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Lore of the Corps
From Cowboy and Tribal Lawyer to Judge Advocate and Secretary of War:

The Remarkable Career of Patrick J. Hurley

Fred L. Borch
Regimental Historian & Archivist

One of the most interesting judge advocates in history was Patrick J. Hurley, who worked as a coal miner, mule driver, and cowboy before becoming a lawyer and entering the Judge Advocate General's Department (JAGD) in 1917. After serving with great distinction in Europe in World War I, Hurley left active duty. He remained in the Army Reserve and, during World War II, attained the rank of major general. But Hurley also served in our Army as Secretary of War under President Herbert Hoover and served as U.S. Ambassador to China in the administrations of Presidents Franklin D. Roosevelt and Harry S. Truman. What follows is the story of a truly remarkable Army lawyer.

Born in the Choctaw Nation, Indian Territory (now Oklahoma), in January 1883, Patrick J. Hurley grew up in poverty. His father worked in the coal fields as a day laborer for \$2.10 a day; young Pat joined his father in the mines when he was eleven years old. For a nine-and-one-half hour day, the boy received seventy-five cents.¹

Later, when the coal mines closed for a time and young Hurley was without work, he spent his days in the company of Native American members of the Choctaw Nation who, along with the Creeks and Cherokees, were the most prominent Indian tribes in the territory. His friendship with Choctaw Victor Locke would open professional doors after Hurley became a lawyer. But first the teenager returned to the coal mines, where he worked as a mule skinner, "driving the animals as they hauled cars full of coal out of the pits."² Hurley subsequently left the mines to work as a cowboy, "herding and feeding cattle belonging to a local butcher."³ While punching cattle, Hurley teamed up with a cowboy named Will Rogers—the same Will Rogers who would achieve national fame as an actor and humorist.⁴ The two men formed a lifelong friendship that only ended with Rogers' untimely death.

¹ DON LOHBECK, PATRICK J. HURLEY 28 (1956).

² *Id.* at 30.

³ *Id.*

⁴ Williams Penn Adair "Will" Rogers (1879–1935) was one of America's best known celebrities in the 1920s and 1930s. He was a vaudeville performer, humorist, social commentator, and film actor. He had a newspaper column that was read daily by forty million people. He is still remembered today for his timeless and entertaining quotes ("I don't make jokes. I just watch the government and report the facts."). For more on Rogers, see BEN YAGODA, WILL ROGERS: A BIOGRAPHY (2000).

Hurley was still working as a cowhand—sometimes for as little as \$1.00 a day⁵—when a ranch owner who had taken a liking to him arranged for Hurley to attend Indian University (today's Bacone College). He excelled as a student and obtained his A.B. in 1905. Hurley then took a job as an office clerk and began studying law in his spare time. His intent was to sit for the Indian Territory bar examination when he felt he had studied enough law to pass. In 1907, however, friends in Muskogee convinced Hurley that he should obtain a law degree. As a result, Pat Hurley journeyed to Washington, D.C., enrolled in National University, and obtained his LL.B. in 1908. He was just twenty-five years old.

Returning to Oklahoma, he passed the Oklahoma bar and built a successful practice in Tulsa (oil had been discovered there in 1901). In 1911, President William H. Taft appointed Hurley's boyhood friend, Victor Locke, as the Principal Chief of the Choctaws. The new chief now appointed Patrick J. Hurley, then serving as president of the Tulsa Bar Association, as the new National Attorney for the Choctaw Nation of Indians, at an annual salary of \$6,000.⁶ Since the average American earned \$750 a year during this era, this was a huge amount of money for a twenty-eight year old Oklahoma lawyer.⁷

At the time, there were about 28,000 men, women, and children in the Choctaw Nation, and real estate held communally by the tribe was worth as much as \$160 million. Since the most valuable item in that tribal property was coal and asphalt lands, Hurley's job was to ensure that any contracts involving the lease or sale of those lands were fair to the Choctaw and that any proceeds were fairly distributed to members of the Choctaw Nation. Unscrupulous businessmen and politicians had engaged in "systematic, planned fraud" against the tribe for years, mostly by making contracts with individual Indians that purported to dispose of property held communally by the tribe.⁸ Once Hurley became the Choctaw's attorney, however, he successfully fought against these and other fraudulent contracts in court. He also protected the rights of the Choctaws under various treaties with the United States, insisting that the government

⁵ LOHBECK, *supra* note 1, at 33.

⁶ *Id.* at 45.

⁷ Meryl Baer, *The History of American Income*, http://www.ehow.com/info_7769323_history-american-income.html (last visited Oct. 15, 2013).

⁸ LOHBECK, *supra* note 1, at 56, 60.

had a legal responsibility to protect Indian resources.⁹ Hurley was so successful that he could have remained as the Choctaw Attorney for as long as he desired.

In May 1917, however, one month after Congress declared war on Germany and the Central Powers, Hurley resigned and travelled to Washington, D.C., where he accepted a commission as a captain (CPT) in the JAGD. Hurley was no stranger to soldiering, having served as a private, corporal, sergeant, lieutenant and captain in the Muskogee (Oklahoma) Militia from 1903 to 1916 and in the Oklahoma National Guard from 1916 to 1917; in this last position, Hurley served on the U.S.-Mexican border with Guard personnel who were tasked with preventing Mexican warlord Pancho Villa from conducting raids into the United States.¹⁰ Now, however, Hurley was going to soldier as an Army lawyer.

After arriving in Washington, D.C., CPT Hurley initially helped in the preparation of administration of the Selective Service Act of 1917. After some months, he tired of working in “a small office in the grim War, State & Navy Building,”¹¹ and pestered Judge Advocate General Enoch Crowder to permit him to transfer to combat duty. Finally, in April 1918, now Major (MAJ) Hurley “went overseas with the first detachment of American artillery to go to France.”¹² He subsequently served as the Judge Advocate, Army Artillery, First Army, where he not only prosecuted a number of courts-martial,¹³ but also found time to assume the duties of the Army Artillery’s Acting Adjutant General and Acting Inspector General.

While wearing crossed-pen-and-sword insignia, Hurley took part in the battles of Aisne-Marne, St. Mihiel, and Meuse-Argonne. During the last battle, the newly promoted lieutenant colonel (LTC) was cited “for distinguished and exceptional gallantry at Forest de Woevre on 10 November 1918.”¹⁴ The following day—the last day of World War I—LTC Hurley was commended for his gallantry in action while conducting a reconnaissance under heavy enemy fire near Louppy, France.¹⁵ This meant that Hurley was issued

the Silver Star medal when that decoration was created by the Army in 1932.¹⁶

After the Armistice, LTC Hurley was appointed by General John J. Pershing to be the Judge Advocate, 6th Army Corps. In this position, he successfully negotiated an agreement with the Grand Duchy of Luxemburg for the use of its roads and railroads by U.S. troops as they marched across that country on their way to occupy Germany. Originally, General John J. Pershing had planned to simply requisition the necessary trains, and use Luxemburg roads as if Luxemburg were occupied enemy territory on the theory that, as Germany had marched into Luxemburg and occupied it from 1914 to 1918, the Grand Duchy could be treated as if it were conquered enemy territory. Hurley pointed out, however, that regardless of Germany’s actions, Luxemburg still had a neutral status under the 1907 Hague Convention and that Pershing’s proposed course of action would violate international law. After Brigadier General Walter A. Bethel,¹⁷ the senior judge advocate on Pershing’s staff, admitted that Hurley was correct, General Pershing tasked LTC Hurley with arriving at a diplomatic solution. The result was an agreement in which the Americans agreed to pay for the use of railroad cars and pay for the upkeep of roads used by U.S. troops. They also agreed to pay rent for property used for military purposes, including housing used to billet American Soldiers.¹⁸ At the end of his service in Luxemburg, LTC Hurley was awarded the Distinguished Service Medal, with the following citation:

Assigned as Judge Advocate, Army Artillery, First Army, he rendered services of marked ability, performing, in addition to his manifold duties, the duties of adjutant general and inspector general. Later, as Judge Advocate General (sic) of the Sixth Army Corps, he ably conducted the negotiations arising between the American Expeditionary Forces and the Grand Duchy of Luxemburg wherein he displayed sound judgment, marked zeal and a keen perception of existing conditions. He has rendered services of material worth to the American Expeditionary Forces.¹⁹

After leaving active duty in May 1919, Hurley entered private practice, but returned in March 1929 to be Assistant Secretary of War under President Herbert Hoover. When the sitting Secretary of War died in November, Hoover

⁹ *Id.* at 57.

¹⁰ *Id.* at 66, 69.

¹¹ *Id.* at 70. Known today as the “Executive Office Building;” it is located near the White House in Washington, D.C. *Id.*

¹² *Id.* at 71.

¹³ As a major, Hurley served as the prosecutor in *United States v. Buckner*, in which an African-American Soldier was prosecuted for raping a French civilian. See Fred L. Borch, *Anatomy of a Court-Martial: The Trial and Execution of Private William Buckner in World War I*, ARMY LAW., Oct. 2011, at 1.

¹⁴ LOHBECK, *supra* note 1, at 72.

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ Bethel would later be promoted to major general and serve as the Judge Advocate General from 1923 to 1924.

¹⁸ LOHBECK, *supra* note 1, at 72–74.

¹⁹ Headquarters, War Dep’t, Gen. Orders No. 68 (2 Sept. 1920).

nominated Hurley to replace him. The U.S. Senate unanimously confirmed him to the office the following month, “making Pat Hurley, now forty-six years old, the first cabinet officer from the State of Oklahoma, and the only Secretary of War to have served in the armed forces with the rank of private.”²⁰ Hurley was also the first Secretary of War to have previously served as an Army judge advocate.²¹

Hurley left office with the election of Franklin D. Roosevelt, but returned to public service with the start of World War II. Promoted to brigadier general in 1942 (Hurley had remained in the Army Reserve and was a colonel at the start of the conflict), he was ordered to the Southwest Pacific and placed in charge of “efforts to run the Japanese blockade of the Philippines with supplies for General MacArthur’s beleaguered forces on Bataan peninsula.”²²

While Hurley was able to assemble ships and crews in Australia, only a few vessels managed to breach the Japanese blockade; for every ship that arrived, two were lost. But Hurley’s efforts did ensure that the American defenders of the Philippines were never short of ammunition.²³ As for Brigadier General Hurley, he experienced Japanese aggression first-hand when he was wounded in the head by shrapnel in a Japanese bombing attack on Port Darwin, Australia.²⁴

After a quick recovery from this injury, Hurley was appointed U.S. Minister to New Zealand. On 1 April 1942, he assumed duties in Wellington as the top American diplomat in the country. But Hurley was unhappy being in a civilian suit instead of serving alongside Soldiers and, when President Roosevelt asked him if he would like to visit Moscow as a special emissary, Brigadier General Hurley readily agreed. After arriving in the Soviet Union and meeting with Stalin, Hurley and his entourage spent ten days with the Red Army in combat operations, including time

with front-line troops then encircling the German army at Stalingrad.²⁵

Later, Brigadier General Hurley participated in both the Cairo and Tehran conferences where he held the rank of ambassador. After being promoted to major general in December 1943, Hurley went to Chungking as U.S. Ambassador to China in the summer of 1944. In addition to his diplomatic duties, Hurley also served as Roosevelt’s (and later President Harry S. Truman’s) “personal representative on military matters” until he left China in September 1945.²⁶

After the war, Hurley moved to New Mexico, where he was active in both business and politics. He ran unsuccessfully for U.S. Senate as a Republican (1946, 1948, and 1952). Hurley died in Santa Fe, New Mexico, in July 1963. He was eighty years old.

Major General Hurley’s remarkable achievements as an Army lawyer and public servant have not been forgotten by the Corps: the courtroom at Headquarters, U.S. Army Fires Center of Excellence and Fort Sill, Oklahoma, is named in his honor.

More historical information can be found at
The Judge Advocate General’s Corps
Regimental History Website
*Dedicated to the brave men and women who have served our
Corps with honor, dedication, and distinction.*
<https://www.jagcnet.army.mil/History>

²⁰ LOHBECK, *supra* note 1, at 86.

²¹ Though Hurley was a judge advocate *before* serving as Secretary of War, he was not the first Secretary of War who also served as a judge advocate; that first belongs to Joseph Holt, who became a judge advocate *after* serving as Secretary of War. Holt served briefly as Secretary of War in the administration of President James Buchanan. President Abraham Lincoln then appointed Holt, who had no military experience, as Judge Advocate General of the Army. In the modern era, the only judge advocate to have served in the Army’s most senior civilian position is Togo D. West, Jr. West served as a captain in our Corps from 1969 to 1973 and then entered private practice in Washington, D.C. He returned to public service as Secretary of the Army from 1993 to 1997. For more on West, see CATHERINE REEF, *AFRICAN AMERICANS IN THE MILITARY* 241–43 (2010).

²² JUDGE ADVOCATE GENERAL’S CORPS, U.S. ARMY, *THE ARMY LAWYER: A HISTORY OF THE JUDGE ADVOCATE GENERAL’S CORPS, 1775–1975*, at 121 (1975).

²³ LOHBECK, *supra* note 1, at 164.

²⁴ *Id.* at 163.

²⁵ *Id.* at 174–83.

²⁶ *Id.* at 386, 417.

The North Atlantic Treaty Organization Legal Advisor: A Primer

Colonel Brian H. Brady*

I. Introduction

A lawyer who provides legal advice to a North Atlantic Treaty Organization (NATO) client is known as a legal advisor (LEGAD).¹ United States judge advocates perform duty as LEGADs and occupy key NATO crisis establishment posts, advising clients who execute NATO-led operations in Afghanistan, the Balkans, and other contingencies.² Additionally, judge advocates serve in NATO permanent establishment posts where they supervise other NATO legal personnel.³ Outside of NATO, U.S. judge advocates deliver legal advice to U.S. commanders with responsibility for the support of geographically dispersed U.S. personnel who fill NATO posts.⁴ U.S. judge advocates

coordinate opportunities for NATO exercises and training events for augmentees and units identified for transfer to NATO operations.⁵ Recently, senior U.S. judge advocates have commanded a NATO unit in Afghanistan.⁶ Consequently, U.S. judge advocates, whatever their assignment, need to know more about NATO and the LEGAD function.

Preparation for duty in a NATO assignment can be frustrating.⁷ Judge advocates, particularly augmentees to NATO billets, are unlikely to receive funding to attend exercises or training enroute to their assignments. Compounding this frustration, NATO references are not readily accessible to non-NATO personnel.⁸ The majority of NATO documents can only be accessed from NATO's Document Handling System, which is generally restricted to those with computer access to NATO's electronic domain. Even when available, what publications are relevant? While the most useful primer on NATO is the NATO Legal Deskbook, it is practically unavailable outside of NATO.⁹ Existing U.S. materials do not provide extensive insight into NATO's operations or day-to-day LEGAD practice.¹⁰ So

* Judge Advocate, U.S. Army. Presently assigned to the Defense Intelligence Agency Office of General Counsel Operations. Between 2010 and 2012, the author served as staff legal advisor (LEGAD) in the Office of the Legal Advisor, North Atlantic Treaty Organization (NATO), Allied Command Transformation, Joint Warfare Centre, Stavanger, Norway. While assigned as Deputy Staff Judge Advocate, U.S. European Command, Patch Barracks, Stuttgart, Germany, he served as Acting Chief LEGAD, NATO Allied Joint Force Command Naples, February through June 2004. The opinions and conclusions herein are those of the author and do not necessarily represent the views of either the Joint Warfare Centre, the U.S. Army Judge Advocate General's Corps, U.S. Department of Defense, or NATO. The author wishes to acknowledge the invaluable assistance of the Office of the Legal Advisor and CLOVIS team, Supreme Allied Command Transformation, Staff Element Europe (SACT EE) in the preparation of this article.

¹ ALLIED ADMIN. PUB. (AAP) 15, NATO GLOSSARY OF ABBREVIATIONS USED IN NATO DOCUMENTS AND PUBLICATIONS, at C-17 (23 Feb. 2013) [hereinafter NATO GLOSSARY], available at <http://nsa.nato.int/zPublic/ap/aap15/aap-15.pdf> (including both English and French abbreviations and acronyms).

² The senior lawyer advising the NATO-led International Security Assistance Force (ISAF) is an Army judge advocate; the senior lawyer who advises ISAF's operational headquarters, the ISAF Joint Command (IJC), is also a U.S. Corps-level Staff Judge Advocate (SJA); the LEGADs for each of ISAF's Regional Commands East, South, and Southwest are also U.S. divisional-level SJAs. The Deputy LEGAD for Kosovo Force (KFOR) is a U.S. judge advocate. Recently, Army judge advocates have been assigned to NATO's Land Component Command in Izmir, Turkey, and the German-Netherlands Corps, Muenster, Germany. In 2011, U.S. judge advocates (U.S. Air Force) were temporarily assigned to the Combined Air Operations Center (CAOC) in Italy to provide NATO targeting support to NATO's *Operation Unified Protector* (Libya). Judge advocates who practice as LEGADs range in rank from lieutenant to colonel. See generally JUDGE ADVOCATE GEN.'S CORPS PERSONNEL DIRECTORY (Oct. 2012); see also JUDGE ADVOCATE GEN.'S CORPS QUILL AND SWORD NO. 29, ASSIGNMENTS, Winter 2012.

³ A U.S. judge advocate serves as senior LEGAD to Allied Joint Force Command Naples (one of two of NATO's operational level commands; the equivalent of a combatant command) and supervises an international staff, including NATO International Civilians and non-U.S. judge advocates.

⁴ See generally *U.S. Army NATO Brigade History*, U.S. ARMY NATO BRIGADE, <http://www.usanato.army.mil/sites/programs/unithistory/index.html> (last visited Oct. 15, 2013) ("United States Army NATO was established by General Order #46, effective 20 December 1950 . . . the

Command has evolved into providing superlative support to nearly 1300 soldiers and civilians and 1500 family members throughout NATO.".) *Id.*

⁵ U.S. judge advocates provide legal support to NATO exercise and training centers and NATO-accredited schools such as the Joint Warfare Centre (JWC) in Stavanger, Norway, and the NATO School at Oberammergau, Germany.

⁶ See generally Jack Goldsmith, *ROLFF-A Gets a Boost from NATO*, LAWFARE (Jun. 9, 2011), <http://www.lawfareblog.com/2011/06/rolff-a-gets-a-boost-from-nato/>. The NATO Rule of Law Field Support Mission has been commanded by four judge advocates: Brigadier General Mark Martins, Rear Admiral James Crawford, Brigadier General Ural Glanville, and Brigadier General Patrick Reinert.

⁷ As part of the author's duties in preparing personnel for deployment to NATO posts at ISAF as augmentees, he was frequently disappointed to learn that national fiscal constraints or conflicting duties prevented attendance at NATO-mandated predeployment training. For example, the past two senior LEGADs for ISAF who deployed as augmentees did not attend NATO predeployment training before assuming their posts as NATO's senior lawyers in theatre. Until about 2012, neither of the U.S. predeployment platforms, the CONUS Replacement Center (CRC) and Theater Specific Individual Requirements Training (TSIRT), covered NATO-specific training such as escalation of force training.

⁸ The NATO Standardization Agency (NSA) publishes unclassified NATO documents approved by NATO nations under standardization agreement (STANAG) and is available at <http://nsa.nato.int/nsa/nsdd/listpromulg.html>.

⁹ OFFICE OF THE LEGAL ADVISER, ALLIED COMMAND TRANSFORMATION, STAFF ELEMENT EUROPE, NATO LEGAL DESKBOOK (2d. 2010) [hereinafter NATO LEGAL DESKBOOK] (copy on file with author).

¹⁰ See, e.g., CTR. FOR LAW & MILITARY OPERATIONS, THE JUDGE ADVOCATE GEN.'S LEGAL CTR. & SCH., U.S. ARMY, JA 422, OPERATIONAL LAW HANDBOOK ch. 23, at 519-22 (2011). Only three pages are devoted to

how can the judge advocate prepare for duty as a LEGAD? This article provides some insight into NATO, its legal authorities, structure, and the practice of law as a LEGAD.

II. NATO Legal Authority

The North Atlantic Treaty Organization is a creation of international agreement. A mosaic of international agreements establishes the NATO Alliance, states its mission, and grants privileges and immunities to its subordinate elements. The next section provides an overview of some of these key agreements.

A. North Atlantic Treaty of 1949

The North Atlantic Treaty, also known as the Washington Treaty, establishes NATO legal authority, organization, and function.¹¹ NATO is both a political entity and a military entity. NATO's political leader is the Secretary General (currently Mr. Anders Fogh Rasmussen, a Danish citizen), while its military leader is the Supreme Allied Commander Europe (SACEUR) (currently U.S. Air Force General Philip M. Breedlove). The treaty establishes both a political and military role for the organization.

1. Core Mission and Article 5

Article 5 of the treaty states the core mission of NATO.¹² This mission is based upon article 51 of the UN Charter, which provides for collective self-defense. Article 5 states as follows:

The Parties agree that an armed attack against one or more of them in Europe or North America shall be considered an attack against them all and consequently they agree that, if such an armed attack occurs, each of them, in exercise of the right of individual or collective self-defense recognized by article 51 of the Charter of the United Nations, will assist the Party or Parties so attacked by taking forthwith, individually and in concert with the other Parties, such action as it deems necessary, including the use of armed

force, to restore and maintain the security of the North Atlantic area.¹³

NATO invoked the provisions of article 5 to the treaty for the first time in the aftermath of the 11 September 2001 attacks on the United States.¹⁴ NATO Operation Active Endeavor (naval operations in support of 9/11 counterterrorism missions in the Mediterranean) was one of the first NATO operations authorized under article 5.¹⁵

2. Non-Article 5 Activity

Not all NATO military activity can be justified under article 5 to the treaty. NATO member states¹⁶ have an obligation to train and prepare for their defense. This is articulated in article 3 to the treaty.¹⁷ The political aspect of NATO is reflected in the article 4 requirement that parties consult one another to resolve disputes or identify potential threats to the alliance.¹⁸ These authorities have been

¹³ *Id.*

¹⁴ *What is NATO?, Key Events, 2001*, NORTH ATLANTIC TREATY ORGANIZATION, <http://www.nato.int/nato-welcome/index.html> (last visited 22 October 2013) (“Large-scale terrorist attacks in New York and Washington D.C. NATO invokes Article 5 for the first time ever and adopts a broader approach to security.”).

¹⁵ *NATO A-Z, Operation Active Endeavour*, NORTH ATLANTIC TREATY ORGANIZATION (June 21, 2013), http://www.nato.int/cps/en/natolive/topics_7932.htm?selectedLocale=en:

The deployment was one of eight measures taken by NATO to support the United States in the wake of the terrorist attacks of 11 September 2001, following the invocation of Article 5, NATO's collective defence clause, for the first time in the Alliance's history.

The deployment started on 6 October and was formally named Operation Active Endeavour on 26 October 2001. Together with the dispatch of Airborne Warning and Control System (AWACS) aircraft to the United States, it was the first time that NATO assets had been deployed in support of an Article 5 operation.

Id.

¹⁶ NATO member states are the following: Albania, Belgium, Bulgaria, Canada, Croatia, Czech Republic, Denmark, Estonia, France, Germany, Greece, Hungary, Iceland, Italy, Latvia, Lithuania, Luxembourg, Netherlands, Norway, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Turkey, United Kingdom, and United States. *NATO Member Countries*, NORTH ATLANTIC TREATY ORGANIZATION (Apr. 9, 2013), http://www.nato.int/cps/en/nato-live/nato_countries.htm.

¹⁷ North Atlantic Treaty, *supra* note 11, art. 3 (“In order more effectively to achieve the objectives of this Treaty, the Parties, separately and jointly, by means of continuous and effective self-help and mutual aid, will maintain and develop their individual and collective capacity to resist armed attack.”).

¹⁸ *Id.* art. 4 (“The Parties will consult together whenever, in the opinion of any of them, the territorial integrity, political independence or security of any of the Parties is threatened.”).

NATO, and only six pages discuss multinational operations under which NATO operations also fall.

¹¹ North Atlantic Treaty, Apr. 4, 1949, 63 Stat. 2241, 34 U.N.T.S. 243 (entered into force Aug. 24, 1949) [hereinafter North Atlantic Treaty], available at http://www.nato.int/cps/en/natolive/official_texts_17120.htm.

¹² *Id.* art. 5.

interpreted to give NATO its own engagement activity (mirroring the activity of a U.S. combatant command), such as the Partnership for Peace and the Mediterranean Dialogue.¹⁹ While article 5 is a good start point in articulating the legal basis for traditional NATO operations, the LEGAD may also refer to underlying United Nations Security Council Resolutions (UNSCR) giving authority to engage in armed conflict under Chapter VII of the UN Charter.²⁰ In this light, NATO doctrine provides for operational responses beyond article 5 self-defense.

To address the multitude of security scenarios facing the alliance, NATO doctrine recognizes a category of activity known as Non-Article 5 Crisis Response Operations (NA5CRO).²¹ Non-Article 5 operations cover contingencies that do not amount to a response to an armed attack on alliance territory.²² The earliest example of this type of operation includes the NATO-lead of the Implementation Force (IFOR) in Bosnia-Herzegovina.²³ The doctrine states as follows:

NA5CRO range from support operations primarily associated with civil agencies through operations in support of peace, countering irregular threat activities, to combat . . . this could include, but is not limited to, extraction operations, tasks in support of disaster relief and humanitarian operations, search and rescue (SAR) or

¹⁹ *NATO A–Z, Partnerships: A Cooperative Approach to Security*, NORTH ATLANTIC TREATY ORGANIZATION (20 Mar. 2013), http://www.nato.int/cps/en/natolive/topics_84336.htm?

Over the past two decades, the Alliance has developed a network of structured partnerships with countries from the Euro-Atlantic area, the Mediterranean and the Gulf region, as well as individual relationships with other partners across the globe. Today, NATO pursues dialogue and practical cooperation with 41 partner countries and engages actively with other international actors and organisations on a wide range of political and security-related issues.

Id.

²⁰ *See, e.g.*, S.C. Res. 1386, U.N. Doc. S/RES/1386 (20 Dec. 2001) (authorizing a chapter VII action in Afghanistan); *see also* S.C. Res. 1776, U.N. Doc. S/RES/1776 (19 Sept. 2007) (explicitly recognizing NATO's lead of ISAF which had previously been led by nations on a rotational basis since 2001). NATO has led ISAF since August 2003.

²¹ ALLIED JOINT PUB. 3.4A, ALLIED JOINT DOCTRINE FOR NON-ARTICLE 5 CRISIS RESPONSE OPERATIONS (15 Oct. 2010) [hereinafter AJP 3.4A], available at https://clovis.hq.nato.int/RC/Basic%20documents/DanaInfo=clovis.hq.nato.int+AJP_3_4_A.pdf (login and password required).

²² *Id.* ch. 1, para. 0104b(2).

²³ General Framework Agreement for Peace in Bosnia and Herzegovina, Annex 1-A, Agreement of the Military Aspects of the Peace Settlement, 35 I.L.M. 75 (Nov. 21, 1995).

support to non-combatant evacuation operations (NEOs), freedom of navigation and overflight enforcement, sanction and embargo enforcement, support to stabilization and reconstruction activities, peace enforcement (PE), and counterinsurgency (COIN).²⁴

3. Organizational Authority Under Article 9

The North Atlantic Treaty establishes the North Atlantic Council (NAC).²⁵ All NATO entities owe their base authority to some action taken by the NAC. As part of NATO's basic functions, the NAC establishes subsidiary bodies which include political, military, and other organizational entities within NATO. On the military side, the NAC established the Military Committee (MC), which provides direction and guidance on military policy and strategy.²⁶ The MC is supported by its International Military Staff (IMS). Among other things, the NAC approves rules of engagement (ROE) and target lists for specified NATO operations.²⁷

The NAC is chaired by the Secretary General of NATO (Mr. Anders Fogh Rasmussen), who builds consensus within this political and military body. The Secretary General is supported by the International Staff (IS) who works NATO's political agenda.

The NAC is also empowered to establish a form of subsidiary body that is now known as a NATO Agency.²⁸ NATO Agencies are the executive body within a subsidiary

²⁴ AJP 3.4A, *supra* note 21, ch. 1, para. 0104b(2); *see also* Major J.D. Godwin, *NATO's Role in Peace Operations: Reexamining the Treaty After Bosnia and Kosovo*, 160 MIL. L. REV. 1 (1999) (examining implications for the future of NATO out of sector in light of its 1990s-era operations and Article VIII of the UN Charter).

²⁵ North Atlantic Treaty, *supra* note 11, art. 9 ("The Parties hereby establish a Council, on which each of them shall be represented, to consider matters concerning the implementation of this Treaty. The Council shall be so organized as to be able to meet promptly at any time. The Council shall set up such subsidiary bodies as may be necessary; in particular it shall establish immediately a defense committee which shall recommend measures for the implementation of Articles 3 and 5.")

²⁶ *Id.*

²⁷ ALLIED JOINT PUB., AJP-01(D), ALLIED JOINT DOCTRINE (STANAG 2437) para. 0306b, ch. 3 (Dec. 21, 2010) [hereinafter AJP-01(D)], available at [http://nsa.nato.int/nsa/zPublic/ap/ajp-01\(d\).pdf](http://nsa.nato.int/nsa/zPublic/ap/ajp-01(d).pdf) (explaining the role of the Military Committee in recommending ROE for adoption by the North Atlantic Council) ("During periods of crises, the MC advises the NAC and DPC of the military situation, and makes recommendations on the use of military force, the implementation of contingency plans and the development of appropriate rules of engagement."); *see also Id.* para. 0521 ("Military actions are controlled by Rules of Engagement (ROE), which are authorized by the NAC on approval of the OPLAN.")

²⁸ *Id.*

body.²⁹ NATO agencies include such entities as the NATO Standardization Agency (NSA), NATO Maintenance and Supply Agency (NAMSA), and the NATO Communications and Information System Services Agency (NCSA).³⁰ Soldiers who eat at a NATO dining facility on the NATO-operated part of Kabul International Airport (KAIA) eat meals that were contracted and paid for by a NAMSA.

B. NATO Status of Forces Agreement

As North Atlantic Treaty member nations stationed troops within each other's territories for the purpose of defending the alliance, member nations agreed to afford baseline privileges and immunities for activity and personnel present on a treaty mission. The "Agreement between the Parties to the North Atlantic Treaty regarding the Status of Their Forces," which is more commonly known as the NATO Status of Forces Agreement (NATO SOFA), provides baseline privileges and immunities for all NATO personnel stationed in and transiting within member nations.³¹ Privileges and immunities are further augmented by supplementary agreements with member nations. For example, the Supplementary Agreement with Germany extensively implements the basic NATO SOFA.³²

In addition to the NATO SOFA, other agreements provide privileges and immunities for the activities of NATO personnel assigned to NATO subsidiary bodies and allied headquarters or international military headquarters. Unlike a national headquarters such as the 21st Theater

²⁹ See, e.g., NORTH ATLANTIC COUNCIL, DEFENCE POL'Y AND PLANNING COMM. (REINFORCED) NATO AGENCIES REFORM, INITIAL REPORT OF THE LEGAL TASK FORCE ON AGENCY REFORM, AC/281-N(2011)0099 (R), annex 1, sec. 4 (19 May 2011) [hereinafter AGENCY REFORM REPORT] (Charters), available at https://clovis.hq.nato.int/dana-na/auth/url_10/welcome.cgi (login and password required). The report clarifies the distinction between Agency and Subsidiary Body as follows:

4.1 The subsidiary bodies listed at Annex 1, have been established through the approval of a Charter by the NAC In the context of the report it is to be noted that reference will be made to subsidiary bodies rather than Agencies. According to the provisions of the respective Charters, Agencies are the executive body of an Organization created as a subsidiary body.

Id.

³⁰ *Id.* annex 1.

³¹ Agreement between the Parties to the North Atlantic Treaty regarding the Status of Their Forces, June 19, 1951, 4 U.S.T. 1792, 199 U.N.T.S. 67 (entered into force Aug. 23, 1953) [hereinafter NATO SOFA].

³² Agreement to Supplement the Agreement of June 19, 1951, Between the Parties to the North Atlantic Treaty Regarding the Status of Their Forces With Respect to Foreign Forces Stationed in the Federal Republic of Germany, with Protocol of Signature, Aug. 3, 1959, 14 U.S.T. 531, 481 U.N.T.S. 262, T.I.A.S. No. 5351 (entered into force July 1, 1963) (as amended 24 U.S.T. 2355, T.I.A.S. No. 7759).

Sustainment Command in Germany, which is a U.S.-sending state entity covered by the NATO SOFA, a NATO international military headquarters such as the Allied Joint Force Command Headquarters Brunssum, Netherlands, is not a sending state entity. Consequently, separate agreements govern its legal status and those of its personnel. The next two sections address the Ottawa Agreement³³ and Paris Protocol,³⁴ which provide status to NATO entities located on member state territory.

C. Ottawa Agreement

In Ottawa in September 1951, just three months after the signing of the NATO SOFA, the North Atlantic Treaty members also signed an "Agreement on the Status of the North Atlantic Treaty Organization, National Representatives and International Staff."³⁵ The Ottawa Agreement defines and extends certain privileges and immunities to "the Organization," "the Council," "subsidiary bodies," and "Chairman of the Council of Deputies."³⁶ These bodies encompass NATO Agencies, specialized boards, the International Staff, the International Military Staff, and the Military Committee. In essence, while adding the word "Organization" to North Atlantic Treaty, it established rules that facilitated ease of movement and immunities for key policy makers.

The Organization has "juridical personality; it shall have the capacity to conclude contracts, to acquire and dispose of movable and immovable property and to institute legal proceedings."³⁷ The Organization has "immunity from every form of legal process [subject to waiver by the Chairman]."³⁸ The Organization's premises and archives "shall be inviolable."³⁹ The Organization "shall be exempt" from direct taxes, customs duties, and import restrictions.⁴⁰ Privileges and immunities were also extended to officials such as the Executive Secretary, the Coordinator of North Atlantic Defence Production that are "normally accorded to

³³ Agreement on the Status of the North Atlantic Treaty Organization, National Representatives and International Staff, 20 Sept. 1951, 5 U.S.T. 1087, 200 U.N.T.S. 3 (entered into force May 18, 1954) [hereinafter Ottawa Agreement].

³⁴ Protocol on the Status of International Military Headquarters Set Up Pursuant to the North Atlantic Treaty, Aug. 28, 1952, 5 U.S.T. 870, 200 U.N.T.S. 340 (entered into force Apr. 10, 1954) [hereinafter Paris Protocol].

³⁵ Ottawa Agreement, *supra* note 33.

³⁶ *Id.* art. I.

³⁷ *Id.* art. IV.

³⁸ *Id.* art. V.

³⁹ *Id.* arts. VI and VII.

⁴⁰ *Id.* art. X.

diplomatic personnel”⁴¹ Further immunities were extended to “experts . . . employed on missions on behalf of the Organization”⁴² The Ottawa Agreement does not extend privileges and immunities to military headquarters or other military bodies “unless the Council decides otherwise”⁴³

D. Paris Protocol

In 1952, when NATO was still headquartered near Paris, its member nations signed the “Protocol on the Status of International Military Headquarters set up pursuant to the North Atlantic Treaty.”⁴⁴ France, however, later renounced the Protocol when it withdrew from NATO in 1966, and Canada has not ratified it; therefore, issues related to headquarters in their territory must be resolved with reference to separate bilateral or multilateral agreements.

The Paris Protocol, as it is known, extends the privileges and immunities of the NATO SOFA to NATO’s Allied Headquarters or International Military Headquarters and their personnel.⁴⁵ Technically, these headquarters must be “immediately subordinate to a Supreme Headquarters.”⁴⁶ Most importantly, the Paris Protocol vests the source of legal authority and legal personality in NATO’s Supreme Headquarters.⁴⁷ Now known as Strategic Commands, the two Supreme Headquarters (Allied Command Operations located in Mons, Belgium, and Allied Command Transformation, located in Norfolk, Virginia) are the source of authority for subordinate elements. As NATO elements are established on member state territory, the Strategic Commands negotiate “special arrangements” with a receiving state to further implement the Paris Protocol.⁴⁸

⁴¹ *Id.* art. XX.

⁴² *Id.* art. XXI.

⁴³ *Id.* art. II.

⁴⁴ Paris Protocol, *supra* note 34.

⁴⁵ *Id.* art. II (“The Agreement [NATO SOFA] shall apply to Allied Headquarters in the territory of a Party to the present Protocol in the North Atlantic Treaty area, and to the military and civilian personnel of such Headquarters and their dependents”).

⁴⁶ *Id.* art. 1c (“‘Allied Headquarters’ means any Supreme Headquarters and any international military headquarters set up pursuant to the North Atlantic Treaty which is immediately subordinate to a Supreme Headquarters.”) (emphasis added).

⁴⁷ *Id.* art. X (“Each Supreme Headquarters shall possess juridical personality; it shall have the capacity to conclude contracts and to acquire and dispose of property.”).

⁴⁸ *Id.* (“The receiving State may, however, make the exercise of such capacity subject to special arrangements between it and the Supreme Headquarters or any subordinate Allied Headquarters acting on behalf of the Supreme Headquarters.”).

While Strategic Commands have significant authority in the establishment of Allied Headquarters or International Military Headquarters, the North Atlantic Council also has authority to apply the provisions of the Paris Protocol to “any international military Headquarters or organization . . . which is established pursuant to the North Atlantic Treaty.”⁴⁹ This authority provides a solution to the Paris Protocol rule that headquarters have to be “immediately subordinate to a Supreme Headquarters.”⁵⁰ For example, NATO accredits national training centers known as Centres of Excellence (COE), which support NATO capabilities. These centres do not fall under the definition of subsidiary bodies, boards, organs, or Allied Headquarters subordinate to a Strategic Command. Since Allied Command Transformation is NATO’s proponent of exercises, doctrine, and training, but does not have immediate oversight over a COE, it turns to the North Atlantic Council to vest an accredited Centre of Excellence with Paris Protocol status.⁵¹

E. Operational Agreements

As NATO deploys military capability out of treaty territory, its agreements may have no effect on non-NATO states. Consequently, NATO executes additional agreements to provide legitimacy for its mission, plus privileges and immunities for its personnel. For example, NATO’s military presence and privileges and immunities for its role in Afghanistan as lead for the International Security Force (ISAF) is set forth in a Military Technical Agreement (MTA).⁵² While U.S. forces acting under Operation

⁴⁹ *Id.* art. XIV (“The whole or any part of the present Protocol or of the Agreement [NATO SOFA] may be applied, by decision of the North Atlantic Council, to any international military Headquarters or organization”).

⁵⁰ *Id.* art. 1c.

⁵¹ See, e.g., *History of the CCOE*, CIVIL-MILITARY CO-OPERATION CTR. OF EXCELLENCE, <http://www.cimic-coe.org/home/history.php> (last visited Oct. 18, 2013).

In November 2005, the final decision on the transformation of the former CGN HQ in to a CCOE was made by the Sponsoring Nations and supported by ACT and SHAPE The decision marked the start of a formalised accreditation procedure, which was concluded on 31 July 2007 when the North Atlantic Council granted the CCOE the status as a NATO accredited Centre of Excellence, with the status of an International Military Body, IAW Article 14 of the Paris Protocol.

Id.

⁵² Military Technical Agreement Between the International Security Assistance Force and the Interim Administration of Afghanistan, 4 Jan. 2002, 41 I.L.M. 1032 [hereinafter MTA]. Annex A sets forth the status of forces arrangement; see also Exchange of Letters Between the NATO Secretary General and the Government of the Islamic Republic of Afghanistan (22 Nov. 2004) (“‘NATO Personnel’ means the military and civilian personnel assigned or attached to or employed by the North Atlantic Treaty Organization, its member States, and non-NATO Troop Contributing

Enduring Freedom have the equivalent of the 1961 Vienna Convention on Diplomatic Relations administrative and technical privileges and immunities, under a 2003 exchange of notes,⁵³ U.S. forces assigned or acting under Transfer of Authority (TOA) to ISAF are also covered by the MTA.

III. NATO Structure

This section explores the various entities that were created to execute alliance functions since the inception of the North Atlantic Treaty. The purpose is to provide a general understanding of NATO's civilian bureaucracy and military structure so that the judge advocate can frame issues in the context of their mission and legal status. While U.S. personnel perform duty at most of these entities, very few of these entities have a U.S. judge advocate on the LEGAD staff. The most useful open source of information about these structures can be found in the Allied Joint Publication, AJP-01(D), Allied Joint Doctrine, which is also known as Standard NATO Agreement (STANAG) 2437.⁵⁴

A. North Atlantic Council, Committees, and Subsidiary Bodies

As discussed in the previous section, the North Atlantic Council is not only the focal point for decision-making, but is also the source of legal authority within the North Atlantic Treaty.⁵⁵ The North Atlantic Council establishes subsidiary bodies that support the Secretary General and provide forums that represent national interests. These bodies include the International Staff, which supports the Secretary General, and the International Military Staff, which supports the Military Committee (MC). The Military Committee is essentially the forum for the Chiefs of Defense (i.e., Chairman of the Joint Chiefs of Staff) of each member state to engage in military policy and operational decisions.

The North Atlantic Council also creates entities that are now known as NATO Agencies. NATO Agencies perform major support functions such as procurement,⁵⁶

communications services,⁵⁷ and standardization of policy.⁵⁸ These bodies are located in select member states while their personnel may be deployed to NATO Command Structure headquarters.

These subsidiary bodies derive their legal status, privileges, and immunities from the Ottawa Agreement of 1951.⁵⁹ The Ottawa Agreement grants "juridical personality" to the North Atlantic Council and its subsidiary bodies.⁶⁰ The North Atlantic Council and its subsidiary bodies enjoy immunity with regard to its property and assets,⁶¹ premises,⁶² and archives.⁶³ NATO is reviewing and consolidating its subsidiary bodies under a process known as

NSPA's mission is to provide responsive, effective and cost-efficient logistics support services for systems and operations. This support is provided—in times of peace, crisis and war, wherever required—to the NATO member nations, the NATO Military Authorities and partner nations, both individually and collectively. In line with guidance provided by the North Atlantic Council, it aims to maximise the ability and flexibility of armed forces, contingents, and other relevant organisations to execute their core mission.

Id.

⁵⁷ *NATO A-Z, The NATO Communications and Information Agency (NCI Agency)*, NORTH ATLANTIC TREATY ORGANIZATION, http://www.nato.int/cps/en/natolive/topics_69332.htm (last visited Oct. 16, 2013).

NCI Agency delivers advanced Command, Control, Communications, Computers, Intelligence, Surveillance and Reconnaissance (C4ISR) technology and communications capabilities in support of Alliance decision-makers and missions, including addressing new threats and challenges such as cyber and missile defence. This includes the acquisition of technology, experimentation, the promotion of interoperability, systems and architecture design and engineering, as well as testing and technical support. It also provides communication and information systems (CIS) services in support of Alliance missions.

Id.

⁵⁸ *NSA Mission*, NATO STANDARDIZATION AGENCY, <http://nsa.nato.int/nsa/> (last visited Oct. 16, 2013) ("The NSA is an independent NATO Agency that reports to the Committee for Standardization (CS) for general oversight and direction. (The NSA reports directly to the Military Committee, however, for issues relating to operational standardization.) The Agency's mission is to foster NATO standardization with the goal of enhancing the combined operational effectiveness of Alliance military forces.")

⁵⁹ Ottawa Agreement, *supra* note 33.

⁶⁰ *Id.* art. IV.

⁶¹ *Id.* art. V.

⁶² *Id.* art. VI.

⁶³ *Id.* art. VII.

States that are operating under NATO command and control arrangements or in support of the International Security Assistance Force.")

⁵³ Agreement Regarding the Status of United States Military and Civilian Personnel of the U.S. Department of Defense Present in Afghanistan in Connection with Cooperative Efforts in Response to Terrorism, Humanitarian and Civic Assistance, Military Training and Exercises, and Other Activities, U.S.-Transitional Islamic State of Afghanistan, Sept. 26, 2002–May 28, 2003, 2002 U.S.T. LEXIS 100 (entered into force May 28, 2003).

⁵⁴ AJP-01D, *supra* note 27.

⁵⁵ North Atlantic Treaty, *supra* note 11, art. 9.

⁵⁶ *NATO A-Z, The NATO Support Agency (NSPA)*, NORTH ATLANTIC TREATY ORGANIZATION (28 June 2012), http://www.nato.int/cps/en/natolive/topics_88734.htm.

Agency Review.⁶⁴ Agency Review raises several legal issues under the Ottawa Agreement concerning disposition of assets, disposition of records, downsizing, relocation, renaming of a body, and effect of international agreements.⁶⁵ This is associated with name changes and modification to agency charters, which may impact supplementary agreements on their status in member states.

B. NATO Command Structure

NATO's military construct is institutionalized under the NATO Command Structure (NCS).⁶⁶ The current command structure dates to a NATO Military Committee Decision of 2003, which consolidated a multitude of Cold War-era Allied commands including numerous sub-regional commands.⁶⁷ Two Strategic Commands (SC) act as the focal point for NATO's operations and concepts: Allied Command Operations and Allied Command Transformation. From a legal perspective, Strategic Commands are the source of legal personality or "juridical personality" for all subordinate international military headquarters.

1. Allied Command Operations

NATO's operations capability is institutionalized in its Strategic Command known as Allied Command Operations (ACO), which is still referred to by its legacy name: Supreme Headquarters Allied Powers Europe (SHAPE).⁶⁸ Supreme Allied Commander Europe (SACEUR) commands not only ACO, but is also Commander, U.S. European Command (USEUCOM). Allied Command Operations provides direction and guidance to its subordinate Allied Joint Force Commands (JFC): JFC Brunssum, and JFC Naples.⁶⁹ Until recently, each Joint Force Command

⁶⁴ NATO A-Z, *NATO Reform*, NORTH ATLANTIC TREATY ORGANIZATION (8 April 2013), http://www.nato.int/cps/en/natolive/topics_68230.htm ("Agencies Review aims to enhance efficiency and effectiveness in the delivery of capabilities and services, to achieve greater synergy between similar functions and increase transparency and accountability. At the Lisbon Summit, Allies agreed to streamline the 14 NATO agencies into three major programmatic themes: procurement, support, and communications and information.").

⁶⁵ AGENCY REFORM REPORT, *supra* note 29.

⁶⁶ AJP-01(D), *supra* note 27, ch. 3.

⁶⁷ NORTH ATLANTIC MILITARY COMM., MC 324/1 (MILITARY DECISION), THE NATO MILITARY COMMAND STRUCTURE (16 May 2003) (NATO-restricted). THE NATO COMMAND MILITARY STRUCTURE was reissued as NORTH ATLANTIC MILITARY COMM., MC 324/1 (MILITARY DECISION), THE NATO MILITARY COMMAND STRUCTURE (16 Feb. 2010) (NATO-restricted).

⁶⁸ AJP-01(D), *supra* note 27, annex 3A, para. 3A2a n.3 ("This historic acronym [SHAPE] continues to be used despite recent changes to the NATO military command structure.").

⁶⁹ *Id.*

included subordinate component commands much like a U.S. combatant command (Air, Land, Maritime, and Special Operations Forces (SOF)).⁷⁰ The component commands are now stand-alone service-like component commands which provide forces for a Joint Force Commander. Army judge advocates are serving at JFC Naples and the Land Component Command in Izmir, Turkey.

Allied Joint Force Commands are international military headquarters staffed with NATO Permanent Establishment (PE) posts. If the Allied Joint Force Command sets up a subordinate command to execute operations, the deployed post may be established via crisis establishment (CE) billets created by a document known as a Combined Joint Statement of Requirements (CJSOR).⁷¹ For example, all LEGAD billets within ISAF are coded as CE billets on the CJSOR for ISAF and its subordinate operational command, the IJC. Additional contributions to the CE billet structure are considered a Voluntary National Contribution (VNC), thus are an excess requirement and not reflected on the CJSOR.⁷²

2. Allied Command Transformation

NATO's transformational training and doctrine capability is vested in Allied Command Transformation (ACT).⁷³ The Supreme Allied Commander Transformation (SACT) used to also be the Commander, U.S. Joint Forces Command (USJFCOM), Norfolk, Virginia; but with USJFCOM's closure, SACT is now a French flag officer's post. ACT's "core task is to lead the transformation of NATO's military structures, forces, capabilities and doctrine in order to improve the military effectiveness of the Alliance."⁷⁴ Allied Command Transformation's subordinate commands include ACT Staff Element Europe, Mons, Belgium; Joint Warfare Centre, Stavanger, Norway; Joint Force Training Centre (JFTC), Bydgoszcz, Poland; Joint Analysis and Lessons Learned Centre, Monsanto, Portugal.⁷⁵

⁷⁰ *Id.* annex 3, para. 3A2a.

⁷¹ ALLIED COMMAND OPERATIONS (ACO), DIR. 45-3, ALLIED COMMAND OPERATIONS CRISIS ESTABLISHMENT (CE) MANAGEMENT ch. 1, para. 1-5a (10 Mar. 2011) [hereinafter ACO DIR. 45-3] available at https://clovis.hq.nato.int/RC/Basic%20documents/_DanaInfo=clovis.hq.nato.int+ACO_DIR_045_003.pdf (login and password required) (describing the force generation process: "Following the NAC Force Activation Directive, a force generation process is triggered by SHAPE releasing the Activation Warning (ACTWARN). A Combined Joint Statement of Requirements (CJSOR) is drawn up by SHAPE CPP . . ."); see also NATO GLOSSARY, *supra* note 1, at C-17.

⁷² NATO GLOSSARY, *supra* note 1, at V-3.

⁷³ AJP-01(D), *supra* note 27, annex 3A, para. 3A2b.

⁷⁴ *Id.*

⁷⁵ *Id.* annex 3, para. 3A2b n.5.

A judge advocate should look to ACT to fulfill predeployment training requirements. The Joint Warfare Centre and the Joint Force Training Center provide exercise and training opportunities that are particularly important to judge advocates at the operational (Corps) and tactical (Division) level. The Joint Warfare Center provides an exercise platform for staff personnel filling positions at HQ ISAF and the IJC. The Joint Force Training Centre provides a similar platform for those deploying to ISAF Regional Commands.

In 2012, U.S. V Corps and U.S. III Corps sent their deploying legal staff to participate in a combined exercise, UNIFIED ENDEAVOR/ISAF Training Event, hosted by the Joint Multinational Training Center in Grafenwoehr, Germany. NATO allies also sent their deploying personnel who were designated to fill NATO billets in the deployed NATO LEGAD office. As NATO missions evolve, more effort will likely be made to train NATO Force Structure units that are assigned to perform NATO Response Force duties on behalf of the Alliance.

C. NATO Force Structure

NATO Command Structure provides the basis for NATO command and control of units that have been transferred to NATO control. Nations allocate units or personnel to fill NATO Force Structure (NFS) military response capabilities, which are the actual fighting elements within NATO.⁷⁶ NATO Force Structure may be “composed of allied, national and multinational forces, together with affiliated headquarters, which are placed at the Alliance’s disposal on a permanent or temporary basis under specified readiness criteria. National contributions to NATO Force Structure are made available to the Alliance under both the agreed mechanisms for the Transfer of Authority [TOA] and by coordination and cooperation agreements”⁷⁷ A U.S. judge advocate has recently been assigned to a NATO Force Structure unit: the German-Netherlands Corps, Muenster, Germany. While NATO Force Structure units have limited U.S. judge advocate presence, U.S. personnel are assigned to NATO posts in many NATO Force Structure units. In this way, it is possible for a U.S. Corps or Division to deploy under the operational command of NATO. Consequently, the SJA for the U.S. Corps or Division will be responsible for legal advice concerning NATO operations.

The traditional function of NATO Force Structure units has been to fight a conventional war under article 5 of the North Atlantic Treaty.⁷⁸ Emerging threats demand a broader

⁷⁶ NORTH ATLANTIC MILITARY COMM., MC 317/1(MILITARY DECISION), THE NATO FORCE STRUCTURE (24 July 2001) (NATO-restricted).

⁷⁷ AJP-01(D), *supra* note 27, annex 3A, para. 3A7.

⁷⁸ North Atlantic Treaty, *supra* note 11, art. 5.

spectrum of operational responses, including Non-Article 5 Crisis Response Operations (NA5CRO).⁷⁹ Non-Article 5 operations cover contingencies that do not amount to a response to an armed attack on Alliance territory.⁸⁰ NATO’s operations enforcing the U.N. mandate during Operation Unified Protector was a glimpse into NATO’s potential future. One type of NATO entity that may be called upon to execute these operations includes the NATO Response Force (NRF).⁸¹ The NRF is a combined joint package comprising Air, Land, Maritime, and SOF capabilities to meet an extant crisis.⁸²

IV. Transfer of U.S. Personnel and Units to NATO

A. Doctrine for Multinational Operations

*[W]hen a group of countries wants to launch a joint intervention as a coalition—which confers political legitimacy—only NATO can provide the common command structure and capabilities necessary to plan and execute complex operations.*⁸³

U.S. doctrine concerning multinational operations was significantly revised in July 2013 and reflects U.S. experience with NATO operations. In an Alliance operation, Alliance rules provide both the political and military framework for unity of effort.⁸⁴ Under U.S. doctrine, there are three types of multinational command

⁷⁹ AJP 3.4A, *supra* note 21.

⁸⁰ *Id.* ch. 1, para. 0104b(2).

⁸¹ ALLIED JOINT PUB. (AJP) 3(B), ALLIED DOCTRINE FOR THE CONDUCT OF OPERATIONS para. 0229, ch. II, (Mar. 16, 2011) [hereinafter AJP-3B], available at [http://nsa.nato.int/nsa/zPublic/ap/ajp-3\(b\).pdf](http://nsa.nato.int/nsa/zPublic/ap/ajp-3(b).pdf) (“The NATO Response Force (NRF) is a high-readiness, joint and combined force whose purpose it is to provide an immediate military response to an emerging crisis as part of the Alliance comprehensive crisis management system for both Article 5 and crisis response operations. The NRF mission is to provide a rapid demonstration of force and early establishment of a NATO military presence.”); see also ALLIED COMMAND OPERATIONS DIR. (AD) 80-96, NATO RESPONSE FORCE (24 Apr. 2013) [hereinafter AD 80-96] (NATO restricted); NORTH ATLANTIC MILITARY COMM., MC 477 (MILITARY DECISION), MILITARY CONCEPT FOR THE NATO RESPONSE FORCE (Apr. 10, 2003) (NATO-restricted).

⁸² AD 80-96, *supra* note 81.

⁸³ Ivo H. Daadler & Admiral James S. Stavridis, Supreme Allied Commander Europe and Commander U.S. European Command, *NATO’s Victory in Libya: The Right Way to Run an Intervention*, FOREIGN AFF., Mar./Apr. 2012, at 4. The authors go further by comparing NATO Alliance operations to multilateral coalitions which “by contrast, have no common doctrine for conducting military operations, no common capabilities or command structure for quickly integrating national forces into a cohesive campaign, and no standing mechanisms for debating then deciding on an agreed course of action. Such ad hoc coalitions therefore almost always rely disproportionately on a single nation to bear the brunt of security burdens that ideally should be more equally shared.” *Id.*

⁸⁴ *Id.*

structures: Integrated; Lead-nation (LN); and Parallel.⁸⁵ Similarly, NATO doctrine (adopted by the United States as STANAG 2490) recognizes three structural models for the command and organization of multinational forces: Fully Integrated; Lead Nation; and Framework Nation.⁸⁶ While still part of NATO's joint doctrine, the structural models are no longer reflected in NATO's operational doctrine.⁸⁷ The Fully Integrated model is the prime example of a command structure that provides a common umbrella of ROE, staff procedures, and political aims.⁸⁸ For example, HQ ISAF is a

⁸⁵ JOINT CHIEFS OF STAFF, JOINT PUB. 3-16, MULTINATIONAL OPERATIONS ch. II, para. 4 (17 July 2013) [hereinafter JOINT PUB 3-16] (identifying three types of multinational command structure: Integrated (e.g., NATO); Lead-nation (e.g., Operation Iraqi Freedom); Parallel (e.g., Gulf War 1991)).

⁸⁶ ALLIED JOINT PUB. (AJP) 3(A), ALLIED DOCTRINE FOR JOINT OPERATIONS ch. 1, sec. V (Multinational Cooperation (the Combined Approach to Operations), para. 0147 (Command Organization) (2 July 2007) [hereinafter AJP 3A], available at https://clovis.hq.nato.int/RC/Basic%20documents/DanaInfo=clovis.hq.nato.int+AJP_3_A.pdf (login and password required).

a. Fully Integrated. Fully integrated forces are based on a 'proportional shares' bi- or multinational basis with national components and a fully integrated headquarters. The working language and procedures would be agreed by the contributing nations. Commanders of such multinational formations are usually appointed on a rotational basis.

b. Lead Nation. One nation would assume responsibility for the planning and execution of an operation. The commanding officer, staff, Command, Control, Communications and Information (C3I) structure, doctrine and logistic coordination of the force would normally be provided by one nation (the lead nation). Other nations could assign contributions to this force, and fill staff positions in the lead nation's staff.

c. Framework Nation. One nation provides the framework for the required command structure and forces. The key elements of the staff and the headquarters support would come from the framework nation. The working language and procedures though would be based on Alliance standards.

Id.

⁸⁷ AJP 3(A) is superceded by ALLIED JOINT PUB. (AJP) 3(B), *supra* note 81, para. 3, preface ("The main difference between AJP-3(A) and AJP-3(B) is that this publication better reflects the linkage between the newly revised capstone joint doctrine document AJP-01(D) [*supra* note 27], with which it should be used in conjunction."); see also AJP-01(D), *supra* note 28, at 0316 (preserving the language cited at footnote 85).

⁸⁸ JOINT PUB 3-16, *supra* note 85, para. 5, ch. II (articulating the U.S. view (and virtues) of alliance operations):

5. Multinational Command Structures

a. In multinational commands, national political objectives are addressed and generally subsumed within MNF objectives at the alliance treaty level. Typically, alliance command structures have been carefully developed over extended periods of time and have a high degree of stability and consensus;

NATO-led Fully Integrated multinational headquarters. In contrast, the United States was the Lead Nation for the command and control of Multinational Forces–Iraq (MNF–I) during Operation Iraqi Freedom (OIF), which was characterized by *ad hoc* bilateral arrangements.⁸⁹

After the dissolution of the Soviet Union in 1991, the United States found itself increasingly committed to multinational operations involving NATO.⁹⁰ Judge

doctrine and standardization characterize alliances. Established command structures may be modified or tailored for particular operations, especially when combined operations include non-allied members.

b. Combined command relationships often reflect either an integrated command structure or a LN [lead nation] command structure. Alliances typically have established command structures, support systems, and standardized procedures. In combined operations, such structures should be used to the maximum practical extent. Combined command and force structures often mirror the degree of allied member participation. Subordinate commands are often led by senior military officers from member nations. Effective operations within an alliance require that the senior political and military authorities be in agreement on the type of command relationships that will govern the operations of the forces. Notwithstanding peacetime command relationships, the political sensitivities associated with actual operations will impact command relationships and operating procedures.

Id.

⁸⁹ Joint Publication 5.0, *Joint Operation Planning*, which states as follows:

17. Multinational Planning and Coordination

a. General. *Multinational operations* is a collective term to describe military actions conducted by forces of two or more nations. Such operations are usually undertaken within the structure of a coalition or alliance, although other possible arrangements include supervision by an IGO (such as the United Nations or Organization for Security and Cooperation in Europe). A coalition is an arrangement between two or more nations for common action. Nations usually form coalitions for a single occasion or for longer cooperation in a narrow area of common interest. An alliance is a result of formal agreements between two or more nations for broad, long-term objectives that further the common interests of the members. Key to any multinational operation is the achievement of unity of effort among political and military leaders of member nations emphasizing common objectives and shared interests as well as mutual support and respect[emphasis added].

JOINT PUB. 5.0, JOINT OPERATION PLANNING ch. II, para. 17, at II-37 (11 Aug. 2011).

⁹⁰ See, e.g., *Current Operations*, ALLIED COMMAND OPERATIONS, <http://aco.nato.int/ongoingoperations.aspx> (last visited Oct. 16, 2013). Current operations include NATO-led command and control of the International Security Assistance Force (ISAF); NATO-led mission in support of the U.N. mandate for a peace support operation in Kosovo (KFOR); Operation Active Endeavor (an enduring maritime counterterrorism operation in the Mediterranean); and Operation Ocean

advocates and other U.S. lawyers assigned to NATO posts play an important role in shaping and executing NATO operations.⁹¹ Consequently, there are growing opportunities to serve outside of national units in NATO Command Structure, NATO Force Structure, NATO Organizations, and their subsidiary bodies.⁹²

B. NATO Posts

Assignment to a NATO staff billet in a permanent NATO headquarters or subsidiary body, known as a Permanent Establishment (PE) post, is a national decision, which in the case of the United States, after service and branch equities have been met, is coordinated by a staff element located at the U.S. European Command.⁹³ Since the assignment of U.S. personnel to NATO is part of a member state's contribution to NATO, NATO does not reimburse the Department of Defense for assignments to NATO posts.⁹⁴

Shield (ongoing counter-piracy operations in the waters off the Horn of Africa). *Id.*

⁹¹ E.g., JFC Naples Chief LEGAD is a U.S. Army judge advocate colonel; the KFOR Deputy LEGAD is a U.S. Army judge advocate colonel; the Chief LEGADs for both ACO and ACT are retired U.S. Navy judge advocates; the Chief LEGADs and almost the entire LEGAD CE posts for HQ ISAF, IJC, NATO Training Mission-Afghanistan (NTM-A) (Commander, NTM-A are dual-hatted as Commander of the U.S. Combined Security Training Command-Afghanistan (CSTC-A)), and Regional Commands East, South, and Southwest are comprised of U.S. judge advocates; the Combined Air Operations Centre (CAOC) servicing the U.S. CENCTOM AOR, including Afghanistan air operations, is populated by U.S. Air Force attorneys; U.S. judge advocates filled key JFC Naples Air Component Command slots in its CAOC during execution of missions over Libya during Operation Unified Protector; ISAF's direct reporting unit, the NATO Rule of Law Field Support Mission-Afghanistan, is commanded by a U.S. one-star judge advocate.

⁹² AJP-01(D), *supra* note 27, ch. 3.

⁹³ CHAIRMAN OF THE JOINT CHIEFS OF STAFF, INSTR. 1600.01A, CHARTER FOR UNITED STATES EUROPEAN COMMAND NATO MANNING DIVISION para. 6a(2)(b)1 (10 Dec. 2010) [hereinafter CJCSI 1600.01A] (The manning division, *inter alia*, "[m]anages manpower requirements and sourcing strategies for U.S. contributions to NATO, to include Voluntary National Contributions, dualhat, rotational and non-quota post allocations, and U.S. joint requirements.")

⁹⁴ U.S. DEP'T OF DEF., FINANCIAL MANAGEMENT REGULATION, DOD 7000.14R, VOL. 11A, CH.R 9, SUPPORT OF INTERNATIONAL MILITARY ACTIVITIES para. 0902 [hereinafter FMR], available at http://comptroller.defense.gov/fmr/current/11a/Volume_11a.pdf (last visited Oct. 18, 2013). This policy is articulated as follows:

090201. Nonreimbursable Support

The Department of Defense (DoD) provides nonreimbursable support to international military organizations in two forms: (1) through a financial contribution to the budget of the international organization, or (2) by assignment of U.S. military elements to the international organization under the terms of international treaties or agreements (see *DoD Directive 5530.3*, "International Agreements"). The U.S. military elements may be assigned either on a long-or short-term basis.

The assignment process is slightly different for personnel assigned to operational billets known as Crisis Establishment (CE) posts.

Operational and tactical crisis establishment posts include those found at Headquarters (HQ) International Security Assistance Force (ISAF), HQ ISAF Joint Command (IJC), NATO Training Mission-Afghanistan (NTM-A), NATO Rule of Law Field Support Mission-Afghanistan (NROLFSM-A), and HQ Kosovo Force (KFOR).⁹⁵ When the SJA of a U.S. Corps becomes the Chief LEGAD of a NATO crisis establishment post such as the IJC, the SJA is also vested as a NATO LEGAD responsible for the delivery of advice on NATO operations.

NATO Force Structure is filled by units of specific military capabilities that have been offered to NATO by Troop Contributing Nations (TCN) and accepted under a NATO operational regime known as Transfer of Authority (TOA).⁹⁶ Not all NATO Force Structure is comprised of crisis establishment posts. When a troop-contributing nation proffers capability (personnel or a unit) to NATO, it is the equivalent of a service providing organized, trained, and equipped forces to a Combatant Commander.⁹⁷

A. Typically, short-term assignments would be for the purpose of participating in a joint exercise or maneuvers conducted under the auspices of the international organization.

B. Long-term assignments typically involve filling an existing billet on the staff of an international organization.

C. Support under paragraphs 090201.A. and B., are not reimbursable to DoD. As an exception to this policy, support by members of a U.S. military element who provide services that were included in the budget of the international organization (e.g., a U.S. military member who occupies an international civilian billet) shall be reimbursable

Id. at 4.

⁹⁵ ACO DIR. 45-3, *supra* note 71, para. 1-4a (defining a CE billet as "a table setting out the authorised posts for a CRO [Crisis Response Operation] unit, formation or headquarters").

⁹⁶ ALLIED COMMAND OPERATIONS DIR. 80-20, ALLOCATION OF FORCES AND TRANSFER OF AUTHORITY (17 June 2011) [hereinafter ACO DIR. 80-20] (NATO-restricted). For U.S. forces, this requires Secretary of Defense approval, under provisions of 10 U.S. Code § 162, because this is an allocation of U.S. forces that are outside the normal "forces for" Combatant Commanders process.

⁹⁷ CHAIRMAN OF THE JOINT CHIEFS OF STAFF, INSTR. 2700.01E, INTERNATIONAL AGREEMENTS FOR RATIONALIZATION, STANDARDIZATION, AND INTEROPERABILITY (RSI) BETWEEN THE UNITED STATES ITS ALLIES AND OTHER FRIENDLY NATIONS encl. A, para. 4b (18 Jan. 2012) [hereinafter CJCSI 2700.01E] (reinforcing the NATO rule that "*Nations are responsible for training, organizing, and equipping the forces they have earmarked for, or assigned to, an alliance or Coalition.*") (emphasis added).

Personnel assigned to NATO posts at the operational level (e.g., HQ ISAF, IJC, NTM-A) have to receive training mandated by their controlling operational Allied Joint Force Command (JFC).⁹⁸ Additionally, the post's job description (JD) may require that the incumbent receive specialized predeployment training and education.⁹⁹ Supervisory LEGADs should specify training and education requirements in office JDs to not only ensure deployment of qualified personnel, but also to maximize training opportunities while in the post. When a JD contains training requirements, NATO may fund a portion of transportation costs, using NATO international travel funds once the post is filled.¹⁰⁰ For personnel assigned to posts in Afghanistan at the operational level, their first taste of NATO training could be at the Joint Warfare Centre, Stavanger during an ISAF Predeployment Training Event or Individual Augmentee Predeployment Training (IAPDT). Upon learning about a potential NATO assignment, particularly at the operational level, U.S. military lawyers should contact the incumbent Joint Warfare Centre LEGAD to determine what training is available.

C. U.S. Support to its Personnel in NATO Posts

The United States assigns personnel to NATO posts located in diverse locales including Izmir, Lisbon, Madrid, Milan, Mons, Muenster, and Stavanger.¹⁰¹ These

⁹⁸ See, e.g., Letter from Allied Joint Force Command Brunssum, subject: NATO-Led ISAF Predeployment Training 2013, para. 1 (22 Nov. 2012) [hereinafter JFCB Training Memo], available at https://clovis.hq.nato.int/RC/References/DanaInfo=clovis.hq.nato.int+LTR_JFCBS_PreDeployent_2013.pdf (login and password required).

The purpose of this letter is to inform ISAF Troop Contributing Nations of the requirement to attend NATO-led Pre-Deployment Training. The NATO training professionals at all of the NATO Education and Training Facilities provide the best training available, and this is critical to our success in Afghanistan. The annexes to this letter provide detailed information regarding the HQ ISAF/IJC pre-deployment training and other selected training events for 2013, as well as the ISAF training calendar for 2013, and details regarding course content. Subsequent quarterly letters will provide updates and changes as necessary for each quarter of 2013.

Id.

⁹⁹ ACO DIR. 45-3, *supra* note 71, para. 3-2a ("Pre-deployment Training Requirements. Any requirement for national mandatory pre-deployment training is the responsibility of each TCN or NATO for deployed NICs [NATO International Civilians discussed later]. *NATO requirements are specified on the JD.*") (emphasis added).

¹⁰⁰ See, e.g., ALLIED COMMAND OPERATIONS, DIR. 60-50, TRAVEL ON INTERNATIONAL DUTY (21 Dec. 2006) [hereinafter ACO DIR. 60-50].

¹⁰¹ For an exhaustive list of these headquarters, see FMR, *supra* note 94, vol. 11A, ch. 9, tbl.9-1. An extract of Administrative Agent responsibilities for ACO is as follows:

2. Allied Command Operations (ACO)

assignments create administrative and logistical challenges to all nations who must support dispersed clusters of personnel. In the case of the United States, the Secretary of Defense designates a service to act as administrative agent for the logistical support of U.S. personnel assigned to international military HQs.¹⁰² For example, the U.S. Army is the agent for the International Military Staff at HQ NATO in Belgium, while the U.S. Navy is the agent for JFC Naples, and the U.S. Air Force is the agent for JWC in Norway. This support may also extend to fiscal contributions to the mission of the unit based upon Memoranda of Understanding (MOUs).¹⁰³ For example, the United States

a. Supreme Headquarters Allied Powers Europe (SHAPE)
Army
(Mons, BE)

b. HQ Allied Joint Force Command Brunssum (HQ JFCBS)
Army
(Brunssum, Netherlands (NL))

c. HQ Allied Maritime Command (HQ MARCOM)
Air Force
(Northwood, United Kingdom (UK))

...

(3) Allied Deployable Air Command and Control Center
Army
(DACCC) (Poggio Renatico, Italy(IT))

(4) Combined Air Operations Center #5
Army
(Poggio Renatico, IT)

...

e. HQ Allied Land Command (HQ LANDCOM)
Air Force
Izmir, Turkey (TU)

...

g. HQ Allied Joint Force Command Naples (HQ JFCNP)
Navy
(Naples, IT)

¹⁰² *Id.*

¹⁰³ *Id.* para. 090303 (Administrative Agent). The administrative agent shall:

A. Budget for the U.S. contributions to designated non-NATO international military organizations. When the Army is not the administrative agent for a NATO body, or other multinational headquarters, the designated agent shall provide the Army with program and budget information on the annual contribution for inclusion in the Army's O&M appropriation. Budgeting for the NAPMA constitutes an exception to this policy.

B. Coordinate with appropriate U.S. representatives at the international military organizations to ensure that effective procedures and controls are prescribed for budgeting, obligating, disbursing, and receiving credits incident to administering the U.S. contributions.

is a major financial supporter of the NATO School Oberammergau, Germany based, on an original agreement between the U.S. Army and Germany executed in 1974.¹⁰⁴ In NATO, the term “MOU Organization” refers to a multilaterally funded entity such as NATO Centres of Excellence and operational units, such as the Allied Rapid Reaction Corps (ARRC), which are funded via multilateral MOU.¹⁰⁵ Service attitude, funding, and resourcing, therefore, have a great impact on the quality of life for U.S. personnel assigned to NATO structures.

V. NATO LEGAD Practice and Issues

A. LEGAD Organization and Function

NATO LEGAD organization and function is derived from NATO’s Bi-Strategic Command (Bi-SC) Directive 15-23, which governs the delivery of legal advice within NATO’s two Strategic Commands.¹⁰⁶ This regulation

C. Program and allocate resources in a manner that will provide the international organization with the highest possible level of support under section 0902 and paragraphs 090402, 090403, or 090404 of this chapter consistent with financial constraints that may be imposed through the normal program and budget process.

D. Support U.S. military elements attached to the designated international military organization on a nonreimbursable basis, unless the support is an international budget cost or is a budget responsibility of another Military Department (see paragraph 090304). The standards and directives of the administrative agent shall govern the level and type of support furnished. The level and type of support will be consistent with the highest possible level of support allowable under this chapter while not violating those same governing standards and directives. Support requirements based upon input provided by the U.S. military element shall be included in the administrative agent’s annual budget. In carrying out this support responsibility, the administrative agent shall obtain support from the most efficient and economical source while ensuring that no parallel support facility is established when the support may be performed economically by local sources (see *DoD Instruction 4000.19*, “Interservice and Intragovernmental Support”).

E. Provide U.S. military elements, which are Table of Organization and Equipment (TO&E) or equivalent units, with replacement issues of consumable and nonconsumable material, obtaining peculiar items when necessary from supply systems of the parent Military Service on a reimbursable basis.

¹⁰⁴ *Id.* vol. 11A, ch. 9, tbl.9-1.

¹⁰⁵ *Id.* vol. 11A, ch. 9, para. 4, tbl.9-1 (outlining MOU Organizations, which include NATO Rapid Deployable Corps, German-Netherlands Corps, Muenster, Germany).

¹⁰⁶ BI-STRATEGIC COMMAND, DIR. 15-23, POLICY ON LEGAL SUPPORT (23 July 2009) [hereinafter BI-SC DIR. 15-23], available at <https://clovis.hq>.

mandates that the LEGAD be part of the Command Group and not subordinated to another staff element.¹⁰⁷ Apart from obvious cultural differences and specific mission focus, a U.S. judge advocate will find that the organization and functions of a NATO LEGAD Office are remarkably similar to those of an Office of the Staff Judge Advocate or General Counsel’s Office.

B. Legal Research Tools

Few LEGADs gain NATO experience while practicing law in their national posts. Opportunities to attend NATO collective legal training may also be limited.¹⁰⁸ LEGADs filling NATO posts as augmentees face a significant challenge preparing for their NATO duties. Compounding the lack of exposure to NATO experience and training opportunities is limited access to NATO documents. Reach-back to national systems is also limited by having a “foreign” IP address (NATO is not on the <.mil> or <.gov> domain). Further, U.S. LEGADs may not have the ability to use a CAC on NATO systems. NATO’s document handling systems exclude access to personnel who are not part of NATO organizations and subsidiary bodies, NATO Command Structure or NATO Force Structure posts. Fortunately, there are several ways to get access to relevant information.

The NATO e-Library page provides links to its official texts.¹⁰⁹ The NATO Standardization Agency (NSA) website provides access to key unclassified doctrinal publications that have been adopted by NATO member nations as a Standard NATO Agreement.¹¹⁰ Upon request, prospective LEGADs can obtain a copy of the NATO Legal Deskbook, which provides a superb overview of key legal issues and NATO processes.¹¹¹ The NATO Legal Gazette (first

nato.int/RC/Basic%20documents/Forms/DanaInfo=clovis.hq.nato.int+All%20Directives.aspx (login and password required).

¹⁰⁷ *Id.* para. 7 (“The Office of the Legal Adviser is a key member of the Command Group and the Senior Legal Adviser enjoys direct access to the Commander.”).

¹⁰⁸ NATO training is also available at numerous ACT-recognized NATO Centres of Excellence. Additionally, the NATO School, Oberammergau, Germany is a mainstay of NATO-oriented legal training. The NATO School offers an excellent introductory course for NATO LEGADs and more advanced operational law and targeting courses for seasoned LEGADs. Funding for attendance falls on the nations.

¹⁰⁹ *e-Library*, NORTH ATLANTIC TREATY ORGANIZATION, <http://www.nato.int/cps/en/SID-78FFB86D-59C6D9E0/natolive/publications.htm> (last visited Oct. 16, 2013).

¹¹⁰ See, e.g., AJP-01(D), *supra* note 27 (the AJP is adopted as STANAG 2437).

¹¹¹ NATO LEGAL DESKBOOK, *supra* note 8 (the Deskbook is in constant draft and, as a living document, gets better with each evolution). The current edition consists of 17 parts as follows:

published in 2006) provides NATO LEGAD practitioners' insights to current NATO issues.¹¹² Once in-processed to a NATO post, or upon request before assuming a NATO post, NATO LEGADs will have access to Comprehensive Legal Overview Virtual Information System (CLOVIS), which is an online community of interest sponsored by the legal element of ACT's Staff Element Europe.¹¹³

C. Common Legal Issues

1. Rules of Engagement

Legal Advisors serving within NATO Command and Force Structure have a key role in the delivery of operational law advice to their commands. For example, the LEGADs located at JFC Naples, the Land Component Command Izmir, and German-Netherlands Corps devote a substantial portion of their duties to operational law issues. Legal Advisors assigned to NATO contingencies such as Headquarters ISAF and the ISAF Joint Command (IJC) can expect to focus almost all their NATO efforts on operational law. Consequently, LEGADs who deliver operational law advice must be versed in NATO Rules of Engagement.

NATO has its own Rules of Engagement as part of its integrated alliance command and control structure.¹¹⁴ Unlike

U.S. Standing Rules of Engagement, NATO ROE are tailored for a specific operation. The North Atlantic Council authorizes ROE for this purpose.¹¹⁵ Generally, Annex E of all NATO operations plans will contain the approved ROE and Political Policy Indicators governing the operation. Additional amplification of the ROE, and a useful tool for interpretation of the ROE, is found in the ROE implementation message (ROEIMPL—pronounced “ROW-impull”). ACO/SHAPE, in its capacity as Strategic Command, issues ROEIMPL which are a compilation of ROE from MC 362/1 that apply to the operation.¹¹⁶ Additional legal definitions and guidance will normally be contained in the OPLAN's legal Annex AA. The definitions for hostile act and hostile intent are particularly important for the NATO practitioner because they will not necessarily mirror their national practice.¹¹⁷

NATO does not issue ROE on self-defense because NATO considers self-defense to be a matter of national law.¹¹⁸ What the United States might consider self-defense rules appear under NATO's “Attack” series of ROE as responses to hostile acts or intent.¹¹⁹ One term peculiar to NATO ROE includes Series 33 rules (Use of Force in Designated Operations): Persons Designated Special Status (PDSS) and Property Designated Special Status (PrDSS).¹²⁰ An area that LEGADs need to know is whether national caveats impact the ability of a troop contributing nation to execute a given mission.¹²¹ Ultimately, NATO ROE provide an umbrella under which most nations' ROE are tailored to execute their role in a NATO-led operation. Deviations from NATO ROE are declared by national caveats and published by ACO/SHAPE for a given operation.¹²² The ROE may appear transparent to the Soldier on the ground, but the LEGAD needs to know the bigger picture and must

Part I: The Development and Organization of NATO and the Overview of NATO Bodies;

Part II: Decisionmaking and Document Management;

Part III: Introduction to the Law of International Organizations and to Key NATO Legal Documents;

Part IV: Key NATO Legal Documents on the Status of Forces and Headquarters;

Part V: Treaty Law, International Agreements and NATO Practice;

Part VI: Legal Support in NATO;

Part VII: Personnel;

Part VIII: Overview of NATO Procurement, Logistics or Service Organizations;

Part IX: NATO Resources and Financial Matters;

Part X: Logistics;

Part XI: Legal Framework and Legal Basis of Military Operations;

Part XII: Introduction to the Law of Armed Conflict and Rules of Engagement;

Part XIII: Issues in Operations: Special Operations from a Legal Perspective;

Part XIV: Issues in Operations: Claims;

Part XV: EU Crisis Management Operations and their Relations with NATO Operations;

Part XVI: Human Rights in Military Operations;

Part XVII: Environmental Protection.

¹¹² See, e.g., Mr. Richard Pregent, *Cyber Defense and Counterintelligence*, 26 NATO LEGAL GAZETTE, No. 26, 29 Sept. 2001, at 13, available at [https://clovis.hq.nato.int/Pages/DanaInfo=clovis.hq.nato.int+Resources.aspx \(login and password required\)](https://clovis.hq.nato.int/Pages/DanaInfo=clovis.hq.nato.int+Resources.aspx (login and password required)).

¹¹³ CLOVIS, NATO SPECIAL OPERATIONS NETWORK, <https://clovis.nshq.nato.int/> (last visited Oct. 17, 2013) (login and password required).

¹¹⁴ NORTH ATLANTIC TREATY ORG., MILITARY COMM., MC 362/1, NATO RULES OF ENGAGEMENT (2003) [hereinafter NATO ROE], available at

[https://clovis.hq.nato.int/RC/Basic%20documents/Forms/,DanaInfo=clovis.hq.nato.int+All%20Policies.aspx?Paged=TRUE&p_SortBehavior=0&p_FileLeafRef=MC%5f0215%5f39%2epdf&p_ID=1107&PageFirstRow=61&&View={26EBCA3E-CBFA-44FF-8278-DAB9F59872FE}](https://clovis.hq.nato.int/RC/Basic%20documents/Forms/,DanaInfo=clovis.hq.nato.int+All%20Policies.aspx?Paged=TRUE&p_SortBehavior=0&p_FileLeafRef=MC%5f0215%5f39%2epdf&p_ID=1107&PageFirstRow=61&&View={26EBCA3E-CBFA-44FF-8278-DAB9F59872FE} (login and password required)) (login and password required).

¹¹⁵ *Id.* para. 14.

¹¹⁶ *Id.* para. 22.

¹¹⁷ Major Winston S. Williams, Jr., *Multinational Rules of Engagement: Caveats and Friction*, ARMY LAW., Jan. 2013, at 24. In this excellent article, the author discusses the friction caused by national caveats to NATO ROE and differing national interpretation related to self-defense.

¹¹⁸ NATO ROE, *supra* note 114, para. 7.

¹¹⁹ *Id.* Series 42.

¹²⁰ *Id.* para. 6 (the rules appear at Series 332 and 333).

¹²¹ See generally Williams, *supra* note 117.

¹²² NATO ROE, *supra* note 114, para. 5.

deliver training that includes all relevant ROE, as well as escalation of force policy and tactical directives.¹²³

Like U.S. practice, NATO considers ROE to be commander's business; but unlike U.S. practice, NATO fixes responsibility for coordination of ROE in a position coded as ROE Staff Officer. The ROE Staff Officer is a NATO post. This post is generally assigned to the Operations Directorate or CJ3 of a NATO operational staff. In some cases, that officer may be a trained lawyer or LEGAD. The post does not function under the direct supervision of the LEGAD; therefore, the Chief LEGAD (i.e., SJA equivalent) must ensure that the ROE Officer does not deliver legal advice.

2. Targeting and Effects

NATO has a refined targeting process.¹²⁴ This process results in what is known as the Joint Prioritized Target List (JPTL—pronounced “JAY-Pit-ul”). Under the standard process, practiced during NATO exercises, the JPTL includes both kinetic and non-kinetic (e.g., influence) targets. NATO targeting is part of an “effects based approach” to operations (EBAO).¹²⁵ NATO's emerging operations doctrine formulated in the Comprehensive Operations Planning Directive (COPD) reinforces use of effects in NATO planning as part of what it terms the “Comprehensive Approach.”¹²⁶ The effects approach is also

¹²³ Major Winston S. Williams, Jr., *Training the Rules of Engagement for the Counterinsurgency Fight*, ARMY LAW., Jan. 2012, at 42 (referring to the ISAF tactical directive which provides additional guidance to commanders).

¹²⁴ Allied Joint Doctrine for Joint Targeting, AJP 3.9, [STANAG 2524] (22 May 2008) [hereinafter AJP 3.9] available at https://clovis.hq.int/RC/Basic%20documents/,DanaInfo=clovis.hq.nato.int+AJP_3_9.pdf (login and password required); see also ACE DIR. 80-70, CAMPAIGN SYNCHRONIZATION AND JOINT TARGETING IN ACO (27 Apr. 2010) (NATO-restricted) [hereinafter ACE DIR. 80-70].

¹²⁵ AJP 3.9, *supra* note 124; see also NATO Military Comm. Memorandum, MCM-0052-2006, MC POSITION ON EFFECTS BASED APPROACH TO OPERATIONS para. 5 (6 June 2006), available at https://clovis.hq.nato.int/RC/References/,DanaInfo=clovis.hq.nato.int+MCM_0052_2006.pdf (login and password required) (NATO's Military Committee defines EBAO as follows: “the Effects Based Approach to Operations is the coherent and comprehensive application of the various instruments of the Alliance, combined with the practical cooperation along with involved non-NATO actors, to create effects necessary to achieve planned objectives and ultimately to the NATO end state.”).

¹²⁶ ALLIED COMMAND OPERATIONS COMPREHENSIVE OPERATIONS PLANNING DIR., (COPD INTERIM V1.0), annex A, para. 1-13 (17 Dec. 2010) [hereinafter COPD] (Operational Art in the Alliance Context, Operations Design) available at <https://clovis.hq.nato.int/RC/Basic%20documents/Forms/,DanaInfo=clovis.hq.nato.int+All%20Directives.aspx> (login and password required), describing effects as follows:

Effects play a crucial role because they provide a focus for actions and contribute to the accomplishment of objectives and the end state. Actions are designed to create effects that contribute to changes in the capabilities, behaviour or opinions

used at the joint operational level by the United States,¹²⁷ although it may not be practiced by its service components at the tactical level.¹²⁸ NATO targeting is similar to the

(perceptions) of actors within the operations environment, and to changes to the strategic environment. Effects can be grouped into two categories physical and non-physical. Although all physical effects will lead to some form of non-physical effect, their primary purpose will be to influence the capabilities of actors, while non-physical effects are principally directed to an actor's behaviour (also referred to as the cognitive domain). This change in the behavioural or physical state of a system (or system elements), which results from one or more actions, or other causes, may be categorized: (1) Desired Effects are those effects that will have a positive impact on the achievement of objectives.

(2) Undesired Effects are those effects that disrupt or jeopardize the achievement of objectives. In turn, these have to be mitigated.

(3) Intended effects are pre-determined effects that are anticipated to result from the actions taken.

(4) Unintended effects are those effects that are not anticipated or envisioned to be associated with the objectives and actions taken. These effects may be desired or undesired.

Id.

¹²⁷ See generally JOINT CHIEFS OF STAFF, JOINT PUB. 3-60, JOINT TARGETING ch. I, para. 8b, at I-8 (13 Apr. 2007) [hereinafter JOINT PUB 3-60]. This publication describes the four principles of targeting and defining effects as follows:

Effects-based. To contribute to the achievement of the JFC's objectives, targeting is concerned with the creation of specific desired effects through target engagement. Target analysis considers all possible means to create desired effects, drawing from all available capabilities. The art of targeting seeks to create desired effects with the least risk and expenditure of time and resources.

Id.

¹²⁸ See, e.g., U.S. DEP'T OF ARMY, FIELD MANUAL 3-0, OPERATIONS (Feb. 2008), addressing Effects and Army Doctrine:

D-11. Army forces conduct operations according to Army doctrine. The methods that joint force headquarters use to analyze an operational environment, develop plans, or assess operations do not change this. During operations, joint force headquarters provide direction to senior Army headquarters. Army headquarters then perform the military decisionmaking process (MDMP) to develop its own plan or order. (FM 5-0 describes the MDMP.)

D-12. Army forces do not use the joint systems analysis of the operational environment, effects-based approach to planning, or effects assessment. These planning and assessment methods are intended for use at the strategic and operational levels by properly resourced joint staffs. However, joint interdependence requires Army leaders and staffs to understand joint doctrine that addresses these methods when participating in joint operation

process defined by U.S. joint operational doctrine using terms such as JPTL.¹²⁹

NATO doctrine provides LEGADs with additional tools to facilitate delivery of cogent legal advice on targeting. ACE Directive (AD) 80-70, Annex K provides an extensive list of desired effects and targeting options for a commander.¹³⁰ Combined with targets approved by the North Atlantic Council, and commander's intent, this doctrine provides LEGADs a meaningful way to articulate their advice and achieve a rational operational end state.

During NATO-led ISAF Training Events, the LEGAD training audience gets extensive exposure to targeting. The NATO process is modified for the unique requirements of ISAF. HQ ISAF has pushed the targeting process to the ISAF Joint Command (IJC), which manages the Targeting Operations Cell (TOC) with the support of working groups and boards to nominate, approve, and engage a target. ISAF targeting is split into two processes: kinetic targeting is handled by the Joint Targeting Working Group (JTWG—pronounced “JIT-Wig”), resulting in the Joint Prioritized Effects List (JPEL—pronounced “JAY-Pel”); and non-kinetic targeting which results in the Joint Prioritized Influence List (JPSIL—pronounced “JIP-Sill”).¹³¹ The terminology and process change frequently; therefore, judge advocates assigned to this important task must obtain specialized training.

planning or assessment or commanding joint forces. (Jt PUBs 3-0 and 5-0 establish this doctrine.)

D-13. Describing and assessing operations in terms of effects does not fundamentally change Army doctrine. Army operations remain purpose based and conditions focused. The fundamentals of full spectrum operations and mission command include the idea of focusing efforts toward establishing conditions that define the end state. Achieving success in operations requires commanders to gauge their progress continually. Assessing whether tasks are properly executed cannot accomplish this alone. Rather, commanders assess an operation's progress by evaluating how well the results of executing various tasks contribute to creating end state conditions.

Id. at D-2.

¹²⁹ JOINT PUB 3-60, *supra* note 127, ch. II, para. 3c, at II-4 through II-10.

¹³⁰ ACE DIR. 80-70, *supra* note 124 (Annex K identifies Desired Effects which include at least nine ways to “Kill/Destroy,” six ways to “Influence,” and five ways to “Monitor.”).

¹³¹ See generally, *NATO/ISAF Secret-HQ IJC Standard Operating Procedure 2020*, IJC Joint Targeting, Nomination, Vetting and Management Procedures (5 Apr. 2013), available at HQ ISAF and HQ IJC CENTRIX websites (classified access only); see also NATO/ISAF Secret-HQ IJC SOP 220, IJC Joint Targeting, Nomination, Vetting and Management Procedures (22 Oct. 2011); see also NATO/ISAF Secret-HQ IJC SOP 398, Target Management and the Employment of Indirect Fires ISO ISAF Offensive Operations (24 Aug. 2011).

Training LEGADs in targeting ensures that NATO forces comply not only with international law, but also with command intent to minimize civilian casualties. Upon review of Operation Unified Protector (the NATO-led mission to enforce the UNSCR mandate in Libya), Admiral Stavridis, then the SACEUR, declared that NATO must train more lawyers, among other personnel, to improve NATO targeting:

However successful, NATO's intervention in Libya suggested that the organization must strengthen its basic infrastructure if it hopes to increase its role in global security Within the command structure, for example, the alliance has failed to devote the necessary resources to developing key skills, including the capacity to find and engage the types of mobile targets common in contemporary operations, plan joint operations in parallel with fast-paced political decision-making, [and] support the targeting process with legal advice¹³²

3. NATO Training and Exercise Support

Another aspect of NATO's operational law practice includes LEGAD support to NATO exercises and training. NATO training guidance comes from Bi-Strategic Command Directive (Bi-SC) 75-3, which not only outlines the collective training process, but also outlines the key roles played by commanders in Allied Command Transformation and Allied Command Operations.¹³³ Judge advocates may be tasked to assist with predeployment training as subject matter experts.

As part of national preparations for deployment, all NATO personnel are required to receive training in the law of armed conflict.¹³⁴ This is a legal subject that is governed by national law, not only because NATO as an entity is not a signatory to the Geneva Conventions, but also because

¹³² Daadler & Stavridis, *supra* note 83, at 6.

¹³³ BI-STRATEGIC COMMAND DIR. 75-3, COLLECTIVE TRAINING AND EXERCISE DIRECTIVE (CT&ED) para. 1-16b (28 Oct. 2010) [hereinafter BI-SC DIR. 75-3] available at https://clovis.hq.nato.int/RC/Basic%20documents/DanaInfo=clovis.hq.nato.int+BI_SC_75_3.pdf (login and password required) (“As directed by SACT, the JWC promotes and supports NATO's joint and combined experimentation, analysis and doctrine development processes to maximize transformational synergy and to improve NATO's capabilities and interoperability.”).

¹³⁴ ALLIED TRAINING PUB., ATRAINP-2, TRAINING IN THE LAW OF ARMED CONFLICT ch. 1, para. 3.2.1 (20 Mar. 2013) [hereinafter STANAG 2449], available at <http://nsa.nato.int/nsa/zPublic/ap/ATrainP-2%20EDA%20V1%20E.pdf> (“In order to meet the legal obligations placed upon them by LOAC, Nations are required to train their Personnel in LOAC. LOAC training is a national responsibility.”).

nations have separate reservations and caveats regarding their international legal obligations. NATO does, however, have a Standard NATO Agreement on the minimum standards for training in the law of armed conflict.¹³⁵ Standard NATO Agreement 2449 provides elementary outlines and a script for training that encourages the use of legal advisors.¹³⁶

Judge advocates who deploy to the ISAF Joint Command or other NATO contingencies may receive predeployment training at NATO's Joint Warfare Centre in Stavanger Norway or at the Joint Multinational Training Center in Grafenwoehr, Germany.¹³⁷ An Army judge advocate is assigned to the Joint Warfare Centre and acts as a bridge to NATO training of U.S. lawyers. The Joint Warfare Centre's Program of Work (POW) is driven by its immediate headquarters, Allied Command Transformation.¹³⁸ The Joint Warfare Centre also works transformation projects requiring legal support.¹³⁹ These exercise and training events require significant build-up and participation.

In NATO, the commander requiring an exercise is known as the Officer Scheduling the Exercise (OSE): this could be SACEUR or a Joint Force Commander who places the requirement on NATO's master exercise calendar and

¹³⁵ *Id.* ch. 1, para. 1 ("The training standard goal is to standardize training in the Law of Armed Conflict (LOAC) by establishing a minimum standard of training to ensure that NATO operations are conducted in accordance with LOAC, where applicable.").

¹³⁶ *Id.* ch. 1, para. 3.2.3 ("Nations shall ensure that legal advisors are available, when necessary, to advise military commanders at the appropriate level on the application of LOAC and on the appropriate instruction to be given to the armed forces on this subject.").

¹³⁷ BI-SC DIR. 75-3, *supra* note 133.

¹³⁸ *Id.* at para. 1-16b; *see also* General Stephane Abrial, Supreme Allied Commander Transformation, Memorandum 5000 C-210/TT-5272/Ser: NU 0282, enclosure 1, para. 51(2) (27 Apr. 2010) (ACT Strategic Plan). The SACT mandates that all officers and senior NCOs read his Strategic Plan within fourteen days of joining the command. This extract articulates one key mission that JWC executes on behalf of ACT. ACT's exercise and training mission is articulated as follows:

Develop and deliver Education and Individual Training (E&IT) to NATO common standards in support of SACEUR's requirements, including but not limited to his strategic priorities. Support SACEUR's collective training and exercise requirements throughout design, specification, planning, execution and assessment in accordance with political military guidance and SACEUR's operational requirements.

Id.

¹³⁹ BI-SC Dir. 75-3, *supra* note 133, para. 1-16b(3) ("(3) JWC, as SACT's agent, will be responsible for managing collective experimentation in exercises. JWC will assign an Experimentation Integrator and lead the Operational Experimentation and Capability Integration Process. Furthermore, JWC provides concept integration of innovative or mature concepts (methods, procedures and/or techniques) as directed by HQ SACT and ACO on exercises focusing on the operational level.").

establishes command training objectives.¹⁴⁰ The OSE designates an Officer Conducting the Exercise (OCE) who is in essence, the commander of the exercising unit, such as a NATO Force Structure entity (e.g., Commander, NATO Rapid Deployment Corps).¹⁴¹ The OSE will also designate an Officer Directing the Exercise (ODE), who is the commander of the training platform.¹⁴² The ODE "supports the OCE for the detailed planning and overall execution of the exercise by creating the conditions which allow the achievement of the exercise aim and objectives."¹⁴³ The Joint Warfare Centre is normally the ODE and supports exercises and training through scenario development, lessons learned, and capture, analysis, and execution of the computer assisted exercise (CAX) script system known as the Joint Exercise Management Module JEMM.¹⁴⁴ Within this construct, a lawyer from the Joint Warfare Centre becomes the lead LEGAD for legal-related exercise play.¹⁴⁵

Within the Joint Warfare Centre, the lead LEGAD is expected to serve, *inter alia*, in the following roles: LEGAD Subject Matter Expert (SME); Functional Area Training (FAT)/Battle Staff Training (BST) moderator for the LEGAD training audience; instructor on legal topics during Mission Specific Training (MST) and Cross-FAT; and role player during the exercise.¹⁴⁶ This provides a "crawl-walk-run" approach to training.¹⁴⁷ One of the key roles of the ISAF exercise lead LEGAD is to "[c]oordinate additional Legal SMEs and role players . . ." Consequently, lead LEGAD maintains contacts in theater to solicit subject

¹⁴⁰ *Id.* para. 1-9a.

¹⁴¹ *Id.* para. 1-9b.

¹⁴² *Id.* para. 1-9c; *see also* para. 1-16b(1) ("When JWC is designated ODE for an exercise, the OCE and ODE will coordinate efforts to enable setting the conditions for achievement of the OSE's aim and objectives and the OCE's approved training objectives.").

¹⁴³ *Id.*

¹⁴⁴ JWC SOP NO. 800, JWC STANDING OPERATING PROCEDURES-EXERCISES (30 Aug. 2011) [hereinafter JWC SOP 800] (copy on file with the JWC Office of the LEGAD).

¹⁴⁵ *Id.* ch. 09 (Legal Support).

¹⁴⁶ *Id.* ch. 09, para. 2.c (identifying eight LEGAD duties for ISAF exercises and training events).

¹⁴⁷ *Id.* During ISAF Training Events, for example, the training audience progresses as follows: Mission Specific Training (MST) where broad mission-related subjects, such as cultural awareness and COIN theory is discussed; Electronic Working Practices (EWP) where the training audience develops individual information technology skills such as locating SOPs on command portals; Functional Area Training (FAT) and Cross-FAT present specific instruction in a staff section's organization and function (e.g., LEGADs learn about the role and mission of their offices at HQ ISAF or HQ IJC); Battle Staff Training (BST) integrates FAT into collective demonstrations and walk-thru of working groups and boards; Mission Rehearsal Exercise (MRE) consolidates all the training in the "run" phase of the training event where the training audience assumes responsibility for their staff functions and learn to collaborate as a team based on the exercise scenario.

matter expert support.¹⁴⁸ In this way, U.S. judge advocates may travel from their deployed locations to deliver specialized legal topics such as targeting.

Another type of training concerns the NATO Response Force (NRF). This training takes a different tack from ISAF exercises by using a phased approach to develop an operational level staff. The phased approach includes a series of exercise events, or training sessions, that culminate in a scenario replicating a world crisis. Thus, a staff contingent may train as the equivalent of a predeployment site survey (or operational liaison reconnaissance team) which will encounter role players representing host nation officials. As the NATO staff drafts its operational plans, the exercise commitment builds to the simulation of a deployment.

The lead LEGAD duties include: scenario development, which includes “preparing United Nations Security Council Resolutions, Status of Forces Agreements, and other documents. . . [such as] EXPLAN Legal Annex, Rules of Engagement (ROE).” The LEGAD also assists with “scripting for legal realism; serves as observer-trainer during Phases . . . ; [and] prepares briefs or point papers on legal issues.”¹⁴⁹ The observer-trainer role may include travel to a Joint Force Command or Component Command to assist its LEGAD staff in their roles.

Logistical and host nation support are identified up to five years in advance of a NATO exercise under the Military Training and Exercise Program (MTEP).¹⁵⁰ As part of the MTEP process, the Strategic Commands identify the host nation for the exercise. Bi-Strategic Command Directive 75-3 mandates the following time lines and should involve LEGAD support to develop requirements:

NATO Host Nation Support (HNS) requests to NATO nations should be made two years in advance of the exercise Phase III by SHAPE Readiness and Requirements Directorate. HNS requests to partner nations should be made three years in advance HNS selection, including either standing or developed Memoranda of Understanding (MOUs) should be concluded by SHAPE and the HN(s) one year in advance or a decision will be made on the continuance of the

¹⁴⁸ JWC SOP 800, *supra* note 144, para. 2.c(4). It also helps being a U.S. VNC, since many Chief LEGADs in theatre are dual-hatted as both NATO/ISAF and U.S. lawyers.

¹⁴⁹ *Id.* para. 2(b)1-8.

¹⁵⁰ BI-SC DIR. 75-3, *supra* note 133, para. 3-2d (“The MTEP is the Bi-SCs’ programme that schedules exercises and exercise resources to implement SACEUR’s strategic priorities and achieve the required levels of operational readiness . . .”).

exercise. Joint Implementation Agreements (JIAs), if required, must be concluded by the Component Commands/Sending Nations by the Initial Planning Conference.¹⁵¹

Templates for requesting and developing host nation support agreements are found in Allied Joint Publication (AJP) 4.5B.¹⁵² For logisticians and LEGADs alike, AJP 4.5B provides a useful template that can be used for other operational logistical support requirements. Note that some nations may require substantial staffing to accept the variety of agreements contemplated under this publication.¹⁵³ Other processes exist to obtain support within NATO outside of normal acquisition channels. These rules developed as a result of NATO experience during United States’ Return of Forces to Germany (REFORGER) exercises in the 1970s, when Host Nations (HNs) declined to be bound by U.S. contracting clauses, foreign military sales, and offshore procurement legal regimes.¹⁵⁴

As an outgrowth of the REFORGER experience, many NATO nations and entities (such as SHAPE/ACO) have what are now known as Acquisition and Cross-Servicing Agreements (ACSA) with the United States, enabled under the successor law to the NATO Mutual Support Act of 1979.¹⁵⁵ A Standard NATO Agreement (STANAG) exists to provide equipment to NATO.¹⁵⁶ For the purposes of an exercise, NATO uses the term host nation to include a sending state that has a facility located on a receiving States’ soil: for example, the United States may be regarded as the

¹⁵¹ *Id.* para. 3-21.

¹⁵² ALLIED JOINT PUBLICATION (AJP) 4.5, EDITION B, VERSION 1, HOST NATION SUPPORT DOCTRINE AND PROCEDURES (6 May 2013) [hereinafter AJP 4.5B] (STANAG 2234) (6 May 2013), *available at* <http://nsa.nato.int/nsa/zPublic/ap/ajp-4.5%20edb%20v1%20e.pdf>.

¹⁵³ *Id.* at iv (DEU, POL and the United States express specific reservations to this policy).

¹⁵⁴ For the seminal discussion of this history, see Captain Fred T. Pribble, *A Comprehensive Look at the North Atlantic Treaty Organization Mutual Support Act of 1979*, 125 MIL. LAW REV. 187 (July 1989). Pribble is now General Counsel for the U.S. Defense Logistics Agency.

¹⁵⁵ 10 U.S.C. §§ 2341–2350, subch. I, ch. 138 (2013). *See also* U.S. DEP’T OF DEF., DIR. 2010.9, ACQUISITION AND CROSS-SERVICING AGREEMENTS (28 Apr. 2013); U.S. CHAIRMAN OF THE JOINT CHIEFS OF STAFF, INSTR. 2120.01B, ACQUISITION AND CROSS-SERVICING AGREEMENTS (20 Sept. 2010); Major Ryan A. Howard, *Acquisition and Cross-Servicing Agreements in an Era of Fiscal Austerity*, ARMY LAW., Oct. 2013, at 26.

¹⁵⁶ STANAG 3381 provides a means of acquiring ACSA goods and services. *See also* U.S. ARMY IN EUROPE (AE) REG. 350-2, INTEGRATING THE ARMED FORCES OF OTHER NATIONS INTO U.S. ARMY UNIT-LEVEL TRAINING EVENTS IN EUROPE, app. C (Third-Country Requirements for Training in Germany); *see also* U.S. CHAIRMAN OF THE JOINT CHIEFS OF STAFF, INSTR. 2700.01E, INTERNATIONAL MILITARY AGREEMENTS FOR RATIONALIZATION, STANDARDIZATION, AND INTEROPERABILITY (RSI) BETWEEN THE UNITED STATES, ITS ALLIES, AND OTHER FRIENDLY NATIONS (18 Jan. 2012).

host nation for a multinational exercise on Grafenwoehr.¹⁵⁷ Finally, entering into agreements with partner nations, just like U.S. practice, requires authority to negotiate and conclude an international agreement.¹⁵⁸

4. NATO Status Issues

Legal advisors who serve in any NATO subsidiary body, Command Structure, or Force Structure entity will have to interpret either the Ottawa Agreement or Paris Protocol with regard to the daily operations of their headquarters. As an example, the Joint Warfare Centre is immediately subordinate to Allied Command Transformation (ACT) located in Norfolk, Virginia. Allied Command Transformation has vested the Joint Warfare Centre with juridical personality under the Paris Protocol because it is an Allied Headquarters, or International Military Headquarters, directly subordinate to a Strategic Command.¹⁵⁹ Additionally, “special arrangements” have been made to accommodate its mission in Norway.¹⁶⁰ These arrangements include a Supplementary Agreement to the NATO SOFA with Norway, a Memorandum of Agreement, and local agreements.¹⁶¹ Also, internal directives and policy further

implement these agreements.¹⁶² This type of cascading authority is common to other NATO International Military Headquarters located in other NATO receiving States. Each headquarters will have a different relationship with a receiving state; therefore, a critical role of the LEGAD is to interpret the application of these treaties and agreements to minimize friction points. These relationships will be revised as NATO implements new host nation support policy, which may impose greater support requirements on the host nation.¹⁶³

The authority to negotiate and conclude international agreements is withheld to NATO’s Strategic Commands under Bi-Strategic Command Directive 15-3, Preparation and Control of International Agreements.¹⁶⁴ Absent delegation of authority, or existing agreement with a

¹⁵⁷ BI-SC DIR. 75-3, *supra* note 133, para. 1-9p.

NATO defines Host Nation (NH) as a nation which, by agreement: receives forces and materiel of NATO and/or other nations operating on/from or transiting through its territory; allows materiel and/or NATO organizations to be located on its territory; and/or provides for these purposes. This term is also used in a generic sense to identify a NATO military structure entity that “hosts” or provides support to participants in a NATO exercise; for example JWC and JFTC.

Id.

¹⁵⁸ BI-STRATEGIC COMMAND DIR. 15-3, PREPARATION AND CONTROL OF INTERNATIONAL AGREEMENTS (11 Jan. 2007) [hereinafter BI-SC DIR. 15-3] available at <https://clovis.hq.nato.int/RC/Basic%20documents/Forms/,DanaInfo=clovis.hq.nato.int+All%20Directives.aspx> (login and password required).

¹⁵⁹ Paris Protocol, *supra* note 34, art. X (“Each Supreme Headquarters shall possess juridical personality; it shall have the capacity to conclude contracts and to dispose of property. The receiving State may, however, make the exercise of such capacity subject to special arrangements between it and the Supreme Headquarters or any subordinate Allied Headquarters acting on behalf of the Supreme Headquarters.”).

¹⁶⁰ *Id.*

¹⁶¹ The following agreements concerning the Joint Warfare Centre’s relationship with Norway typify arrangements that other international military headquarters have with their receiving states:

- A. The NATO SOFA, *supra* note 31.
- B. Paris Protocol, *supra* note 34.
- C. Memorandum of Agreement between the Ministry of Defence of the Kingdom of Norway and Headquarters, Supreme Allied Commander Transformation as represented by Joint Warfare

Centre, concerning *The Closure of Joint Headquarters North, the Establishment of the NATO Joint Warfare Centre at Stavanger, Norway, and Support of the NATO Joint Warfare Centre at Stavanger, Norway*, dated 21 June 2006 (MOA), available at <https://clovis.hq.nato.int/RC/Basic%20documents/Forms/,DanaInfo=clovis.hq.nato.int+All%20Agreements%20arrangements.aspx> (login and password required) (copy on file with the JWC Office of the LEGAD).

- D. Supplementary Agreement between the Kingdom of Norway and Headquarters Supreme Allied Commander Transformation and Supreme Headquarters Allied Powers Europe, subject: *On the Special Conditions Applicable to the Establishment and Operation on Norwegian Territory of International Military Headquarters*, dated 6 August 2008.
- E. Local Agreement between Norwegian Defence Estate Agency [NDEA] and Joint Warfare Centre for The Support of the NATO Joint Warfare Centre in Stavanger, Norway, dated 20 Jan. 2009 (copy on file with the JWC Office of the LEGAD).
- F. Local Agreement between Norwegian Defence Logistic Organisation [NDLO] and Joint Warfare Centre for The Support of the NATO Joint Warfare Centre in Stavanger, Norway, dated 5 May 2009 (copy on file with the JWC Office of the LEGAD).

¹⁶² See, e.g., JOINT WARFARE CENTRE DIR. 16-13, INDIVIDUAL DUTY FREE PRIVILEGES (8 May 2013); JOINT WARFARE CENTRE DIR. 16-15, VAT REIMBURSEMENT OF GOODS BOUGHT IN NORWAY BY ENTITLED PERSONNEL (25 May 2010).

¹⁶³ NATO COMMAND STRUCTURE HOST NATION SUPPORT (HNS)—POLICY AND STANDARDS (PO) (2011) 0020 (8 Feb. 2011) (NATO-restricted) (effective Feb. 14, 2011).

¹⁶⁴ BI-SC DIR. 15-3, *supra* note 106, para. 1-1d (“Only the two Supreme Headquarters are given legal personality and authority to enter into contracts and other legally binding agreements. The North Atlantic Council specifically recognizes the authority of SHAPE and HQ SACT to enter into international agreements that may be further delegated to subordinate headquarters. *Subordinate headquarters may enter into contracts, international agreements and other legally binding agreements only where authority has been delegated to them by the Strategic Headquarters.*”) (emphasis added).

receiving state, subordinate commands have limited authority to conclude international agreements. This NATO policy mirrors U.S. policy.¹⁶⁵

In the case of practice at the Joint Warfare Centre, a LEGAD would apply the Supplementary Agreement and MOA between NATO and Norway to provide a basis for the interpretation of the Centre's relationship with Norway. The issues typify practice at other international headquarters and include the following: special privileges afforded to General/Flag Officers; review of extension of privileges and immunities to family members when the servicemember is deployed for extended periods; review of policy concerning provision and rationing of alcoholic beverages and other tax-free items to entitled NATO personnel; review and reinforcement of privileges to import and export free of duty and taxes, NATO-related goods and services; review of new agreements to extend receiving state logistics or real estate facilities and services to NATO personnel.

5. NATO Information Practices

NATO archives and records are generally inviolable as a matter of treaty.¹⁶⁶ NATO's information practices are implemented through North Atlantic Council policy.¹⁶⁷ The policy mandates proper record keeping and archiving of NATO documentation.¹⁶⁸ Three main players factor into

¹⁶⁵ U.S. DEP'T OF DEF., DIR. 5530.3, INTERNATIONAL AGREEMENTS (11 June 1987); see also U.S. CHAIRMAN OF THE JOINT CHIEFS OF STAFF, INSTR. 2300.01D, INTERNATIONAL AGREEMENTS (5 Oct. 2007).

¹⁶⁶ See, e.g., Ottawa Agreement, *supra* note 33, art. VII ("The archives of the Organization and all documents belonging to it or held by it shall be inviolable, wherever located."); see also Paris Protocol, *supra* note 34, art. XII ("The archives and other official documents of an Allied Headquarters kept in premises used by those headquarters or in possession of any properly authorized member of the Headquarters shall be inviolable, unless the Headquarters has waived this immunity.").

¹⁶⁷ NORTH ATLANTIC COUNCIL POLICY, C-M(2008) 0113 (INV), THE PRIMARY DIRECTIVE ON INFORMATION MANAGEMENT (PDIM) annex 1 (18 Dec. 2008), available at <https://clovis.hq.nato.int/RC/Basic%20documents/Forms/DanaInfo=clovis.hq.nato.int+NATODocIKM.aspx> (login and password required).

¹⁶⁸ *Id.* sec. 3, para. 13 articulates key concepts reproduced in part as follows:

- (a) Information is a Corporate Resource . . .
- (b) Information Ownership and Custodianship. Information shall have an originator, and clearly defined ownership and custodianship assigned throughout its life-cycle;
- (c) Leadership and Organizational Structure . . .
- (d) Information Sharing. Information shall be managed with an emphasis on the 'responsibility to share' balanced by the security principle of 'need-to-know', and managed to facilitate access, optimize information sharing and re-use, and reduce duplication, all in accordance with security, legal and privacy obligations;
- (e) Information standardization. Information shall have standardized structures and consistent representations

information management: the NATO Archives Committee, the NATO Security Committee, and the NATO C3 Board (NC3B).¹⁶⁹ The key person, though, is the NATO Archivist appointed by the Secretary General.¹⁷⁰ With NATO Archivist help, LEGADs can assist their commands with the proper marking, retention, and disposition of documents.¹⁷¹ NATO is not subject to Freedom of Information Act requests under national law; therefore, properly marked documentation ensures that its archives remain inviolable. The NATO website maintains a page on NATO Archives that includes links to key policy documents.¹⁷² The website also demonstrates that member states can obtain documents of interest to their nations notwithstanding inviolability.¹⁷³

6. NATO Contracting and Fiscal Law

NATO contracting authority is derived from either the Ottawa Agreement or the Paris Protocol.¹⁷⁴ This authority is implemented within both Allied Command Operations (ACO) and Allied Command Transformation (ACT) by Bi-Strategic Command (Bi-SC) Directive, 60-70.¹⁷⁵ This policy also contains standards of conduct and improper business practices guidance that is essentially based on ACO rules.¹⁷⁶

-
- to enable interoperability, cooperation and more effective and efficient processes . . .
 - (f) Information Assurance . . .
 - (g) Information Needs . . .

¹⁶⁹ *Id.* sec. 5, para. 31.

¹⁷⁰ *Id.* sec. 5, paras. 41 and 42 ("The NATO Archivist's main responsibilities are the identification of information with permanent value, the overall management of the NATO Archives and the implementation of the Public Disclosure Policy [PO(90)(Revised), NATO PUBLIC DISCLOSURE POLICY, dated 27 January 1995 (under review)].").

¹⁷¹ NORTH ATLANTIC COUNCIL, C-M(2009)0021 (INV), POLICY ON THE RETENTION AND DISPOSITION OF NATO INFORMATION (2 Mar. 2009), available at http://www.nato.int/nato_static/assets/pdf/pdf_archives/20120327_C-M_2009_0021_INV-Retention_Dispo_of_NATO_Inf.pdf. Also available at <https://clovis.hq.nato.int/RC/Basic%20documents/Forms/DanaInfo=clovis.hq.nato.int+NATODocIKM.aspx> (login and password required).

¹⁷² *NATO A-Z, NATO Archives*, NORTH ATLANTIC TREATY ORGANIZATION (Dec. 7, 2012), <http://www.nato.int/cps/en/natolive/68238.htm>.

¹⁷³ *Id.* ("NATO discloses documents related to the Hungarian Revolution in 1956.").

¹⁷⁴ See, e.g., Paris Protocol, *supra* note 34, art. X.

¹⁷⁵ BI-STRATEGIC COMMAND DIR. 60-70, BI-STRATEGIC COMMAND PROCUREMENT DIRECTIVE (22 Dec. 2004) [hereinafter BI-SC Dir. 60-70]; cf. HQ ISAF STANDING OPERATING PROCEDURES 803, ISAF PROCUREMENT AND CONTRACTING OPERATIONS (2 Apr. 2011), available at https://clovis.hq.nato.int/RC/Basic%20documents/DanaInfo=clovis.hq.nato.int+SOP_00803_HQISAF.pdf.

¹⁷⁶ BI-SC Dir. 60-70, *supra* note 175, para. 2-2; see also ALLIED COMMAND OPERATIONS DIR. 40-7, STANDARDS OF CONDUCT, RELATIONSHIPS WITH CONTRACTORS, AND DISCLOSURE OF INFORMATION (19 Feb. 1992), available at https://clovis.hq.nato.int/RC/Basic%20documents/DanaInfo=clovis.hq.nato.int+ACE_Dir_%2040_7.pdf (login

Although not required by NATO regulation, commanders may ask their LEGADs to review the propriety of expenditures for NATO's version of representation funds known as Official Representation Hospitality funds.¹⁷⁷

NATO contracting officers have broad discretion when it comes to seeking legal advice. Unlike national practice, “[n]either ACO/ACT has established a mandatory (e.g., monetary) threshold above which legal review must be sought.”¹⁷⁸ The guidance admonishes contracting officers to seek legal counsel “[e]specially when unusual, complex and sensitive matters are at hand”¹⁷⁹ This discretion is mitigated by local SOP: for example, the Joint Warfare Centre makes the LEGAD a member of the Command Requirements Board ensuring legal oversight at the initiation phase of procurement.¹⁸⁰ Local contracting policy, such as that of the Joint Warfare Centre, also sets Established Financial Limits (EFL), otherwise known to U.S. practitioners as investment thresholds, for competition purposes for the procurement of “basic, noncomplex supplies and services.”¹⁸¹

NATO fiscal process also mirrors national practices, but has some unique terminology.¹⁸² NATO does not fund *per diem* costs that fall on the nations.¹⁸³ For deployed judge advocates, NATO can fund “costs attributable to more than one nation,” but requires analysis to determine if more than one nation actually receives a benefit.¹⁸⁴ NATO Financial Controllers (FINCON) and CJ8 staff officers are key points of contact for NATO fiscal issues.

and password required); ALLIED COMMAND OPERATIONS DIR. 60-54, ACCEPTANCE OF GRATUITIES (13 Apr. 1988).

¹⁷⁷ See, e.g., ALLIED COMMAND OPERATIONS DIR. 60-52, OFFICIAL REPRESENTATION AND HOSPITALITY (17 Feb. 2006) [hereinafter ACO DIR 60-52]; see also HQ ISAF STANDING OPERATING PROCEDURE 801, REPRESENTATION AND HOSPITALITY FUNDS (24 Feb. 2011).

¹⁷⁸ BI-SC Dir. 60-70, *supra* note 175, para. 1-2d (Legal Advisors).

¹⁷⁹ *Id.*

¹⁸⁰ JOINT WARFARE CENTRE STANDING OPERATING PROCEDURES 600, JWC REQUIREMENTS BOARD (JRB): PRIORITIZATION OF INTERNATIONAL MILITARY BUDGET (15 Mar. 2007) (copy on file with JWC Office of the LEGAD).

¹⁸¹ JOINT WARFARE CENTRE STANDING OPERATING PROCEDURES 602, JWC STANDING OPERATING PROCEDURES—PURCHASING AND CONTRACTING EXECUTION (15 Mar. 2007) (copy on file with JWC Office of the LEGAD).

¹⁸² See, e.g., ACE DIR. 60-1, CONTROL OF FUNDS (23 Nov. 1982) (incorporating Changes 1 & 2), available at https://clovis.hq.nato.int/RC/Basic%20documents/DanaInfo=clovis.hq.nato.int+ACE_DIR_60_1.pdf (login and password required).

¹⁸³ ACO DIR. 60-50, *supra* note 100.

¹⁸⁴ See, e.g., HQ ISAF STANDING OPERATING PROCEDURES 815, BUDGET FUND MANAGERS GUIDE (7 Mar. 2011).

NATO has three types of common funds that are acquired through the capability package process.¹⁸⁵ NATO Infrastructure Program (NSIP) is the equivalent of MILCON; the Military Budget covers low threshold O&M-like requirements; and international manpower funds requirements related to justified posts.¹⁸⁶ In a NATO-led operation, the Crisis Response Operation Urgent Requirement (CUR) is one way to obtain NATO approval and funding of a requirement.¹⁸⁷ NATO uses terms such as “Minimum Military Requirements,” or “Costs Lie Where they Fall” to deny funding.¹⁸⁸ For example, the number of crisis establishment (CE) posts allocated to a particular contingency limits common funding. Thus, an office that has five posts cannot receive funding for a sixth computer because that exceeds NATO's minimum military requirements. The requirements review board (RRB) process in NATO is managed by four geographic coordinators. For example, NATO requirements for the Joint Warfare Centre in Norway are processed by JFC Brunssum rather than ACT Norfolk which is that command's higher headquarters.¹⁸⁹

7. Civilian Personnel Law

NATO employs its own permanent workforce known as NATO International Civilians (NIC). NATO International Civilians are governed by NATO personnel rules set forth in the NATO Civilian Personnel Regulations (NCPRs), commonly referred to as the “Red Book.” For the purposes of receiving certain privileges and immunities under terms of the NATO SOFA, civilian personnel are part of the “civilian component” of a sending State's deployed force present in the receiving State.¹⁹⁰ Since NICs are hired by NATO or its international military headquarters, they are included as members of the “civilian component” by the

¹⁸⁵ BI-STRATEGIC COMMAND DIR. 85-1, INTERIM CAPABILITY PACKAGE DIRECTIVE para. 1.1 (11 June 2007), available at https://clovis.hq.nato.int/RC/Basic%20documents/DanaInfo=clovis.hq.nato.int+BI_SC_DIR_85_1.pdf (login and password required) (outlining NATO's three budget lines: “Military Common-Funding Programs are an important aspect of the cooperation amongst Alliance members. NATO's common resources consist of the NATO Security Investment Programme, the Military Budget, and International Manpower.”).

¹⁸⁶ *Id.*

¹⁸⁷ *Id.* ch. 3.

¹⁸⁸ *Id.* para. 3.4.3 (outlining NATO's general funding principles).

¹⁸⁹ *Id.* para. 2.2.3.a. NATO's reorganization will change this arrangement (e.g., JFC Lisbon's responsibilities will have to be absorbed by either JFC Brunssum, JFC Naples or HQ ACT).

¹⁹⁰ NATO SOFA, *supra* note 31, art. 1b (“‘Civilian component’ means the civilian personnel accompanying a force of a Contracting Party who are in the employ of an armed service or that Contracting Party, and who are not stateless persons, nor nationals of any State which is not a Party to the North Atlantic Treaty, nor nationals of, nor ordinarily resident in, the State in which the force is located.”).

Paris Protocol.¹⁹¹ The NATO SOFA and Paris Protocol preclude extension of privileges and immunities to Norwegians or other persons who are considered “ordinarily residents” in Norway (e.g., a lawful resident of Stavanger in the oil industry who then applies for a NATO position).

Understanding the legal status of a NATO International Civilian is important because it impacts their operational use. For example, NATO deploys civilian personnel to NATO operations as part of its exercise preparations.¹⁹² While deployed, NICs may find themselves being excluded from the support of their nation’s deployed national support element (NSE) because they are not accompanying the forces (or a civilian component) of a sending State. For NATO civilians deployed in support of ISAF, the ISAF Civilian Human Resources Management Office (CHRMO) provides the equivalent services that a deployed Soldier would find at a national support element (NSE).¹⁹³ The NATO LEGAD must, therefore, have working knowledge of NATO civilian personnel rules and international agreements governing their status wherever they are utilized.¹⁹⁴

¹⁹¹ Paris Protocol, *supra* note 34, art. III, para. 1.b (“[C]ivilian component” means civilian personnel who are not stateless persons, nor nationals of any State which is not a Party to the Treaty, nor nationals of, nor ordinarily resident in the receiving State, and who are (i) attached to the Allied Headquarters and in the employ of an armed service of a Party to the North Atlantic Treaty or (ii) in such categories of civilian personnel in the employ of the Allied Headquarters as the North Atlantic Council shall decide.”).

¹⁹² ALLIED COMMAND TRANSFORMATION DIR. 45-4, PERSONNEL SELECTION AND DEPLOYMENT GUIDE FOR NATO MISSIONS (15 Apr. 2010); *see also* ALLIED COMMAND OPERATIONS DIR. 50-11, DEPLOYMENT OF CIVILIANS (30 June 2010), *available at* https://clovis.hq.nato.int/RC/Basic%20documents/,DanaInfo=clovis.hq.nato.int+ACT_DIR_45_4.pdf. The author recently produced ACT Advanced Distributed Learning (ADL) online Course Number 137 to provide both legal and policy information to deploying NATO civilians. Judge advocates may apply for access to ACT’s ADL website located at <https://jadr.act.nato.int/>.

¹⁹³ *See* ISAF Civilian Human Resources Policy and Regulations (CHRPRs) (16 Mar. 2011), *available at* https://clovis.hq.nato.int/RC/Basic%20documents/,DanaInfo=clovis.hq.nato.int+ISAF_CHRPRs.pdf (login and password required). The CHRPRs govern the employment of civilians and their general support (including provision of body armor and helmets). ISAF possesses unique recruitment authority for civilians who are not classified as NICs, which is found not only in ISAF CHRPRs but also in ISAF Standard Operating Procedures (SOP) 119 subject: HQ ISAF Standard Operating Procedures (SOP) 119, Recruitment of International Civilian Consultants (ICC) and Local Civilian Hire (LCH) in Support of the ISAF Mission (22 Feb. 2011). ALLIED COMMAND OPERATIONS DIR. 45-3, ALLIED COMMAND OPERATIONS CRISIS ESTABLISHMENT (CE) MANAGEMENT para. 1-7 (10 Mar. 2011) (providing general NATO policy on theatre authority to establish ICC and LCH positions).

¹⁹⁴ MTA, *supra* note 52 (Annex A sets forth the status of forces arrangement); *see also* the Exchange of Letters between the NATO Secretary General and the Government of the Islamic Republic of Afghanistan (22 Nov. 2004) (clarifying that “‘NATO Personnel’ means the military and civilian personnel assigned or attached to or employed by the North Atlantic Treaty Organization, its member States, and non-NATO Troop Contributing States that are operating under NATO command and control arrangements or in support of the International Security Assistance Force”).

8. Concepts, Doctrine, and Integration

NATO’s approach to the operational art leverages all tools in the diplomatic, economic, and military sphere to achieve the desired NATO operational end state. NATO’s Non-Article 5 Crisis Response Operations will raise legal issues as a result of cooperation with non-NATO entities.¹⁹⁵ These operations can include security sector reform, capacity-building, interim governance, restoration of essential services, and military outreach.¹⁹⁶

One of NATO’s doctrinal concepts, the comprehensive approach, has evolved from its counterinsurgency birthplace¹⁹⁷ and is now reflected in all operational environments in NATO’s Comprehensive Operational Planning Document.¹⁹⁸ The “[c]omprehensive approach can be described as a means to ensure a coordinated and coherent response to crisis by all relevant actors.”¹⁹⁹ NATO doctrine reflects an operational requirement for commanders to go beyond military solutions.²⁰⁰ LEGADs are key actors

¹⁹⁵ AJP 3.4.A, *supra* note 21, para. 0209 (illustrating some dilemmas: “Successful civil-military cooperation (CIMIC) requires effective interaction between the NATO-led force and civil parties including international, national, and NGOs, and other agencies within the JOA and possibly beyond. The parameters for this cooperation will, ideally, be established between NATO and these organizations and agencies through official agreements and MOUs established at the highest levels . . .”).

¹⁹⁶ AJP 01(D), *supra* note 27, ch. 2.

¹⁹⁷ AJP 3.4.4, ALLIED JOINT DOCTRINE FOR COUNTERINSURGENCY (COIN) (Feb. 2011), *available at* <https://clovis.hq.nato.int/RC/Basic%20documents/Forms/,DanaInfo=clovis.hq.nato.int+All%20Doctrines.aspx> (login and password required).

¹⁹⁸ COPD, *supra* note 126, annex A, para. 1-4.

¹⁹⁹ *Id.* annex A, para. 1-4a n.5.

²⁰⁰ AJP-01(D), *supra* note 27, ch. II, at 2-11 (providing NATO’s Contribution to a Comprehensive Approach).

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NATO experiences in Afghanistan, Kosovo and other operations confirm the complexity of contemporary crises. Complex crises do not lend themselves to simple definition or analysis. Today’s challenges demand a comprehensive approach by the international community, including the coordinated action from an appropriate range of civil and military actors, enabled by the orchestration, coordination and de-confliction of NATO’s military and political instruments with the other instruments of power. This needs to be a broader cooperation and planning in accordance with the principles and decisions of relevant senior NATO bodies. NATO’s engagement in a comprehensive approach to crisis management is focused at three levels:

a. At the political and strategic level, NATO concentrates on building confidence and mutual understanding between international actors.

b. At the operational level, the priority is to cooperate with other international actors in the overall planning

in effecting the comprehensive approach, since execution could include negotiation of agreements with international governments and non-governmental organizations. The comprehensive approach is demonstrated by the relationship between the participants in civil affairs and civil military cooperation (what NATO calls CIMIC), Stability Operations, and Rule of Law.²⁰¹ United States doctrine captures this concept as its “whole of government approach” to operations.²⁰² During the planning process, staff officers should apply “PMESII” analysis rather than the military decision-making process.²⁰³

One mission that illustrates the execution of the comprehensive approach is the NATO Rule of Law Field Support Mission-Afghanistan. Between 2011 and September 2013, a one-star U.S. judge advocate commanded the NATO Rule of Law Field Support Mission (NROLFSM) as a direct reporting unit to Commander of International Security Assistance Force (COMISAF).²⁰⁴ This NATO command was established to complement the commander’s national mission that he executed as U.S. Rule of Law Field Force-Afghanistan (subordinate to Combined Joint Interagency Task Force (CJIATF) 435).²⁰⁵ While

NROLFSM executed ISAF’s rule of law mission in Afghanistan, which included development of evidence-based operations (EvBO), its commander also executed a national function which included a train, advise, and assist mission at the Justice Center in Parwan (JCIP). Both missions required significant interaction with host nation authorities (police, prosecutors, and courts), interagency partners (U.S. Department of State), and international organizations demonstrating execution of the comprehensive approach, or whole of government approach, to joint operations.

NATO Rule of Law Field Support Mission posts included a Danish Deputy Commander and a Dutch Chief of Staff, who were both trained as LEGADs. The command also included Polish plans officers who were acquired under NATO’s Combined Joint Statement of Requirements (CJSOR) process. NATO Rule of Law Field Support Mission did not have an organic LEGAD; therefore, NATO legal advice came from the ISAF LEGAD (a U.S. judge advocate), while national advice came from the CJIATF 435 SJA. Both U.S. and NATO lawyers had to understand when an issue belonged to the national bailiwick or NATO bailiwick: in this context, having NATO authorities gave the commander solutions that were not constrained by national limits (for example, use of NATO common funding vice use of U.S. operations and maintenance funds).

for complex operations in which a large degree of civil-military interaction will be required.

c. At the theatre level, NATO force commanders must be empowered to conduct effective cooperation and coordination with indigenous local authorities and other international actors in the execution of operations.

All 3 levels must function in a complementary manner to achieve success.

Id.

²⁰¹ See, e.g., JP 3-16, *supra* note 85, ch. III, para. 17 (“Within NATO, CMO is often referred to as CIMIC. CIMIC refers to “the resources and arrangements which support the relationship between commanders and the national authorities, civil and military, and civil populations in an area where military forces are or plan to be employed.” Such arrangements include cooperation with nongovernmental or international agencies, organizations, and authorities.”).

²⁰² JOINT CHIEFS OF STAFF JOINT PUB. 3-08, INTERORGANIZATIONAL COORDINATION DURING JOINT OPERATIONS, at xiii (24 June 2011) (“A whole-of-government approach integrates the collaborative efforts of the departments and agencies of the USG to achieve unity of effort. Under unified action, a whole-of-government approach identifies combinations of the full range of available USG capabilities and resources that reinforce progress and create synergies.”).

²⁰³ See, e.g., JP 5.0, *supra* note 88, fig.III-5 (articulating PMESII as Political, Military, Economic, Social, Information, and Infrastructure System Analysis).

²⁰⁴ See generally NATO/ISAF SECRET-COMISAF OPERATIONS PLAN (OPLAN) 38302 (REVISION 6 AMENDMENT 2) INTERNATIONAL SECURITY FORCE (ISAF) OPERATIONS IN AFGHANISTAN (Oct. 27, 2012). This source is available at HQ ISAF and HQ IJC CENTRIX websites (classified access only) (stating the mission of NROLFSM).

²⁰⁵ See NATO Media Backgrounder, *NATO Rule of Law Field Support Mission (NROLFSM)*, NORTH ATLANTIC TREATY ORGANIZATION,

VI. Conclusion

This article has provided a brief introduction to NATO, its legal authorities, structures, posts, and legal practice. As a primer for a NATO Legal Advisor, it provided a detailed description of the parallel legal universe that NATO inhabits. U.S. judge advocates have greater opportunities to serve in NATO posts, as NATO executes its fully integrated multinational mission. As illustrated, NATO legal practice has many similarities to an assignment to a U.S. Office of the Staff Judge Advocate, but it is a legal practice that occurs in a multinational environment requiring knowledge beyond Service regulations, Department of Defense issuances, and Joint doctrine. While NATO’s training and exercise platforms provide practical opportunities to learn about key NATO processes, fiscal realities may prevent the judge advocate from predeployment or TDY-enroute training. Consequently, this article was aimed at providing readers a better understanding of NATO and the issues that a U.S. judge advocate may encounter while serving as a NATO LEGAD.

http://www.nato.int/nato_static/assets/pdf/pdf_2011_06/20110609-Backgrounder-Rule_of_Law-en.pdf (last visited Oct. 29, 2013).

Acquisition and Cross-Servicing Agreements in an Era of Fiscal Austerity

Major Ryan A. Howard*

[W]e are joining with allies and partners around the world to build their capacity to promote security . . . [T]he growing capabilities of allies and partners . . . create new opportunities for burden-sharing.¹

I. Introduction

As dusk falls on Fort Campbell, you make your way to the brigade headquarters for an urgent mission analysis briefing.² Several hours earlier you learned your brigade was selected to serve as a task force headquarters deploying to Morocco.³ Members of Al Qaeda in the Islamic Maghreb (AQIM) have crossed the Morocco-Algeria border and established several camps outside the city of Zag. From this base of operations, AQIM coordinates attacks, conducts training, and traffics weapons.⁴ Thus far, Moroccan counterterrorism operations have failed and it now appears that local Moroccans are joining AQIM cells.⁵ The task force's mission is to build the capacity of Moroccan forces to conduct successful counterterrorism operations and strengthen the border.⁶ Having reviewed your higher headquarters' order and intelligence products, you identify your specified, implied, and essential tasks.⁷ Additionally, you validate your mission analysis and funding source with

the Staff Judge Advocate.⁸ The briefing begins.

The S-4's mission analysis reveals a resource-constrained environment and the potential for a logistics shortfall.⁹ After evaluating the S-4's contingency plans, your commander asks, "Can we trade supplies with Moroccan forces? Can they provide us with billeting? Can we give them meals? What about loaning them our equipment?" The S-3, S-4, and Support Operations Officer (SPO) then discuss potential courses of action. Concerned about the legal implications, the Deputy Commanding Officer (DCO) asks, "Judge?" You brief that an Acquisition and Cross-Servicing Agreement (ACSA) may offer the commander the ability to exchange supplies, services, and support with the Moroccans. At the conclusion of the briefing, the DCO confirms your deliverable and you start your legal research.¹⁰

In an era of fiscal austerity, ACSAs offer commanders a critical means to engage multinational partners in support of tomorrow's strategic defense challenges. Acquisition and Cross-Servicing Agreements are uniquely suited to enable commanders to achieve the mission while navigating a resource-constrained environment. Acquisition and Cross-Servicing Agreements allow U.S. forces to exchange certain categories of supplies and services with eligible countries and international organizations.¹¹ Consequently, Judge Advocates (JAs) must understand both the capabilities and limitations of the ACSA program. To that end, this article explores the ACSA program and provides practitioners with a framework for analyzing ACSA transactions in support of multinational engagements.

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¹ President Barack Obama, *Introduction to U.S. DEP'T OF DEF., SUSTAINING U.S. GLOBAL LEADERSHIP: PRIORITIES FOR 21ST CENTURY DEF.*, at i (2012) [hereinafter 21ST CENTURY DEF. PRIORITIES], available at http://www.defense.gov/news/Defense_Strategic_Guidance.pdf (last visited Oct. 17, 2013).

² See U.S. DEP'T OF ARMY, ARMY DOCTRINE PUB. 5-0, THE OPERATIONS PROCESS para. 34 (17 May 2012); see also U.S. DEP'T OF ARMY, ARMY TACTICS, TECHNIQUES, AND PROCEDURES 5-0.1, COMMANDER AND STAFF OFFICER GUIDE para. 4-25 (14 Sept. 2011) [hereinafter ATTP 5-0.1].

³ See ALEXIS ARIEFF, CONG. RESEARCH SERV., RS21579, MOROCCO: CURRENT ISSUES (30 June 2011), available at <http://fpc.state.gov/documents/organization/168105.pdf> (last visited Oct. 17, 2013) ("The United States government views Morocco as an important ally against terrorism and a free trade partner.").

⁴ In 2010, Moroccan and European authorities disrupted cells linked to Al Qaeda in the Islamic Maghreb (AQIM) that were trafficking cocaine from Algeria through Morocco. *Id.* at 13.

⁵ "Moroccans . . . have joined AQIM at camps in Algeria and elsewhere outside of the country." *Id.*

⁶ See generally U.S. DEP'T OF ARMY, ARMY DOCTRINE REFERENCE PUB. 3-07, STABILITY (31 Aug. 2012); U.S. DEP'T OF ARMY, FIELD MANUAL 3-22, ARMY SUPPORT TO SECURITY COOPERATION (22 Jan. 2013).

⁷ JOINT CHIEFS OF STAFF, JOINT PUB. 1-04, LEGAL SUPPORT TO MILITARY OPERATIONS, at II-10 (17 Aug. 2011) [hereinafter JOINT PUB. 1-04] (identifying the key mission analysis actions for Judge Advocates (JAs)).

⁸ National Defense Authorization Act for Fiscal Year 2006, Pub. L. No. 109-163, § 1206, 119 Stat. 3456 (2005) as amended most recently by the National Defense Authorization Act for Fiscal Year 2013, Pub. L. No. 112-239, §1201, 126 Stat. 1632 (2012) (authorizing the Secretary of Defense (SECDEF) to use operations and maintenance funds to "build the capacity of a foreign country's national military forces").

⁹ See ATTP 5-0.1, *supra* note 2, para. 4-26 ("Since no amount of subsequent planning can solve a [mis-] understood problem, mission analysis is the most important step in the [Military Decision Making Process].").

¹⁰ JOINT PUB. 1-04, *supra* note 7, at II-10 (stating JAs should identify "legal issues impacting operational limitations" and "research applicable international agreements" as part of mission analysis).

¹¹ 10 U.S.C. §§ 2341-2350 (2013). See U.S. DEP'T OF DEF., DIR. 2010.9, ACQUISITION AND CROSS-SERVICING AGREEMENTS para. E2.1.5 (28 Apr. 2003) [hereinafter DODD 2010.9].

II. An Overview

A. The ACSA

Acquisition and Cross-Servicing Agreements enable deployed U.S. forces to acquire and exchange logistic supplies, services, and support (LSSS) with eligible foreign countries and international organizations on a reimbursable basis.¹² The purpose of an ACSA is to provide commanders with a flexible means to exchange logistic support with multinational forces, particularly during emergencies and unforeseen circumstances.¹³ Without ACSA authority, U.S. forces would be required to use formal acquisitions procedures to secure LSSS, and they would be prohibited from transferring LSSS to foreign countries without reimbursement.¹⁴ Through the ACSA program, Congress empowered deployed commanders to address unforeseen logistic needs by exchanging LSSS with multinational partners.¹⁵

B. A Retrospective

During the 1970s, the United States dramatically decreased the number of troops stationed in foreign countries.¹⁶ As troop levels decreased, U.S. forces became more dependent on contracting for their logistics support.¹⁷ However, the burdensome processes of formal commercial contracting and foreign military sales impeded logistic support in the field and undermined foreign relations.¹⁸ For example, if a U.S. commander wanted to “feed a company of U.S. troops in an allied mess hall (because they were

operating away from their own),” the commander was required to use commercial contracting procedures, and if that commander wanted to “help a nearby allied unit with some spare parts or ammunitions,” he was forced to “go through [foreign military sales] procedures.”¹⁹

Consequently, Congress enacted the North Atlantic Treaty Organization (NATO) Mutual Support Act (NMSA) of 1979, which simplified the process for exchanging LSSS among NATO countries and U.S. forces.²⁰ Congress streamlined LSSS transactions by exempting these NMSA acquisitions from numerous provisions of U.S. procurement law.²¹ In the years that followed, Congress modified NMSA agreements into ACSAs by expanding the eligibility criteria, legislating additional methods of exchange, and broadening the categories of support permitted within the program.²² In 1994, President Clinton signed Presidential Decision Directive 25, directing the U.S. government seek reimbursement for LSSS provided in combined exercises and operations.²³ Today, the United States has ACSAs with ninety-two countries.²⁴

C. ACSA Authorities

Acquisition and Cross-Servicing Agreement legislation provides two types of authority: acquisition-only authority (AoA) and cross-servicing agreement authority.

¹² 10 U.S.C. §§ 2341–2350 (2013); *see* DoDD 2010.9, *supra* note 11, para. E2.1.5.

¹³ CHAIRMAN, JOINT CHIEFS OF STAFF, JOINT PUB. 4-08, JOINT DOCTRINE FOR LOGISTICS SUPPORT OF MULTINATIONAL OPERATIONS app. C, para. 2 (21 Feb. 2013) [hereinafter JOINT PUB. 4-08]; *see also* U.S. DEP’T OF ARMY, DIR. 2012-12, INTERIM ARMY ACQUISITION AND CROSS-SERVICING AGREEMENTS, LIFT AND SUSTAIN, AND FOREIGN ASSISTANCE ACT AUTHORITIES ch. 1, para. 1 (30 Apr. 2012) [hereinafter AD 2012-12], *available at* http://www.apd.army.mil/pdf/AD2012_12.pdf.

¹⁴ *See, e.g.*, 10 U.S.C. § 2304(a) (2013) (requiring full and open competition); 22 U.S.C. § 2761 (2013) (outlining requirements for foreign military sales (FMS)).

¹⁵ *See generally* U.S. FORCES–AFG., PUB. 1-06, MONEY AS A WEAPON SYSTEM AFGHANISTAN 195 (13 Feb. 2012).

¹⁶ H.R. REP. NO. 96-612, pt. 1, at 5 (1979) (stating reductions in “tooth-to-tail” ratio resulted in fewer U.S. logistics personnel supporting the North Atlantic Treaty Organization (NATO)).

¹⁷ *Id.* (stating U.S. forces contracted support to fill the void left by the personnel reductions); *see also* Fred T. Pribble, *A Comprehensive Look at the NATO Mutual Support Act of 1979*, 125 MIL. L. REV. 187 (1989).

¹⁸ S. REP. NO. 96-842, at 2 (1980) (concluding that the acquisition and cross-servicing agreement (ACSA) legislation will be an “important contribution to the smooth functioning of the NATO alliance and eliminate a needless source of friction between the [United States] and its allies”); H.R. REP. NO. 96-612, pt. 1, at 5 (“European allies now state unequivocally that . . . they will no longer provide support under [the existing system].”)

¹⁹ S. REP. NO. 96-842, at 12. Robert W. Komer, the Under SECDEF for Policy, sent a letter to the U.S. Senate Committee on Foreign Relations supporting the NATO Mutual Support Act (NMSA) of 1979, stating that existing law burdened relations with allies by imposing inflexible procedures, mandating allies allow the U.S. to examine their records, and prohibiting allies from paying gratuities for favorable contractual treatment.

²⁰ NATO Mutual Support Act of 1979, Pub. L. No. 96-323, 94 Stat. 1016 (1980).

²¹ 10 U.S.C. § 2343 (2013) (exempting ACSA acquisitions from a number of requirements); *see, e.g., id.* § 2304(a) (requiring full and open competition); *id.* § 2207 (prohibiting gratuities); *id.* § 2313 (requiring the examination of host nation contractor records).

²² National Defense Authorization Act for Fiscal Year 1987, Pub. L. No. 99-661, § 1104a(2), 100 Stat. 3816 (1986) (expanding eligibility from NATO countries to non-NATO countries and the UN); National Defense Authorization Act for Fiscal Year 1990, Pub. L. No. 101-189, § 938(a), 103 Stat. 1352 (1989) (authorizing equal value exchange (EVE)); National Defense Authorization Act for Fiscal Year 1995, Pub. L. No. 103-337, § 1317(h), 108 Stat. 2663 (1994) (authorizing ACSA loans and the exchange of airlift).

²³ PRESIDENTIAL DECISION DIR. 25 para. 9D (May 3, 1994), *available at* http://www.clintonlibrary.gov/_previous/Documents/2010%20FOIA/Presidential%20Directives/PDD-25.pdf (last visited Oct. 17, 2013) (offering a historical antecedent to the 2012 Def. Strategic Guidance directive to “share the burden” with allies).

²⁴ PowerPoint Presentation, J-4 Logistics, Joint Chiefs of Staff, Acquisition and Cross-Servicing Agreements Country List (20 Sept. 2013) [hereinafter J-4 ACSA PPT], *available at* https://intellipedia.intelink.gov/wiki/Acquisition_and_Cross-Servicing_Agreements.%28ACSA%29 (login required). For a current list of ACSAs, see Appendix A (List of Acquisition and Cross-Servicing Agreements).

Acquisition-only authority authorizes U.S. forces deployed outside the United States to *acquire* LSSS from eligible foreign sources.²⁵ The virtue of AoA is speed: this method of acquisition does not require the negotiation of a cross-servicing agreement.²⁶ Eligible entities include NATO countries, NATO subsidiary bodies, the United Nations (UN), and regional international organizations.²⁷ Additionally, LSSS may be acquired from non-NATO countries, provided the foreign country enjoys a defense alliance with the United States, stations or homeports U.S. forces or vessels, allows the United States to preposition materiel within its country, or hosts military exercises or other operations.²⁸

Cross-servicing agreement authority, on the other hand, empowers the Secretary of Defense (SECDEF) to enter into international agreements with eligible foreign countries and international organizations for the *reciprocal exchange* of LSSS.²⁹ The SECDEF, after consultation with the Secretary of State, may enter into an ACSA with NATO countries, NATO subsidiary bodies, the UN, regional international organizations, or non-NATO countries designated by the SECDEF.³⁰ The SECDEF may only designate a non-NATO country as eligible when he determines such designation is in U.S. national security interests.³¹ Once the agreement is in place, U.S. forces in foreign countries may exchange LSSS pursuant to the terms of that agreement. The SECDEF has delegated the eligibility determination to the Under Secretary of Defense for Acquisition, Technology, and Logistics (USD (AT&L)) and the authority to conclude negotiations to Combatant Commanders (CCDR).³²

²⁵ 10 U.S.C. § 2341 (2013); DoDD 2010.9, *supra* note 11, para. 4.2; CHAIRMAN, JOINT CHIEFS OF STAFF, INSTR. 2120.01C, ACQUISITION AND CROSS-SERVICING AGREEMENTS encl. A, para. 3 (13 Feb. 2013) [hereinafter CJCSI 2120.01C], *available at* https://intellipedia.intelink.gov/wiki/ACSA_Laws_Directives_%26_Guidance (login required).

²⁶ DoDD 2010.9, *supra* note 11, para. 4.2.3; CJCSI 2120.01C, *supra* note 25, encl. A, para. 3; JOINT PUB. 4-08, *supra* note 13, app. C, para. 2b (directing the use of acquisition-only authority in the absence of an ACSA).

²⁷ 10 U.S.C. § 2341(1) (2013); DoDD 2010.9, *supra* note 11, paras. 4.2.1.1–4.2.1.2; CJCSI 2120.01C, *supra* note 25, encl. A, para. 3a.

²⁸ 10 U.S.C. § 2341(2) (2013); DoDD 2010.9, *supra* note 11, para. 4.2.1.3; CJCSI 2120.01C, *supra* note 25, encl. A, para. 3b. *See, e.g.*, Acquisition-Only Agreement, U.S.–Morocco, Feb. 16, 2004 (enabling U.S. forces to order logistic supplies, services, and support while deployed to Morocco for Exercise African Lion 2013), *available at* https://intellipedia.intelink.gov/wiki/ACSA_Country_Documents (last visited Oct. 17, 2013) (login required).

²⁹ 10 U.S.C. § 2342(a) (2013); DoDD 2010.9, *supra* note 11, para. 4.3.1; CJCSI 2120.01C, *supra* note 25, encl. A, para. 4.

³⁰ 10 U.S.C. § 2342(a)(1) (2013); DoDD 2010.9, *supra* note 11, para. 4.3.1; CJCSI 2120.01C, *supra* note 25, encl. A, para. 4.

³¹ 10 U.S.C. § 2342(b) (2013) (requiring the SECDEF to consult with the SECSTATE and provide congressional notification when designating non-NATO countries eligible for ACSAs); DoDD 2010.9, *supra* note 11, para. 4.3.2.2; CJCSI 2120.01C, *supra* note 25, encl. A, para. 4a.

³² DoDD 2010.9, *supra* note 11, paras. 5.1.2, 5.3.1.

D. Reimbursable Exchanges

The virtue of the ACSA program is the flexibility it offers commanders when they or their allied partners encounter an unexpected logistic requirement. When an ACSA is in place, commanders can quickly exchange LSSS with allies in one of three ways: payment-in-kind (PIK), replacement-in-kind (RIK), and equal value exchange (EVE).³³

1. Payment-In-Kind

Payment-in-kind allows the receiving party to purchase LSSS from the supplying party by payment in local currency.³⁴ For example, if Germany provides the United States with 30,000 liters of fuel valued at €50,000, the United States must transmit €50,000 to Germany within 30 days. Payment-in-kind transactions are ideal for governments who can access and transfer payment in a timely manner. Suppliers of LSSS should avoid PIK arrangements when the receiving party will require significant lead time to acquire or transfer currency. Practitioners should note the purchase of LSSS using PIK is generally subject to amount limitations.³⁵

2. Replacement-In-Kind

Replacement-in-kind allows the receiving party to reimburse the supplying party with the same or substantially similar LSSS within one year of the transaction.³⁶ For example, if Germany provides the United States with 30,000 liters of fuel valued at €50,000, the United States must return 30,000 liters of fuel, or something substantially similar, to Germany within one year.³⁷ Should the United States fail to satisfy their obligation by the deadline, the exchange transaction will automatically convert to a reimbursement transaction, and the U.S. will be required to pay Germany

³³ 10 U.S.C. § 2344 (2013); DoDD 2010.9, *supra* note 11, para. 4.1.3; CJCSI 2120.01C, *supra* note 25, encl. A, para. 4d; *see also* JOINT PUB. 4-08, *supra* note 13, app. C, para. 2c (stating that the supplying party selects the form of reimbursement).

³⁴ U.S. DEP'T OF DEF., REG. 7000.14-R, DoD FIN. MGMT. REG., vol. 11A, ch. 7, para. 080202A (July 2010) [hereinafter DoD FMR] (requiring payment within thirty days; the parties may extend this deadline up to ninety days).

³⁵ 10 U.S.C. § 2347 (2013); DoD FMR, *supra* note 34, para. 080204 (stating that annual acquisitions from NATO countries are limited to \$200 million and from non-NATO to \$60 million; and annual transfers from NATO countries are limited to \$150 million and non-NATO countries to \$75 million). *But see* CJCSI 2120.01C, *supra* note 25, encl. A, para. 5h(1)–(3) (stating the limitations apply neither to replacement-in-kind (RIK) and equal value exchange (EVE) transactions, nor during active hostilities and contingency operations).

³⁶ DoDD 2010.9, *supra* note 11, para. E2.1.14; DoD FMR, *supra* note 34, para. 080202B.

³⁷ DoD-FMR, *supra* note 34, para. 080202B.

€50,000. When parties both possess substantially similar supplies (e.g., fuel), RIK transactions offer an efficient mechanism for mutual support. However, RIK should be avoided when the receiving party will lack the LSSS required to satisfy the obligation.

3. Equal Value Exchange

Equal Value Exchange enables the receiving party to repay the supplying party with different goods or services, equal to the value of the LSSS originally received, within one year.³⁸ For example, if Germany provides the U.S. with 30,000 liters of fuel valued at €50,000, the United States may satisfy their obligation by giving Germany €50,000 worth of ammunition, or other permissible LSSS, within one year. Equal Value Exchanges are preferred because they offer both parties tremendous flexibility. Commanders should consider an EVE when their trading partners are likely to face challenges securing currency (i.e., PIK) or similar LSSS (i.e., RIK).

E. Parameters

The commander's ability to exchange LSSS has limitations.³⁹ Acquisition and Cross-Servicing Agreements only allow for the exchange of *permissible* LSSS: "food, water, billeting, transportation (including airlift), petroleum, oils, lubricants, clothing, communications services, medical services, ammunition, base operations support . . . storage services, use of facilities, training services, spare parts and components, repair and maintenance services, and air and sea port services."⁴⁰ Permissible LSSS also includes "temporary use of general purpose vehicles and other nonlethal . . . military equipment which are not designated as significant military equipment."⁴¹ Moreover, Congress and the SECDEF have empowered Combatant Commands (CCMDs) to loan significant military equipment to allied partners for up to one year in certain circumstances.⁴²

³⁸ DoDD 2010.9, *supra* note 11, para. E2.1.6; *id.* (requiring payment within one year for EVE transactions).

³⁹ 10 U.S.C. § 2342(a)(2) (2013).

⁴⁰ *Id.* § 2350(1); DoDD 2010.9, *supra* note 11, para. E2.1.10; CJCSI 2120.01C, *supra* note 25, glossary, at GL-4 (defining logistic supplies, services, and support (LSSS)); *id.* encl. A, app. (providing examples of LSSS); see also HEADQUARTERS, U.S. AFRICA COMMAND, MANUAL 4000.01, STANDARD OPERATING PROCEDURES FOR THE IMPLEMENTATION OF THE ACQUISITION AND CROSS-SERVICING AGREEMENT (ACSA) encl. A (29 Sept. 2009) [hereinafter ACM 4000.01] (providing categories and examples of LSSS), available at https://intellipedia.intelink.gov/wiki/ACSA_Laws,_Directives,_%26_Guidance (login required).

⁴¹ 10 U.S.C. § 2350(1) (2013); DoDD 2010.9, *supra* note 11, para. E2.1.10; CJCSI 2120.01C, *supra* note 25, glossary, at GL-4 (defining LSSS).

⁴² John Warner National Defense Authorization Act for Fiscal Year 2007, Pub. L. No. 109-364, § 1202, 120 Stat. 2083 (2006), amended by the Ike Skelton National Defense Authorization Act for Fiscal Year 2011, Pub. L. No. 111-383, § 1203(a), 124 Stat. 4137 (2010), amended by the National

Additionally, ACSA authority is further constrained in a number of ways. First, ACSAs may not be used to circumvent the foreign military sales process.⁴³ Specifically, the Department of Defense (DoD) expressly prohibits U.S. forces from using ACSAs to acquire or transfer "weapons systems; [the] initial quantities of [certain] replacement and spare parts for [certain] major end items of equipment . . . ; and major end items of equipment."⁴⁴ Additionally, U.S. forces are prohibited from acquiring or transferring "guided missiles; naval mines and torpedoes; nuclear ammunition and included items . . . ; cartridge and propellant-actuated devices; chaff and chaff dispensers; guidance kits for bombs and other ammunition; and chemical ammunition (other than riot control agents)."⁴⁵ Second, U.S. forces may not use ACSAs to procure LSSS that is reasonably available from commercial sources in the United States.⁴⁶ Third, U.S. forces are prohibited from increasing inventory levels in anticipation of future ACSA transactions.⁴⁷ Fourth, practitioners must remain mindful of fundamental fiscal law limitations. U.S. forces may not order LSSS in the current year for use in a future year (i.e. time) and ACSA transactions must not exceed authorized thresholds (i.e., amount).⁴⁸ Finally, the international agreement itself may include additional limitations; practitioners must validate that the governing ACSA actually authorizes the contemplated exchange.⁴⁹

Defense Authorization Act for Fiscal Year 2012, Pub. L. No. 112-81, § 1202, 125 Stat. 1298 (2011) (authorizing ACSA lend authority in Afghanistan through 2014); see also AD 2012-12, *supra* note 13, ch. 2, para. 2a (delegating this authority to U.S. Central Command).

⁴³ CJCSI 2120.01C, *supra* note 25, encl. A, para. 5f (directing use of FMS when appropriate); see also HEADQUARTERS, U.S. SOUTHERN COMMAND, HANDBOOK 700-6, ACQUISITION AND CROSS-SERVICING AGREEMENTS para. 2.3 (11 May 2012) [hereinafter SOUTHCOM HB 700-6], available at https://intellipedia.intelink.gov/wiki/COCOM_ACSA_Directives_%26_Guidance (login required) (stating that ACSAs are intended to complement, not replace, FMS); see also The Arms Export Control Act, 22 U.S.C. § 2761 (2013) (outlining FMS); DEF. SEC. COOPERATION AGENCY (DSCA) SEC. ASSISTANCE MGMT., MANUAL 5105.38-M, chs. 4-6 (14 Apr. 2013), available at <http://www.samm.dsca.mil/listing/chapters> (login required) (offering practitioners a guide on the FMS process).

⁴⁴ DoDD 2010.9, *supra* note 11, para. 4.5.1 (stating ACSAs may not be used when the replacement and spare parts are covered by tables of organization and equipment, tables of allowances and distribution, or equivalent documents); CJCSI 2120.01C, *supra* note 25, encl. A, para. 5b1.

⁴⁵ DoDD 2010.9, *supra* note 11, para. 4.5.2; CJCSI 2120.01C, *supra* note 25, encl. A, para. 5b2.

⁴⁶ 10 U.S.C. § 2342(c) (2013); DoDD 2010.9, *supra* note 11, para. 4.4.

⁴⁷ 10 U.S.C. § 2348 (2013); DoDD 2010.9, *supra* note 11, para. 4.6.

⁴⁸ 31 U.S.C. § 1502(a) (2013) ("The balance of an appropriation or fund limited for obligation to a definite period is available only for payment of expenses properly incurred during the period of availability or to complete contracts properly made within that period of availability."); *id.* § 1341(a)(1)(A) ("An officer or employee of the U.S. Government . . . may not make or authorize an expenditure or obligation exceeding an amount available in an appropriation or fund for the expenditure or obligation.")

⁴⁹ CJCSI 2120.01C, *supra* note 25, encl. A, para. 6g (stating the parties may not exchange LSSS beyond the geographic limitations of the ACSA or combatant command). For an explanation of how to research and find ACSAs, see *infra* Part III.B.

Returning to our hypothetical, the TF commander's intent was clear; he wants the flexibility to exchange supplies with Moroccan forces, should there be a logistics shortfall during the operation. Your research confirmed that ACSAs enable commanders to exchange LSSS with eligible countries to meet logistics shortfalls while deployed.⁵⁰ You also learned that ACSA transfers may be satisfied by PIK, RIK, and EVE.⁵¹ Finally, you determined that ACSAs have limitations, including: supplies and services must be permissible LSSS, ACSAs may not be used to procure supplies commercially available in the United States, and certain items are expressly excluded from the ACSA program (e.g., weapons systems).⁵²

III. A Framework for Analysis

A. Introduction

You now analyze whether an ACSA would meet the commander's intent: (1) Does the commander's logistics needs concern *permissible* LSSS? and (2) Does the commander want the ability to *acquire* LSSS or does he desire the flexibility to *exchange* LSSS?⁵³ In this case, an ACSA is appropriate because the commander wants to exchange permissible LSSS. Your research continues—does the United States have an ACSA with Morocco?

B. Researching ACSAs

The United States enjoys ACSAs with approximately ninety-two countries and an additional eighty-one countries are eligible.⁵⁴ When researching ACSAs, practitioners have numerous resources, including: the U.S. Department of State (DoS) Treaties in Force,⁵⁵ the Intelink ACSA Portal,⁵⁶ and the JAGCNET International and Operational Law

Documents Library.⁵⁷ Practitioners should note their controlling ACSA's expiration date to ensure the exchange of LSSS throughout the operation.⁵⁸

After researching the aforementioned resources, you learn that the United States does *not* have an ACSA in force with Morocco. You then brief the commander that an ACSA will meet his desired end-state, but the United States does not currently have an ACSA in place with Morocco. The commander asks, "How do we get one?"

C. Securing an ACSA

Acquisition and Cross-Servicing Agreements are international agreements.⁵⁹ Given this status, both law and policy greatly shape a servicemember's ability to secure an ACSA. Consequently, practitioners must know the laws, rules, and policies germane to international agreements.

As a preliminary matter, the DoS must be consulted prior to negotiating and concluding an international agreement.⁶⁰ To this end, the DoS established the Circular 175 procedure (C-175 procedure), which provides guidance to the Executive Branch concerning "the negotiation, conclusion, reporting, publication, and registration of U.S. treaties and international agreements."⁶¹

Additionally, DoD personnel are prohibited from negotiating international agreements absent written approval from a DoD official with proper authority.⁶² *Negotiation*

⁵⁰ 10 U.S.C. §§ 2341–2350 (2013); DoDD 2010.9, *supra* note 11, para. E2.1.5.

⁵¹ 10 U.S.C. § 2344 (2013); DoDD 2010.9, *supra* note 11, para. 4.13; CJCSI 2120.01C, *supra* note 25, encl. A, para. 4d.

⁵² DoDD 2010.9, *supra* note 11, paras. 4.4, 4.5.1, and E2.1.10.

⁵³ SOUTHCOM HB 700-6, *supra* note 43, app. D.

⁵⁴ J-4 ACSA PPT, *supra* note 24.

⁵⁵ U.S. DEP'T OF STATE, TREATIES IN FORCE: A LIST OF TREATIES & OTHER INT'L AGREEMENTS OF THE U.S. IN FORCE ON JANUARY 1, 2012 (2012), available at <http://www.state.gov/s/l/treaty/tif/index.htm> (last visited Oct. 17, 2013) (login required) (providing a list of treaties and international agreements as of 1 January 2012).

⁵⁶ *Acquisition and Cross-Servicing Agreements*, INTELINK, https://intellipedia.intelink.gov/wiki/Acquisition_and_Cross-Servicing_Agreements_%28ACSA%29 (last visited Oct. 17, 2013) (login required) (offering researchers ACSA country documents, education materials, and field references).

⁵⁷ *Int'l and Operational Law Division Documents Library*, JAGCNET, <https://www.jagcnet2.army.mil/IODOcLib> (last visited Oct. 17, 2013) (login required).

⁵⁸ See, e.g., Acquisition and Cross-Servicing Agreement, U.S.–Afg., para. IX, Feb. 16, 2004, available at https://intellipedia.intelink.gov/wiki/ACSA_Country_Documents (login required) (terminating the ACSA ten years after the date the last party signs the agreement).

⁵⁹ CJCSI 2120.01C, *supra* note 25, glossary, at GL-3 (stating that cross-servicing agreements are international agreements under U.S. DEP'T OF DEF., DIR. 5530.3, INT'L AGREEMENTS para. E2.1.1 (11 June 1987) [hereinafter DODD 5530.3]). See also RESTATEMENT (THIRD) OF FOREIGN RELATIONS LAW § 301 (1987) [hereinafter RESTATEMENT 3D FOREL] (defining an international agreement as "an agreement between two or more states or international organizations that is intended to be legally binding and is governed by international law"); CHAIRMAN, JOINT CHIEFS OF STAFF, INSTR. 2300.01D, INT'L AGREEMENTS para. 5 (5 Oct. 2007).

⁶⁰ Case-Zablocki Act, 1 U.S.C. § 112b (2013). See also RESTATEMENT 3D FOREL, *supra* note 59, § 311 cmt. b (stating the SECSTATE enjoys full power to negotiate and conclude international agreements in the President's name; clarifying that other departments are required to *consult* with the SECSTATE even when granted authority to negotiate); DODD 5530.3, *supra* note 59, para. 7 (outlining the DoD implementation of the Case-Zablocki Act).

⁶¹ U.S. DEP'T OF STATE, FOREIGN AFF. MANUAL VOLUME 11—POLITICAL AFFAIRS 720, 721 (Sept. 25, 2006) available at <http://www.state.gov/m/a/dir/regs/fam/11fam/index.htm>.

⁶² Logan Act, 18 U.S.C. § 953 (2013); DODD 5530.3, *supra* note 59, para. 8.2.

includes forwarding a draft agreement or communicating an offer to a foreign government's representative with such specificity that acceptance would result in forming an agreement;⁶³ however, preliminary and exploratory discussions are not considered *negotiation*.⁶⁴ In sum, servicemembers risk violating federal law when they communicate to their foreign counterpart an interest in securing an ACSA.

Returning to our hypothetical, you know the commander wants an ACSA; you also know task force personnel are not authorized to negotiate an international agreement—to do so would violate federal law.⁶⁵ Accordingly, you brief the staff sections regarding ACSA-related communications with the Moroccans. You then forward a request for assistance to the U.S. Africa Command (AFRICOM) Office of Legal Counsel. They advise “there is a two-part process for securing an ACSA: eligibility and negotiation.”

1. Eligibility

To secure an ACSA, the country or organization must first be declared eligible.⁶⁶ NATO countries and its subsidiary bodies, as well as the UN, are already eligible.⁶⁷ For non-NATO countries, the SECDEF is authorized to make an eligibility determination based on U.S. national security interests.⁶⁸ The Joint Staff/J-4 has established a process for securing eligibility determinations.⁶⁹ First, the task force must request their CCMD nominate the foreign country or international organization.⁷⁰ The CCMD will then review the request and nominate the foreign country or international organization for designation as eligible.⁷¹

After the CCMD forwards the nomination, the Joint Staff/J-4 forwards the request to the J-5 and the Office of the

⁶³ DoDD 5530.3, *supra* note 59, para. E2.1.2 (stating the document's title is not dispositive: a document may still be an international agreement even when the title does not include the word “agreement”).

⁶⁴ *Id.*

⁶⁵ Logan Act, 18 U.S.C. § 953 (2013); DoDD 5530.3, *supra* note 59, para. 8.2.

⁶⁶ DoDD 2010.9, *supra* note 11, para. 4.1.

⁶⁷ 10 U.S.C. §§ 2342(a)(1)(A)–(C) (2013); DoDD 2010.9, *supra* note 11, para. 4.3.1.

⁶⁸ 10 U.S.C. §§ 2342(a)(1)(D), 2342(b) (2013).

⁶⁹ CJCSI 2120.01C, *supra* note 25, encl. C, para. 5.

⁷⁰ DoDD 2010.9, *supra* note 11, para. 5.3 (delegating nominating authority from the SECDEF to the Chairman of the Joint Chiefs of Staff (CJCS)); CJCSI 2120.01C, *supra* note 25, encl. B, para. 2i(7) (delegating nominating authority to the Combatant Commanders (CCDRs)).

⁷¹ CJCSI 2120.01C, *supra* note 25, encl. C, para. 5 (outlining the requirements for Combatant Command (CCMD) nominations, including a CCMD legal review, and emphasizing the minimum processing time of sixty days).

Chairman's Legal Counsel.⁷² The J-4 then sends the request to the Office of the USD (AT&L), who ultimately makes the ACSA eligibility determination.⁷³ After the USD (AT&L) reviews the request and coordinates with the Under Secretary of Defense for Policy and the DoD General Counsel, the USD (AT&L) consults with the DoS.⁷⁴ Provided the Office of the Secretary of Defense (OSD) supports the designation, the USD (AT&L) then notifies Congress.⁷⁵ If the 30-day congressional notification period expires without objection, the USD (AT&L) will notify the Joint Staff/J4, who then notifies the CCMD that the foreign government or international organization is designated eligible.⁷⁶

Back at Fort Campbell, your request for assistance to AFRICOM yielded favorable results: Morocco was designated eligible in 1988.⁷⁷ Given that Morocco is eligible, the task force now only requires the negotiation of the international agreement. You brief your commander and recommend requesting AFRICOM negotiate and conclude an ACSA with Morocco. Additionally, you recommend requesting AoA to ensure the task force is able to purchase LSSS from the Moroccans in the event the ACSA is untimely.⁷⁸ The task force commander approves your recommendations to request ACSA and AoA, and reminds you, “The task force deploys in 120 days.”

2. Negotiation

Congress granted the SECDEF the authority to enter into ACSAs with eligible foreign countries and international organizations after *consultation* with the DoS.⁷⁹ In furtherance of congressional intent, the DoS authorized the

⁷² *Id.* encl. C, para. 5e.

⁷³ DoDD 2010.9, *supra* note 11, para. 5.1.2; CJCSI 2120.01C, *supra* note 25, encl. B, para. 2a(2).

⁷⁴ DoDD 2010.9, *supra* note 11, para. 5.1.2; CJCSI 2120.01C, *supra* note 25, encl. B, para. 2a(1); *supra* note 25, encl. C, para. 5f.

⁷⁵ DoDD 2010.9, *supra* note 11, para. 4.3.2 (stating the USD(AT&L) notifies the Senate Armed Services and Foreign Relations Committees; and the House Armed Services and International Relations Committees); CJCSI 2120.01C, *supra* note 25, encl. B, para. 2a(1) & encl. C, para. 5f.

⁷⁶ CJCSI 2120.01C, *supra* note 25, encl. C, paras. 5d, 5g (stating practitioners should allow a minimum of sixty days for the eligibility determination).

⁷⁷ Memorandum from Frank Carlucci, SECDEF, to the Chairman of the Joint Chiefs of Staff and Assistant SECDEF, subject: NATO Mutual Support Act (NMSA) Designations (29 Mar. 1988), *available at* https://www.intelink.gov/inteldocs/action.php?kt_path_info=ktcore.actions.document.view&fDocumentId=194870 (last visited Oct. 10, 2013) (declaring Morocco eligible for ACSA negotiations) (login required).

⁷⁸ 10 U.S.C. § 2341 (2013); DoDD 2010.9, *supra* note 11, para. 4.2; CJCSI 2120.01C, *supra* note 25, encl. A, para. 3.

⁷⁹ 10 U.S.C. § 2342(a) (2013) (requiring consultation with, but not concurrence by, the SECSTATE).

SECDEF to negotiate and conclude ACSAs.⁸⁰ The SECDEF then delegated this authority to the Chairman of the Joint Chiefs of Staff (CJCS), who further delegated the authority to CCDRs.⁸¹

ACSA negotiations start with the CCMD preparing a draft agreement.⁸² When the DoS empowered the DoD to negotiate and conclude ACSAs, they required the DoD use a model agreement when drafting the ACSA.⁸³ If the draft ACSA substantially deviates from the model agreement, the Joint Staff, OSD, and DoS will likely review the draft document.⁸⁴ Consequently, deviating from the model agreement will result in delays.

After drafting the agreement, the CCMD ACSA Program Manager (PM) organizes a negotiating team, consisting at a minimum of the ACSA PM (who serves as the lead negotiator) and legal counsel.⁸⁵ The ACSA PM then coordinates with the U.S. country team, forwards a draft agreement to his foreign counterpart, and conducts negotiations.⁸⁶ If the foreign country or international organization requests substantive changes to the draft agreement, the ACSA PM will note the specific reasons for modification and contact the Joint Staff/J-4.⁸⁷ After negotiations conclude, each party will staff the draft agreement for approval within their respective organizations

(i.e., CCMD review).⁸⁸ The ACSA PM may request the Joint Staff informally review the draft agreement.⁸⁹ The parties then agree to the ACSA *ad referendum*.⁹⁰

The ACSA PM then forwards the agreement to the Joint Staff/J-4 *formally* requesting authority to conclude the agreement.⁹¹ The Joint Staff/J-4 forwards the request to the OUSD (AT&L) directorate for International Cooperation (OUSD (AT&L)/IC), who in turn sends the request through the OSD for legal, policy, and financial reviews.⁹² The OUSD (AT&L)/IC then forwards the request to the DoS for consultation and issues a memorandum to the Joint Staff either granting or declining the request to conclude the agreement.⁹³ If the USD (AT&L)/IC grants authority to conclude the agreement, the Joint Staff/J4 will delegate this authority to the CCDR.⁹⁴

After receiving authority, the ACSA PM will forward the approved English and translated versions of the agreement to the foreign country or international organization.⁹⁵ At this point, practitioners should note that the foreign country may require internal approval or an exchange of diplomatic notes.⁹⁶ Generally, the ACSA PM will conduct a signing ceremony where the CCDR and foreign representative sign and conclude the ACSA.⁹⁷ While neither the DoS nor DoD have mandated a minimum signature level, the United States and foreign signatories should be of “approximately equal rank or position.”⁹⁸ Finally, practitioners must refer to their CCMD’s local policies governing signing ceremonies.⁹⁹

In sum, negotiating an ACSA is a process that requires significant lead time (i.e., more than 100 days) because the ACSA PM must both negotiate laterally with his foreign

⁸⁰ Memorandum from John Hillen, Assistant Sec’y of Political-Military Affairs, to Robert Joseph, Under Sec’y of State for Arms Control & Int. Sec. Affairs (July 11, 2006) [hereinafter DoS Joseph Memo] (granting the Assistant Secretary of Political Military Affairs the authority to empower the DoD to conclude ACSAs, provided the DoD does not deviate from the model template).

⁸¹ DoDD 2010.9, *supra* note 11, para. 5.3.1 (delegating the authority to negotiate and conclude ACSAs to the CJCS); DoDD 2010.9, *supra* note 11, para. 5.6.2 (authorizing the CJCS to delegate the authority to negotiate and conclude ACSAs to the CCDRs); CJCSI 2120.01C, *supra* note 25, encl. B, paras. 2d(2), 2i(2) (directing CCDRs to negotiate ACSAs when authorized by the CJCS). *See also* AD 2012-12, *supra* note 13, ch. 2, para. 3 (30 Apr. 2012) (prohibiting CCDRs from further delegating authority).

⁸² CJCSI 2120.01C, *supra* note 25, encl. C, para. 6a(1).

⁸³ DoS Joseph Memo, *supra* note 80, tab 1 (enclosing the ACSA 2006 negotiation template).

⁸⁴ CJCSI 2120.01C, *supra* note 25, encl. C, para. 6a(2). *See also* DoS Joseph Memo, *supra* note 80, at 2 (requiring approval by the Under Secretary of State for Arms Control and International Security Affairs when a draft ACSA substantially deviates from the model agreement).

⁸⁵ CJCSI 2120.01C, *supra* note 25, encl. C, para. 6b (stating the ACSA Program Manager (PM) may also seek support from the CCMD J5, Joint staff, service component commands, or the U.S. country team).

⁸⁶ *Id.* encl. C, para. 6c. *See also* Roger S. Golden, Office of Int’l Cooperation, Under Sec’y of Def. for Acquisition, Tech., and Logistics, Address at the 2012 ACSA Worldwide Conference: Negotiation Issues (June 4, 2012) [hereinafter Roger Golden Address], *available at* https://intellipedia.intelink.gov/wiki/ACSA_Conf_2012_Briefs (found on website under Briefs, OSD) (recommending the ACSA team maintain accurate records of all negotiations because the process can take years, forcing negotiators to leave actions to their successors).

⁸⁷ CJCSI 2120.01C, *supra* note 25, encl. C, para. 6c(2).

⁸⁸ *Id.* encl. C, para. 6c(4).

⁸⁹ *Id.* encl. C, para. 6d–e (directing ACSA PMs to resubmit agreements to foreign governments when the Joint Staff directs modifications).

⁹⁰ *Id.* encl. C, para. 6c(3) (stating *ad referendum* means “the agreement . . . is subject to staffing and approval”).

⁹¹ *Id.* encl. C, para. 6f(1) (requiring a CCMD J-4 memorandum requesting authority to conclude the agreement, a copy of the agreement noting departures from the template, and a CCMD legal review).

⁹² *Id.* encl. C, para. 6f(2).

⁹³ *Id.* encl. C, para. 6f(3) (requiring consultation, not concurrence).

⁹⁴ *Id.* encl. C, para. 6g.

⁹⁵ *Id.* encl. C, para. 6h.

⁹⁶ Roger Golden Address, *supra* note 86.

⁹⁷ CJCSI 2120.01C, *supra* note 25, encl. C, para. 6i.

⁹⁸ *Id.* encl. C, para. 6i(1).

⁹⁹ *See, e.g.*, HEADQUARTERS, U.S. AFRICA COMMAND, INSTR. 4000.01, UTILIZING ACQUISITION AND CROSS-SERVICING AGREEMENTS encl. C, para. 2(a)(2) (29 Sept. 2009) [hereinafter ACI 4000.01], *available at* https://intellipedia.intelink.gov/wiki/COCOM_ACSA_Directives_%26_Guidance (login required) (withholding signature authority to the commander, U.S. AFRICOM).

counterpart and staff the agreement vertically through the CCMD, Joint Staff/J-4, OSD, and DoS.¹⁰⁰ Logisticians and JAs should identify ACSA requirements as early as possible.¹⁰¹

Returning to our hypothetical, AFRICOM is acting on your request for assistance. First, AFRICOM confirms with the Joint Staff/J-4 that they have the authority to negotiate with the Moroccans. The AFRICOM ACSA PM then coordinates the drafting of an ACSA using the DoS model agreement. The ACSA PM forwards the draft agreement to the Moroccans and, with the assistance of his ACSA team, conducts negotiations. After both the CCDR and the Moroccans approve the draft agreement *ad referendum*, the ACSA PM forwards the agreement through Joint Staff/J-4 to OUSD (AT&L)/IC. The USD (AT&L)/IC grants authority to conclude the agreement and the Joint Staff/J-4 delegates this authority to the CCDR. Subsequently, the CCDR concludes the agreement at the signing ceremony. Approximately 100 days after receiving the request, AFRICOM secures your ACSA just prior to the deployment.

D. Exchanging LSSS: Orders and Transfers

You are now deployed to a cooperative security location (CSL) east of Tan Tan airport. While attending a battle update brief, the S-4 informs the commander that Moroccan forces have requested our support. Given their strained supply lines, the Moroccans request meals, fuel, and several anti-tank guided missile systems (i.e., BGM-71 TOWs). The S-4 also advises that a number of our task force vehicles are in need of maintenance services beyond what the task force can provide. The S-4 recommends leveraging the ACSA to provide the requested support to the Moroccans in exchange for maintenance services to our vehicles. The commander turns to you and says, “Judge?” You advise that the BGM-71 TOWs are guided missile systems and may not be transferred under the ACSA.¹⁰² You then recommend approval of the remaining portion of the exchange. The commander approves your recommendation.

Once the ACSA is in place, the parties generally have all the authority necessary to exchange LSSS.¹⁰³ An ACSA order is “a written request, in an agreed upon format and signed by an authorized individual, for the provision of

LSSS pursuant to an ACSA.”¹⁰⁴ Unlike ACSAs, the orders themselves are not international agreements.¹⁰⁵ While ACSAs enable parties to exchange LSSS, they do not *require* parties to fill orders received from one another.¹⁰⁶ Generally, LSSS transfers occur on an individual basis, but orders may be open-ended when the quantity or time frame is undefined.¹⁰⁷ Additionally, practitioners should familiarize themselves with local policy, as each CCDR has published authority governing ACSA orders within their areas of responsibility.¹⁰⁸ There are three types of orders: transfer for cash (i.e., PIK), exchange of similar or different LSSS (i.e., RIK or EVE), and loans.

1. Transfer for Cash (i.e., PIK)

When exchanging currency for LSSS, logisticians first define the type, timing, and quantity of the requirement.¹⁰⁹ The CCMD ACSA PM, in coordination with legal and contracting, will validate that the governing ACSA allows for the transfer of the contemplated LSSS.¹¹⁰ When acquiring LSSS, the ACSA PM must ensure that the desired “goods or services are not reasonably available from U.S. commercial sources,” and that the transaction supports U.S. national interests and the commander’s end-state.¹¹¹ The ACSA PM and their foreign counterpart then negotiate the terms of the order.¹¹² Negotiations should address “type, quantity, delivery location and schedule, billing information,

¹⁰⁴ CJCSI 2120.01C, *supra* note 25, glossary, at GL-4.

¹⁰⁵ DoDD 5530.3, *supra* note 59, para. E2.1.1.3.7; CJCSI 2120.01C, *supra* note 25, encl. D, para. 4b(3)(a) (stating orders are binding international commitments).

¹⁰⁶ AD 2012-12, *supra* note 13, ch. 2, para. 5.

¹⁰⁷ CJCSI 2120.01C, *supra* note 25, encl. D, para. 5a, 5c (reminding practitioners to not obligate funds beyond the period of availability for open-ended orders).

¹⁰⁸ See ACI 4000.01, *supra* note 99; HEADQUARTERS, U.S. CENTRAL COMMAND, REG. 700-1, MULTINATIONAL LOGISTICS SUPPORT BETWEEN THE U.S. AND GOVERNMENTS OF COUNTRIES WITHIN THE USCENTCOM AREA OF RESPONSIBILITY (19 Apr. 2006), *available at* https://intellipedia.intelink.gov/wiki/COCOM_ACSA_Directives_%26_Guidance (last visited Oct. 17, 2013) (login required); U.S. EUROPEAN COMMAND, DIR. 60-8, LOGISTICS SUPPORT USING ACQUISITION AND CROSS-SERVICING AGREEMENTS (19 Sept. 2001) [hereinafter ED 60-8], *available at* https://intellipedia.intelink.gov/wiki/COCOM_ACSA_Directives_%26_Guidance (last visited Oct. 17, 2013) (login required); HEADQUARTERS, U.S. PACIFIC COMMAND, INSTR. 0602.1, MUTUAL LOGISTIC SUPPORT BETWEEN THE U.S. AND THE GOVERNMENTS OF OTHER ELIGIBLE COUNTRIES (7 Oct. 2007), *available at* https://intellipedia.intelink.gov/wiki/COCOM_ACSA_Directives_%26_Guidance (login required); SOUTHCOM HB 700-6, *supra* note 43.

¹⁰⁹ CJCSI 2120.01C, *supra* note 25, encl. D, para. 4a(1).

¹¹⁰ *Id.* encl. D, para. 4a(1)(a).

¹¹¹ *Id.* encl. D, para. 4a(1)(b) (stating practitioners should consider timeliness, costs, purpose, and location when determining if LSSS is reasonably available from U.S. commercial sources).

¹¹² *Id.* encl. D, para. 4a(2).

¹⁰⁰ James A. Teaford, Multinational & Interagency Division, J-4 Logistics, Joint Chiefs of Staff, Address at the 2012 ACSA Worldwide Conference: ACSA 101 (May 22, 2012), *available at* https://intellipedia.intelink.gov/wiki/ACSA_Conf_2012_Briefs (login required).

¹⁰¹ JOINT PUB. 4-08, *supra* note 13, ch. III, para. 4b.

¹⁰² The BGM-71 TOW, a guided missile system, is expressly excluded from the ACSA program. DoDD 2010.9, *supra* note 11, para. 4.5.2; CJCSI 2120.01C, *supra* note 25, encl. A, para. 5b(2).

¹⁰³ AD 2012-12, *supra* note 13, ch. 2, para. 3.

and price of LSSS to be transferred.”¹¹³ Generally, parties should agree to a firm fixed price.¹¹⁴

The parties begin the transaction by populating the required order form as directed by the governing ACSA.¹¹⁵ The ACSA Global Automated Tracking and Reporting System (AGATRS) enables ACSA PMs to order, track, manage, and report their ACSA transactions.¹¹⁶ After the order form is completed and signed by both parties, a binding international commitment is formed.¹¹⁷ Having completed the ACSA order, the supplying organization then coordinates for the LSSS.¹¹⁸ For U.S.-provided support, the ACSA PM will coordinate with the subordinate commands for LSSS from the supply system or private vendors.¹¹⁹ The ACSA PM then validates delivery and acceptance by the foreign country or international organization.¹²⁰ The ACSA PM forwards the completed ACSA order form to the subordinate command’s resource managers (RM) for billing and collection.¹²¹

2. Transfer for Similar LSSS (i.e., RIK) or Different LSSS (i.e., EVE)

When providing LSSS in exchange for RIK or EVE, a similar process is followed. Logisticians first define the requirement, and the ACSA PM and their foreign

¹¹³ *Id.*; DoD FMR, *supra* note 34, para. 0806 (outlining reciprocal and non-reciprocal pricing methods).

¹¹⁴ CJCSI 2120.01C, *supra* note 25, encl. D, para. 4a(2)(a) (stating the ACSA PM should include a “not to exceed” amount when the parties are unable to agree on a firm fixed price).

¹¹⁵ *Id.* encl. D, para. 4a(3)(a). See Appendix B (Standard ACSA Order Form).

¹¹⁶ CJCSI 2120.01C, *supra* note 25, encl. A, para. 5k (stating the ACSA Global Automated Tracking and Reporting System is the DoD ACSA system of record for the OSD, Joint Staff, and CCMDs); see also DoDD 2010.9, *supra* note 11, para. 5.6.8 (requiring CCMDs to submit quarterly ACSA reports to the CJCS); DoD FMR, *supra* note 34, para. 080403A (requiring CCMDs to provide “not later than the 15 days after the end of the preceding fiscal quarter, a detailed report, by fiscal year, for each . . . agreement entered into . . . itemized by transaction”).

¹¹⁷ CJCSI 2120.01C, *supra* note 25, encl. D, para. 4a(3)(a) (stating these actions form a binding international commitment, not an international agreement). When the United States receives LSSS for payment-in-kind (PIK), the service component must secure a fund certification *before* signing the ACSA order form. *Id.* encl. D, para. 4a(3)(b). When the United States transfers LSSS for PIK, the order form must contain the fund site of the burdened account for reimbursement. *Id.* encl. D, para. 4a(3)(b).

¹¹⁸ *Id.* encl. D, para. 4a(4)(a).

¹¹⁹ *Id.* encl. D, para. 4a(4) (directing practitioners consult U.S. DEP’T OF DEF., REG. 4500.9-R, DEF. TRANSPORTATION REG. (Nov. 2010) when seeking support from U.S. Transportation Command).

¹²⁰ *Id.* encl. D, para. 4a(5)(a); encl. D, app. A.

¹²¹ *Id.* encl. D, para. 4a(6) (stating the RM will forward the action to the organization identified in the ACSA for billing and collection; and the billing element will forward a bill to the foreign country’s payment office).

counterparts negotiate the ACSA transaction.¹²² In contrast to the terms negotiated in PIK transactions, the parties negotiate *value* rather than price and the form of reimbursement.¹²³ Again, the parties initiate the ACSA transaction by completing an ACSA order form.¹²⁴ The ACSA PM must ensure the order contains an estimate of the value of the LSSS to be transferred.¹²⁵ For U.S.-provided support, the ACSA PM will coordinate with a subordinate command for the LSSS, who will then deliver the LSSS from the logistics elements inventory or contracted vendor.¹²⁶ After validating delivery and acceptance of the LSSS, the ACSA PM will forward the completed form to the resource element of the subordinate command pending reimbursement by the foreign government.¹²⁷ Upon receipt of the RIK or EVE reimbursement, the ACSA PM will annotate the order and notify the RM.¹²⁸ In the event the receiving party defaults, the order is processed as a cash reimbursement transaction.¹²⁹

3. Loan of LSSS for Cash, RIK, or EVE

Finally, LSSS may be loaned in exchange for cash, RIK, or EVE.¹³⁰ Again, the process is similar. After defining the requirement, the parties negotiate the terms.¹³¹ Unlike other exchanges, parties seeking to loan LSSS must address “the value of LSSS to be loaned or leased, and the costs and terms of the loan or lease.”¹³² The ACSA PM will initiate the transaction, order the LSSS, coordinate delivery, verify acceptance, and ensure reimbursement.¹³³ The ACSA PM completes the transaction by verifying that the loaned items are returned in sound condition.¹³⁴ If the returned LSSS is serviceable, the ACSA PM will contact the RMs and

¹²² CJCSI 2120.01C, *supra* note 25, encl. D, para. 4b(1).

¹²³ *Id.* encl. D, para. 4b(2)(a).

¹²⁴ *Id.* encl. D, para. 4b(3)(a).

¹²⁵ *Id.* encl. D, para. 4b(3)(b).

¹²⁶ *Id.* encl. D, para. 4b(4)–(5).

¹²⁷ *Id.* encl. D, para. 4b(5), 4b(6) (stating the receiving party is generally required to reimburse the responsible command within one year of delivery).

¹²⁸ *Id.* encl. D, para. 4b(6).

¹²⁹ *Id.* encl. D, para. 4b(7). Accordingly, practitioners should secure a fund site even though RIK and EVE transactions do not require one. *Id.* encl. D, para. 4b(3)(b).

¹³⁰ *Id.* encl. D, para. 4c.

¹³¹ *Id.* encl. D, para. 4c(1)–(2).

¹³² *Id.* encl. D, para. 4c(2).

¹³³ *Id.* encl. D, para. 4c(3); *id.* encl. D, para. 4a(3)–(6) (stating the ACSA PM will implement the PIK process, outlined above in Part II.D.1, when loaning LSSS for cash); *id.* encl. D, para. 4b(3)–(6) (stating the ACSA PM will implement the RIK or EVE process, outlined above in Part II.D.2, when loaning LSSS for RIK or EVE).

¹³⁴ *Id.* encl. D, para. 4c(4).

document the return.¹³⁵ If the returned items are not serviceable, the ACSA PM will build an estimate to repair or replace the LSSS, and the RMs will generate a bill and collect reimbursement.¹³⁶

Back at the CSL near Tan Tan airport, the commander has made his decision: coordinate the trade—provide meal and fuel support to the Moroccans in exchange for vehicle maintenance. First, the S-4 forwards the requirement to the AFRICOM ACSA PM, addressing the type, timing, and quantity of vehicle maintenance.¹³⁷ The ACSA PM, in coordination with legal, then validates that the U.S.-Moroccan ACSA allows for the exchange of food, fuel, and vehicle maintenance.¹³⁸ Additionally, the ACSA PM ensures that U.S. commercial sources are not reasonably available to provide vehicle maintenance in light of timeliness, cost, and location.¹³⁹ Next, the ACSA PM confirms that the required vehicle maintenance promotes the commander's desired end-state and promotes U.S. interests.¹⁴⁰ The ACSA PM, on behalf of the task force, then negotiates the terms of the order with the Moroccans, addressing "type, quantity, delivery location and schedule, billing information, and value of LSSS to be transferred."¹⁴¹

The ACSA PM builds the order in AGATRS, using the *value* of the LSSS rather than price.¹⁴² He then signs and forwards the order to his Moroccan counterpart for signature.¹⁴³ The ACSA PM also secures a fund site in the event of default.¹⁴⁴ After both parties have signed the order, it becomes a binding international *commitment*.¹⁴⁵ The ACSA PM orders the fuel and meals from AFRICOM.¹⁴⁶ He then tracks delivery, receipt, and acceptance of the

supplies.¹⁴⁷ Finally, the ACSA PM completes the order form in AGATRS documenting delivery and acceptance.¹⁴⁸ You met the commander's desired end-state: the task force successfully exchanged LSSS with the Moroccans to address a logistics shortfall.

IV. Conclusion

As the United States navigates an era of fiscal austerity, national security threats continue to emanate from states with "[w]eakened or diminished counterterrorism capabilities, border control mechanisms, [and] internal security priorities . . ."¹⁴⁹ As a result, the U.S. national defense strategy requires a leaner force that develops partner capacity and promotes burden-sharing.¹⁵⁰ ACSAs are critical to this endeavor.

Thus, ACSAs enable commanders to meet U.S. national defense goals in a fiscally constrained environment by exchanging support with multinational partners. The JA familiar with ACSAs is uniquely situated to support the commander's desire to satisfy logistics requirements in a legal, flexible, and efficient manner. To that end, this article outlined the purpose and limitations of ACSAs, and provided practitioners with an overview of the ACSA process from negotiation to acquisition. Acquisition and Cross-Servicing Agreements offer a critical burden-sharing opportunity at a moment in history when the United States says to her allies, "We can share what we got of yours, 'cause we done shared all of mine."¹⁵¹

¹³⁵ *Id.* encl. D, para. 4c(4)(a).

¹³⁶ *Id.* encl. D, para. 4c(4)(b); AD 2012-12, *supra* note 13, ch. 1, para. 6a.

¹³⁷ CJCSI 2120.01C, *supra* note 25, encl. D, para. 4b(1) (citing encl. D, para. 4a(1)(a)–4a(1)(c)).

¹³⁸ *Id.* encl. D, para. 4a(1)(b) (requiring validation that the ACSA authorizes the proposed LSSS); *id.* encl. A, app. (stating food, fuel, and vehicle maintenance are permissible LSSS).

¹³⁹ *Id.* encl. D, para. 4a(1)(b) (directing practitioners to consider timeliness, costs, purpose, and location when determining if "the goods are reasonably available from U.S. commercial sources").

¹⁴⁰ *Id.* encl. D, para. 4a(1)(b).

¹⁴¹ *Id.* encl. D, para. 4b(2). *See also* DoD FMR, *supra* note 34, para. 0806; SOUTHCOM HB 700-6, *supra* note 43, at 5 (stating LSSS should be valued using the pricing guidance in the DoD FMR and, in light of market surveys, compared with previous purchases and with independent U.S. Government estimates).

¹⁴² ACM 4000.01, *supra* note 40, encl. B; CJCSI 2120.01C, *supra* note 25, encl. D, para. 4b(3)(b).

¹⁴³ CJCSI 2120.01C, *supra* note 25, encl. D, para. 4b(3)(a).

¹⁴⁴ *Id.* encl. D, para. 4b(3)(b).

¹⁴⁵ *Id.* encl. D, para. 4a(3)(a) (an order is not an international agreement).

¹⁴⁶ *Id.* encl. D, para. 4b(4)(a).

¹⁴⁷ *Id.* encl. D, para. 4b(5)(b).

¹⁴⁸ *Id.* encl. D, para. 4b(5)(b). The ACSA PM sends the completed order form to the USARAF resource managers (RMs) for filing pending reimbursement. *Id.* encl. D, para. 4b(5)(b). As the Moroccans provide maintenance services, the ACSA PM notifies the RMs and updates the invoice. *Id.* encl. D, para. 4b(6).

¹⁴⁹ *Worldwide Threat Assessment of the U.S. Intelligence Cmty: Statement for the Record Before the S. Select Comm. on Intelligence*, 113 CONG. 4 (Mar. 12, 2013), available at <http://www.dni.gov/index.php/newsroom/testimonies/194-congressional-testimonies-2013/816-statement-for-the-record-worldwide-threat-assessment-of-the-u-s-intelligence-community> (statement of James R. Clapper, Dir. of National Intelligence).

¹⁵⁰ 21ST CENTURY DEF. PRIORITIES, *supra* note 1, at 3 ("Building partnership capacity [around] the world [is] important for sharing the costs and responsibilities of global leadership.").

¹⁵¹ GRATEFUL DEAD, *Jack Straw*, on EUROPE 72 (Warner Brothers Records 1972).

Little America: The War Within the War for Afghanistan¹

Reviewed by Major Temi Anderson*

*Anyone who said you can go from full-on combat to transition in two years wasn't being realistic . . . [T]he lesson is that these things are going to take a lot of time and a lot of treasure.*²

I. Introduction

In the wake of what many journalists perceived as failed strategy in Iraq, war correspondents chronicled numerous lessons learned by military leaders and diplomats.³ Seeing an opportunity to continue this legacy in what many refer to as the “good war,”⁴ Washington Post Correspondent Rajiv Chandrasekaran followed the story of the 2009 Afghanistan surge.⁵ The author provides readers with valuable insight into the complex world of twenty-first century counterinsurgency and lets readers decide whether the surge paid off.⁶ In furtherance of this goal, the author captivates readers with the rich details of various interview accounts from battlefield leaders. Chandrasekaran uses his experience as a journalist to pen *Little America*. This journalist approach, however, runs the risk of losing readers along the way because the author provides little independent

explanation regarding key points. In his closing chapters, the author finally explains that counterinsurgency is profitable, but is a fiendishly difficult strategy to implement effectively in the short term. Counterinsurgency requires a malleable military, effective civilian advisers, and sage policy-makers.⁷ *Little America* illustrates that those fundamentals were not always present in Afghanistan.

Little America is divided into three parts: Grand Dreams, Shattered Plans, and Triage. In eighteen chapters consisting of over 360 pages and a prologue, Chandrasekaran follows military leaders, State Department officials, and various war cabinet members through disparate paths that ultimately led them to Afghanistan. He demonstrates how their varied experiences shaped the way they viewed the path to success in the longest American war in history.⁸

The title of the book signals the author's thesis. “Little America” refers to attempts by the U.S. Agency for the International Development (USAID) to improve agriculture in the southern Afghanistan province of Helmand from 1950 to 1970.⁹ The United States invested over 21 million dollars in an effort to woo Afghanistan from a looming Soviet influence and strengthen the Afghan-U.S. partnership.¹⁰ Expatriate developers planned to create a massive irrigation project in Lashkar Gah, Helmand's desert capital.¹¹ Locals started calling the area “Little America” because the development featured stately western-style homes and stores filled with American conveniences like Coca-Cola.¹² The agricultural project eventually ran aground because it lacked

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¹ RAJIV CHANDRASEKARAN, *LITTLE AMERICA: THE WAR WITHIN THE WAR FOR AFGHANISTAN* (2012).

² *Id.* at 320. This quote from a field grade officer illustrates one of the key issues the author finds with the 2009 surge: a short engagement is not profitable in a volatile country. The author supports instead a longer, concomitant military, and economic commitment to restoring public faith in the government. *Id.*

³ See RAJIV CHANDRASEKARAN, *GREEN ZONE: IMPERIAL LIFE IN THE EMERALD CITY* (2010); see also THOMAS E. RICKS, *FIASCO: THE AMERICAN MILITARY ADVENTURE IN IRAQ, 2003 TO 2005* (2006).

⁴ George Friedman, *Al Qaeda, Afghanistan and the Good War*, FOREIGN POL'Y ASS'N, http://www.fpa.org/topics_info2414/topics_info_show.htm?doc_id=670946 (last visited Oct. 15, 2013).

⁵ M.J. WILLIAMS, *THE GOOD WAR: NATO AND THE LIBERAL CONSCIENCE IN AFGHANISTAN* (2011). President Barack Obama signed orders to deploy 30,000 more troops to Afghanistan in late 2009. CHANDRASEKARAN, *supra* note 1, at 128. See also *Afghanistan Profile*, BBC NEWS SOUTH ASIA (Oct. 15, 2013), <http://www.bbc.co.uk/news/world-south-asia-12024253> (offering a historical timeline of events in Afghanistan). Chandrasekaran previously wrote a successful book about reconstruction challenges in Iraq. CHANDRASEKARAN, *supra* note 3.

⁶ U.S. DEP'T OF ARMY, FIELD MANUAL 3-24, COUNTERINSURGENCY glossary (15 Dec. 2006) [hereinafter FM 3-24]. Counterinsurgency (COIN) consists of “those military, paramilitary, political, economic, psychological, and civic actions taken by a government to defeat insurgency.” *Id.* Political power is a key aim of counterinsurgency. *Id.* at 1-1. Both insurgents and counterinsurgents seek to gain the good will of the people by demonstrating that their form of government is in the best position to address issues that are important to them. *Id.* Long-term success in COIN depends on the people “taking charge of their own affairs and consenting to the government's rule.” *Id.*

⁷ *Id.* at 1-24 to 1-28.

⁸ Thomas Nagorski, *Editor's Notebook: Afghan War Now Country's Longest*, ABC NEWS (June 7, 2010), <http://abcnews.go.com/Politics/afghan-war-now-longest-war-us-history/story?id=10849303>.

⁹ CHANDRASEKARAN, *supra* note 1, at 18–23. The project was designed to harness the raging waters of the majestic Hindu Kush River, routing them to the Helmand valley to support agricultural fields with an elaborate network of canals. *Id.* The original engineer firm failed to conduct thorough soil analysis that would have uncovered the fact that Helmand farmland was shallow and that below it laid an impermeable layer of subsoil. *Id.* As a result, water pooled on the surface when farmers irrigated their land. *Id.* The remaining salt in the soil stunted the growth of anything that farmers planted. *Id.*

¹⁰ *Id.*

¹¹ *Id.* at 29.

¹² *Id.* at 23–28.

preliminary soil analysis.¹³ The story of “Little America” is more than a subtle history lesson for readers. Chandrasekaran believes that like “Little America,” the coalition’s efforts in Afghanistan will ultimately prove fruitless because once again, America underestimated the time and requirements necessary for success.

Readers comfortable with a text book format may be surprised, as this book departs from the product-based approach found in traditional scholarly works.¹⁴ The author neither provides an explicit thesis nor spoon-feeds readers his main points. Instead, Chandrasekaran simply refers to the Helmand agricultural project from the outset and revisits the subject as he introduces various characters throughout the book.¹⁵ The implication is that like this unfulfilled endeavor, the current attempt to quickly stabilize Afghanistan will also prove fruitless. The author’s implied thesis is that short term intervention in Afghanistan is pointless because it does not remedy the core problem of the area: corruption. Corruption in the Afghan government and military serve as major roadblocks in the quest to garner lasting public support for civic entities.

Rather than using an introduction or preface to orient the reader to the book’s methodology, the author uses colorful vignettes and “vivid imagery . . . to set the stage.”¹⁶ The author uses “descriptive chapter titles” in lieu of carefully constructed points.¹⁷ This forces readers to extrapolate lessons from the voluminous vignettes. This

¹³ *Id.* at 29.

¹⁴ Chunling Sun & Gouping Feng, *Process Approach to Teaching Writing Applied in Different Teaching Models*, 2 ENG. LANGUAGE TEACHING 150, 150–51 (Mar. 2009), available at www.ccsenet.org/journal/index.php/elt/article/view/350/315. A product-based approach to writing includes a fixed linear design that the writer imitates. *Id.* This traditionally includes an introduction, thesis, and conclusion organized in a logical or coherent fashion. *Id.* A process-based approach places emphasis on the progression of writing, rather than a fixed linear approach. *Id.* This is communication-based instruction (like story-telling), as opposed to communicative pedagogy. Unlike the product approach, which is more centered on the written outcome or proving a thesis, the process approach focuses on the thinking process involved in writing. *Id.*

¹⁵ CHANDRASEKARAN, *supra* note 1, at 18–23.

¹⁶ Major Evan R. Seamone, Book Review, *The Fourth Star: Four Generals and the Epic Struggle for the Future of the United States Army*, ARMY LAW., Apr. 2011, at 1, 38. This review of *Little America* followed the same methodology that Major Seamone used in reviewing *The Fourth Star* (2009), as the author of *The Fourth Star*, similar to Chandrasekaran, also used vignettes to construct his points.

¹⁷ *Id.* Part One of the book is called “Grand Dreams,” for example. The chapters within in it, “An Enchanting Time,” “Stop the Slide,” “Marinestan,” and “The Wrong Man,” describe how Afghanistan was full of hope in the 1950s as the United States invested in a massive agricultural project only to find that the plan was flawed. CHANDRASEKARAN, *supra* note 1. “Stop the Slide” fast forwards to June 2009 where the top Marine Commander in Afghanistan, Brigadier General Larry Nicholson, begrudgingly implemented the Army’s COIN strategy to prevent escalating violence rather than his preferred approach of searching for and destroying the enemy. *Id.*

fresh approach encourages readers to experience Afghanistan through the eyes of fascinating characters carefully selected by the author, but also risks losing readers in detailed stories that are frequently not organized, chronological, or logical. The remedy would have been simple. Readers would benefit from a road map and timeline in the beginning of his work. This supplemental material would have given readers a better sense of the big picture, literary plan, and purpose of each chapter in relation to the author’s goals in telling the story of *Little America*.¹⁸ As a well established reporter, Chandrasekaran clearly embraces the storytelling structure of journalism using individual accounts in support of his main points. However, it is difficult to evaluate his points unless one can assess the credibility of each source. This review explores how Chandrasekaran’s journalism-based writing style impacts his argument, the benefits readers gain from this approach, and the lessons military leaders can glean from *Little America*.

II. The Impact of Journalism on Scholarly Writing

Little America is clearly the result of countless hours of field research in Afghanistan. In the Notes section, Chandrasekaran explains that he gained direct access to confidential State Department and presidential conversations by conducting seventy original interviews for this book.¹⁹ Chandrasekaran traveled to southern Afghanistan over a dozen times to report on the Afghanistan surge for the *Washington Post* from February 2009 to July 2011, but the Notes section provides a rather incomplete list of sources to support key facts.²⁰ Endnotes are fine; however, they should be comprehensive so that readers do not question the veracity of each account while reading the book. The target audience likely includes readers with some military or diplomatic experience. Their backgrounds will cause them to think more critically about the accuracy of accounts.

For example, in part two of the book, “Shattered Plans,” Chandrasekaran provides a fascinating inside account of a 2010 Mardi Gras party at the U.S. embassy in Kabul that

¹⁸ Chandrasekaran does provide an under-inclusive map of Afghanistan to help orient readers to the area. The author also includes several photographs that improve a reader’s understanding of some key actors. *Id.* at xi.

¹⁹ *Id.* at 339. The author relies on primary sources mostly and does a good job remaining well within the scope of the 2009 surge. *Id.* The author also mentions that he obtained information from government documents released by Wikileaks, an Internet-based anti-secrecy group. *Id.*

²⁰ *Id.* For example, the author fails to cite the source from which he gained a direct quote delivered by General McChrystal during a speech to more than one hundred top Afghan and U.S. officers prior to a major operation in Marja. *Id.* at 140. The author need not provide readily accessible footnotes imbedded in the text to satisfy readers’ curiosity. Endnotes are appropriate, but should be detailed enough to account for key facts upon which Chandrasekaran relies.

“almost ended all parties.”²¹ Bored and underutilized, embassy officials resorted to alcohol as a social lubricant.²² Inebriated partygoers unable to access one of only two restrooms urinated outdoors.²³ In response, the U.S. ambassador to Kabul sent the two American male offenders home, but a Turkish ambassador remained because he was outside the reach of State Department officials.²⁴ This account leaves readers wondering how the author can verify this event when the majority of partygoers were probably too inebriated to give an accurate account of others’ activities. The author neither refers to the Turkish embassy official and the two American embassy officials by name, nor does he list the source of the disciplinary account. Chandrasekaran apparently relies on a reporter’s privilege to protect his source, but including more account details would improve the believability of the account.²⁵

While the content of the vignette may seem trivial, the author misses a key opportunity to provide strong evidence that supports one of his subthemes—the United States did not use some USAID and State Department personnel efficiently; as a result, commanders missed key opportunities to improve diplomatic relationships with Afghan leaders.²⁶ The author recognizes that diplomatic relationships are necessary to successfully mentor strong Afghan leaders—a key component of COIN strategy.²⁷ The author suggests that a weak support structure for Afghan leaders diminished their credibility among Afghans and impacted U.S. military success.²⁸ Another subtheme the author suggests is that civilian personnel were a key ingredient in the surge. Bureaucratic issues, however, often made it difficult to both secure talented personnel and match them with jobs that took advantage of their skill sets.²⁹ Rather than deploying embassy officials to the field to develop public-private partnerships in support of diplomatic relations, a disproportionate number remained on the tightly guarded “prison compound” of Kabul, attending numerous meetings and drafting countless memos.³⁰ Dejected

personnel often looked for an escape from the controlling atmosphere of Kabul in limited social opportunities like the Mardi Gras party.³¹ The Mardi Gras incident demonstrates that the coalition lacked a centralized body that could both direct participating states and discipline actors for not complying with strategic goals of the coalition. Providing background information regarding the command structure among coalition partners would help readers reach Chandrasekaran’s conclusion that U.S. and NATO leaders would benefit from a centralized command structure to maintain greater command and control of personnel and operations.³²

A. Reporter’s Privilege

Like many reporters, Chandrasekaran apparently relies upon a reporter’s privilege to conceal important sources used to establish a vast array of subthemes throughout the book.³³ As a result, *Little America* assumes that readers will rely upon the accuracy of pivotal witness accounts without the benefit of substantiation. The problem with this approach is that if readers are unwilling to take this leap of faith and accept the veracity of witness accounts, they will not grasp vignette points necessary to support his primary theme.

What is reporter’s privilege? Many states have adopted statutes that grant reporters unqualified protection from divulging confidential information and a qualified privilege for nonconfidential information.³⁴ These statutes, commonly referred to as reporter’s privilege, support the First Amendment right to freedom of expression.³⁵ In New York, for example, Subsection (b) of Civil Rights Law § 79-h creates an “absolute privilege with respect to any information, including the identity of a source, conveyed to a

²¹ *Id.* at 178.

²² *Id.*

²³ *Id.*

²⁴ *Id.*

²⁵ *Id.* at 358. The author does not cite the source in his notes.

²⁶ *Id.* at 188–89.

²⁷ FM 3-24, *supra* note 6, at 1-22.

²⁸ CHANDRASEKARAN, *supra* note 1, at 318.

²⁹ *Id.* at 172–73 (observing how State Department personnel who wanted to work in the field outside the U.S. embassy compound in Kabul were often assigned to desk jobs in Kabul, while personnel who wanted desk jobs were sent to remote Afghan provinces to advise combat commanders).

³⁰ *Id.* at 174.

³¹ *Id.*; see *contra id.* at 184 (documenting the balanced account of Carter Sahib, a successful State Department representative in Garmser, who contradicts the author’s assertion that some State Department personnel were underutilized).

³² The author does a fair job of explaining the command relationship between U.S. forces and the Marines, citing the fact that the Marine brigade commander reported to a three-star Marine general at U.S. Central Command instead of the top Army Commander in Afghanistan, General McChrystal. *Id.* at 212. The book, however, does not explain the command structure between NATO assets like Great Britain.

³³ *Id.* at 339 (“I have chosen not to cite my interviews, the documents and e-mails I received, and public comments of senior officials. I do, however, indicate where I have used details gleaned from specific State Department cables and other government documents that were released on the Internet by the antisecrecy group WikiLeaks.”). *Id.*

³⁴ Laura R. Handman Esq. et al., *New York—Privilege Compendium*, REP. COMM. FOR FREEDOM OF THE PRESS, <http://www.rcfp.org/new-york-privilege-compendium/i-introduction-history-background> (last visited Oct. 15, 2013). As of 2011, thirty-six states and the District of Columbia adapted various reporter’s privilege statutes. *Id.* A growing question is the scope of the privilege in the age of blogging and internet dissemination. *Id.*

³⁵ *Id.*

reporter in confidence.”³⁶ Reporters comfortable with a progeny of court cases supporting this privilege in criminal and civil proceedings openly apply this rule to other communications like newspaper articles and books.³⁷ The goal of the privilege is to “increase the flow of information in circumstances in which society wishes to encourage open communication.”³⁸ Scholarly work is a form of communication. However, scholarly or historical works possess conventions that demand “complete accuracy.”³⁹ Applying the privilege to scholarly works may discount the author’s message. Readers questioning the truth of each account may lose focus on critical lessons as they meander through these detailed vignettes.

B. Immersion Journalism

Journalists who immerse themselves in the environment they cover offer readers a unique opportunity to live through the experiences of themselves and others. Some journalists prefer to immerse themselves in the lives of their subjects so that they can reenact their lives instead of simply rendering a report of a sociological study.⁴⁰ Immersion journalists like Chandrasekaran engage in the activity that they want to write about to gain an inside look at the subject.⁴¹ This writing style includes the journalist in the story, allowing readers to discover new insights into familiar topics. Some journalists have a little trepidation about “how visible they want to be in their own book” and often let the subject speak for itself.⁴² This approach has merit, but leaves readers with little interpretive guidance regarding the purpose and direction of each vignette. Readers are left to fend for themselves in the rich details of multiple accounts simply because the author wants to prevent himself from becoming part of the story.

³⁶ *Id.* The author published *Little America* in New York. CHANDRASEKARAN, *supra* note 1, at unmarked page.

³⁷ Laura Katherine Layton, *Defining “Journalist”: Whether and How A Federal Reporter’s Shield Law Should Apply to Bloggers*, NAT’L L. REV. (Mar. 16, 2011), http://www.natlawreview.com/article/defining-journalist-whether-and-how-federal-reporter-s-shield-law-should-apply-to-bloggers#_edn1. See also *Knight-Ridder Broad., Inc. v. Greenberg*, 70 N.Y.2d 151 (1987) (criminal investigation) (noting reporters have unqualified protection from having to divulge confidential information and qualified privilege for nonconfidential information).

³⁸ *Id.*

³⁹ *Seamone, supra* note 16, at 39 (quoting RICHARD D. BANK, *THE EVERYTHING GUIDE TO WRITING NONFICTION* 210 (2010)).

⁴⁰ ROBIN HEMLEY, *A FIELD GUIDE FOR IMMERSION WRITING: MEMOIR, JOURNALISM, AND TRAVEL* 73 (U. Ga. Press 2012) (stating that fact-based scholarly writing often examines issues from the outside looking in, like a study).

⁴¹ *Id.* at 55.

⁴² *Id.* at 74.

In some chapters, Chandrasekaran combats this issue by providing a concluding paragraph that summarizes key points; however, this practice is not consistent. The closing chapters are the most insightful as the author emerges to discuss key takeaways. A preface and introduction geared toward providing a roadmap of the author’s key points would serve as a better compromise for future readers. While a journalist’s inside account is helpful, readers would also benefit from the clarity that a list of characters would provide. This list would allow readers to remember key players and their roles in the coalition effort.

Fellow journalist Steve Coll did this well in *Ghost Wars*, a novel recounting the history of covert wars in Afghanistan that fueled Islamic militancy.⁴³ Coll also relies on first-hand accounts from key personnel but uses a well-written prologue to clearly explain his thesis and the structure of his argument. He further provides a list of maps, principle characters, and a detailed notes section to substantiate key interview accounts. Chandrasekaran would have been well served in following Coll’s example.

III. Lessons for Military Leaders and Judge Advocates

Beyond its commentary on the interaction of civilian and military leadership in Afghanistan, *Little America* delivers fresh insight⁴⁴ that reveals the complexity of building a winning campaign. Three main points that this reader gleaned make the book a worthwhile read and summarize a key lesson learned—“great powers can lose small wars.”⁴⁵

A. Develop a Project Organization with Clearly Defined Roles

First, with regard to defining small wars, *Little America* reveals that in coalition engagements, strong powers can experience the toll of war against a fluid insurgency and within their organization if they do not establish clearly defined roles.⁴⁶ Judge advocates can assist by ensuring that

⁴³ STEVE COLL, *GHOST WARS: THE SECRET HISTORY OF THE CIA, AFGHANISTAN, AND BIN LADEN, FROM THE SOVIET INVASION TO SEPTEMBER 10, 2011*, at xvii–17 (2005).

⁴⁴ The author provides fresh insight by allowing readers to observe the surge from the perspective of actors on the ground in Afghanistan rather than second hand accounts they may have received from the news.

⁴⁵ Lieutenant Colonel Robert M. Cassidy, *The British Army and Counterinsurgency: The Saliency of Military Culture*, MIL. REV. 53 (May–June 2005), available at http://www.army.mil/professionalWriting/volumes/volume3/november_2005/11_05_2.html.

⁴⁶ CHANDRASEKARAN, *supra* note 1, at 152–54. The author portrays the Marines and Colonel Harry Tunnell’s brigade as units that embraced combat more than counterinsurgency. *Id.* In doing so, the author shows that without defining roles for your subordinates, the effort may win small battles, but ultimately lose complex objectives. *Id.* Strong powers

commanders are aware of the legal obligations they have to various organizations outside the military (i.e., non-governmental organizations and State Department officials operating within their area of operations) as well as their own subordinates. Leaders can also use this lesson to develop organized systems and defined roles within the teams they manage. Brigade Judge Advocates can ensure that they win small wars by ensuring that they utilize paralegals' technical expertise effectively to streamline the legal review process. This management technique will not only improve response time for commanders, but will also ensure that every member of the team is used, valued, and well synchronized. This approach helps prevent the fracture that Chandrasekaran describes among State Department, coalition forces, and USAID officials.

B. Eliminate Finger-Pointing and Public Fights

Second, *Little America* illustrates how the organization can benefit when leaders demonstrate a unified front.⁴⁷ The author points out that when General Petraeus assumed command of Afghanistan, he improved the relationship between civilians and the military by stopping public bickering.⁴⁸ General Petraeus quickly realized that cohesion among departments made America stronger on the international stage. The key take-away for leaders is that Soldiers have a greater sense of purpose when they feel the command message is consistent. Positive leadership breeds productivity and compliance.

C. Hold Team Members Accountable for Delivery

Finally, Chandrasekaran repeatedly demonstrates how corruption in the Karzai regime and a lazy, self-interested Afghan Army harmed stabilization efforts.⁴⁹ The Karzai regime did little to stop the drug trade, and failed coalition

experience the toll of war when they begin to lose momentum. Without a synchronized effort at the brigade and division level, strategic objectives can be more difficult to achieve.

⁴⁷ *Id.* at 221 (explaining that when General Petraeus assumed command of Afghanistan, he improved the relationship between civilians and the military by stopping public bickering).

⁴⁸ When General Petraeus assumed command in Afghanistan, Ambassador Eikenberry, a top State Department official, told him that President Karzai was ready to endorse a controversial U.S.-backed program to expand armed village-level defense forces. *Id.* Consequently, General Petraeus mentioned it in his first meeting with President Karzai. *Id.* According to witnesses, President Karzai "went through the roof" and delivered a long and embarrassing lecture to General Petraeus about Afghanistan's history of unruly militias. *Id.* This led General Petraeus and his aides to blame Ambassador Eikenberry for misreading President Karzai. In public, however, the two leaders demonstrated a unified front. *Id.* General Petraeus ordered subordinates to stop the trash talk. *Id.* Ambassador Eikenberry instructed his staff to improve cooperation with the military. *Id.*

⁴⁹ *Id.* at 141–42, 318.

efforts to maintain economic security in villages led Afghans to cultivate poppy in support of the Taliban.⁵⁰ This forced U.S. and Afghan forces into battles to regain previously held territory. Throughout the surge, military leaders repeatedly battled the issue of failed economic security and its effects on stabilization efforts.⁵¹ Through this example, Chandrasekaran demonstrates that every part of the team is important and team members must be held to the same standard. Leaders who hold parties responsible will spend less time trying to engage in damage control over weak areas.

IV. Concluding Thoughts

Military leaders will find *Little America* a thought-provoking and invigorating account on multiple levels. Chandrasekaran's passion for the subject matter emanates from each vignette carefully designed to glorify battlefield leaders that he deeply respects. As a professional journalist, the author offers a balanced approach while documenting key deficiencies in multiple government agencies that exposed the war within the U.S. effort. Despite the detracting reliance on a journalistic writing style, the book offers a unique perspective on the 2009 surge in Afghanistan and provides valuable lessons for military officers and judge advocates who are deploying to Afghanistan. If you are looking for an engaging book that offers key lessons before you deploy, *Little America* is a must-read.

⁵⁰ *Id.* at 107.

⁵¹ Chandrasekaran points out that the United States would establish security in certain sectors, but then lose it to the Taliban within the next two years due to the failure of addressing the importance of economic stability. *Id.* at 106–107. For example, in sectors where security was established, Bush-era officials destroyed Afghan poppy fields, which were used to produce opium, a key source of funding for the Taliban. Destruction of the fields hurt poor farmers, who became indebted to drug brokers because they accepted cash up-front to cultivate poppy for the Taliban. Poor farmers became perfect Taliban recruits who used the day wages they earned to repay their debt and remain in contact with the Taliban, causing the previously secured sector to fall back into Taliban control. *Id.*

CLE News

1. Resident Course Quotas

a. Attendance at resident continuing legal education (CLE) courses at The Judge Advocate General's Legal Center and School, U.S. Army (TJAGLCS), is restricted to students who have confirmed reservations. Reservations for TJAGSA CLE courses are managed by the Army Training Requirements and Resources System (ATRRS), the Army-wide automated training system. If you do not have a confirmed reservation in ATRRS, attendance is prohibited.

b. Active duty servicemembers and civilian employees must obtain reservations through their directorates training office. Reservists or ARNG must obtain reservations through their unit training offices.

c. Questions regarding courses should be directed first through the local ATRRS Quota Manager or the ATRRS School Manager, Academic Department at (800) 552-3978, extension 3172.

d. The ATRRS Individual Student Record is available on-line. To verify a confirmed reservation, log into your individual AKO account and follow these instructions:

Go to Self Service, My Education. Scroll to ATRRS Self-Development Center and click on "Update" your ATRRS Profile (not the AARTS Transcript Services).

Go to ATRRS On-line, Student Menu, Individual Training Record. The training record with reservations and completions will be visible.

If you do not see a particular entry for a course that you are registered for or have completed, see your local ATRRS Quota Manager or Training Coordinator for an update or correction.

e. The Judge Advocate General's School, U.S. Army, is an approved sponsor of CLE courses in all states that require mandatory continuing legal education. These states include: AL, AR, AZ, CA, CO, CT, DE, FL, GA, ID, IN, IA, KS, KY, LA, ME, MN, MS, MO, MT, NV, NH, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, TN, TX, UT, VT, VA, WA, WV, WI, and WY.

2. Continuing Legal Education (CLE)

The armed services' legal schools provide courses that grant continuing legal education credit in most states. Please check the following web addresses for the most recent course offerings and dates:

a. The Judge Advocate General's Legal Center and School, U.S. Army (TJAGLCS).

Go to: <https://www.jagcnet.army.mil>. Click on the "Legal Center and School" button in the menu across the top. In the ribbon menu that expands, click "course listing" under the "JAG School" column.

b. The Naval Justice School (NJS).

Go to: http://www.jag.navy.mil/njs_curriculum.htm. Click on the link under the "COURSE SCHEDULE" located in the main column.

c. The Air Force Judge Advocate General's School (AFJAGS).

Go to: <http://www.afjag.af.mil/library/index.asp>. Click on the AFJAGS Annual Bulletin link in the middle of the column. That booklet contains the course schedule.

3. Civilian-Sponsored CLE Institutions

For additional information on civilian courses in your area, please contact one of the institutions listed below:

- AAJE: American Academy of Judicial Education
P.O. Box 728
University, MS 38677-0728
(662) 915-1225
- ABA: American Bar Association
750 North Lake Shore Drive
Chicago, IL 60611
(312) 988-6200
- AGACL: Association of Government Attorneys in Capital Litigation
Arizona Attorney General's Office
ATTN: Jan Dyer
1275 West Washington
Phoenix, AZ 85007
(602) 542-8552
- ALIABA: American Law Institute-American Bar Association
Committee on Continuing Professional Education
4025 Chestnut Street
Philadelphia, PA 19104-3099
(800) CLE-NEWS or (215) 243-1600
- ASLM: American Society of Law and Medicine
Boston University School of Law
765 Commonwealth Avenue
Boston, MA 02215
(617) 262-4990
- CCEB: Continuing Education of the Bar
University of California Extension
2300 Shattuck Avenue
Berkeley, CA 94704
(510) 642-3973
- CLA: Computer Law Association, Inc.
3028 Javier Road, Suite 500E
Fairfax, VA 22031
(703) 560-7747
- CLESN: CLE Satellite Network
920 Spring Street
Springfield, IL 62704
(217) 525-0744
(800) 521-8662
- ESI: Educational Services Institute
5201 Leesburg Pike, Suite 600
Falls Church, VA 22041-3202
(703) 379-2900

FBA: Federal Bar Association
1815 H Street, NW, Suite 408
Washington, DC 20006-3697
(202) 638-0252

FB: Florida Bar
650 Apalachee Parkway
Tallahassee, FL 32399-2300
(850) 561-5600

GICLE: The Institute of Continuing Legal Education
P.O. Box 1885
Athens, GA 30603
(706) 369-5664

GII: Government Institutes, Inc.
966 Hungerford Drive, Suite 24
Rockville, MD 20850
(301) 251-9250

GWU: Government Contracts Program
The George Washington University Law School
2020 K Street, NW, Room 2107
Washington, DC 20052
(202) 994-5272

IICLE: Illinois Institute for CLE
2395 W. Jefferson Street
Springfield, IL 62702
(217) 787-2080

LRP: LRP Publications
1555 King Street, Suite 200
Alexandria, VA 22314
(703) 684-0510
(800) 727-1227

LSU: Louisiana State University
Center on Continuing Professional Development
Paul M. Herbert Law Center
Baton Rouge, LA 70803-1000
(504) 388-5837

MLI: Medi-Legal Institute
15301 Ventura Boulevard, Suite 300
Sherman Oaks, CA 91403
(800) 443-0100

MC Law: Mississippi College School of Law
151 East Griffith Street
Jackson, MS 39201
(601) 925-7107, fax (601) 925-7115

NAC National Advocacy Center
1620 Pendleton Street
Columbia, SC 29201
(803) 705-5000

NDAA: National District Attorneys Association
44 Canal Center Plaza, Suite 110
Alexandria, VA 22314
(703) 549-9222

NDAED: National District Attorneys Education Division
1600 Hampton Street
Columbia, SC 29208
(803) 705-5095

NITA: National Institute for Trial Advocacy
1507 Energy Park Drive
St. Paul, MN 55108
(612) 644-0323 (in MN and AK)
(800) 225-6482

NJC: National Judicial College
Judicial College Building
University of Nevada
Reno, NV 89557

NMTLA: New Mexico Trial Lawyers' Association
P.O. Box 301
Albuquerque, NM 87103
(505) 243-6003

PBI: Pennsylvania Bar Institute
104 South Street
P.O. Box 1027
Harrisburg, PA 17108-1027
(717) 233-5774
(800) 932-4637

PLI: Practicing Law Institute
810 Seventh Avenue
New York, NY 10019
(212) 765-5700

TBA: Tennessee Bar Association
3622 West End Avenue
Nashville, TN 37205
(615) 383-7421

TLS: Tulane Law School
Tulane University CLE
8200 Hampson Avenue, Suite 300
New Orleans, LA 70118
(504) 865-5900

UMLC: University of Miami Law Center
P.O. Box 248087
Coral Gables, FL 33124
(305) 284-4762

UT: The University of Texas School of Law
Office of Continuing Legal Education
727 East 26th Street
Austin, TX 78705-9968

VCLE: University of Virginia School of Law
Trial Advocacy Institute
P.O. Box 4468
Charlottesville, VA 22905

4. Information Regarding the Judge Advocate Officer Advanced Course (JAOAC)

a. The JAOAC is mandatory for an RC company grade JA's career progression and promotion eligibility. It is a blended course divided into two phases. Phase I is an online nonresident course administered by the Distributed Learning Division (DLD) of the Training Developments Directorate (TDD), at TJAGLCS. Phase II is a two-week resident course at TJAGLCS each January.

b. Phase I (nonresident online): Phase I is limited to USAR and Army NG JAs who have successfully completed the Judge Advocate Officer's Basic Course (JAOBC) and the Judge Advocate Tactical Staff Officer Course (JATSOC) prior to enrollment in Phase I. Prior to enrollment in Phase I, students must have obtained at least the rank of CPT and must have completed two years of service since completion of JAOBC, unless, at the time of their accession into the JAGC they were transferred into the JAGC from prior commissioned service. Other cases are reviewed on a case-by-case basis. Phase I is a prerequisite for Phase II. For further information regarding enrolling in Phase I, please contact the Judge Advocate General's University Helpdesk accessible at <https://jag.learn.army.mil>.

c. Phase II (resident): Phase II is offered each January at TJAGLCS. Students must have submitted all Phase I subcourses for grading, to include all writing exercises, by 1 November in order to be eligible to attend the two-week resident Phase II in January of the following year.

d. Regarding the January 2014 Phase II resident JAOAC, students who fail to submit all Phase I non-resident subcourses by 2400 hours, 1 November 2013 will not be allowed to attend the resident course.

e. If you have additional questions regarding JAOAC, contact MAJ T. Scott Randall, commercial telephone (434) 971-3368, or e-mail Thomas.s.randall2.mil@mail.mil.

5. Mandatory Continuing Legal Education

a. Judge Advocates must remain in good standing with the state attorney licensing authority (i.e., bar or court) in at least one state in order to remain certified to perform the duties of an Army Judge Advocate. This individual responsibility may include requirements the licensing state has regarding continuing legal education (CLE).

b. To assist attorneys in understanding and meeting individual state requirements regarding CLE, the Continuing Legal Education Regulators Association (formerly the Organization of Regulatory Administrators) provides an exceptional website at www.clereg.org (formerly www.cleusa.org) that links to all state rules, regulations and requirements for Mandatory Continuing Legal Education.

c. The Judge Advocate General's Legal Center and School (TJAGLCS) seeks approval of all courses taught in Charlottesville, VA, from states that require prior approval as a condition of granting CLE. For states that require attendance to be reported directly by providers/sponsors, TJAGLCS will report student attendance at those courses. For states that require attorneys to self-report, TJAGLCS provides the appropriate documentation of course attendance directly to students. Attendance at courses taught by TJAGLCS faculty at locations other than Charlottesville, VA, must be self-reported by attendees to the extent and manner provided by their individual state CLE program offices.

d. Regardless of how course attendance is documented, it is the personal responsibility of Judge Advocates to ensure that their attendance at TJAGLCS courses is accounted for and credited to them and that state CLE attendance and reporting requirements are being met. While TJAGLCS endeavors to assist Judge Advocates in meeting their CLE requirements, the ultimate responsibility remains with individual attorneys. This policy is consistent with state licensing authorities and CLE administrators who hold individual attorneys licensed in their jurisdiction responsible for meeting licensing requirements, including attendance at and reporting of any CLE obligation.

e. Please contact the TJAGLCS CLE Administrator at (434) 971-3309 if you have questions or require additional information.

Current Materials of Interest

1. The Legal Automation Army-Wide Systems XXI—JAGCNet

a. The Legal Automation Army-Wide Systems XXI (LAAWS XXI) operates a knowledge management and information service called JAGCNet primarily dedicated to servicing the Army legal community, but also provides for Department of Defense (DoD) access in some cases. Whether you have Army access or DoD-wide access, all users will be able to download TJAGSA publications that are available through the JAGCNet.

b. Access to the JAGCNet:

(1) Access to JAGCNet is restricted to registered users who have been approved by the LAAWS XXI Office and senior OTJAG staff:

(a) Active U.S. Army JAG Corps personnel;

(b) Reserve and National Guard U.S. Army JAG Corps personnel;

(c) Civilian employees (U.S. Army) JAG Corps personnel;

(d) FLEP students;

(e) Affiliated (U.S. Navy, U.S. Marine Corps, U.S. Air Force, U.S. Coast Guard) DoD personnel assigned to a branch of the JAG Corps; and, other personnel within the DoD legal community.

(2) Requests for exceptions to the access policy should be e-mailed to: LAAWSXXI@jagc-smtp.army.mil.

c. How to log on to JAGCNet:

(1) Using a Web browser (Internet Explorer 6 or higher recommended) go to the following site:
<http://jagcnet.army.mil>.

(2) Follow the link that reads “Enter JAGCNet.”

(3) If you already have a JAGCNet account, and know your user name and password, select “Enter” from the next menu, then enter your “User Name” and “Password” in the appropriate fields.

(4) If you have a JAGCNet account, *but do not know your user name and/or Internet password*, contact the LAAWS XXI HelpDesk at LAAWSXXI@jagc-smtp.army.mil.

(5) If you do not have a JAGCNet account, select “Register” from the JAGCNet Intranet menu.

(6) Follow the link “Request a New Account” at the bottom of the page, and fill out the registration form completely. Allow seventy-two hours for your request to process. Once your request is processed, you will receive an e-mail telling you that your request has been approved or denied.

(7) Once granted access to JAGCNet, follow step (c), above.

2. TJAGSA Publications Available Through the LAAWS XXI JAGCNet

a. The Judge Advocate General’s School, U.S. Army (TJAGSA), Charlottesville, Virginia continues to improve capabilities for faculty and staff. We have installed new computers throughout TJAGSA, all of which are compatible with Microsoft Windows Vista™ Enterprise and Microsoft Office 2007 Professional.

b. The faculty and staff of TJAGSA are available through the Internet. Addresses for TJAGSA personnel are available by e-mail at jagsch@hqda.army.mil or by accessing the JAGC directory via JAGCNET. If you have any problems, please

contact Information Technology Division Office at (434) 971-3257. Phone numbers and e-mail addresses for TJAGSA personnel are available on TJAGSA Web page at <http://www.jagcnet.army.mil/tjagsa>. Click on “directory” for the listings.

c. For students who wish to access their office e-mail while attending TJAGSA classes, please ensure that your office e-mail is available via the web. Please bring the address with you when attending classes at TJAGSA. If your office does not have web accessible e-mail, forward your office e-mail to your AKO account. It is mandatory that you have an AKO account. You can sign up for an account at the Army Portal, <http://www.jagcnet.army.mil/tjagsa>. Click on “directory” for the listings.

d. Personnel desiring to call TJAGSA can dial via DSN 521-7115 or, provided the telephone call is for official business only, use the toll free number, (800) 552-3978; the receptionist will connect you with the appropriate department or directorate. For additional information, please contact the ITD office at (434) 971-3264 or DSN 521-3264.

3. The Army Law Library Service

a. Per *Army Regulation 27-1*, paragraph 12-11, the Army Law Library Service (ALLS) must be notified before any redistribution of ALLS-purchased law library materials. Posting such a notification in the ALLS FORUM of JAGCNet satisfies this regulatory requirement as well as alerting other librarians that excess materials are available.

b. Point of contact is Mr. Daniel C. Lavinger, The Judge Advocate General’s Legal Center and School, U.S. Army, ATTN: ALCS-ADD-LB, 600 Massie Road, Charlottesville, Virginia 22903-1781. Telephone DSN: 521-3306, commercial: (434) 971-3306, or e-mail at Daniel.C.Lavinger.civ@mail.mil.

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