

# Answering the Call: A Guide to Humanitarian Assistance and Disaster Relief for the Expeditionary Judge Advocate

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## I. Introduction

Your duty phone rings, waking you from a dead sleep. It is 0302, and the Crisis Action Team has been activated. As the staff judge advocate (SJA), you need to be there. As you get out of bed and begin to dress, you process the sparse information received over the phone. A catastrophic natural disaster has occurred, and within seventy-two hours you and your unit must be en route to provide humanitarian assistance. While you have never worked a humanitarian assistance and disaster relief (HADR) mission before, you know from your experience and training that they can be incredibly complex and varied, and you will need to know as much as possible before departing with your command.

Fortunately, you also know this is not the first time the United States has provided humanitarian assistance to another nation in need.<sup>1</sup> Humanitarian assistance and disaster relief operations are an important tool in the U.S. Department of State's (DoS) toolkit, and are a critical competency of the U.S. military by doctrine.<sup>2</sup> Expeditionary units within each branch of the U.S. military have rendered aid on several occasions in recent years.<sup>3</sup> When you were first assigned as SJA to the commander of an expeditionary unit, you knew that you should be prepared to advise your commander in a short-fuse HADR operation, and that an understanding of the most common legal issues was critical. You took the time to read about previous operations, and have a decent understanding of how commanders, SJAs, and their sections confronted and overcame the many legal and practical challenges they faced. A competent and knowledgeable SJA can mean the difference

between mission success and failure for a commander. Now, as you buckle your seatbelt, switch on your headlights, and begin the drive to base, you begin to recall what you have read in preparation for the mission ahead.

## II. Background

As you drive, you begin to think about the process and the scope of the mission. "Humanitarian assistance" is a specific term of art, and is only one portion of foreign assistance, defined as "aid and action designed to save lives, alleviate suffering, and reduce the economic and social impact of disasters and humanitarian crises . . . [which] includes the provision of food, water, emergency shelter, and medical aid."<sup>4</sup> Humanitarian assistance and disaster relief operations are generally executed by the Department of Defense (DoD) in support of another federal agency, often the United States Agency for International Development (USAID) under the direction of the DoS, although there are some circumstances under which a commander could provide some assistance under immediate response authority for a limited time with host nation and DoS concurrence.<sup>5</sup> Often, HADR operations are complex, joint endeavors and involve the DoS, other federal agencies, non-governmental organizations (NGOs), and more than one branch of the U.S. military.<sup>6</sup> Offhand, you can recall some of the details of the U.S. government responses to the 2010 earthquake in Haiti,<sup>7</sup> the 2011 nuclear reactor meltdown in Japan,<sup>8</sup> the 2013 typhoon in the Philippines,<sup>9</sup> the 2014 Ebola outbreak in Liberia,<sup>10</sup> and the 2015 earthquake in Nepal.<sup>11</sup> While each response involved

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<sup>1</sup> See generally III Marine Expeditionary Force & Joint Task Force-505, Office of the Staff Judge Advocate, Operation Tomodachi/Pacific Passage After Action Report (May 25, 2011) (on file with Center for Law and Military Operations The Judge Advocate General's Legal Center and School, United States Army, Charlottesville, Virginia (CLAMO)) [hereinafter JTF-505 AAR]; 3d Marine Expeditionary Brigade, Office of the Staff Judge Advocate, Operation Damayan: Philippine Typhoon Humanitarian Assistance After Action Report (Dec. 4, 2013) (on file with CLAMO) [hereinafter 3MEB AAR]; 101st Airborne Division (Air Assault), Office of the Staff Judge Advocate, Operation United Assistance After Action Report (May 2015) (on file with (CLAMO)) [hereinafter 101AD AAR]. Although the U.S. military sometimes provides domestic disaster relief in the form of defense support to civilian authorities (DSCA), this primer will focus on foreign humanitarian assistance (FHA).

<sup>2</sup> JOINT CHIEFS OF STAFF, JOINT PUB. 3-29, FOREIGN HUMANITARIAN ASSISTANCE (3 Jan. 2014) [hereinafter JP 3-29]. Although the Department

of Defense (DoD) may be involved in several types of humanitarian operations, HADR (also known as Foreign Disaster Relief (FDR)) should be distinguished from Humanitarian Civic Assistance (HCA), which is non-emergent in nature. *Id.* at I-9

<sup>3</sup> See JTF-505 AAR, *supra* note 1; 22d Marine Expeditionary Unit, Office of the Staff Judge Advocate, Operation Unified Response (Haiti Earthquake Relief) After Action Report (May 13, 2010) (on file with (CLAMO)) [hereinafter 22MEU AAR]; 101AD AAR, *supra* note 1.

<sup>4</sup> JP 3-29, *supra* note 2 at ch. I, para. 1(e)(3).

<sup>5</sup> JP 3-29, *supra* note 2 at ch. I, para. 1(a)(1), 2(c); see also U.S. DEP'T OF DEF., DIR. 5100.46, FOREIGN DISASTER RELIEF para. 4 (6 Jul. 2012) [hereinafter DoDD 5100.46].

<sup>6</sup> See generally JP 3-29, *supra* note 2.

<sup>7</sup> 22MEU AAR, *supra* note 3.

<sup>8</sup> JTF-505 AAR, *supra* note 1.

<sup>9</sup> 3MEB AAR, *supra* note 1.

<sup>10</sup> 101AD AAR, *supra* note 1.

<sup>11</sup> Amaani Lyle, USAID, PACOM Assist Earthquake Relief in Nepal, DOD NEWS, DEFENSE MEDIA ACTIVITY (May 12, 2015),

different political and tactical considerations, each also had characteristics in common.

The units involved in a HADR operation are often directly related to their geographic location and capabilities.<sup>12</sup> Generally, highly mobile units and units garrisoned at or near the affected area are assigned HADR missions because nearby units are able to respond most quickly to requests for assistance from host nations and the DoS, and because their geographic combatant commander will have the best cognizance over the situation from a DoD perspective.<sup>13</sup>

For example, during the Ebola epidemic response in 2014, Operation United Assistance, U.S. Africa Command (AFRICOM)—via U.S. Army Africa (USARAF)—provided forces including soldiers of the 101st Airborne Division and III Corps, which were requested specifically for their capabilities and mobility.<sup>14</sup> This was a deliberate response due to the gradual nature of the epidemic, and because of the need to ensure that as much risk as possible was mitigated, and that all necessary capabilities could be brought with the unit when it landed in country.<sup>15</sup> When an earthquake affected Haiti in mid-January 2010, USAID served as lead federal agency and U.S. Southern Command (SOUTHCOM) assembled a Joint Task Force (JTF) to assist under Operation Unified Response, including the 82d Airborne Division, XVIII Airborne Corps, the 22d Marine Expeditionary Unit (MEU) and 24th MEU, and other air and naval forces.<sup>16</sup> The Haitian government immediately requested assistance and by the following day, U.S. forces began to arrive on scene to begin relief efforts, which continued for roughly five months.<sup>17</sup> After Typhoon Haiyan struck the Philippines, the Philippine government immediately requested aid from the U.S. government, and the 3d Marine Expeditionary Brigade (MEB) and Joint Special Operations Task Force Philippines (JSOTF-P) began response within six hours under what would become Operation Damayan, coordinating with USAID personnel on scene.<sup>18</sup> Six days later Joint Task Force-505 (JTF-505) was assembled by order of U.S. Pacific Command

(PACOM), and took lead over the tactical mission with its more substantial assets until it was disestablished two weeks later.<sup>19</sup> PACOM executed a similar plan for relief in Nepal, again assembling JTF-505, and initially spearheading the efforts with 3d MEB, augmented by Air Force and 3d Marine Aircraft Wing assets and personnel to accommodate air bridging.<sup>20</sup>

Operation Tomodachi, PACOM's response to the 2011 earthquake, tsunami, and Fukushima reactor meltdown in Japan, was somewhat larger and timelier for a number of reasons.<sup>21</sup> The government of Japan immediately requested assistance and JTF-505 was formed on the same day as the disaster.<sup>22</sup> It included Air Force, Navy, Army, and Marine Corps assets, likely because each of those branches has personnel and equipment stationed within mainland Japan, a relatively short distance from the site of the disaster.<sup>23</sup> Additional Navy and Marine Corps assets from Okinawa also participated in the humanitarian assistance, noncombatant evacuation operations (NEO), and radiological monitoring and containment as they arrived on scene.<sup>24</sup> It is likely that the response was larger because the assets were readily available; the disaster presented a potential threat to U.S. capabilities, operational capabilities and to an important strategic partner; and because it was a more complex disaster than most.

You have driven for a while and are nearing base, and you start to ask yourself how to organize and recall what you know when briefing your commander and staff. The planning considerations can be broken down into three functional areas: Pre-event considerations, coordination and contingency planning at the combat operations center (COC) level, and what you need to ensure that the troops on the ground know.

### III. Pre-Event

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<http://www.defense.gov/News/Article/Article/604621/usa-id-pacom-assist-earthquake-relief-in-nepal>.

<sup>12</sup> See 101AD AAR, *supra* note 1.

<sup>13</sup> See JP 3-29, *supra* note 2.

<sup>14</sup> Major Dale Greer, *101st Airborne Soldiers head to Liberia in support of USAID*, U.S. AFRICA COMMAND (Oct. 20, 2014), <http://www.africom.mil/newsroom/article/23757/101st-airborne-soldiers-head-to-liberia-in-support-of-usaid>; *TRANSCRIPT: Pentagon Briefing on DoD Response to Ebola with GEN Rodriguez*, U.S. AFRICA COMMAND (Oct. 8, 2014), <http://www.africom.mil/newsroom/article/23695/transcript-pentagon-briefing-on-dod-response-to-ebola-with-gen-rodriguez>.

<sup>15</sup> Greer, *supra* note 14.

<sup>16</sup> Lieutenant General P.K. Keen et al., *Foreign Disaster Response: Joint Task Force-Haiti Observations*, MIL. REV., Nov.–Dec. 2010, at 85–87.

<sup>17</sup> *Id.*

<sup>18</sup> Lieutenant Colonel Thomas Parker et al., *An Inside Look into USPACOM Response to Super Typhoon Haiyan*, CENTER FOR EXCELLENCE IN DISASTER MANAGEMENT & HUMANITARIAN ASSISTANCE 7 (Feb. 2015),

<http://reliefweb.int/sites/reliefweb.int/files/resources/OprDamayanReportFinal3%20%281%29.pdf>.

<sup>19</sup> *Id.* at 8. Because Joint Task Force-505 (JTF-505) is the standing III MEF-led PACOM task force for HADR operations, the designation will appear in discussion of several different HADR operations. *Id.*; see also JTF-505 AAR, *supra* note 1.

<sup>20</sup> Lyle, *supra* note 11.

<sup>21</sup> See generally ANDREW FIECKERT & EMMA CHANLETT-AVERY, CONG. RESEARCH SERV., R41690, JAPAN 2011 EARTHQUAKE: U.S. DEPARTMENT OF DEFENSE (DOD) RESPONSE (2011), <http://fpc.state.gov/documents/organization/159781.pdf>.

<sup>22</sup> JTF-505 AAR, *supra* note 1.

<sup>23</sup> FIECKERT & CHANLETT-AVERY, *supra* note 21 at 1.

<sup>24</sup> *Id.* at 2, 4. Noncombatant evacuation operations (NEOs) often run concurrent to HADR, and any SJA involved with HADR should also study NEO. See JOINT CHIEFS OF STAFF, JOINT PUB. 3-68, NONCOMBATANT EVACUATION OPERATIONS (18 Nov. 2015).

Many things can be done prior to the mission to reduce friction and ensure success. Wherever the skids can be greased ahead of time, the mission will run more smoothly and the likelihood of success is increased.

#### A. What the Commander Needs to Know Before the Mission Begins

The commander of any force likely to engage in HADR operations should know first what HADR operations are; second, under what authority they can be conducted and funded; and finally, what their relationship is to other military forces and federal agencies in their area of responsibility. The general authority to conduct HADR is found in the Foreign Assistance Act (FAA) of 1961, codified at Title 22. Funding may be available through Overseas Humanitarian Disaster Assistance and Civic Aid (OHDACA) funds—use of which is governed within the DoD by internal policy—or from service operations and maintenance funds during the immediate response period, the Combatant Commander Initiative Fund, or funds from other agencies or other specific authorizations.<sup>25</sup> The DoS is generally the lead federal agency, with USAID and the DoD supporting. However commanders are also capable of some initial assistance with host nation government concurrence and with concurrence of the Chief of Mission (COM), who is generally the U.S. Ambassador to the host nation.<sup>26</sup> Commanders may also embark and transit their forces within the theater before receiving a formal request for forces (RFF), as was done at the beginning of the Haiti earthquake response, but they should be aware that they bear some fiscal risk of not being reimbursed if no additional funding is authorized.<sup>27</sup> Regardless, the commander and staff should know to make contact with their higher headquarters and the DoS to determine what assistance the host nation requested and where they are authorized to take their forces.

#### B. Hit the Ground Running

The Staff Judge Advocate should be thoroughly embedded with staff and planners well before a contingency operation is launched, and should have a strong understanding

<sup>25</sup> See 10 U.S.C. § 2561; Consolidated and Further Continuing Appropriations Act of 2015, Pub. L. No. 113-235, 128 Stat. 2130 (2014); JP 3-29, *supra* note 2, app'x B; DoDD 5100.46, *supra* note 5, para. 4.

<sup>26</sup> JP 3-29, *supra* note 2; DoDD 5100.46, *supra* note 5.

<sup>27</sup> OFFICE OF THE STAFF JUDGE ADVOCATE, UNITED STATES FLEET FORCES, OPERATION UNIFIED RESPONSE, HAITI EARTHQUAKE RELIEF (PHASE I) (3 Mar. 2010) [hereinafter USFF Unified Response].

<sup>28</sup> *Id.*; see also JTF-505 AAR, *supra* note 1.

<sup>29</sup> U.S. Army Japan, I Corps Forward, 10th Area Support Group, & Joint Land Task Force-10, Office of the Staff Judge Advocate, Operation Tomodachi/Pacific Passage After Action Report (May 24, 2011) [hereinafter 10ASG AAR].

of the planning process and their unit's operational procedures.<sup>28</sup> The SJA may be called upon to perform other, non-legal functions as well, so it's important to maintain a battle staff mentality in order to serve the mission.<sup>29</sup> Ideally, the SJA has previously worked on exercises with the command or deployed with them, and has attended the Joint Humanitarian Operations Course (JHOC).<sup>30</sup> Identifying personnel with foreign language skills for the area of responsibility in which the unit will likely deploy is also a good idea, as was critical to the relief efforts following the Haiti earthquake in 2010.<sup>31</sup>

#### C. Solid and Redundant Communication

Communication is as important for the SJA section as it is for any portion of the command element. One solution is to set up ahead of time an organizational email box (OMB) via the J-6, G-6, or S-6 communications section to allow for easy communication with all members of the SJA shop.<sup>32</sup> This should help when the unit is in a position to use email, but there will also be times when bandwidth is limited or the Internet is altogether unavailable.<sup>33</sup> Any judge advocate in that situation should have a plan to communicate with their commander, even if it means co-location.

#### D. Prepared Response Templates

There are likely to be some routine, repeated inquiries from outside organizations that require a more formal response than a simple email.<sup>34</sup> Over time, these requests can build up and drain manpower from the primary mission of command advice. If possible, it is best to have pre-prepared, standard response templates ready for routine inquiries such as Freedom of Information Act (FOIA) requests from outside entities and Congressional inquiries, or to create them as soon as it becomes apparent that they are routine.<sup>35</sup>

#### E. Request Assistance, but Do More with Less

It is rare that any unit deploys on a short notice HADR mission with full strength and resources.<sup>36</sup> While the SJA section may never reach full strength for the mission

<sup>30</sup> 22MEU AAR, *supra* note 3. The Joint Humanitarian Operations Course (JHOC) is run by USAID, and is an excellent resource for Commanders, SJAs, and other staff of headquarters likely to conduct HADR operations. *Id.*

<sup>31</sup> USFF UNIFIED RESPONSE, *supra* note 28.

<sup>32</sup> 3MEB AAR, *supra* note 1. An organizational email box creates one point of contact for the organization, through which all members of the shop receive any message sent to the address. See *id.*

<sup>33</sup> JTF-505 AAR, *supra* note 1.

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

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

<sup>36</sup> JTF-505 AAR, *supra* note 1.

requirements, the SJA should be prepared to request supplementary manpower if he or she is short-staffed.<sup>37</sup> It is important that the requests be made, but any judge advocate on a HADR operation should also be prepared to do without, and to accomplish the mission with limited bandwidth, communication, and manpower.<sup>38</sup>

#### IV. At the COC Level: Coordination and Administrative Issues

You know that once the operation begins, as the judge advocate you will likely spend much of your time in the COC with the command staff, assisting the commander in his command and control of the operation. As the staff assembles, there are many critical areas where you should insert yourself as the judge advocate to assist with the operation. Generally, they can be divided into (1) access and coordination and (2) planning for contingencies on the ground.

##### A. Access and Coordination

The first area where SJA assistance is needed is access to the host nation and coordination with their government and the COM (generally the U.S. Ambassador to the host nation) through the DoS. It is imperative that the SJA is involved in the earliest stages of planning to ensure that this is properly accomplished.<sup>39</sup>

##### 1. Understand the Operating Environment

Every HADR operating environment is different. The nature of the disaster, the security environment, and the capabilities of the host nations differ from operation to operation and the U.S. forces' operational plan should be tailored to those differences.<sup>40</sup> You, the commander, and the rest of the staff should consider the state of intergovernmental

relations, our history with the host nation, and the host nation's capabilities, needs, and requests. It is also critical to know whether you are operating in a permissive or impermissive environment. An overprotective posture, or over-assisting a host nation that has requested limited assistance, can produce bad feelings with our more capable partners and create the impression that they are unable to handle their own problems.<sup>41</sup> One of the best sources for this critical information will be USAID and DoS personnel, with whom you should have a pre-existing relationship.

##### 2. Initial Contact and Coordination with the DoS and USAID

As soon as the unit receives notification of a likely HADR mission within its area of responsibility, the staff should make contact with the DoS and USAID liaisons. The staff will know that a HADR mission is likely when the COM or assistant secretary of state for the area declares a disaster, provided the event meets three criteria: first, the disaster exceeds the host nation's ability to respond; second, the affected country's government either requests or is willing to receive U.S. assistance; and third, a response to the disaster is in the U.S. national interest.<sup>42</sup> This declaration is transmitted through diplomatic chains, and the COM takes the lead on the HADR operation, utilizing DoS, USAID, and (as necessary) DoD assets.<sup>43</sup> Alternatively, commanders whose forces are at or near the disaster affected area have limited immediate response authority, which is a more limited and less preferred authority intended for use only when time is of the essence.<sup>44</sup> Regardless, initial coordination is critical since your unit will fill a supporting role, and will generally only be employed where a unique military capability is needed.<sup>45</sup>

It is also critical to coordinate the intergovernmental agreements in a HADR action. For example, status of forces agreements (SOFAs), visiting forces agreements (VFAs), and diplomatic notes, if in place, delineate the authority for our

<sup>37</sup> *Id.* Ideally, as the SJA to the lead DoD agency for a full-scale HADR operation, the SJA should request priority-one status on the Joint Manning Document (JMD) for the SJA, deputy SJA, a day watch officer, and a night watch officer and should request priority-two status for an SJA forward, a fiscal judge advocate, two legal planners, and two paralegals. *Id.*

<sup>38</sup> JTF-505 AAR, *supra* note 1.

<sup>39</sup> JP 3-29, *supra* note 2, at I-5.

<sup>40</sup> For example, the Government of Japan was able to exercise far more control following the 2012 earthquake and Fukushima reactor meltdown than the Government of Haiti during Operation Unified Response or the Government of Liberia during Operation United Assistance. JTF-505 AAR, *supra* note 1; 10ASG AAR, *supra* note 30; 22MEU AAR, *supra* note 3; 101AD AAR, *supra* note 1.

<sup>41</sup> JTF-505 AAR, *supra* note 1; 10ASG AAR, *supra* note 30.

<sup>42</sup> JP 3-29, *supra* note 2, at II-17. See *infra* Appendix A for a sample generic authorization letter from the Deputy Secretary of Defense to the combatant commander (CCDR), pursuant to a request for forces.

<sup>43</sup> JP 3-29, *supra* note 2, at II-17.

<sup>44</sup> DoD policy discusses a commander's immediate response authority:

Nothing in this Directive shall be construed as preventing a military commander with assigned forces at or near the immediate scene of a foreign disaster from taking prompt action to save human lives. In cases in which this authority is invoked, the commander should obtain the concurrence of the host nation and U.S. Chief of Mission of the affected country before committing forces. Also, the Combatant Commander shall follow up as soon as possible, but no later than seventy-two hours after the start of relief operations, to secure Secretary of Defense or Deputy Secretary of Defense approval for continuing assistance. Combatant Commanders must also obtain Secretary or Deputy Secretary approval in order to obtain reimbursement with (OHDACA) [Overseas Humanitarian Disaster Assistance Civic Aid] funds. Such assistance during the first seventy-two hours does not include the authority to provide military assistance that does not contribute to urgent life-saving efforts.

DoDD 5100.46, *supra* note 5, para. 4.f.

<sup>45</sup> JP 3-29, *supra* note 2, at I-1.

forces to be present, and the laws to which they will be subject.<sup>46</sup> Judge advocates should also be aware of any agreements involving overflight of neighboring countries, and your commander and his staff should be able to articulate to DoS the requirement for any additional access.<sup>47</sup> The DoS will be able to coordinate these agreements, so it is critical that they know the military requirements, and that all agencies are aware of all agreements that are in place, of their parameters, and their effective dates. Due to the interagency and international character of most HADR actions, it is also a good idea to minimize classification, keeping everything unclassified if possible, to allow for maximum sharing of information.<sup>48</sup> The staff should consider using Liaison Officers (LNOs) to local military and governmental agencies for informational purposes if personnel are available, but should ensure that they do not drive the requirements without proper analysis.

Interoperability and communication are critical, but it is also important to avoid mission creep due to direct requests for assistance from other agencies. It may be possible to provide that support to the extent that fiscal authority exists and that applicable regulations allow for it, but the staff should not allow pop-up requirements to bump actual mission critical sorties.<sup>49</sup> On other occasions, units have received pressure from non-governmental organizations (NGOs) to take legal risks or violate policy.<sup>50</sup> The best way to avoid outside agency requests interfering with operations is to maintain solid communications with each DoS and DoD agency staff attorney on the relief effort, and to maintain solid daily communication with the COM and USAID, validating any requests for assistance through the Mission Tasking Matrix (MITAM) process.<sup>51</sup> This level of contact ensures that the requested aid is within the scope of how the COM intends to use your unit, that the legal and fiscal risk to your commander is minimized, and that it does not bump other critical missions from the schedule.

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<sup>46</sup> See USFF UNIFIED RESPONSE, *supra* note 28; JTF-505 AAR, *supra* note 1. Intergovernmental agreements will govern force protection measures, customs, passport control, access to commissaries, and criminal jurisdiction, and will affect importation of supplies, equipment, arms, and force protection posture. USFF UNIFIED RESPONSE, *supra* note 28. If no agreements are in place, any service members who violate local law will be subject to local jurisdiction. Telephone Interview with Major Timothy Taylor, USMC, SJA, 3d Marine Expeditionary Brigade and Major Jordan Gwiazdon, USMC, SJA Forward, Joint Task Force-505 (Jan. 6, 2016) [hereinafter Taylor & Gwiazdon].

<sup>47</sup> This was an issue with overflight of Cuba during the Haiti relief efforts. See USFF UNIFIED RESPONSE, *supra* note 28.

<sup>48</sup> 3MEB AAR, *supra* note 1; Taylor & Gwiazdon, *supra* note 47.

<sup>49</sup> See *e.g.* Taylor & Gwiazdon, *supra* note 47. This occurred in Nepal in 2015, when the Nepalese Army often requested airlift for their personnel to move throughout the country, even though such lift was outside the scope of the execution order, was direct military to military support, and was not immediately lifesaving. See *infra* Appendix D, a Mil-Air Reference Sheet provided by Lieutenant Colonel Christopher M. Brannen, USMC, Deputy SJA for Operational Law, PACOM.

## B. Planning for Contingencies on the Ground

You know from reading reports of others' experiences conducting HADR missions that coordination will take you a long way, but you and the rest of the staff will have to plan for specific contingencies that you expect to encounter on the ground based on what you know of the operating environment.<sup>52</sup> You will need to consider from a legal perspective the foreign civilians you are assisting, force protection for your unit, and the likely administrative issues you will encounter.

### 1. Civilian Considerations

One of the first issues to resolve will be how properly to refer to the civilians who have been affected by the disaster. Certain words can have specific legal consequences. For example, referring to someone as a refugee or a migrant, or in any way implying or stating that they have been granted asylum, can confuse the situation and create a basis for a claim of additional legal or political rights.<sup>53</sup> The best practice is to refer to them using terms which do not impart legal status, such as internally displaced persons (IDPs) or affected persons, and ensure that your commander and any public affairs officers (PAOs) and LNOs use those terms as well.<sup>54</sup> On the other hand, particular legal language is sometimes necessary to trigger entitlements and fiscal authorities during events such as Operation Pacific Passage, a NEO executed concurrently with Operation Tomodachi.<sup>55</sup> The JTF-505 Operations Order failed to use the term *safe haven*, which is a term of art, and caused fiscal confusion when displaced U.S. citizens attempted to settle their claims.<sup>56</sup> The best way to avoid creating a perception of over- or under-entitlement is for you and the staff to understand and properly use the Joint Travel Regulations (JTR) terminology and terms of art. Even if you do not have them memorized, ensure that you have access to an up-to-date version for research before embarking on the mission, and that you have developed a working

<sup>50</sup> See USFF UNIFIED RESPONSE, *supra* note 28; see also JTF-505 AAR, *supra* note 1. During Operation Unified Response NGOs pressured the U.S. naval forces to facilitate transport of Haitian orphans into the United States, which would have violated both law and policy. See USFF UNIFIED RESPONSE, *supra* note 28.

<sup>51</sup> Taylor & Gwiazdon, *supra* note 47. For example, JTF-505 judge advocates held daily teleconferences with all other judge advocates involved with Operation Tomodachi. See *e.g.* Taylor & Gwiazdon, *supra* note 47; see JTF-505 AAR, *supra* note 1. See *infra* Appendix C for a portion of a presentation compiled by Maj Leah Sprecher, USAF, PACAF, describing the MITAM process.

<sup>52</sup> Taylor & Gwiazdon, *supra* note 47; USFF UNIFIED RESPONSE, *supra* note 28.

<sup>53</sup> USFF UNIFIED RESPONSE, *supra* note 28.

<sup>54</sup> *Id.*

<sup>55</sup> JTF-505 AAR, *supra* note 1.

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

familiarity with them.

Once you and the staff are prepared to properly discuss the civilian considerations, you should plan for the full spectrum of contingencies you are likely to encounter, and plan for every type of affected person. Your unit will likely deliver relief supplies, but may also be called upon to relocate affected people, provide medical evacuation, or conduct other types of missions. It is important to remember that the civilian population is not homogenous. The people you assist will be both men and women and may be ill or injured, elderly, or pregnant; some may even be unaccompanied children.<sup>57</sup> Many will be foreign nationals and some may be U.S. citizens. You and the staff should plan for assisting all likely classes of affected people. One positive example was during Operations Tomodachi and Pacific Passage, when U.S. citizens who were too far along in their pregnancies to safely fly still needed to be evacuated to a safe haven.<sup>58</sup> As a contingency plan, they were flown to Okinawa, which was the shortest flight possible that would still get the women to a safe haven location.<sup>59</sup>

Failure to plan for contingencies and communicate those plans to the lowest levels can further complicate the operation. During Operation Unified Response, five unaccompanied minors were medically evacuated aboard the USS Bataan.<sup>60</sup> This resulted in complications repatriating the children once their treatment was complete.<sup>61</sup> While the unit had intended to repatriate the children via the United Nations Children's Fund (UNICEF) and Government of Haiti (GoH), it became apparent that those outside agencies were not proactively seeking the children's parents.<sup>62</sup> The unit then developed a procedure to reunite the children with their parents.<sup>63</sup> The SJA first interviewed the children with the assistance of a translator in order to gather as much relevant information as possible about the children's families and homes.<sup>64</sup> The SJA took pictures of the children and with the help of ship's personnel, assembled an informational flyer for each of the children.<sup>65</sup> Finally, the SJA traveled to the Civil Military Operations Center (CMOC) near the children's hometowns and worked with the CMOC personnel to find the children's families.<sup>66</sup> While the unit took the proper and most responsible course of action once the children came aboard ship, more thorough planning would have allowed the

commander to establish and effectively communicate a policy at the beginning of the operation that no unaccompanied minors were to come aboard a U.S. ship, which would have avoided the need for the unit to take charge of the repatriation.<sup>67</sup>

Whether medical evacuation is provided to only a few of the affected people or there is a mass migration as a result of the disaster, your commander should have a plan for returning any affected people to a safe environment. According to the Geneva Conventions, we must avoid refoulement, or returning people into a situation in which their lives are at risk.<sup>68</sup> To avoid refoulement, you should consult with the DoS, and if in a neighboring country the Department of Homeland Security (DHS), to learn what plans have already been established for returning affected people to safety and managing mass migrations.<sup>69</sup> This allows your commander and the staff to tailor plans compatible with existing higher and adjacent plans.

## 2. Force Protection

Although it's always critical to plan for civilian considerations during a civilian focused mission such as HADR, the commander and staff also need to plan for force protection, and you must assist with the legal aspects of that planning. From a legal standpoint, force protection mainly consists of the development of appropriate self-defense based rules of engagement (ROE). Any ROE should reflect all forces present in the affected area, covering sea, ground, and air. They should be built around any existing international agreements with the affected country, including SOFAs and diplomatic notes, and with close coordination with DoS and judge advocates from each component.<sup>70</sup>

This coordination is critical for several reasons. First and foremost, these agreements govern the import of weapons and equipment into the country. ROE which govern use of deadly force are meaningless if no weapons can be brought ashore. Coordination with DoS is also important for policy reasons. An armed foreign force coming ashore, even to provide assistance during a disaster, can create the impression that the host nation has lost some measure of sovereignty and lost

<sup>57</sup> *Id.*; USFF UNIFIED RESPONSE, *supra* note 28.

<sup>58</sup> JTF-505 AAR, *supra* note 1.

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

<sup>60</sup> 22MEU AAR, *supra* note 3.

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

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

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

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

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

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

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

<sup>68</sup> See Geneva Convention Relative to the Protection of Civilian Persons in Time of War art. 4., Aug. 12, 1949, 75 U.N.T.S. 973 [hereinafter GC IV]; Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts art. 73, 75 & 85, 1125 U.N.T.S. 17512 [hereinafter AP I]. While GC IV and AP I relate to non-refoulement in armed conflicts, the U.S. applies that humanitarian principle in all military operations as a matter of policy. See JP 3-29, *supra* note 2 at A-4, A-6.

<sup>69</sup> See USFF UNIFIED RESPONSE, *supra* note 28.

<sup>70</sup> JTF-505 AAR, *supra* note 1.

control over their internal security.<sup>71</sup> In every case the host nation is responsible for—although not always capable of—providing security and force protection for the operation; therefore U.S. forces will often operate with no armament.<sup>72</sup> In the case of a functionally failed state, such as Haiti during Operation Unified Response, it may be necessary for U.S. forces to operate with limited defensive armaments.<sup>73</sup> Whichever type of ROE most appropriately fit the situation, judge advocates from each component should work together to provide their respective mission requirements to the combatant command (CCMD) SJA for development of comprehensive rules.<sup>74</sup>

Overly broad or unnecessarily differing ROE can create confusion or unnecessarily burden subordinate commands.<sup>75</sup> During Operation Unified Response, the U.S. SOUTHCOM Commander directed all U.S. military personnel entering the Haiti disaster area to carry a weapon for personal defense.<sup>76</sup> This did not account for naval personnel aboard ship, many of whom were not qualified to use personal weapons and never went ashore.<sup>77</sup> A fragmentary order (FRAGO) was later issued relaxing the weapons carriage requirement to those service members entering the country of Haiti.<sup>78</sup> Also during Operation Unified Response, confusion was created by differing weapons posture policies.<sup>79</sup> While Marines operated with their weapons in condition four, other units operated with magazines inserted, potentially creating confusion and concern with the local populace.<sup>80</sup> For standardizing force protection posture and procedures, communication is key, as is developing and publishing an ROE card to U.S. forces who will be operating on the ground, and training those forces to the applicable ROE.<sup>81</sup>

Under certain circumstances, such as a radioactive disaster or disease outbreak, it may be necessary to establish additional force protection policies, such as quarantine and decontamination.<sup>82</sup> These measures can result in the

destruction of contaminated personal property and clothing following an exposure.<sup>83</sup> If that personal property is contaminated, damaged, or destroyed in the line of duty, the servicemember should be compensated by the normal claims process.<sup>84</sup> If such measures must be taken, clear command policy should be set limiting the amount of personal property to be taken into the affected area in order to minimize claims for lost personal property.

### 3. Administrative Issues

In addition to personal property claims by servicemembers, there are many other administrative issues which may arise during a HADR mission. Fiscal law analysis will be involved in almost every action your unit takes, investigations may be required, and claims processing may be necessary.

It cannot be overemphasized that any judge advocate deployed on a HADR mission must have a strong command of fiscal law issues.<sup>85</sup> They should understand authorities for spending and funding sources and be prepared to act as a fiscal law subject matter expert in close coordination with the military comptroller.<sup>86</sup> They should be able to explain to the unit commander under what authority they can move to the affected area prior to authorization of OHDACA funds, and that any early movement will generally be funded with Operations and Maintenance (O&M) funds, with the possibility of reimbursement from OHDACA funds if they are later authorized.<sup>87</sup> They should also be able to interpret and explain to their commander the authorization letter from the Deputy Secretary of Defense to the CCMD, which delineates the amount of funding and constraints on its use, and should know the process for disposing of acquired equipment after an extended mission, such as United Assistance.<sup>88</sup> In addition to a personal understanding of the

<sup>71</sup> Taylor & Gwiazdon, *supra* note 47. For example, U.S. forces in Operation Tomodachi operated under a very restrictive set of ROE, which more closely resembled domestic rules for use of force, because that set of rules most closely fit the SOFA and the operating environment. 10ASG AAR, *supra* note 30.

<sup>72</sup> Taylor & Gwiazdon, *supra* note 47.

<sup>73</sup> 22D MEU UNIFIED RESPONSE, *supra* note 3.

<sup>74</sup> See USFF UNIFIED RESPONSE, *supra* note 28.

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

<sup>76</sup> *Id.*

<sup>77</sup> *Id.*

<sup>78</sup> *Id.*

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

<sup>80</sup> 22MEU AAR, *supra* note 3. Weapons condition four consists of weapon on safe, magazine removed, bolt forward on an empty chamber, and ejection port cover closed. U.S. MARINE CORPS, REFERENCE PUB. 3-01A, RIFLE MARKSMANSHIP para. 4-2 (11 Oct. 2012).

<sup>81</sup> *Id.*

<sup>82</sup> 10ASG AAR, *supra* note 30.

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

<sup>84</sup> *Id.*

<sup>85</sup> See e.g., JTF-505 AAR, *supra* note 1; Taylor & Gwiazdon, *supra* note 47; 101AD AAR, *supra* note 1.

<sup>86</sup> See 101AD AAR, *supra* note 1; 10ASG AAR, *supra* note 30.

<sup>87</sup> JP 3-29, *supra* note 2, at B-1–B-3; see also 10 USCS § 2561; Consolidated and Further Continuing Appropriations Act of 2015, Pub. L. No. 113-235, 128 STAT. 2130 (2014). While this can be classified as an administrative issue, it could just as easily be included as an operational planning issue, because analysis will need to be completed before any significant expenditure of resources, including the initial movement of forces to the affected area. See JP 3-29, *supra* note 2, at I-5. This is generally seen in the context of force posturing within a CCMD, e.g., movement of ships and personnel already afloat to an area near the disaster to allow for quick response once a RFF is made. See *id.* at III-11–III-12.

<sup>88</sup> Telephone Interview with Major Leah Sprecher, USAF, Deputy SJA for Operation Law, Pacific Air Forces, (Jan. 20, 2016) [hereinafter Sprecher]. 22MEU AAR, *supra* note 3; 101AD AAR, *supra* note 1.

authorities, SJAs should deploy with digital copies of funding authorities, handbooks, publications, and regulations for reference.<sup>89</sup> Finally, any expenditures of resources once the HADR mission is underway must be validated as in support of the DoD/USAID mission through the MITAM process.<sup>90</sup>

If mishaps or misconduct occur, an investigation may be necessary. While the relief efforts in Nepal were generally a success, they were marred by the loss of a Marine Corps UH-1Y helicopter.<sup>91</sup> That incident resulted in the deaths of six Marines, two Nepalese soldiers, and five Nepalese villagers.<sup>92</sup> The incident required both a JAGMAN investigation and aviation safety investigation, to which senior and experienced Marine aviators and experts were assigned.<sup>93</sup> There was considerable controversy surrounding transport of the unrecognizable remains from Nepal to CONUS for DNA identification; but between commanders, judge advocates, and DoS, an agreement was reached to send all remains CONUS for identification under escort of a Nepalese medical officer and to repatriate the Nepalese remains once they were identified.<sup>94</sup> A fiscal determination was made that the repatriation mission could be paid for using OHDACA funds, given that it was in support of and arising from the HADR mission.<sup>95</sup>

Nearly any mission involving U.S. armed forces and foreign nationals will result in claims, but not every unit will need to process claims.<sup>96</sup> If your service is not the designated claims adjudication authority, you should not handle the claims. If your service is designated, you should be familiar with your service specific publication governing the administration of claims, and be cognizant of the types of claims that can be paid at your level, the process for paying them (including the appointment of foreign claims commissions), the importance of documentation, and sources of funding for claims.<sup>97</sup> Failure to route claims properly can result in confusion and complication. For example, during the relief efforts in Haiti, a dog was killed and a claim was erroneously routed up through commanders to U.S. Fleet

Forces, who then rerouted the claim to the U.S. Army Claims Service, to whom the claim should have been routed in the first place.<sup>98</sup> Claims processing may also be affected by diplomatic agreement.<sup>99</sup> General awareness of the claims process and solid communication between judge advocates working the operation can help avoid unnecessary friction and complication.

## V. What Troops on the Ground Need to Know

Despite this high level of planning, what the troops on the ground need to know can be boiled down to just a few key areas.

### A. Self Defense Rules of Engagement

Elite expeditionary units such as the Marine Corps' MEUs and the Army's Airborne and Air Assault units are often the units assigned to HADR missions because of their mobility and high level of operational readiness.<sup>100</sup> These units are also renowned for their warfighting ability. For this reason, it's imperative that these troops are put in the proper, non-adversarial mindset and drilled on their self-defense ROE, procedures for escalation of force, and circumstances under which they are authorized to use force.<sup>101</sup> Troops and leadership should thoroughly understand their capabilities and limitations, the operating environment, and the humanitarian mission ahead of them.<sup>102</sup>

### B. How to Deal with Special Classes of Affected People

Servicemembers should know not only how to provide assistance to run-of-the-mill affected persons but also how to assist special classes of affected people. Your commander must set a clear policy on what to do and not to do when servicemembers encounter individuals who may require special treatment such as children, the elderly, pregnant

<sup>89</sup> See *infra* Appendix B (Essential Reference List). You can obtain the most up-to-date references and field AARs from the Center for Law and Military Operations (CLAMO) at <https://www.jagcnet.army.mil/CLAMO> or by calling (434) 971-3145.

<sup>90</sup> Sprecher, *supra* note 89.

<sup>91</sup> Kimberly Hutcherson, Michael Martinez, Sugam Pokharel & Sumnima Udas, *Eight bodies found at U.S. helicopter crash site; pilot identified*, CNN (May 16, 2015), <http://www.cnn.com/2015/05/15/asia/us-helicopter-found-nepal/>.

<sup>92</sup> *Bad weather caused helicopter crash in Nepal: US Marines*, YAHOO! NEWS (Nov. 7, 2015), <https://www.yahoo.com/news/bad-weather-caused-helicopter-crash-nepal-us-marines-073523012.html?ref=gs>.

<sup>93</sup> Telephone Interview with Lieutenant Colonel Christopher Pehrson, USMC, SJA, 3d Marine Aircraft Wing (Jan. 20, 2016). A JAGMAN investigation is the naval service equivalent of the Army's 15-6 investigation. For more information, see the Marine Corps Center for Lessons Learned (MCCLL) AAR and published investigation. *Id.*

<sup>94</sup> Taylor & Gwiazdon, *supra* note 47.

<sup>95</sup> Sprecher, *supra* note 89.

<sup>96</sup> See USFF UNIFIED RESPONSE, *supra* note 28. In any given country, a single service department will be designated as responsible for adjudication of claims in said country in accordance with DoD Instruction 5515.08. See USFF UNIFIED RESPONSE, *supra* note 28; U.S. DEP'T OF DEF., INSTR. 5515.08, ASSIGNMENT OF CLAIMS RESPONSIBILITY sec. 3 (30 Aug. 2016).

<sup>97</sup> 22MEU AAR, *supra* note 3.

<sup>98</sup> USFF UNIFIED RESPONSE, *supra* note 28.

<sup>99</sup> See 10ASG AAR, *supra* note 30. For example, the Government of Japan paid for claims arising from U.S. relief efforts during Operation Tomodachi. See, e.g. *id.*

<sup>100</sup> 101AD AAR, *supra* note 1; 22MEU AAR, *supra* note 3.

<sup>101</sup> 22MEU AAR, *supra* note 3.

<sup>102</sup> *Id.*

women, and the sick or infirm.<sup>103</sup> Once that policy is set, commanders should clearly articulate it and pass it down the chain of command.

### C. Maintaining Operational Security

Although all servicemembers are trained to maintain operational security and not discuss military operations on social media or with family, some always will.<sup>104</sup> Although most HADR environments are relatively permissive, you can easily imagine how persons intent on harming U.S. servicemembers could take advantage of the chaos. The commander should set clear and redundant policy limiting use of social media in order to prevent spillage of official information. That said, during Operation Tomodachi, U.S. forces used official Facebook pages to disseminate information to partners engaging in the relief efforts, and in general it is best to keep information as unclassified as possible.<sup>105</sup> Servicemembers need to know that while a low-friction flow of information through official channels is important for the mission, they should not write personal posts to social media or communicate about the mission to people without a need to know.

### D. Maintaining Mission Focus

Maintaining mission focus is a particular challenge when deploying to a location where many servicemembers have family, as in Haiti during Operation Unified Response.<sup>106</sup> Servicemembers should know that the U.S. government is assisting their affected family members to the maximum extent possible, but the unit's ability to do so depends upon everyone doing their job at their level. The command can facilitate mission focus by bringing additional legal assistance assets to assist service members with helping their disaster affected family members.<sup>107</sup>

### E. Collection of Souvenirs/Gifts, and Loss of Personal Property

Servicemembers should know to take as little personal property as possible into the affected area, and to take out only what they brought in. Commanders must set a prohibition both on looting and acceptance of gifts, to avoid ethics violations as well as to avoid the appearance that U.S. servicemembers are taking advantage of or taking compensation from disaster affected people.<sup>108</sup> Commanders

should also set policy minimizing the amount of personal property that servicemembers bring into an affected area, particularly when there is risk of nuclear, biological, or chemical exposure.<sup>109</sup> This will minimize the potential loss of personal property by servicemembers and resulting claims processing burden.

### F. Military Justice

Finally, service members should clearly understand that they will be held accountable for any misconduct, and under what authority they will be tried for any misconduct. As discussed previously, criminal jurisdiction will depend upon the current SOFAs, VFAs, diplomatic notes, or lack thereof.<sup>110</sup> Depending upon these agreements, they may be subject to court-martial or non-judicial punishment (also known as Article 15, or NJP), or may be subject to prosecution by the authorities of the host nation. NJP was used to great effect during Operation Unified Response for minor offenses such as drinking.<sup>111</sup> Mere knowledge of the potential consequences for misconduct may act as a deterrent.

## VI. Conclusion

As you arrive at the headquarters building, you cannot help but feel a little bit impressed with all you have been able to recall in a short amount of time. Humanitarian assistance and disaster relief operations require judge advocates to exercise all their core competencies and more. Often, they require judge advocates to step outside the legal lane and act as regular staff officers, assisting the commander in whatever way is necessary to accomplish the mission. To do this requires not only a thorough knowledge of the law, but also of the HADR process, interaction between DoD, DoS, and host nation authorities, and of the issues which have arisen in previous operations. Your competence and knowledge can make all the difference between a successful operation and a fiscal violation or international incident resulting in a relieved commander, or worse, the loss of human life.

When you do not know what you do not know, it is easy to miss important issues. Between what you have recalled and the references in your deployment bag, you are confident that you can work through the legal issues, explain them to the commander and staff, and ensure that the troops on the ground know what they need to know.

<sup>103</sup> JTF-505 AAR, *supra* note 1; 10ASG AAR, *supra* note 30; 22MEU AAR, *supra* note 3.

<sup>104</sup> See e.g. USFF UNIFIED RESPONSE, *supra* note 28. During Operation Unified Response, some servicemembers openly blogged about their disaster relief mission. *Id.*

<sup>105</sup> 10ASG AAR, *supra* note 30; 3MEB AAR, *supra* note 1; Taylor & Gwiazdon, *supra* note 47.

<sup>106</sup> 22MEU AAR, *supra* note 3.

<sup>107</sup> *Id.*

<sup>108</sup> 10ASG AAR, *supra* note 30.

<sup>109</sup> *Id.*

<sup>110</sup> Taylor & Gwiazdon, *supra* note 47.

<sup>111</sup> 22MEU AAR, *supra* note 3.

[LETTERHEAD, DEPUTY SECRETARY OF DEFENSE]

[DATE]

MEMORANDUM FOR COMMANDER [COMBATANT COMMAND]

SUBJECT: Humanitarian Assistance to the Government of [HOST NATION]

Pursuant to section 2561 of title 10, United States Code, you are authorized to support U.S. Government humanitarian operations in [HOST NATION] to alleviate the human suffering caused by the recent [DISASTER] consistent with the following delegated authority.

I hereby delegate to Commander [COMBATANT COMMAND], or his designees, the authority to expend up to \$10 million of Overseas Humanitarian, Disaster, and Civic Aid (OHDACA) funds to provide assistance in the form of airlift; airfield assessment, management, and operations; and logistical support for the ongoing humanitarian assistance (HA) efforts in [HOST NATION]. This activity is to be carried out in response to requests from the Government of [HOST NATION], validated by the U.S. Agency for International Development/Office for Foreign Disaster Assistance, and in coordination with the U.S. Embassy in [HOST NATION CAPITAL] and the Defense Security Cooperation Agency.

Also delegate the Commander, [COMBATANT COMMAND], or his designees, the authority to approve the transportation on DoD aircraft of non-DoD donated relief supplies and personnel on a non-reimbursable basis.

Transportation of DoD and non-DD relief supplies and personnel supporting the HA effort may be on a non-reimbursable basis if the DoD transportation is: 1) resourced with OHDACA appropriations; 2) resourced pursuant to drawdown authority; or 3) already scheduled and the transportation is on a space-available, noninterference basis at no increased cost to the Department.

DoD OHDACA funding is available for these purposes and is directed for use in supporting this request, but shall not exceed \$10 million. For audit purposes, [COMBATANT COMMAND] is required to keep records of all expenditures provided pursuant to this authority.

[SIGNATURE]

Instructions:

- Federal Acquisition Regulation (FAR)
- Joint Ethics Regulation (JER)
- DODI 1100.21, Voluntary Services in the DoD
- MILAIR, DoDD 4500.56
- DODI 4500.43, Operational Support Airlift (OSA), w/CH 1 dtd 26 June 2013.
- DOD 4515.13-R (Air transport eligibility) -All gift states and instructions
- DOD 4500.9-R, Joint Federal Travel Regulations, Chapter 6;
- DoDD 4515.12 (Transportation for members of Congress)
- DODD 5100.46, Foreign Disaster Relief (FDR)
- DoD Excess Property Program, 10 USC 2557 (Disposing of excess property upon redeployment)
- CJCS Guide 7210, ORF
- DoDI 7250.13, ORF
  
- Applicable instructions on Asylum and Refuge (e.g. SECNAVINST 5710.22B, Asylum and Refuge)

Joint Publications:

- JOINT PUB. 1-04, Legal Support To Military Operations
- JOINT PUB. 3-29, Foreign Humanitarian Assistance
- JOINT PUB. 3-32, C2 For Joint Maritime Operations
- JOINT PUB. 3-68, Noncombatant Evacuation Operations

Doctrinal Publications:

- Operational Law Handbook (TJAGLCS publication)
- Fiscal Law Deskbook (TJAGLCS publication)
- Ethics Counselor's Deskbook (TJAGLCS publication)

- MAGTF Judge Advocate's Handbook (CLAMO Publication)

Additional:

- CLAMO Deploying Judge Advocate Reference DVD
- Any existing applicable International Agreements with the host nation and any MOA/MOUs with NGOs
- As many previous CLAMO HADR AARs as possible, see specifically Hurricane Mitch AAR.



# Mission Tasking Matrix: MITAM

A	B	C	D	E	F	G	H	I	J
1	<b>USAID/OFDA DoD Mission Tasking Matrix (MITAM)</b>								
2	RESPONSE: Super Typhoon Yolanda								
3	New Missions identified as of <b>12-Nov-13</b>								
4	at 2300								
5	Version: <b>A</b>								
6	Changes from last update								
7	Not confirmed / missing info								
8	Mission ID	1Y-8				1Y-9			
9	Priority	Urgent				Priority			
10	<b>WHO</b> WHO is Requesting US Military Assistance?								
11	Name, Pos	Lola Ruiz				WHO	WHO is Requesting US Military Assistance?		
12	Organization	ISSWI				Name, Pos	Lola Ruiz		
13	e-mail	lruiz@e-dswd.net				Organization	ISSWI		
14	phone	0916-225-5849				e-mail	lruiz@e-dswd.net		
15	<b>WHAT</b> Describe as soon as possible what you want the military to do								
16	Transportation of Department of Social Welfare and Development (DSWD) - Philippines civilian agency								
17	<b>WHEN</b> Date(s) & Time(s)								
18	12Nov13 10:30								
19	12Nov13 1600								
20	<b>WHERE</b> If the request is for a static position:								
21	START Location								
22	Grid								
23	POC on site at contact info								
24	If there is Movement involved, info on the START Point:								
25	START Location								
26	Grid								
27	POC on site at contact info								
28	If there is Movement involved, info on the START Point:								
29	START Location								
30	Grid								
31	POC on site at contact info								
32	Movement of DSWD 575 food sacks (90,000 lbs)								

Standard, field-tested process for validating, prioritizing, and submitting requests for DoD support during disaster response.

# The MITAM Process

## Organizations Requesting Assistance with Humanitarian Efforts:

USG Organization  
or Implementing Partner  
(UN, NGO, etc.)

Other Donors, UN Agency,  
or NGO not directly funded  
by the USG

Host Nation  
Civilian  
Organizations

Host Nation  
Military

Submit Request for  
Assistance (RFA) to  
OFDA

OFDA Civ-Mil Coordinator:

Validate Vet Prioritize

Submits Mission  
Tasking Matrix  
**(MITAM)**  
to DOD

DOD Responding Unit:

Plan Execute Report

Non-  
humanitarian  
requests

**There are numerous regulations governing the use of military aircraft (e.g. DoDD 4500.56; DoDD 4515.13-R; DOD 4500.9-R, Joint Federal Travel Regulations, Chapter 6; DoDD 4515.12 dealing with transportation of members of Congress; DoDI 4500.43; Circular No. A-126; and USPACOMINST 0614.6). Misuse, or the perception of misuse, of transportation resources could result in serious consequences for our commanders. The following items address some of the common MilAir issues that come up in USPACOM. This is not intended to be the sole source for MilAir answers, does not address service specific regulations, and does not negate the requirements to reference the source documents and obtain a proper legal review.**

The DoD Executive Secretariat website for MilAir is:

<http://execsec.defense.gov/Programs/MILAIRRequestProcess.aspx>

The Transportation Policy, USD (AT&L) website is:

[http://www.acq.osd.mil/log/tp/tp\\_policies.htm](http://www.acq.osd.mil/log/tp/tp_policies.htm)

DOD Issuances website:

<http://www.dtic.mil/whs/directives/corres/ins1.html>

1. [DoD Directive 4500.56, DoD Policy on the Use of Government Aircraft and Air Travel, w/CH 3 dated 24 June 2014](#) - "Government aircraft transportation is a premium mode of travel involving high costs and limited resources. All DoD employees at any level including commanders and airlift authorizing officials shall restrict travel based on considerations such as purpose of the trip, method of transportation required, and priority of travel. Every effort shall be made to minimize travel cost." **Government aircraft shall not be approved for other official travel if commercial airline or aircraft (including charter) service is reasonably available; i.e., commercial airline or airlift service is available to effectively fulfill the mission requirement and is able to meet the traveler's departure and arrival requirements in a 24-hour period, unless highly unusual circumstances present a clear and present danger, an emergency exists, use of government aircraft is more cost-effective than commercial air, or other compelling operational considerations make commercial transportation unacceptable.** Using the DoD definition of reasonably available as a 24 hour window before and after the mission will sometimes require a traveler to leave a day earlier, stay a day later, or both.

- Paragraph 4.c. - Travel status, distinguished visitor (DV) code or status, grade, or rank alone is not sufficient to justify the use of government aircraft or to dictate a particular aircraft type. Approved senior official travel may require aircraft capable of satisfying performance, configuration and communications requirements to meet the specific mission needs for the indicated travel. For example, CDRUSPACOM Memorandum dated 31 December 2013 directs component commanders to be within three hours access to secure communications at all time.
- Paragraph 4.j - Besides scheduled government and commercial airlift services, the Department of Defense controls a large number of utility and transport aircraft for support of military operations. Travel is not permitted on those cargo or utility aircraft unless all the following conditions are met:
  - (1) The aircraft is already scheduled for an official purpose.
  - (2) Travel is on a noninterference basis.
  - (3) The noninterference travel use does not require a larger aircraft than needed for the official purpose.
  - (4) Already scheduled official travelers or cargo are not displaced.

(5) The travel results in negligible additional cost to the Government. Such travel is funded by the aircraft operator's organization or the Transportation Working Capital Fund (TWCF).

- Paragraph 4.k. - Rotary-wing aircraft will be used only when the use of ground transportation would have a significant adverse impact on the ability of a senior official to effectively accomplish the purpose of the official travel. This policy applies to all officers and employees of the Department of Defense.
- Paragraph 3 of Enclosure 2 to DODD 4500.56 - The Executive Secretary of the Department of Defense (DoD Exec Sec) shall approve transportation requests, not otherwise delegated, for all non-DoD officials and all senior officials within OSD and the Defense agencies, prioritize travel when requests exceed available airlift capability, and staff requests for temporary or permanent required use travelers to the Secretary of Defense.
  - Example of requests that must go through the Exec Sec process:
    - Requests from anyone who is not an employee of the DoD (e.g. US Peace Corps, USAID)
- Paragraph 11.c. of Enclosure 2 to DODD 4500.56, **GCCs shall "[r]eview and approve government air requests from DoD senior officials within their respective commands including Service components, sub-unified commands, and subordinate joint activities in accordance with this Directive. This authority may be further delegated, in writing, but may not be delegated below the two-star or equivalent level."**

2. DODI 4500.43, Operational Support Airlift (OSA), w/CH 1 dtd 26 June 2013.

<http://www.dtic.mil/whs/directives/corres/pdf/450043p.pdf>. OSA missions are defined as the movement of high-priority passengers and cargo with time, place, or mission-sensitive requirements. OSA missions are a special classification of airlift mission support to provide for the timely movement of limited numbers of priority personnel or cargo. See Enclosure 3 for procedures for OSA requests, priority and urgency codes, and cost management. See also MilAir Primer at <http://execsec.defense.gov/Portals/34/Documents/milair-primer.pdf>.

- **Commanders at all levels and airlift authorizing officials shall NOT schedule training missions when the principal purpose is to accommodate the travel of DoD officials.**
- **OSA Priorities:**
  - **Priority 1:** Direct support of combat, contingency, peacekeeping or humanitarian operations.
  - **Priority 2:** "Operationally necessary". Compelling operational reasons exist that make commercial transportation unacceptable.
  - **Priority 3:** MilAir more cost effective than commercial

3. **Foreign Disaster Relief (FDR)** – Regulations, directives, and orders related to military airlift continue to apply during FDR operations. Military air operations must be approved in accordance with those regulations. Exceptions to the applicability of these regulations in FDR Operations are generally limited to missions supporting the lead federal agency (usually USAID/OFDA) or using MILAIR on a space-available basis. Exceptions will normally be enumerated in the Secretary of Defense Action Memo authorizing FDR operations.

- **Per [DODD 5100.46, Foreign Disaster Relief \(FDR\)](#), ASD(SO/LIC), under authority, direction and control of USD(P), obtains Secretary of Defense authorization and guidance for Combatant Commands to conduct FDR operations. Additionally, ASD(SO/LIC) advises the Secretary of Defense and USD(P) on providing transportation for FDR, including emergency transportation of non-DoD personnel (e.g., relief personnel from other USG agencies or NGOs, IOs, and foreign governments), and of non-USG relief**

**supplies, commodities, items, and equipment on DoD-owned or DoD-controlled aircraft when the requests are related to approved DoD FDR efforts. This advice should include a recommendation on whether the transportation should be provided on a reimbursable or non-reimbursable basis.**

- MILAIR requests should contain sufficient justification to demonstrate that they are, in fact, in furtherance of the disaster relief operations authorized by the SECDEF or on a space-available basis and reviewed by legal counsel.
- DOD 4515.13-R, Chapter 2, para. C2.2.5.3- Employees of other U.S. Government Agencies when traveling on official business exclusively for the Department of Defense. Transportation is chargeable to the sponsoring DoD Component or Agency at the DoD, U.S. Government tariff (See AFR 76-11, "U.S. Government Rate Tariffs," September, 1974).
  - For example, Component Commanders could approve military air transportation for OGAs (e.g. USEMB; USAID/OFDA) when **participating as members of a DOD mission (e.g. USPACOM DART)** on a space-available, non-interference (see also, DODD 4500.56 paragraph 4.j). This is very limited authority and all other request must be submitted in accordance with applicable directives and regulations.
  - **Transportation of DoD and non-DoD relief supplies and personnel must be approved by SecDef per [DoD4515.13-R C10.4.7 and C10.4.8](#).** This is normally part of a SecDef authorization to conduct humanitarian assistance and normally permitted on a non-reimbursable basis if it is 1) resourced with OHDACA appropriations (This means it must be a validated requirement of USAID/OFDA); 2) resourced pursuant to drawdown authority; or 3) already scheduled and the transportation is on a space-available, noninterference basis at no increased cost to DoD.
- **Immediate Response Authority (IRA) under FDR** - Pursuant to [DoDD 5100.46](#), Foreign Disaster Relief (FDR), 6 July 2012, a military commander with assigned forces **at or near the immediate scene of a foreign disaster** may take prompt action to save human lives. In cases in which this authority is invoked, the commander should obtain the concurrence of the host nation and U.S. Chief of Mission of the affected country before committing forces. Also, the Combatant Commander shall follow up as soon as possible, but no later than 72 hours after the start of relief operations, to secure Secretary of Defense or Deputy Secretary of Defense approval for continuing assistance. Combatant Commanders must also obtain Secretary or Deputy Secretary approval in order to obtain reimbursement with OHDACA funds. Such assistance during the first 72 hours does not include the authority to provide military assistance that does not contribute to urgent life-saving efforts.
- US military normally conducts FDR in support of the United States Agency for International Development (USAID) Office of Foreign Disaster Assistance (OFDA) or the Department of State (DOS) as directed by the Secretary of Defense. FDR is designed to supplement or complement the efforts of the host nation (HN) that has the primary responsibility for providing that assistance. **FDR provided by US forces is limited in scope and duration and is conducted to alleviate the immediate suffering of foreign disaster victims.**

**4. CODEL, STAFFDEL, or GOVDEL travel** – These requests should follow the procedures in DODD 4515.12, January 15, 2010, DoD Support for Travel of Members and Employees of Congress to gain OASD(LA) approval. The Assistant Secretary of Defense for Legislative Affairs (ASD(LA)) shall provide oversight of and approve support by the DoD Components of travel by members and employees of Congress to assure compliance with the policies and guidelines prescribed in this Directive. OASD(LA) will serve as the DoD primary point of contact on all matters regarding CODEL, STAFFDEL, or GOVDEL travel. OASD(LA) is responsible for communicating and/or coordinating all issues between DoD Components, the Speaker of the House of Representatives, Senate leadership, and

other members regarding travel, including aircraft assignments, available dates for travel, and purpose of the trip.

**5. Component Commanders may approve transportation of foreign nationals, in the rank of O-6 and below and civilian equivalent, during participation in exercises on ASO aircraft.** IAW DOD 4515.13-R, paragraph C2.2.8.6. (page 43), "Foreign nationals [are eligible passengers on MilAir] during participation in exercises sponsored or directed by the Chairman of the Joint Chiefs of Staff, Combatant Commanders, and Service component commanders of the Combatant Commands, which include combined operations of U.S. and foreign forces. This authorization does not include transportation to and from the exercise area or supporting flights utilized for logistical purposes."

- IAW [DOD 4515.13-R](#), paragraph C10.8 (page 106), general officers reporting directly to service component commanders of combatant commands may authorize transportation of foreign nationals (O-6 and below and civilian equivalents) to be transported on DoD-owned or controlled aircraft when in the commander's overseas area of accreditation or responsibility, and when the commander has determined that such travel is in the primary interest of the DOD and in the limitation imposed by joint regulations. Finally, Enclosure 1 of USPACOMINST 0614.6 states that Service Components may approve transportation of foreign nationals on military air.

**6. USPACOM Instruction 0514.6**, Military Airlift Requests, should be referenced as it is applicable to all HQ USPACOM directorates and special staff, service components, subunified commands and direct reporting units. This instruction is currently under revision.

**7. Defense Support of Civil Authorities (DSCA) - Immediate response authority (IRA)**

Pursuant to [DoDD 3025.18, DSCA, 29 December 2010 w/Ch 1 dated 21 September 2012](#), Federal military commanders, Heads of DoD Components, and/or responsible DoD civilian officials (collectively referred to as "DoD officials") have immediate response authority (IRA). IRA is a response to "a request for assistance from a civil authority, under imminently serious conditions and if time does not permit approval from higher authority," DOD officials may temporarily employ the resources under their control...to save lives, prevent human suffering, or mitigate great property damage."

- Civil authorities: Those elected and appointed officers and employees who constitute the government of the United States, the governments of the 50 states, the District of Columbia, the Commonwealth of Puerto Rico, United States territories, and political subdivisions thereof. Per Joint Publication 3-28, DSCA, 31 July 13 ([http://www.dtic.mil/doctrine/new\\_pubs/jp3\\_28.pdf](http://www.dtic.mil/doctrine/new_pubs/jp3_28.pdf))
- **DoD assets are not a substitute for prudent planning and self-protection. DoD assets should be prudently managed especially in disaster scenarios. Notification procedures should be adhered to in accordance with DoDD 3025.18. IRA is an exception to the general rule that DOD and its assets are not primarily for disaster relief.**

**8. Search and Rescue – [DoDI 3003.01, DoD Support to Civil Search and Rescue \(SAR\), September 26, 2011](#)**

- BLUF: DoD will be asked to provide support by the appropriate SAR authority. It is DoD policy to support Rescue Coordination Center (RCC) requests for civil SAR (DoD forces will FUND THEIR OWN ACTIVITIES without allowing cost reimbursement to delay response to any person in danger or distress). However, GCCs shall not accept the role of SAR coordinator or director of an RCC for civil SAR operations in Search and Rescue Regions (SRRs) for which other nations are responsible. GCCs may support civil SAR operations in such areas in any of these situations: (1) A recognized civil SAR authority requests assistance. (2) U.S. citizens are involved outside of the U.S. and its territories. (3) A DoD command or organization becomes aware of a distress situation to which no

other suitable RCCs are responding, or in which other available civil SAR services appear to be inadequate.