

OTJAG'S China Initiatives: Past, Present, Future

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Introduction

In 1995, the Secretary of Defense directed the Secretary of the Army, as well as the other service secretaries, "to move forward in the area of functional exchanges" with the Chinese People's Liberation Army (PLA), particularly in the area of military jurisprudence. Toward this end, the International and Operational Law Division, Office of The Judge Advocate General (OTJAG), submitted to the Office of the Secretary of Defense (OSD) a proposed program of legal exchanges with the PLA. Shortly thereafter, however, world events caused upper level contact meetings with the PLA to be postponed, and all initiatives were temporarily tabled.

On 26 February 1997, the Chief of Staff of the Army met with his PLA counterpart. They agreed in principle to initiate military justice contacts pursuant to the program initiative previously submitted to the OSD by the OTJAG. In April 1997, the PLA notified the OSD that it was prepared to receive a U.S. Army military justice delegation in China during August 1997.

The Judge Advocate General Visits China

On 14 September 1997, The Judge Advocate General (TJAG) of the Army led a delegation to China for one week. The delegation consisted of TJAG and three Army judge advocates who are specialists in military justice and international/operational law. The purposes of the visit were to conduct senior level discussions and to develop the framework for future bilateral functional exchanges between the military attorneys of the People's Republic of China (PRC) and U.S. Army judge advocates.

The U.S. delegation began its visit in Beijing, a burgeoning city with vast amounts of construction juxtaposed with striking historical edifices, such as the Forbidden City. Initially, the U.S. delegation met with military attorneys from the PLA Military Court of Justice. The President of the Court offered an overview of the PLA Military Court structure and its jurisdiction, and a member of the U.S. delegation provided an overview of the U.S. military justice system. The PLA military attorneys also posed questions regarding the exercise of criminal jurisdiction over U.S. military personnel stationed overseas.

Overview of the PLA Military Court Structure and Its Jurisdiction

The organic law of the People's Law of the PRC provides for three levels of military courts: the PLA Military Court of Justice (highest); the Military Court of the Individual Service (Navy, Air Force, and Army); and the Regional Military Court of Justice (RMCJ). The military courts have in personam jurisdiction over criminal cases involving active duty military, staff and workers of a military unit, and any cases that the Supreme Peoples' Court determines that it should hear. The Supreme People's Court serves as the court of last resort, akin to the U.S. Supreme Court. There is a time limit of ten days to file an appeal. Generally, appellate decisions are rendered in five days.

The PLA Military Court of Justice has one president, one vice-president, one chief of court, and several clerks. It is the court of first instance for defendants who hold positions above the division commander level. This court also hears cases on appeal from the two lower courts. In cases in which the lower court has adjudged the death penalty, this court must review and approve such a sentence.

The intermediate level court (for example, the Military Court of Justice of the Army) is the court of first instance for defendants who hold positions between a vice-commander of a division and a vice-chief of regiment. Additionally, this court is authorized to hear cases on appeal from the RMCJ. The RMCJ is the court of first instance for defendants who hold positions under the vice-chief of regiment level and most other criminal cases.

Generally, judges are graduates of military institutions. They have earned law degrees and have a long history of military experience. All military schools have law departments.

Within the Chinese military justice system, there is no right to a trial by jury. The accused is tried by either a single military judge or a "collegiate branch," which is composed of several military judges. Each military tribunal also has a judicial committee—composed of the president, vice-president, and the chief of court—that may confer on difficult cases.

The PLA Central Military Commission and the General Political Department

The U.S. delegation also met with lawyers from the legal office of the Central Military Commission (CMC) of the PLA and the General Political Department (GPD). The CMC legal representative discussed the role of the CMC and provided an

overview of the Chinese National Defense Law (NDL). The GPD legal representative discussed the role of Chinese military attorneys.

The CMC is similar to the U.S. National Security Council; it establishes policy and implements the NDL. A principal function of the CMC has been the establishment of the Legal Affairs Office in the GPD. This was undertaken in conjunction with the creation of the military attorney system, which came into existence only five years ago. Currently, throughout China, there are 210 offices, with approximately 1200 military lawyers. The regulatory guidance for the roles and functions of Chinese military lawyers was promulgated in 1995 and approved in May 1996. The regulation includes a Code of Professional Conduct, the implementation of a system of attorney certification, and the rules governing the provision of legal services. The role of the PLA military attorney is to protect the legal rights of service members and their families, to advise service members to obey the law, and to provide legal guidance to the military chain of command.

The primary function of the GPD is to train military attorneys. The current challenge is to train PLA military attorneys in the NDL. Enacted on 1 October 1997, the NDL contains numerous reforms in the area of criminal procedure. In order to effect this educational effort, the PLA is making extensive use of videotapes and written publications. Each company-size unit has a legal director who is responsible for legal training. Each month, this individual attends a legal training course taught by a military attorney.

A senior research fellow of the Legal Affairs Bureau of the CMC also gave a presentation on the Civil Air Defense Law and legal provisions relating to the Reserve forces of the PLA. There are many similarities between the Reserve structure and functions of the United States and PRC militaries. For example, Reservists train regularly during peacetime to maintain technical expertise. Reserve mobilization procedures are also very similar to those of the United States. The Reserve component is composed of those individuals who have been released from active duty, graduates from non-military institutes of higher learning, and other citizens who meet the necessary requirements, to include age.

The Shandong Military Region

The U.S. delegation also visited the Shandong Military Region, southeast of Beijing. The delegation held discussions with the political commissar for the 67th Group Army and the staff of the PLA Military Court of the Shandong Military Region. Each military region has a regional military commander and a political commissar. As a practical matter, the political commissar is the lead decision-maker during peacetime, and the regional military commander exercises greater authority during combat.

The structure and jurisdiction of the RMCJ in the Shandong Military Region parallels that of the PLA Military Court in Beijing. A visit to the military region courthouse in Jinan revealed certain differences from U.S. military courtrooms. The PLA military courtroom uses a video camera to project documentary or physical evidence from a monitor to the entire court. The accused is seated in a segregated area, and the court reporter's table is equipped with a computer for immediate transcription of the record of trial. Recent military appropriations reflect a significant impetus to promote automation in all legal offices and courtrooms.

The U.S. delegation was also invited to visit the garrison of the 58th Regiment, an infantry unit. When the delegation arrived, TJAG conducted a formal review of troops with the division commander. The regiment then conducted a demonstration of hand-to-hand combat skills.

The success of this visit was measured not only by the diverse culinary fare (fried scorpions, fried locusts, steamed turtle shell, and chicken feet) on which the U.S. delegation dined during the week, but also by the tremendous interest and hospitality displayed by the PLA military attorneys. It became apparent that there exists a mutual interest between the PLA military attorneys and the U.S. judge advocates in addressing specific legal issues in future functional exchanges.

Reciprocal Visit of PLA Military Lawyers to the United States

In an effort to maintain the momentum of the military law initiative with the PRC, the OTJAG hosted five PLA attorneys (four Army and one Navy) in Washington, D.C. and Charlottesville, Virginia from 16-23 May 1998. In Washington, D.C., the PLA delegation met with various representatives of the U.S. Department of Defense legal structure. The OTJAG division chiefs gave briefings on the organization of Department of Defense legal services, military justice, and the process of recruiting and training judge advocates. The PLA delegation also visited the U.S. Supreme Court and the Court of Appeals for the Armed Forces.

As part of their visit, the PLA delegation traveled to The Judge Advocate General's School, where they received briefings on the curriculum and the methodology used to train U.S. Army judge advocates. As a result of the recent implementation of a military attorney system, the delegation members expressed great interest in the physical facilities and the operating budget of the school.

The delegation spent a portion of its final day at the Fort Belvoir Garrison Staff Judge Advocate office. After meeting the garrison commander, the delegation received briefings on the magistrate program, the claims operation, the trial defense service, and legal assistance service. The PLA delegation posed numerous questions. Of particular interest were the operating budget, the concept of free legal services for service members

and their families, and the fact that a governmental entity settles claims on behalf of service members. The delegation also expressed curiosity and interest in the sizable number of civilian attorneys who work in the Office of the Staff Judge Advocate at Fort Belvoir.

Future Initiatives: Unlimited Opportunities

As the PRC continues its economic reforms and its industrial base is further privatized, the PLA's military lawyers will become extensively involved in acquisition and contract law issues. As a result, the OTJAG plans to focus on this area in a future functional exchange. In the operational arena, the PRC is interested in the potential of becoming more actively engaged in peacekeeping missions. A functional exchange in the area of international and operational law will provide for a more

detailed discussion of peace operations and the role of the military attorney.

Although significant judicial reforms were enacted only six months ago, PRC defense attorneys have embraced them. Military attorneys in the United States can learn from and assist those who are engaged in substantive reforms in their judicial system. Thus, discussions between trial attorneys in the United States and their counterparts in the PRC should prove to be productive.

The resounding success of TJAG's initial visit to China and the reciprocal visit of the PLA delegation has set the stage for future initiatives. Judge advocates who participate in future specialized functional exchanges will have a unique opportunity to share in the further development of the law, both in the United States and abroad.