 2016) (providing an overview of the three-week training plan and graduation requirement for the U.S. Army Airborne School).

<sup>84</sup> The term "near-peer" is used to describe a force with similar weapons and capabilities as the U.S. military. See *Support: Getting Ready to Fight the Near-Peers*, STRATEGY PAGE (Feb. 24, 2014), <http://www.strategypage.com/htm/w/htcbtsp/articles/20140224.aspx>.

<sup>85</sup> Hon. Bill Alexander, *supra* note 16, at 46-47.

<sup>86</sup> Tan, *supra* note 79.

<sup>87</sup> *Id.*

<sup>88</sup> See, e.g., U.S. DEP'T OF ARMY, TRAINING MANUAL 4-48.23, AIRDROP OF SUPPLIES AND EQUIPMENT: RIGGING THE FAMILY OF MEDIUM TACTICAL VEHICLES (FMTV) TRUCKS (July 2013) [hereinafter TM 4-48.23]

limited to ensuring that the U.S. and U.K. forces can talk to each other during maneuvers and live-fire exercises.<sup>93</sup> Similarly, the weapons training would focus on ensuring the allied forces understand the capabilities of each other's primary weapons. Common sense dictates that both of these events are essential for ensuring that two militaries can safely and effectively operate together on the battlefield.

## 2. Supporting Factors

Although the rest of the factors are usually less decisive with a near-peer ally, they still need to be fully analyzed to ensure there is nothing that will counter the presumption against providing a new skill set.

For the communications training, let us assume that the cost and duration of training is relatively low, because it would basically entail trouble shooting the radio systems. The communications training would likely involve a small number of U.S. Soldiers from the S-6<sup>94</sup> teaching U.K. soldiers how to connect their radios to the U.S. network. When analyzing the Honduran artillery training, the GAO pointed at this kind of personnel ration as evidence of formal training.<sup>95</sup> However, unlike in Honduras, this impression is offset by the clear interoperability nature of this event and the sophistication and capabilities of the U.K. forces.

For the heavy-rigging training, the supporting factors may also establish that it is a more formal type of event. The technical and complicated nature of preparing heavy equipment for airborne insertion demands that interoperability training involve considerably more time and resources than the communications training.<sup>96</sup>

The heavy-rigging training is also similar to the Honduran artillery event, because the United Kingdom acquired its aircraft in a foreign military sale (FMS).<sup>97</sup> However, unlike the Honduran military, this interoperability training would not appear to replace formal FMS training because the U.K. is already capable of conducting heavy-drop operations.<sup>98</sup> Despite the evidence of formality, the purpose of the training and the U.K. force's sophistication would corroborate the limited nature of these events.

As a counterpoint, the weapons familiarization training

demonstrates how the supporting factors could overcome the presumptions created by the U.K. forces' sophistication. At first glance, there appear to be no problems because the U.K. forces are fully proficient with their own weapons and do not require a new skill set to participate in the exercises.<sup>99</sup> However, the supporting factors could demonstrate that the weapons training has gone beyond familiarization and created a skill set unrelated to the combined exercise.

If the weapons familiarization training involves more formal U.S. training teams, high expenditures of ammunition, and significant time on the range, then the transfer of knowledge likely goes beyond what is necessary for combined operations. Arguably, U.K. forces need to know the basic capabilities of U.S. weapons in order to operate in a joint environment. However, it is more difficult to argue that U.K. forces need to be able to operate U.S. weapons.

Unlike communications training, U.K. forces do not need to have hands-on experience with U.S. weapons in order to connect to a central system. Unlike the heavy-rigging training, U.K. forces do not need hands-on training with U.S. weapons to avoid accidents during the follow-on exercise. Without these safety and interoperability requirements, the GAO will likely determine that hands-on training with U.S. weapons serves no purpose other than to give the U.K. forces a new skill set. Therefore, hands-on weapons training is difficult to justify, even when operating with a near-peer ally.

As discussed, commanders have flexibility in applying the little t paradigm to training with sophisticated foreign militaries. However, this flexibility has its limits. Little t training with sophisticated allies can involve higher cost and duration, but these supporting factors must still align with the limited need for interoperability, familiarization, and safety training.

## VI. Application to a Developing Ally

The United States' strategic focus on increasing ties with global partners does not just include countries with advanced militaries. The United States has also worked diligently to build ties with less-developed militaries in Africa,<sup>100</sup> Eastern Europe,<sup>101</sup> and Asia.<sup>102</sup> As shown in the GAO's analysis of

<sup>93</sup> *Id.*

<sup>94</sup> FM 6-0, *supra* note 1, para. 2-66.

<sup>95</sup> Hon. Bill Alexander, *supra* note 16, at 43.

<sup>96</sup> TM 4-48.23, *supra* note 88.

<sup>97</sup> *United Kingdom—Globemaster III Sustainment Partnership*, U.S. DEP'T OF DEF. SEC. COOPERATION AGENCY (July 2, 2010), [http://dscs.mil/sites/default/files/mas/uk\\_10-29\\_0\\_0.pdf](http://dscs.mil/sites/default/files/mas/uk_10-29_0_0.pdf) (discussing the renewal of the foreign military sale of C-17 cargo aircraft, spare parts, and maintenance).

<sup>98</sup> Tan, *supra* note 79.

<sup>99</sup> *Small Arms*, U.K. ARMY, <http://www.army.mod.uk/equipment/23218.aspx> (last visited Aug. 16, 2016) (describing the various small arms weapons used by the British army).

<sup>100</sup> GAO-15-568, *supra* note 2.

<sup>101</sup> Joseph Trevithick, *A Great Green Fleet is Rolling Through Eastern Europe*, MEDIUM (25 Mar. 2015), <https://medium.com/war-is-boring/a-great-green-fleet-is-rolling-through-eastern-europe-1ac1f47a14ca>; *see also Operation Atlantic Resolve*, U.S. DEP'T OF DEF., [http://www.defense.gov/News/Special-Reports/0514\\_Atlantic-Resolve](http://www.defense.gov/News/Special-Reports/0514_Atlantic-Resolve) (last visited Aug. 16, 2016) [hereinafter *Operation Atlantic Resolve*] (describing the wide range of operations intended to increase European security).

<sup>102</sup> *See Special Report: DoD Focus on Asia-Pacific Rebalance*, U.S. DEP'T OF DEF., <http://www.defense.gov/News-Article->

Honduras, combined operations with less sophisticated militaries raise the likelihood of a unilateral transfer of skill and increase scrutiny in the little t analysis.<sup>103</sup> Therefore, commanders must provide weight to all the analysis factors to ensure that interoperability training does not rise to the level of formal foreign assistance.

For example, take a scenario where 3rd Stryker Brigade Combat Team (SBCT), 7th Infantry Division, travels to Malaysia to conduct a series of combined exercises in both jungle and urban environments. To prepare for these combined exercises, the United States and Malaysia conduct (1) familiarization training for the Stryker Combat Vehicle,<sup>104</sup> (2) combat medic training, and (3) jungle survival training.<sup>105</sup> The 3rd SBCT command and staff wish to use O&M funds for all of the preparatory training events.

#### A. Little T Analysis

Malaysia is an important ally in the Pacific region and it has taken a central role in the United States' refocus on building partnerships in Asia,<sup>106</sup> which has been coined the Asia-Pacific Rebalance.<sup>107</sup> However, the Malaysian military is not a military peer of the United States and its military expenditures rank only 58th in the world.<sup>108</sup>

As always, the analysis must begin with the prerequisite support for a combined operation. This factor appears to be met, because in order to operate together, both forces will have to be familiar with each other's equipment, medical procedures, and jungle survival techniques. Since the Malaysian military is, in general, less sophisticated than the U.S. military, there will be an initial appearance of a unilateral skill transfer. To counter this initial impression, the brigade staff must fully analyze the Malaysian forces' specific capabilities in the various events.

##### 1. Stryker Training

At first glance, training Malaysian soldiers on the Stryker

Combat Vehicle appears to parallel the problematic artillery training in Honduras. Like the Honduran military's lack of basic competence with 105mm artillery, the Malaysian military does not have experience with Stryker vehicles.<sup>109</sup> Training them on the use and capabilities of the vehicle appears to inherently create a new skill set. However, unlike Honduras, Malaysia has not purchased the Stryker Combat Vehicle in an FMS and will not be expected to operate them during the combined exercise.

The fact that Malaysia does not own Stryker vehicles may appear to alleviate some of the GAO's concerns that little t training will be used as a replacement for formal training purchased through a FMS. However, the commander must still ensure the cost, duration, and personnel organization of the training do not rise to the level of formal training that would normally be purchased in a FMS.

To avoid formal training, the commander must narrowly tailor the Stryker instruction. If the training consists of short demonstrations given to Malaysian soldiers without significant hands-on training, then it will be easier to classify the event as mere familiarization with no transfer of a new skill. However, if the training consists of more elaborate and costly instruction and provides Malaysian soldiers with the ability to use the vehicle, the little t analysis will point toward formal training and prohibited foreign assistance.

##### 2. Medical Training

Medical training also requires an equal analysis of all the little t factors, because the transfer of new skills is greatly dependent on the duration and organization of the training. The easiest way to create fiscal problems is to award a new medical certification to the foreign soldiers, such as the combat lifesavers (CLS) certificate.<sup>110</sup> For a U.S. Soldier to be qualified as a CLS, she must take part in forty hours of didactic and practical training and pass a forty-question

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View/Article/604728/special-report-dod-focus-on-asia-pacific-rebalance (last visited Aug. 16, 2016) [hereinafter *Special Report*] (describing the ongoing U.S. efforts to strengthen alliances in the Asian-Pacific region).

<sup>103</sup> Hon. Bill Alexander, *supra* note 16, at 44.

<sup>104</sup> The Stryker was introduced in 2000 as an eight-wheeled, medium-weight armored vehicle that prioritized flexibility and speed. *Stryker Family*, GEN. DYNAMICS LAND SYS., <http://www.gdls.com/products/stryker-family.php> (last visited Aug. 16, 2016). It currently has ten different configurations that allow for a variety of uses on the battlefield. *Id.*

<sup>105</sup> Amanni Lyle, *Soldiers Learn Survival Skills at Jungle Training Center*, DEF. MEDIA ACTIVITY (May 21, 2015), <http://archive.defense.gov/news/newsarticle.aspx?id=128874>.

<sup>106</sup> Sec'y of Def. Ash Carter, *Media Availability with Secretary Carter at the ASEAN Defense Ministers-Plus Meeting in Kuala Lumpur, Malaysia*, U.S. DEP'T OF DEF. (Nov. 4, 2015), <http://www.defense.gov/News/News-Transcripts/Transcript-View/Article/627598/media-availability-with>

secretary-carter-at-the-asean-defense-ministers-plus-me (discussing the significant issues facing U.S. allies at a conference hosted by Malaysia).

<sup>107</sup> *Special Report*, *supra* note 102.

<sup>108</sup> *Malaysia World Factbook*, U.S. CENT. INTELLIGENCE AGENCY, <https://www.cia.gov/library/publications/the-world-factbook/geos/my.html> (last visited Aug. 16, 2016) (discussing Malaysia's overall military capabilities).

<sup>109</sup> Lithuania and Iraq are the only two countries actively pursuing foreign military sales of the Stryker. See *Lithuania—M1126 Stryker Infantry Carrier Vehicles*, U.S. DEP'T OF DEF. SEC. COOPERATION AGENCY (Nov. 5, 2015), <http://www.dsca.mil/major-arms-sales/lithuania-m-1126-stryker-infantry-carrier-vehicles-icv-30mm-cannon-and-m2-machine>; see also *Iraq—M1135 Stryker Nuclear, Biological, and Chemical Reconnaissance Vehicles*, U.S. DEP'T OF DEF. SEC. COOPERATION AGENCY (Jul. 25, 2013), <http://www.dsca.mil/major-arms-sales/iraq-m1135-stryker-nuclear-biological-and-chemical-reconnaissance-vehicles>.

<sup>110</sup> *Medical Simulation Training Center*, *supra* note 9.

exam.<sup>111</sup> Just as the U.S. Army could not avoid the formality of the Honduran medical training by classifying it as humanitarian,<sup>112</sup> a commander cannot overcome the formality of a CLS training event by reclassifying it as interoperability and familiarization training.

To ensure the medical training satisfies little t criteria, the commander should organize the training to be mutually beneficial. If the medical training consists of relatively equal numbers of U.S. and Malaysian soldiers, then it will appear to be more of an equal transfer of medical methods for interoperability and safety. The cost and duration of the event should also be narrowly tailored to avoid tipping the scales in favor of foreign assistance.

### 3. *Jungle Survival Training*

Regardless of its overall level of sophistication, the Malaysian military is an expert in jungle survival training.<sup>113</sup> This established skill set will greatly impact the little t analysis, because it is reasonable to assume that the average Malaysian soldier is more skilled in jungle survival than the average Soldier in 3rd SBCT.<sup>114</sup> Therefore, the commander can utilize the near-peer mindset when analyzing this training. As with the U.K., it will be far easier to classify this event as interoperability and safety training, even if it requires a somewhat larger investment of time and resources.

## VII. Avoiding Fiscal Issues with Acquisition and Cross-Servicing Agreements

An acquisition and cross-servicing agreement (ACSA) is another tool that can help reduce some of the fiscal risk inherent in little t training. An ACSA is an agreement between the United States and another country or international organization for reciprocal logistic support, supplies, and services (LSSS).<sup>115</sup> The purpose of these agreements is to facilitate logistic support for each country's military when it is forward deployed away from its national logistics system.<sup>116</sup> A brigade staff should consider using an ACSA to decrease the cost of little t training, because the DoD directive that implements ACSA authority specifically contemplates their use during combined exercises.<sup>117</sup>

Once an ACSA is established between countries, each military can place an order for logistic support with the other country's military. ACSA orders can include a wide variety of logistic support, including: food; billeting; transportation; fuel; spare parts; clothing; small-arms ammunition; and training.<sup>118</sup> However, there are limitations to the type of support that can be provided through an ACSA.<sup>119</sup> Commands must coordinate with the ACSA program manager for the relevant combatant command to ensure the contemplated LSSS is permissible.<sup>120</sup>

When an ACSA order requests a non-returnable transfer of resources, such as food or fuel, the receiving country must repay the transfer through one of three methods: 1) payment-in-kind; 2) replacement-in-kind; or 3) equal-value-exchange.<sup>121</sup> This establishes a flexible system in which the United States can use O&M funds to provide logistics support to a foreign force without violating fiscal law. Therefore, commanders can utilize an ACSA to remove a great deal of the potential cost of interoperability training and sway the overall little t analysis.

For example, most of the heavy-rigging training with the U.K. soldiers described above could potentially be included in an ACSA order. The U.K. could submit an ACSA order for food, transportation, and the rigging materials required to conduct the training. These types of ACSA orders could provide commanders with more leeway in planning interoperability training, because the reimbursement by the U.K. removes most of the expenditure of O&M funds. However, even if an ACSA order greatly alleviates the cost of training, judge advocates must still complete little t analysis to ensure the event does not rise to level of formal training.

## VIII. Conclusion

With the United States continuing to work extensively with foreign allies, fiscal issues related to foreign security assistance will continue to be a significant aspect of operational planning. Although many of our combined exercises are supported with funds specifically authorized by Congress,<sup>122</sup> these funds are not under the control of brigade commanders.<sup>123</sup> Judge advocates must understand the little t paradigm to help provide their commanders with the flexibility to plan necessary training at the brigade level and

<sup>111</sup> *Id.*

<sup>112</sup> Hon. Bill Alexander, *supra* note 16, at 48.

<sup>113</sup> Lyle, *supra* note 105.

<sup>114</sup> *Id.*

<sup>115</sup> 10 U.S.C. §§ 2341-50 (2013); *see also* U.S. DEP'T OF DEF., DIR. 2010.9, ACQUISITION AND CROSS-SERVICING AGREEMENTS (28 Apr. 2003) [hereinafter DODD 2010.9].

<sup>116</sup> Major Ryan A. Howard, *Acquisition and Cross-Servicing Agreements in an Era of Fiscal Austerity*, ARMY LAW., Oct. 2013, at 26.

<sup>117</sup> DODD 2010.9, *supra* note 115.

<sup>118</sup> CHAIRMAN, JOINT CHIEFS OF STAFF, INSTR. 2120.01D, ACQUISITION AND CROSS-SERVICING AGREEMENTS encl. A, app. A (21 May 2015) [hereinafter CJCSI 2120.01D].

<sup>119</sup> DODD 2010.9, *supra* note 115, para. 4.5.

<sup>120</sup> Howard, *supra* note 116, at 33 (discussing the role of the combatant command ACSA program manager).

<sup>121</sup> CJCSI 2120.01D, *supra* note 118, para. 4d.

<sup>122</sup> *See Operation Atlantic Resolve*, *supra* note 101; *see also Special Report*, *supra* note 102.

<sup>123</sup> GAO-15-568, *supra* note 2.

below.

As discussed, there are many ways a BJA can use the little t paradigm to help the staff plan for combined exercises. First, the BJA can ensure the S-2<sup>124</sup> is gathering information on the sophistication of the foreign forces and their competence in the specific skills necessary for the combined exercise. Second, the BJA can ensure the S-4<sup>125</sup> makes contact with the combatant command to determine whether an ACSA exists. Finally, the BJA can help the S-3 apply all of this information to the various operational tasks to devise courses of action that may be funded with O&M appropriations. This legal advice will help your fellow staff officers take the initiative and demonstrate to them the value of integrating the BJA into the planning process.

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<sup>124</sup> The S-2, or intelligence officer, is the principal staff officer responsible for gathering and analyzing information on the enemy, terrain, weather, and other important considerations for the commander. FM 6-0, *supra* note 1, para. 2-44.

<sup>125</sup> The S-4, or logistics officer, is the primary staff officer responsible for sustainment, supply, maintenance, transportation, services and contract support. FM 6-0, *supra* note 1, para. 2-55.