

REPORT DOCUMENTATION PAGE				Form Approved OMB No. 0704-0188	
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1. REPORT DATE (DD-MM-YYYY) 10-May-2007		2. REPORT TYPE FINAL		3. DATES COVERED (From - To)	
4. TITLE AND SUBTITLE The Impact of Law and Lawyers on Operations and Planning				5a. CONTRACT NUMBER	
				5b. GRANT NUMBER	
				5c. PROGRAM ELEMENT NUMBER	
6. AUTHOR(S) Christopher M. Hollingshead, LCDR, USCG Paper Advisor (if Any): PROF Bill Calhoun				5d. PROJECT NUMBER	
				5e. TASK NUMBER	
				5f. WORK UNIT NUMBER	
7. PERFORMING ORGANIZATION NAME(S) AND ADDRESS(ES) Joint Military Operations Department Naval War College 686 Cushing Road Newport, RI 02841-1207				8. PERFORMING ORGANIZATION REPORT NUMBER	
9. SPONSORING/MONITORING AGENCY NAME(S) AND ADDRESS(ES)				10. SPONSOR/MONITOR'S ACRONYM(S)	
				11. SPONSOR/MONITOR'S REPORT NUMBER(S)	
12. DISTRIBUTION / AVAILABILITY STATEMENT Distribution Statement A: Approved for public release; Distribution is unlimited.					
13. SUPPLEMENTARY NOTES A paper submitted to the faculty of the NWC in partial satisfaction of the requirements of the JMO Department. The contents of this paper reflect my own personal views and are not necessarily endorsed by the NWC or the Department of the Navy.					
14. ABSTRACT Staff Judge Advocates are negatively affecting a planning group's abilities to develop effective operational plans which cover the full spectrum of available courses of action. Why does this matter? As commanders, planners and operators, we have an obligation to provide clear guidance and expectations to those forces expected to execute the plan. It is important for the SJA to fully participate in the development of plans, guidance, and ROE, but it is the commander's responsibility to ensure that these documents do not become so over drafted or a "well-turned locution" as was so eloquently stated by an Army JAG, that the person actually executing them does not understand them or needlessly places themselves or their unit at risk by not being willing to ask for clarification. Commanders must always keep the principles of war and international and domestic law foremost in their thoughts while political considerations and perceptions must be secondary. Allowing SJA predictions of what may be considered politically correct or what public reactions may happen to influence the commander's decision process effectively delegates the decision making to the staff. By being informed about the laws, risks, and gains of any particular course of action, the commander's decision to do the right thing will always be affirmed.					
15. SUBJECT TERMS Law, Lawyers, Staff Judge Advocates, International Law, Law of Armed Conflict					
16. SECURITY CLASSIFICATION OF:			17. LIMITATION OF ABSTRACT	18. NUMBER OF PAGES 17	19a. NAME OF RESPONSIBLE PERSON Chairman, JMO Dept
a. REPORT UNCLASSIFIED	b. ABSTRACT UNCLASSIFIED	c. THIS PAGE UNCLASSIFIED			19b. TELEPHONE NUMBER (include area code) 401-841-3556

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The Impact of Law and Lawyers on Operations and Planning

by

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A paper submitted to the Faculty of the Naval War College in partial satisfaction of the requirements of the Department of Joint Military Operations.

The contents of this paper reflect my own personal views and are not necessarily endorsed by the Naval War College or the Department of the Navy.

Signature: _____

10 May 2007

Abstract

The Impact of Law and Lawyers on Operations and Planning

Staff Judge Advocates are negatively affecting a planning group's abilities to develop effective operational plans which cover the full spectrum of available courses of action. Why does this matter? As commanders, planners and operators, we have an obligation to provide clear guidance and expectations to those forces expected to execute the plan. It is important for the SJA to fully participate in the development of plans, guidance, and ROE, but it is the commander's responsibility to ensure that these documents do not become so over drafted or a "well-turned locution" as was so eloquently stated by an Army JAG, that the person actually executing them does not understand them or needlessly places themselves or their unit at risk by not being willing to ask for clarification. Commanders must always keep the principles of war and international and domestic law foremost in their thoughts while political considerations and perceptions must be secondary. Allowing SJA predictions of what may be considered politically correct or what public reactions may happen to influence the commander's decision process effectively delegates the decision making to the staff. By being informed about the laws, risks, and gains of any particular course of action, the commander's decision to do the right thing will always be affirmed.

The Impact of Law and Lawyers on Operations and Planning

Military leaders have become increasingly timid and politically correct. That is, they have become fearful of not being able to support and justify their actions with clear and precedent law in an age of global war where ambiguity is the norm. Leaders have also become increasingly sensitive to the statements of various organizations, government or non-government supported, levying accusations of violations of laws because of suffering and casualties through the course of combat operations, regardless of accuracy or validity. This sensitivity leads to overly restricted military actions including planning, operations, and development of Rules of Engagement (ROE). These restraints prolong wars and in the long term increase humanitarian suffering through additional casualties and destruction of infrastructure, directly contrary to the intent of restricting actions in the first place. This attitude of both commanders and civilian leadership flows down to the staffs who develop the plans, including both the Joint Planning Group (JPG) and the Staff Judge Advocates (SJA).

Aggravating the issue, SJAs are often not being embedded in the planning process from the start. If they are not included in all aspects of the planning process, they cannot act as a conduit between the commander and the JPG. When plans are routed through the SJA for approval rather than developed with the JPG, courses of action can be developed which do not have acceptability within the Law of Armed Conflict (LOAC), wasting the JPGs time and ultimately producing an inferior product.

This paper asserts that SJAs are negatively affecting a planning group's abilities to develop effective operational plans which cover the full spectrum of available courses of action. Why does this matter? As commanders, planners and operators, we have an

obligation to provide clear guidance and expectations to those forces expected to execute the plan. It is important for the SJA to fully participate in the development of plans, guidance, and ROE, but it is the commander's responsibility to ensure that these documents do not become so over drafted or a "well-turned locution"¹ as was so eloquently stated by an Army JAG, that the person actually executing them does not understand them or needlessly places themselves or their unit at risk by not being willing to ask for clarification. Further, overly restrictive interpretations of open-ended language such as in the Geneva Convention Protocol 1, makes the U.S. more vulnerable to accusations of war crimes by watchdog organizations and encourages rogue nations or truly criminal organizations to take advantage of those self-imposed restrictions.²

This paper will discuss how international law and LOAC has evolved to bring us to this position, how these ideas have actually become part of the planning process, and the roles of the commander and the SJA. Finally, it will conclude with recommendations that could alleviate some of our difficulties and possibly assist with countering what amounts to the use of the LOAC against the U.S.

International Humanitarian Law vs. the Law of Armed Conflict

*"The American military is particularly vulnerable because of the 'unrealistic norms' especially in relation to collateral damage – propounded by the advocates of the 'new international law.'"*³ - Colonel Charles J. Dunlap, Jr. JAG, USAF

While this paper is not intended to be solely about international law, it is important to discuss how law permeates our policies and strategies. International law has always been a consideration for our foreign policy matters, and laws and rhetoric have always played a central role in our domestic affairs.⁴ Indeed, our country was formed on the basis of what we

as Americans consider universal laws and we possibly adhere to them as much as or more than any other country in the world.

It is in our very nature as Americans to apply laws to all aspects of our military actions. The LOAC was developed consistent with traditional international laws and is grounded in our national culture. Clausewitz advocates that once violence is being used as a means to force a national will on another country, it is necessary to strike with massive force in order to bring about a swift end while minimizing human and material costs. This idea fits firmly within the LOAC, yet over the last several decades, these laws have been challenged by the idea of “international humanitarian law” (IHL).⁵ IHL is different than LOAC. It is not codified or customary whereas LOAC is upheld through conventions and through general international acceptance. This “new” international law is relentlessly promoted by non-governmental organizations (NGOs) such as the International Committee for the Red Cross, Amnesty International, and states with weak military power as well as non-state actors, all of whom have little responsibility for global security.⁶ Indeed, this IHL seems to attempt to increase the legitimacy of insurgency and terrorist groups by excusing their behavior while condemning the actions of the world powers attempting to support world stability. It seems the IHL is attempting to force strong powers into accepting the first strike while waiting for U.N. authorization before responding or mitigating the threat.

If these organizations pushing for the expansion of IHL were to achieve their goal, nations would give up portions of their sovereignty and reduce their national interests by “nearly eliminating the unilateral use of military force; creating the unattainable requirement of avoiding all civilian casualties in combat; promoting the criminal prosecution of individual state officials by the courts of other states and international tribunals; and permitting, or

requiring, international ‘humanitarian’ intervention in a states internal affairs.”⁷ This essentially globalizes justice, ties the hands of powerful states who attempt to follow customary international law, and emboldens those weaker states and non-state actors who were not likely to be concerned about international laws or world opinion in the first place. Indeed, the rhetoric about world players being bound by this new international law is certainly not demonstrated by the actions taken over the last half century by those states advocating the IHL. “The [UN] Charter’s Use-Of-Force rules have widely and regularly been disregarded. Since 1945, two-thirds of the members of the UN – 126 out of 189 – have fought 291 interstate conflicts in which over 22 million people have been killed.”⁸

Even a small shift towards making the laws of war more humane elevates humanitarian concerns above military necessity and national interests, ultimately eroding our ability to conduct operations without allegations of war crimes.⁹ European powers have even accused the U.S. of violating IHL by placing the protection of soldiers lives over the lives of non-combatants by using such tactics as bombing from high altitude, out of the range of surface to air missiles, but too high to visually decide if a target is still a valid military target.¹⁰ While the broad idea of a peaceful world co-existing under consistent humanitarian laws is noble, the reality of today’s environment with rogue states, failed governments and trans-national criminal and terrorist organizations makes this utopian stance a very unrealistic ideal.

NGOs, weak states and non-state actors are becoming increasingly effective at using international laws and the LOAC against the U.S. The term “Lawfare” describes this growing use of the international law as a tool of war, regardless that the majority of the claims are factually flawed and legally without merit.¹¹ The commander must remember that

NGOs are not political entities equivalent to sovereign nations but rather, they are organizations with an agenda who do not necessarily have the same interests or goals as the U.S. While many of these organizations also claim to be representing the people of the world, it is also important to remember they are self-selected, self-promoting groups who represent only their own interests.¹² When these ideas are ignored, it is often to the detriment of plan development and legal interpretations.

Our society, the American media, and our elected officials have become increasingly susceptible to lawfare. In this age of massive information overload, just the fact that a recognized NGO is making an accusation of wrong-doing or war crimes by one of our instruments of national power is enough to cause a reaction. This hypersensitivity to criticism, regardless of validity, permeates down through our military commanders and their staffs including to the SJAs and JPGs. Commanders must remain focused on the basic doctrine of operational planning, adhere to the principles of war, and plan to the operational and strategic goals.

Operational Planning in a Legal Environment

Operations must be planned to meet an objective, one of the principles of war. All aspects of an operation must be directed toward that objective in the most efficient manner with the available resources bounded by the LOAC. Conducting operations that do not adhere to the LOAC, or even those that have the perception of not adhering to the LOAC, carries significant political implications both domestically and internationally.¹³ General Wesley Clark has asserted that in the Balkan conflict, even the preparation for decisive combat was constrained by lawyers.

“One of the most striking features of the Kosovo campaign, in fact, was the remarkably direct role lawyers played in managing combat operations – to a degree unprecedented in previous wars The role played by lawyers in this war should also be sobering – indeed alarming – for devotees of power politics who denigrate the impact of law on international conflict NATO’s lawyers ... became in effect, its tactical commanders.”¹⁴

General Clark should have asked which commander allowed this to happen rather than blaming the SJAs. Problems arise when the commander, staff or SJA start to ignore the principles of war and create plans attempting to counter the use of lawfare while mitigating what they perceive as negative world views. It does not matter how well drafted the plan is; adversaries who do not feel constrained by international law or humanitarian ethics will always be able to create situations where it appears that the U.S. violated LOAC. A good example is the bombing of the al-Firdos command and control bunker in Baghdad during the first Gulf War. The bunker was a valid military target, absolutely within the bounds of the LOAC, since it was a defended place used as a command and control node of the Iraqi military.¹⁵ Unknown to U.S. forces targeting the bunker, Iraq had allowed families of high ranking officers to shelter there. Iraq should have indicated the presence of non-combatants but instead exploited images of women and children killed in the bombing, accusing the U.S. of deliberately targeting civilians. By U.S. forces failing to counter these accusations of war crimes, Iraq successfully used lawfare against the U.S. and stopped additional attacks on military bunkers in the city.¹⁶

Self-restriction is also evident in planning efforts other than combat operations such as counter-drug operations conducted along the U.S.-Mexico border by Joint Task Force Six (JTF-6). JTF-6 is a standing NORTHCOM task force providing counter-drug support to domestic enforcement agencies. Units operating under the OPCON of JTF-6 clearly fall

under the “Posse Comitatus Act” (18USC1385). The Posse Comitatus Act is very short: “Whoever, except in cases and under circumstances expressly authorized by the Constitution or Act of Congress, willfully uses any part of the Army or the Air Force as a posse comitatus or otherwise to execute the laws shall be fined under this title or imprisoned not more than two years, or both.”¹⁷ The SJAs have also determined that Executive Order (E.O.) 12333 – “United States Intelligence Activities,” also applies to these counter-drug operations even though the E.O. clearly states in paragraph 3.5 it is in place to provide control and guidance to the *Intelligence Community*.¹⁸ The commander of the JTF has accepted the SJA interpretation of these two directives to mean that “the military does not search, arrest, detain, question, or follow U.S. Persons.”¹⁹

With these determinations in mind, units developing plans for operations in support of JTF-6 must brief all operational plans to the flag level commander. Part of this brief may be the creation of maps including drug crop growing areas, but more importantly, the SJA must provide overlays including private and public lands to prevent trespassing, designation of all structures because they could possibly be used as dwellings by U.S. Persons, wildlife refuges to avoid environmental impacts, and potential archeological sites to avoid possible damage to artifacts.²⁰ Once these overlays are developed, visual and radar arcs are masked to avoid detection of anything that might be done by a U.S. Person. The point of this is not so much that there are legal limitations graphically displayed on the maps, but that the enemy, weather and terrain are secondary concerns compared to limitations placed on operator’s actions by unnecessarily cautious and narrow interpretations of a one sentence law and an executive order directed at a different community.²¹

Of a more tactical nature, the Combined Air Operations Center (CAOC) in Qatar gives a positive example of Air Force SJAs providing direct support to the commander and warfighter. By being embedded in the CAOC, fully up to speed as to what tactical operations are ongoing, and familiar with the operations as a whole, the SJAs help the commander make better decisions, ultimately reducing the ability of the enemy to wage warfare.²² “The [SJAs] expert opinions facilitate high ops tempo [and] decision making, enabling the commander to prosecute the global war on terror at his pace throughout the spectrum of operations.” said Commodore Mark Swan, RAF, director of the CAOC.²³

The Commander’s Role

The commander must remember his role as an instrument of national power. Our civilian masters have outlined a vision of the world and the goals of the U.S. within strategic documents with the military as but one of the means to exert that vision. If the planning process, deliberate or crisis, is engaged, it has a purpose to carry the national power against something that presents a threat to the national security interests of the U.S. The nature of our society demands that we deal with the threat within certain rules which are laid down in domestic and international law. Imposing restrictions on actions and plans that are within those laws for fear of retribution shows an unwillingness to accept the responsibility of the position of commander, a fear of organizations who do not represent the interests of the U.S. government or U.S. citizens, and a lack of understanding of the rules as they exist.

Often commanders become obsessed with the comments and accusations of NGOs.²⁴ Consider Amnesty International accusing Israel of war crimes for the deaths of 30 non-combatants as they did door-to-door searches in Beirut rather than an artillery barrage to

destroy mortar and rocket positions. Ironically, this method was intended to and likely did reduce the chance of civilian casualties at a much higher risk to the individual troops. Yet, these accusations caused Israel to change their tactics again even though they were well within the bounds of the LOAC and had further restricted their actions with good intentions. As a result of the accusations against the Israelis, we are seeing the same type of reaction by the U.S. military. For example, in Iraq restrictions from higher commanders include rules requiring any attack carrying the risk of more than 30 civilian casualties must be approved by the Secretary of Defense.²⁵

The commander communicates the vision and the purpose of a mission to his staff. Each member of the staff will interpret the guidance differently, so the commander's guidance must be simple and direct. Even the most complex of missions can be broken down into simple chunks. For example, on 15 Jan 1991, President Bush signed National Security Presidential Directive 54 outlining his vision of the upcoming conflict to liberate Kuwait. It was very simple with four purposes: "a) to effect the immediate, complete and unconditional withdrawal of all Iraqi forces from Kuwait; b) to restore Kuwait's legitimate government; c) to protect the lives of American citizens abroad; and d) to promote the security and the stability of the Persian Gulf."²⁶ This mission was clear, and while the goal of security and stability was never met, the vision was there. If a commander has a question about the mission, he must seek clarification from his higher commander. No one in a chain of command wants their intent interpreted differently than their original vision, so they must ensure what they provide is clear and more importantly, understood by their subordinates.

It is true that words matter, so one of the roles of the commander must be to ensure that his staff produces words that can be understood by the audience. For example, ROE are

a commander's guidance to his subordinate units detailing when force can be used in the course of executing their mission. During Operation Uphold Democracy, the invasion of Haiti in 1994, the commander failed in this task. Three days before D-Day, the Chairman of the Joint Chiefs of Staff approved ROE drafted by the Joint Staff legal division. This ROE was a compromise document created in a vacuum that was intended to be an eloquent differentiation between different types of threats. Instead it produced guidance that was difficult to interpret or understand.²⁷

“You may presume that civilians in public armed with crew-served weapons, automatic weapons, or rifles are members of the FADH, National Police, or paramilitary groups, and therefore may treat them as hostile. Civilians in public armed with shotguns or pistols are presumed to be potentially hostile, but deadly force is not authorized unless such persons use or threaten to use armed force against U.S. troops, U.S. citizens, or designated foreign nationals.”²⁸

By accepting the ROE drafted by the Joint Staff lawyers outside the planning process, the commander was left with a product that was unacceptable in several different ways. The soldier on the ground in Port-Au-Prince was forced to distinguish between a rifle and a shotgun, even more difficult as the initial landings were scheduled to happen just before dawn. The soldier was also forced to decide the difference between potentially hostile and hostile. Furthermore, the landing forces received these ROE just hours prior to H-Hour. Fortunately, the landings were unopposed due to the agreements worked out by President Carter at the last moment. Unfortunately, these ROE did lead to an incident where U.S. troops stood by and observed Haitian police club a street vender to death because the troops did not feel they had the authority to do anything about it. Meanwhile, the incident was filmed by the media causing an uproar in the news and eroding our legitimacy for being in the country.²⁹

The Role of the Staff Judge Advocate

While it can be inferred what the role of the SJA in the planning process should be, existing doctrine and guidance gives a muddled view of what the SJAs duties actually are. The Joint Task Force Planning Guidance and Procedures Manual (Joint Pub 5-00.2) shows the SJA being a member of the commander's staff while the joint planning group falls under the J5 Plans Directorate. (See Figure 1)³⁰ Chapter 9 of JP 5-00.2 then shows the SJA being a member of the JPG (See Figure 2)³¹ then just two pages later the SJA is depicted as only a representative from supporting commands. (See Figure 3)³² While any one of these may seem clear, it becomes confusing and somewhat conflicting when they are taken together.

The SJAs responsibilities are outlined in Chapter 2 of JP 5-00.2 as providing various legal services to the CJTF and staff. The "SJA should review the entire OPLAN, OPORD, or campaign plan for legal sufficiency."³³ But in the following paragraph, "the SJA should not be called upon simply in the review of OPLANS, OPORDS, and campaign plans. SJA involvement in the planning process from the beginning is especially important to the issues of EPWs [Enemy Prisoners of War], detainees, CA [Civil Affairs], targeting and ROE."³⁴ While this seems to be appropriate, just being called out in two different ways causes ambiguity in what the SJAs role is. Multiply this by the dozens of joint and service documents that address plans to some degree, many of which do not specify the role of the SJA. For example, the Doctrine for Planning Joint Operations (JP 5-0) does not make one mention of the SJA, nor does Joint Operation Planning and Execution System (JOPES) Volume 1. Many other pubs discuss the role of the SJA, but one should expect the capstone joint planning documents to include the SJA. JP 5-00.2 is but one document, specifically

designed toward Joint Task Forces, but not all plans are created by JTFs. This pub creates a good notional model for how a JPG should be established but there are many other planning situations and staffs where there is no clear outline of how the SJA should be used.

Captain Howard Hoege III, a U.S. Army SJA, discusses the commander's responsibility with respect to ROE in his paper, "ROE ... Also A Matter of Doctrine" published in "The Army Lawyer" in 2002. "ROE are the commander's tool to promote the disciplined use of force within his command."³⁵ He appears to understand the SJAs role of support to the commander but then proceeds to demonstrate an inappropriate and arrogant view of the SJAs development of ROE.

Hoege goes on to imply that the SJAs own the drafting and creation of ROE, advocating the Army doctrine that SJAs are the only staff member qualified to interpret ROE: "in some situations the OPLAW SJA will be the sole member of the ROE planning cell ... or the staff possessing the necessary training in objectivity and impartiality to state unpleasant interpretations of a higher headquarters ROE."³⁶ While not necessarily the norm within the Army lawyer specialty, this article was published in a professional journal and presumably read by other SJAs on staffs.

Hoege does provide some good advice, albeit to lawyers who are drafting the ROE, that the "attempt to articulate just the right level of restraint and just the right level of guidance may result in an amorphous ROE that renders the rules ineffectual."³⁷ While this is good advice, he misses the point that the ROE is a tool for the tactical operator, not a document for consumption by higher headquarters, the media, or the public.

As an example of well-turned locution, consider the ROE in place for Operation Iraqi Freedom. The most recent change was promulgated 3 Apr 2007 as "Modification 4 to ROE

for Operations in Iraq,” clarifying who was designated as hostile. In addition, there are 12 other documents only for Iraq containing some form of ROE guidance dating back to the theater specific ROE promulgated 8 Nov 1995.³⁸ Additionally, staffs must review more than a dozen other documents that may or may not be related. Consider the “Modification to USCENTCOM civilian and contractor arming policy and delegation of authority for Iraq and Afghanistan.” dated 7 Nov 2006.³⁹ This is a five page document explaining the policy for arming contractors and the ROE they fall under. Paragraph 2.C.2.B contains: “use of [private security contractors] can be authorized to protect military personnel and military equipment outside of static facilities (such as for personal security details and convoys) when risk of direct contact with uniformed enemy is not probable.”⁴⁰ Sorting through this type of language can be difficult even for people who routinely review this type of document. More problematic though is this does not involve only contractors. Front line forces work closely with these people and not only must they be aware of their own ROE for the given situation, but that of the contractors so they do not expect them to take actions not authorized under their own ROE.

The Marine Corps is advocating a more balanced role of the SJA in operations planning through the assignment of full-time SJAs to infantry battalions. The SJA is available to answer questions and provide guidance and counsel at a moments notice with the benefit of being in the environment and not doing interpretations of laws and policies in a vacuum.⁴¹ While the battalion commanders have indicated they like having the SJAs as part of their unit, there was some resistance from the lawyers themselves because they “had a perception that battalion SJAs spend a significant amount of their time as ‘line officers’ performing non-legal duties.”⁴² Data indicates the difference between battalion SJAs and

non-battalion SJAs is not significant with 74% compared to 85% of their time spent on legal duties respectively.⁴³ This is a cultural issue within the specialty more than anything. It is hard to conceive someone could join the Marines thinking they would perform as a lawyer 100% of their time.

Recommendations and Conclusions

There is a complex set of influences, attitudes, and cultural biases creating the difficult leadership situations we are in today with regards to how much we can allow IHL and our own internal legal restrictions shape our development of operational plans. Lawfare is an extremely potent weapon if we as commanders, staff and SJAs allow ourselves to be exploited by it, but it is something we can counter with conscious effort. By acquiescing to the threats, accusations and cajoling of the international community and NGOs through overly cautious and conservative interpretations of LOAC by commanders and SJAs, we are allowing outside forces to dictate conduct of future operations and establish customs in international law that are not in the best interests of the U.S.

I propose three recommendations to mitigate the situation as I have described. First we should develop counter-lawfare doctrine. Second, there should be increased legal training for commanders and their staffs. And finally, a wholesale review of planning doctrine across the services should be initiated.

Counter-Lawfare Doctrine and Cells. Lawfare is a concept that is here to stay. Much like terrorism, lawfare is a way that weak or non-state actors can wage war against powers like the U.S. By acknowledging its existence and developing ways to preempt or react to

lawfare as it is being used against us, we effectively neutralize one tool of warfare that now has the potential to do serious damage to U.S. interests.

Public relations cells could be created to analyze the use of lawfare by hostile NGOs and proponents of IHL against U.S. interests. The logical place for these cells would be in the J39 or N39 information operations directorate. These teams would assist in developing the strategic communications ahead of an operation, and anticipate the potential types of lawfare actions through war gaming and IO plan development. More importantly, these teams would lead the military through increased involvement of the development and enforcement of LOAC and its application within international law.⁴⁴

Another element of the counter-lawfare doctrine that would fall within J39's realm could be the creation of "collateral damage assessment teams" who would operate in a permissive environment or imbedded with battle damage assessment cells. These teams would document instances of collateral damage that has the potential to be used by the media, NGOs or enemy against the U.S. This information could be used to counter accusations, or disprove any allegations being levied against commanders.

Increased Training. The LOAC training program is inadequate for the level of fidelity a commander and his planning staff is expected to operate at. Flipping through a number of web pages on Navy Knowledge Online to meet the annual requirement is not creating an understanding of how the LOAC actually applies to operational planning. LOAC, lawfare and strategic communications training should be embedded into entry level training and reinforced by scenario based training included with tactical training such as shipboard drills and weapons qualification. For example, a soldier or sailor could use a "Judgmental Scenario" training tool similar to videos used by the Coast Guard where the

person being trained must articulate not only why they chose to use force in a given situation, but the laws that permit that use of force.

The language contained in the new JCS Standing Rules of Engagement / Standing Rules for Use of Force, while easier to understand is still ambiguous. Complicating matters is the fact that the transition point between ROE/RUF is not clear.⁴⁵ The distinction becomes even less clear when the terms are used in situations they should not be, such as in the CENTCOM contractor policy discussed earlier. CENTCOM specifically outlines “Rules for the Use of Force (RUF) for armed DoD civilian personnel and DoD contractor employees,” yet they apply in Iraq and Afghanistan where normally ROE is the governing guidance.⁴⁶ Increased training helps commanders and staffs know when such language will cause a problem, and allow the troops to more intelligently ask questions about the ROE they are expected to operate under.

Additional training would also benefit the SJAs. If they were to have more exposure to operations and the operational planning process, SJAs would be better equipped to provide the best possible service to the commander. We have short planning courses for staffs, and JFMCC courses for commanders, perhaps it is time to develop a “Planning for SJAs short course.” Ensuring SJAs participate at every level of planning exercises will increase the experience level and enable SJAs to have the practical knowledge and exposure to advise their commanders of what actions are acceptable under the law.⁴⁷

Review of Planning Doctrine. Planning doctrine as it exists today is contained in dozens of different publications: joint, service specific, and even specialty specific. While each of these documents is a way to develop a scheme that will achieve some goal, they are each different in subtle ways. If these were more closely related and emphasized the theory

of developing plans that meet an end state, the plan would be more driven by the goal and less by the process. It is the process that is becoming increasingly bogged down by legal considerations that we must get under control.

This review should also include increased development of notional staffs including a clear role for each of the staff elements. The SJA should be included as an integral part of the planning process and be prepared to provide the commander with counsel and advice, not just language that serves to exonerate him from all risk and responsibility. SJAs are generally skilled writers and have experience in finding meaning in ambiguous or fuzzy language, but this experience should be used to provide clarity and brevity.

Commanders must always keep the principles of war and international and domestic law foremost in their thoughts while political considerations and perceptions must be secondary. Allowing SJA predictions of what may be considered politically correct or what public reactions may happen to influence the commander's decision process effectively delegates the decision making to the staff. By being informed about the laws, risks, and gains of any particular course of action, the commander's decision to do the right thing will always be affirmed.

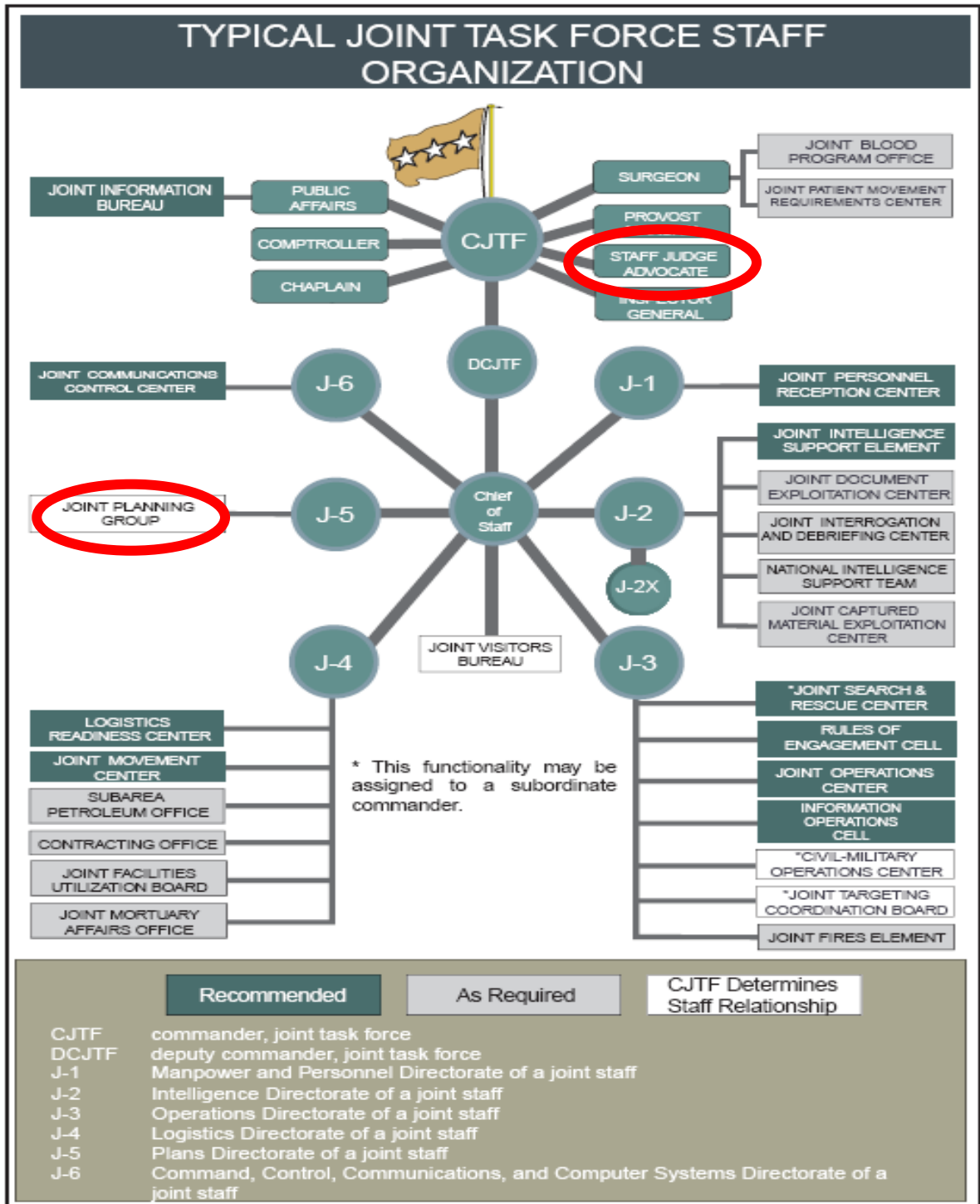


Figure 1
(JP 5-00.2 Figure II-1)

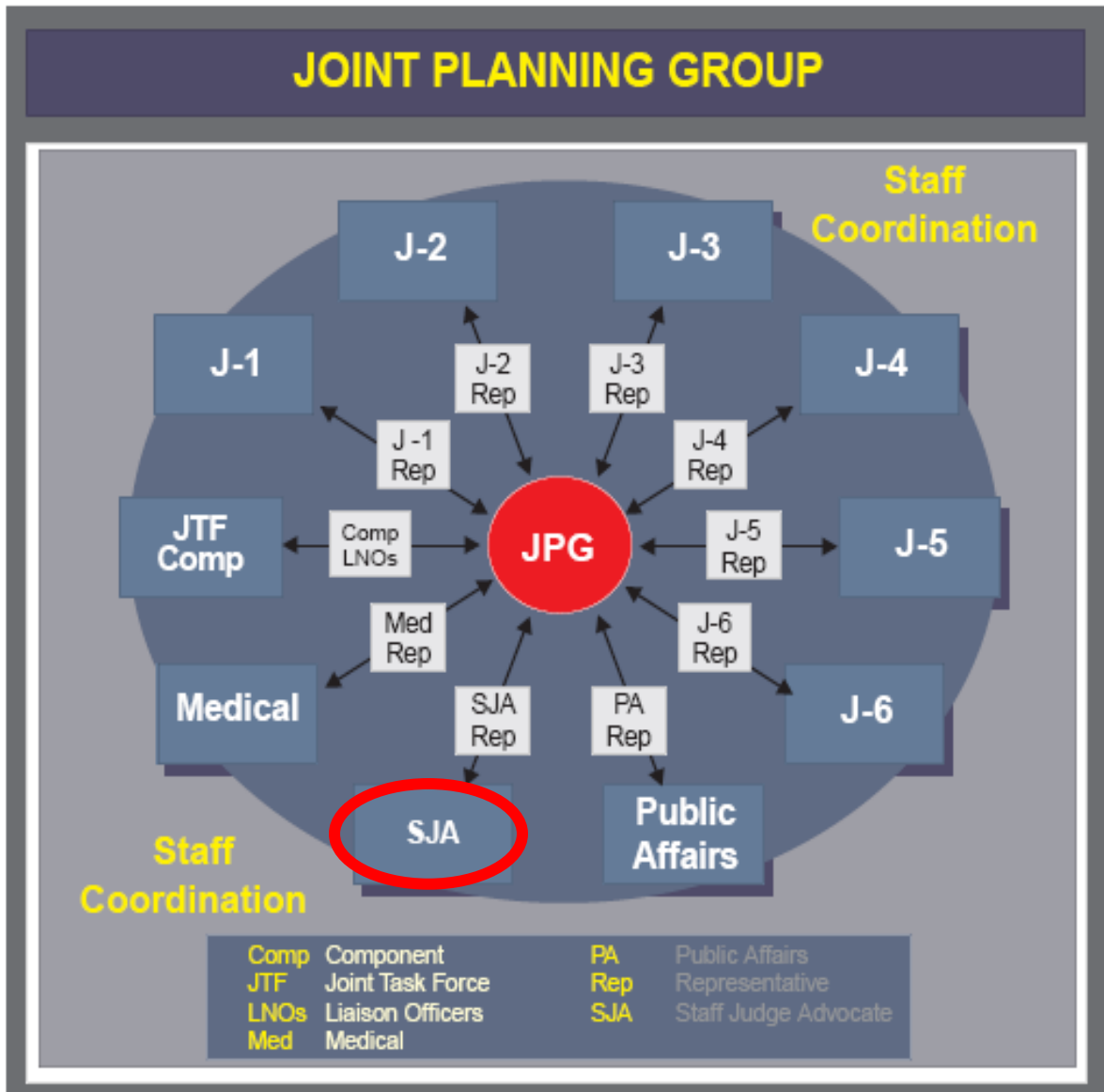


Figure 2
(JP 5-00.2 Figure IX-4)

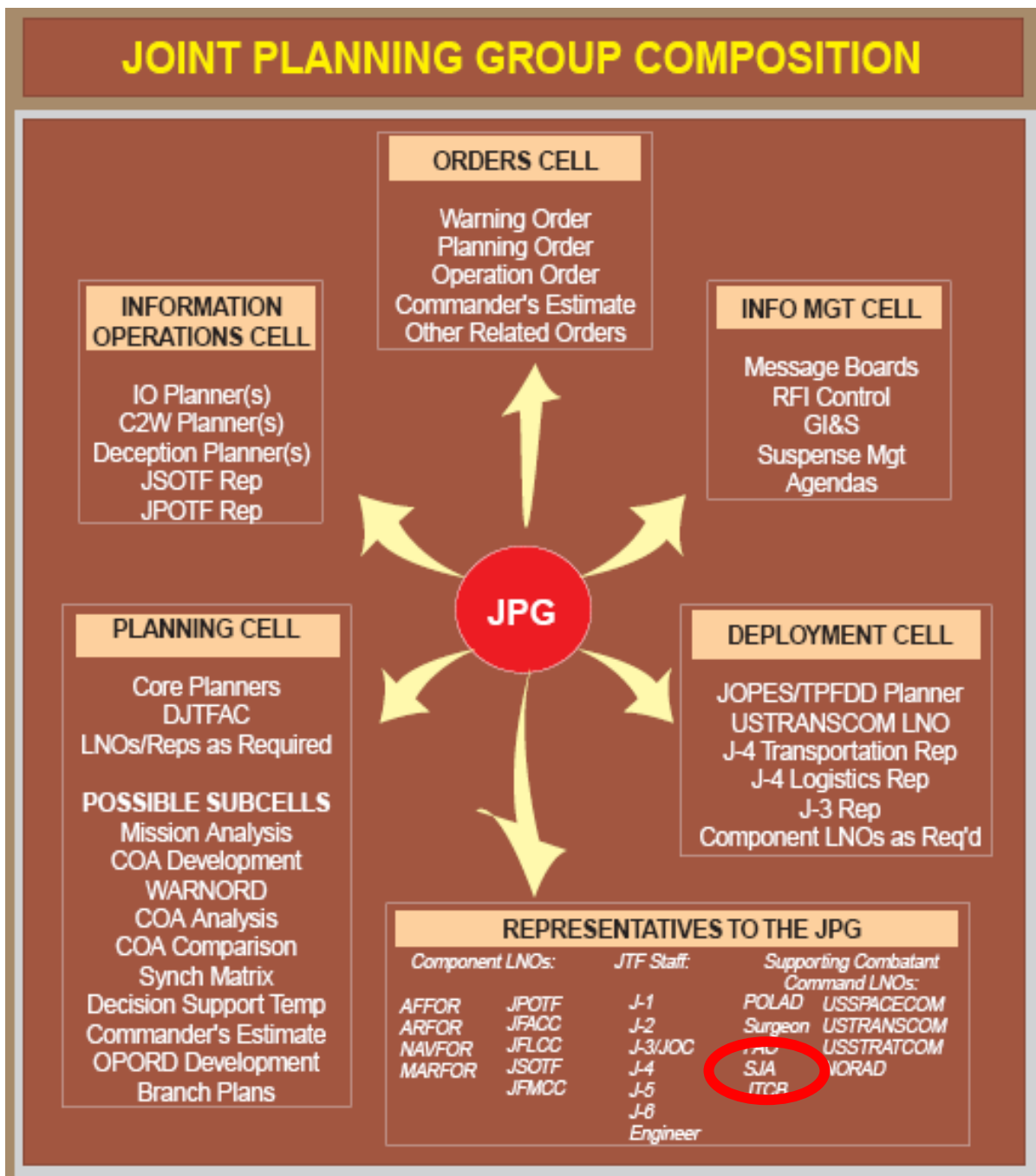


Figure 3
(JP 5-00.2 Figure IX-5)

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