

CHAPTER 24

THE MILITARY DECISIONMAKING PROCESS AND OPERATIONS PLANS

REFERENCES

1. JOINT CHIEFS OF STAFF, JOINT PUB. 1-04, LEGAL SUPPORT TO MILITARY OPERATIONS (17 Aug. 2011).
2. JOINT CHIEFS OF STAFF, JOINT PUB. 3-0, OPERATIONS (11 Aug. 2011).
3. JOINT CHIEFS OF STAFF, JOINT PUB. 3-33, JOINT TASK FORCE HEADQUARTERS (30 July 2012).
4. ARMY DOCTRINE REFERENCE PUBLICATION 3-0, (22 May 2012).
5. ARMY DOCTRINE REFERENCE PUBLICATION 5-0, THE OPERATIONS PROCESS (17 May 2012).
6. JOINT CHIEFS OF STAFF, MANUAL 3122.01A, JOPES Vol. I (Planning Policies and Procedures) (29 Sept. 2006) (current as of 2 July 2010).
7. JOINT CHIEFS OF STAFF, MANUAL 3130.03, Adaptive Planning and Execution (APEX) Planning Formats and Guidance (31 Aug. 2012).

I. OPERATIONS PLANS AND ORDERS IN THE ARMY ARENA

A. The military decisionmaking process (MDMP) is an established and proven analytical process (Figure 1). It is an established planning methodology that integrates the activities of the commander, staff, subordinate headquarters, and other partners to understand the situation and mission; develop and compare courses of action (COAs); decide on a COA that best accomplishes the mission; and produce an operations plan (OPLAN) or operation order (OPORD). The difference between an OPLAN and OPORD is that an OPLAN becomes an OPORD when the commander sets an execution time. The Judge Advocate (JA) must be involved in every aspect of the MDMP, beginning with the Plan Development process, not merely the Plan Review stage. Participation in the Plan Development process enables JAs to assist in the development of a plan that is suitable, feasible, and legal. Judge Advocates can accomplish this by fully integrating themselves into the planning staff and providing direct input into the decision-making process.

B. The planning staff will vary in size and composition depending on the complexity of the operation and the size of the unit. The key players in the Brigade Combat Team (BCT) will be the brigade S-3 (operations officer), S-2 (intelligence), S-4 (logistics officer), and the brigade fire support coordinator (FSCOORD). These officers are primarily responsible for taking the brigade commander's intent and producing a workable, thorough OPORD. There are other important members of the planning staff, usually a representative from each of the warfighting functions (WFF; doctrinal replacement for the battlefield operating systems) and perhaps Air Force, Air & Naval Gunfire Liaison Company (ANGLICO), allied and special operations forces (SOF) liaisons, and of course the BJA. These supporting members of the planning staff all take an active part in the planning process and have the responsibility of assisting the key players in fulfilling the commander's intent. Significantly, all these officers have other crucial duties in the BCT. The planning staff comes together upon the receipt of a warning order (WARNO) from higher headquarters, then plans, produces an order, and moves into the execution phase.

C. The planning staff at the Division level or higher will usually consist of officers and non-commissioned officers (NCOs) who serve on that staff as their primary duty. The planning staff may be called the Battle Management Cell (BMC) or the Future Plans Group (FPG). The operational law (OPLAW) attorneys at the Division level will work on a daily basis with the BMC. The relationship between those JAs and the officers who make up this planning cell is as crucial as the JA's knowledge of relevant legal issues.

D. **OPLAW Concerns in Plans and Orders.** By fully participating in the MDMP, JAs can engage the staff on legal issues during the planning process as well as review the plans and mission orders for all legal issues. Legal issues may be found throughout the plan; therefore, the JA should read the entire plan. The JA must know the law and be able to identify operational issues that raise potential legal issues. Every plan will address many OPLAW issues including, but not limited to, rules of engagement; criminal jurisdiction; claims; displaced persons; riot control agents; command and control; and fiscal law. The Legal Annex provides the JA a place to capture guidance on policy matters contained in other annexes throughout the plan.

Key Inputs	Step	Key Outputs	
<ul style="list-style-type: none"> Higher headquarters' plan or order or a new mission anticipated by the commander 	<p>Step 1: Receipt of Mission</p>	<ul style="list-style-type: none"> Commander's initial guidance Initial allocation of time 	
Warning Order			
<ul style="list-style-type: none"> Higher headquarters' plan or order Higher headquarters' knowledge and intelligence products Knowledge products from other organizations Design concept (if developed) 	<p>Step 2: Mission Analysis</p>	<ul style="list-style-type: none"> Mission statement Initial commander's intent Initial planning guidance Initial CCIRs and EEFI Updated IPB and ruining estimates Assumptions 	
Warning Order			
<ul style="list-style-type: none"> Mission statement Initial commander's intent, planning guidance, CCIRs, and EEFI Updated IPB and running estimates Updated assumptions 	<p>Step 3: Course of Action (COA) Development</p>	<ul style="list-style-type: none"> COA statements and sketches <ul style="list-style-type: none"> Tentative task organization Broad concept of operations Revised planning guidance Updated assumptions 	
<ul style="list-style-type: none"> Updated running estimates Revised planning guidance COA statements and sketches Updated assumptions 	<p>Step 4: COA Analysis (War Game)</p>	<ul style="list-style-type: none"> Refined COAs Potential decision points War-game results Initial assessment measures Updated assumptions 	
<ul style="list-style-type: none"> Updated running estimates Refined COA Evaluation criteria War-game results Updated assumptions 	<p>Step 5: COA Comparison</p>	<ul style="list-style-type: none"> Evaluated COAs Recommended COAs Updated running estimates Updated assumptions 	
<ul style="list-style-type: none"> Updated running estimates Evaluated COAs Recommended COA Updated assumptions 	<p>Step 6: COA Approval</p>	<ul style="list-style-type: none"> Commander-selected COA and any modifications Refined commander's intent, CCIRs, and EEFI Updated assumptions 	
Warning Order			
<ul style="list-style-type: none"> Commander-selected COA and any modifications Refined commander's intent, CCIRs, and EEFI Updated assumptions 	<p>Step 7: Orders Production</p>	<ul style="list-style-type: none"> Approved operation plan or order 	
CCIR	commander's critical information requirement	EEFI	essential element of friendly information
COA	course of action	IPB	intelligence preparation of the battlefield

Figure 1: The Military Decision Making Process (MDMP).

E. For a detailed description of the MDMP, see Chapter 2 of ADRP 5-0, The Operations Process (17 May 2012). A brief synopsis of the 7-step MDMP is provided below.

F. MDMP Step 1: Receipt of Mission.

1. The MDMP begins with the receipt or anticipation of a new mission. The general actions within the receipt of mission step are: alert the staff; gather the tools; update running estimates; conduct initial assessment; issue the commander's initial guidance; and issue the initial WARNO. Upon receipt of a new mission, the unit's operations section alerts the staff of the pending planning requirement. The unit's standing operating procedure (SOP) will identify who is to participate and where they should assemble. The staff (including the JA) prepares for the mission by gathering the tools needed to conduct mission analysis. These include:

- a. Higher headquarters order or plan.
 - b. Map of the area of operations (AO).
 - c. Appropriate field manuals.
 - d. Any existing staff estimates.
 - e. SOP for both your own and higher headquarters.
2. The JA must also prepare for the upcoming mission analysis by having the proper resources to include:
- a. Current ROE with any changes and any requests for changes.
 - b. Relevant status of forces agreement (SOFA) or relevant local law in the anticipated AO.
 - c. Higher headquarters Legal Appendix.
 - d. International and Operational Law Department's Law of Armed Conflict Documentary Supplement.
 - e. International and Operational Law Department's OPLAW Handbook.

3. A critical decision made during the "receipt of mission" step is the allocation of available time. The commander must provide guidance to subordinate units as early as possible to allow them the maximum time for their own planning and preparation for operations. As a general rule, the commander allocates a minimum of two-thirds of available time for subordinate units to conduct their planning and preparation. This leaves one-third of the time for the commander and his staff to do their planning. The commander will then issue initial planning guidance to the staff. In a time-constrained environment, the commander may decide to abbreviate the MDMP.

4. The final task during this step is to issue a WARNO to subordinate and supporting units.

G. MDMP Step 2: Mission Analysis.

1. Mission analysis is crucial to the MDMP. It allows the commander to begin battlefield visualization, a combination of *situational awareness* (achieving a clear understanding of the current state of friendly forces in relation to the enemy and environment) and *commander's intent* (the desired end state that represents mission accomplishment and the key tasks that will get the force from the current state to the end state). The result of mission analysis is defining the tactical problem and beginning the process of determining feasible solutions. It consists of 17 steps (see Figure 2), not necessarily sequential, and results in the staff formally briefing the commander. The JA has an important role in each step.

2. Significant legal issues may arise during each of the above steps. The JA must ask the difficult questions of the plans officer leading the mission analysis to ensure that all relevant legal concerns are worked into the plan. The Adaptive Planning and Execution (APEX) samples at the end of this chapter provide a useful checklist of legal issues that commonly arise. Above all else, by actively participating in the mission analysis phase of orders development, the JA will become intimately familiar with the operation's parameters.

Key Inputs	Process	Key Outputs	
<ul style="list-style-type: none"> • Higher headquarters plan or order • Higher headquarters' intelligence and knowledge products • Knowledge products from other organizations • Updated running estimates • Initial commander's guidance • COA evaluation criteria • Design concept (if design precedes mission analysis) 	<ul style="list-style-type: none"> • Analyze the higher headquarters' plan or order • Perform initial IPB • Determine specified, implied, and essential tasks • Review available assets and identify resource shortfalls • Determine constraints • Identify critical facts and develop assumptions • Begin composite risk management • Develop initial CCIRs and EEFI • Develop initial ISR synchronization plan • Develop initial ISR plan • Update plan for the use of available time • Develop initial themes and messages • Develop a proposed mission statement • Present the mission analysis briefing • Develop and issue initial planning guidance • Develop COA evaluation criteria • Issue a warning order 	<ul style="list-style-type: none"> • Approved mission statement • Initial commander's intent • Initial CCIRs and EEFI • Initial commander's planning guidance • Information themes and messages • Updated IPB products • Updated running estimates • Assumptions • Resource shortfalls • Updated operational timeline • COA evaluation criteria 	
CCIR	commander's critical information requirement	IPB	intelligence preparation
COA	course of action	ISR	intelligence, surveillance
EEFI	essential element of friendly information		Warning Order
			attlefield aissance

Figure 2. Mission Analysis

H. MDMP Step 3: COA Development. After receiving the restated mission, commander's intent, and commander's planning guidance, the staff develops courses of action (COAs) for the commander's approval. The commander must involve the entire staff in COA development. The commander's guidance and intent focus the staff's creativity to produce a comprehensive, flexible plan within the time constraints. Typically, the staff will develop at least two and as many as five, different COAs for the commander to consider.

1. The staff will develop a concept of operations for each COA. The concept of operations describes how arrayed forces will accomplish the mission within the commander's intent. It concisely expresses the "how" of the commander's visualization, summarizing the contributions of each WFF (intelligence, movement and maneuver, fire support, protection, sustainment, command and control), as well as information operations (IO). Also, the operations officer will prepare a COA statement and supporting sketch for each COA. The COA statement clearly portrays how the unit will accomplish the mission and explains the concept of operations. The sketch provides a picture of the maneuver aspects of the concept of operations.

2. The JA must know the legal advantages and disadvantages of each COA and be ready to brief them if required. For example, COA 1 may involve bypassing a major urban area and subsequently using indirect fire on enemy forces defending the city. COA 2 might involve the destruction of an enemy dam in order to flood a likely enemy counterattack axis of advance. COA 3 might use FASCAM mines to achieve the same end. Each COA

presents unique legal issues that the JA must be prepared to brief to the commander in a simple advantage/disadvantage style.

3. Most staffs use a synchronization matrix during COA development. The top of the matrix shows the “H-hour” (the hour at which the operation begins) sequence (e.g., H-4, H-hour, H+2, etc.), which allows the staff to synchronize the COA across time and space in relation to anticipated enemy action. The first column on the left usually contains WFF, IO, projected enemy actions, and decision points to be made at certain H-hours. The synchronization matrix provides a highly visible, clear method for ensuring that planners address all WFF when they are developing COAs and recording the results of wargaming. The matrix clearly shows the relationships between activities, units, support functions, and key events. It assists the staff in adjusting activities based on the commander’s guidance and intent, as well as the enemy’s most likely COAs.

I. MDMP Steps 4-6: COA Analysis / COA Comparison / COA Approval.

1. COA Analysis.

a. Using the process of wargaming to visualize the flow of battle, COA Analysis identifies which COA will accomplish the mission with minimum casualties, while best positioning the force to retain the initiative for future operations. During wargaming, the staff takes a COA and begins to develop a detailed plan, while determining the strengths and weaknesses of each COA. Wargaming tests a COA or improves a developed COA.

b. The JA should be an active participant in the wargaming process. Such participation will not only increase the JA’s knowledge of both the military and operational planning, but will also provide opportunities to address other legal issues that inevitably will arise as the staff wargames each COA. For example, during wargaming, the staff member playing the part of the opposing force may react to a U.S. air assault deep behind his lines by using poison gas on the landing zone. Suddenly, an unplanned legal issue is presented to the staff, and the JA is given the opportunity to resolve it before the COA is approved.

2. COA Comparison.

a. Each staff officer analyzes and evaluates the advantages and disadvantages of each COA from his or her perspective, using evaluation criteria developed prior to wargaming. Staff members present their findings for the others’ consideration. Each WFF representative will rate each COA according to how well his or her function can support it. From these numerical ratings, a decision matrix will be assembled in which each COA is compared for supportability according to WFF. After completing the matrix and the analysis, the staff identifies its preferred COA and makes a recommendation to the commander.

b. Although JAs are not included as one of the WFF representatives, their input before this phase is crucial, since an initial COA may not be supportable from a legal standpoint. For example, COA 1 may rely on the use of riot control agents (RCA), without approval from the proper authority, for the suppression of enemy air defense (SEAD) on the drop zone before a planned airborne assault. In such a case, the JA must identify the critical issue during the COA development, and before the staff spends precious time and resources planning it.

3. *COA Approval.* After the decision briefing, the commander selects the COA he believes will best accomplish the mission. If the commander rejects all developed COAs, the staff will have to start COA development all over again. If the commander modifies a proposed COA or announces an entirely different one, the staff must wargame the revised or new COA to derive the products that result from that process. Based on the commander’s decision, the staff will immediately issue another WARNO with the essential information subordinate units need to refine their plans.

J. MDMP Step 7: Orders Production.

1. Based on the commander’s decision and final guidance, the staff refines the COA, completes the plan and prepares to issue the order. The staff prepares the order or plan by turning the selected COA into a clear, concise concept of operations and required supporting information.

2. The plans officers may ask the JA to read the finished order to see if it meets general standards of clarity, internal consistency, and completeness. The JA should seek every opportunity to serve in such a capacity, as it demonstrates that she is considered “one of the team.” Increasingly, JAs serve as the “honest broker” in the review of plans and orders. Good advice to JAs serving in such a role is to: (a) look at the *entire plan*—both of

your unit and of the higher unit; (b) *read and study* the mission statement and commander's intent (ask: Are the statement and intent clear? Do they sufficiently define the parameters of the operation, while affording the requisite flexibility to the unit?); (c) carefully review the parts of the plan that discuss fire support, civil affairs, military police, intelligence (particularly low level sources), acquisition, and funding. Look to the command's authority to undertake proposed actions. Consider:

- a. Express authority (e.g., the mission statement).
 - b. Implied authority (e.g., the authority to detain civilians can be implied from the mission to "restore order"; the authority to undertake minor, short-term repairs to a civilian power plant, thereby enabling lights to operate, can be implied from the mission to "enhance security and restore civil order").
 - c. Inherent authority (e.g., authority—always—to protect the force).
 - d. Watch out for "mission creep," in that you should help the commander stay in his lane. When dealing with the State Department (DoS), typically through the Country Team, do not presume DoD/DoS synchronization. Protect the commander and use technical channel communications and resources. Remember that "color of money" issues are important, particularly in post-combat stability, security, transition, and reconstruction (SSTR) operations. See this Handbook's Fiscal Law Chapter.
3. When called upon to proofread an order, try to use the following checklist:
- a. Does the order use doctrinally-established terms?
 - b. Is there sufficient detail to permit subordinate commanders to accomplish the mission without further instructions?
 - c. Is there sufficient detail for subordinate commanders to know what other units are doing?
 - d. Does the order focus on essential tasks?
 - e. Does the order limit the initiative of subordinate commanders? That is, does it prescribe details of execution that lie within the subordinate commanders' province?
 - f. Does the order avoid qualified directives such as "try to hold" or "as far as possible"?
 - g. After finishing the order, does the reader have a grasp of the "big picture" of the operation?

II. OPERATION PLANS AND ORDERS IN THE JOINT ARENA

A. The Joint Task Force (JTF) OPLAN in Context.

1. Almost all future contingency operations will be based on the JTF, which will consist of combat and support units from all Services. The JTF will have one commander, who will be responsible for coordinating the complex interplay between the Services to produce maximum combat power. The JTF OPLAN is the mechanism by which this objective is planned. It does not exist in a vacuum. In that regard, as a supporting plan to the OPLAN of a particular Combatant Command, the JTF OPLAN must reflect the guidance contained in the Combatant Command OPLAN and be structured in such a way as to assist in the overall accomplishment of the Combatant Command mission.

2. Combatant Command OPLANs are the mechanisms through which Combatant Commanders (CCDRs) will accomplish national security objectives, as well as the derived military objectives and tasks assigned to them in the Joint Strategic Capabilities Plan (JSCP). This is one of the principal documents prepared by the Chairman of the Joint Chiefs of Staff (CJCS) for the purpose of translating national security policy (formulated by the National Security Council (NSC)) into strategic guidance, direction, and objectives for operational planning by Combatant Commands.

3. Planning for military operations is conducted either deliberately or in crisis action mode.

a. *Deliberate (a/k/a contingency) planning.* Deliberate planning is triggered by the JSCP for the development of Combatant Command OPLANs or other plans. Deliberate planning involves four phases: (1) strategic guidance; (2) concept development; (3) plan development; and (4) plan refinement.

b. *Crisis action planning.* Crisis action planning is initiated by CJCS orders during a crisis, resulting in the development of an OPORD. Crisis action planning involves three phases: (1) situational awareness; (2) planning; and (3) execution.

4. As indicated earlier, JOPES is a single, standardized framework for developing and executing plans and orders, and is used to coordinate the actions of the various Services to accomplish a mission. It prescribes a standardized format that is uniform, predictable, and thorough. Judge Advocates should be familiar with the JOPES format for constructing OPLANs and OPORDs because the relevant information will be located in standardized areas in the plan. For example, the legal annex will always be Appendix 2 to Annex E. The ROE are always Appendix 7 to Annex C. Note that the format and annexes for JOPES plans and orders differs slightly from the standard format and annexes for Army plans and orders.

B. Reviewing Plans and Mission Orders.

1. *Types of Plans and Mission Orders.* Units plan for specific contingencies and missions with OPLANs or contingency plans (CONPLANs). CONPLANs are abbreviated and require additional planning to become OPLANs. Once the time of execution is set, an OPLAN becomes an OPORD. Combatant Commands, and units down to the Division level, prepare and maintain OPLANs and CONPLANs days, months, or even years prior to execution. These plans, in conjunction with the forces assigned or apportioned to the CCDR, enable the staff to develop the Time Phased Force Deployment Data (TPFDD). The TPFDD is a sequenced plan that details the flow of forces into theater using available lift or transport assets. It determines the priority and sequence of units that the JA must ensure are trained in the ROE, and will impact the composition and availability of legal assets in theater.

2. *Responsibility for Plan and Order Review.* Operational Law attorneys must periodically review all existing OPLANs and CONPLANs, though the responsibility for the review rests with the Staff Judge Advocate (SJA). The plans review process must be continuous, with the SJA's representative in constant coordination with the G-3 Plans (or the J-3/5 or J-5 if the JA is working with a JTF element). The SJA's representative must be in the decision-making cycle not only of his or her unit, but of the next higher unit as well. The JA should be a member of the plans team and a "known commodity," not an interloper in the operations planning process.

3. At brigade level and below, written and oral mission orders are often prepared and executed within hours.

4. *The OPLAN/OPORD Review Process.* The appendix to this chapter contains an OPLAN checklist using the JOPES format. Though structured for the review of OPLANs at higher echelons, the checklist offers an extensive list of issues to look for in plans and mission orders at all levels of command. Judge Advocates with more experience than time may prefer to use a shorthand approach to OPLAN/OPORD review. The FAST-J method, which precedes the OPLAN checklist, is a good generalized mechanism for this review.

5. *Developing the Legal Appendix to an OPLAN.* A detailed and easily understood Legal Appendix to an OPLAN/OPORD, complete with relevant references, is essential. Specific Legal Annexes or Appendices must be tailored to each operation, and developed on the basis of individual mission statements and force composition. In addition, pay particular attention to tailoring a "General Order Number One" to each operation. For example, what worked (and made sense) in a conventional conflict may not be prudent for a UN peacekeeping operation. The appendix to this chapter includes relevant JOPES formats, as well as an example of Appendix 4 to Annex E (Legal) for U.S. Forces Haiti, the U.S. component of the UN Mission in Haiti (UNMIH), FRAGO 16 of OPLAN 2380 (Uphold Democracy).

6. *Personal Preparation for Deployment.* Deploying JAs must ensure that their personal affairs are current and that they are prepared for deployment to include personal equipment, TA-50, weapons qualifications, and necessary security clearances. SJAs and other leaders must train subordinate JAs on preparation for, and execution of, deployment.

7. *Preparation of the Legal Deployment Package.* A deployment package includes tactical and office equipment, office supplies, and reference materials. This equipment should be packed and ready for deployment at

all times. Store deployment materials in footlockers, plastic truck boxes, or other containers, and keep them up to date to prevent delays during the deployment sequence. Check the contents and condition of the containers according to a schedule. Determine how the deployment package can be palletized. Keep load plans for vehicles on file. Know how to prepare vehicles and equipment for air movement or shipment. In most units, the SJA deployment package is the responsibility of the OPLAW Attorney or NCO, but the Legal Administrator and the Chief Paralegal NCO must participate in the preparation and care of the deployment package. Train on executing the office deployment plan. Take the deployment package to the field. Tailor the materials for your unit's AO and likely missions. The deployment package should include all applicable SOFAs; country law and area studies; and publications of the Combatant Command with responsibility for the country in which operations will occur.

8. *Deployment SOP.* Deployable SJA offices must maintain an up-to-date deployment SOP, checklists and "smart," or "continuity," books. Corps and Division SOPs will necessarily vary as a result of differences in missions and force composition. To the extent possible, SOPs for SJA offices operating in the same theater should be coordinated for the purpose of ensuring uniformity and consistency of approach toward the provision of legal services to combat commanders. Deployment SOPs must be exercised and refined periodically.

THE FAST-J METHOD FOR OPLAN/OPORD REVIEW

1. **FORCE**

When and what do we shoot?

Mission?

Commander's Intent?

ROE?

2. **AUTHORITY**

To conduct certain missions

- "Law enforcement"
- Training (FMS, FAA)
- HCA

To capture/detain locals

3. **STATUS**

Ours

- Law of the Flag (combat or vacuum [e.g., Somalia])
- SOFA
- Other (e.g., Admin. & Tech., P. & I. through Diplomatic Note)

Theirs

- Status
- Treatment
- Disposition

4. **THINGS**

Buying (Contracting)

Breaking (Claims)

Blowing Up (Targeting)

5. **JUSTICE**

Jurisdiction (Joint or service specific)

Convening Authorities

Control Measures (GO # 1)

TDS, MJ Support

APPENDIX

FORMATS FOR LEGAL APPENDICES

[See APEX Planning Formats and Guidance, *available at* http://www.dtic.mil/cjcs_directives/cjcs/manuals.htm]
NOTE: ADDITIONAL SAMPLE LEGAL ANNEXES ARE CONTAINED IN THE JAGCNET (CLAMO) DATABASE.

(Standardized APEX Format, **Rules of Engagement Appendix**)

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APPENDIX 7 TO ANNEX C TO USEUCOM OPLAN 4999-12 () RULES OF ENGAGEMENT (ROE) ()

() References: List DoD Directives, rules of engagement (ROE) issued by the CJCS, and existing and proposed ROE of the supported commander to be applied when conducting operations in support of this OPLAN.

1. () Situation.

a. () General. Describe the general situation anticipated when implementation of the plan is directed. Provide all information needed to give subordinate units accurate insight concerning the contemplated ROE.

b. () Enemy. Refer to Annex B, Intelligence. Describe enemy capabilities, tactics, techniques, and probable COAs that may affect existing or proposed ROE on accomplishment of the U.S. mission.

c. () Friendly. State in separate subparagraphs the friendly forces that will require individual ROE to accomplish their mission; for example, air, land, sea, SO, hot pursuit. Where appropriate, state the specific ROE to be applied.

d. () Assumptions. List all assumptions on which ROE are based.

e. () Legal Considerations.

2. () Mission. Refer to the Basic Plan. Further, state the mission in such a way that ROE will include provisions for conducting military operations according to the "Laws of War."

3. () Execution.

a. () Concept of Operation

(1) () General. Summarize the intended COA and state the general application of ROE in support thereof. Indicate the time (hours, days, or event) the ROE will remain in effect.

(2) () U.S. National Policies. Refer to appropriate official U.S. policy statements and documents published by the command pertaining to ROE and the Laws of War. Include reference to ROE for allied forces when their participation can be expected. When desired, include specific guidance in a tab. Refer to a separate list of NO STRIKE targets, which may include facilities afforded special protection under international law.

b. () Tasks. Provide guidance for development and approval of ROE prepared by subordinate units.

c. () Coordinating Instructions. Include, as a minimum:

(1) () Coordination of ROE with adjacent commands, friendly forces, appropriate second-country forces, neutral countries, appropriate civilian agencies, and Department of State elements.

(2) () Dissemination of ROE.

(3) () Provision of ROE to augmentation forces of other commanders.

(4) () Procedures for requesting and processing changes to ROE.

4. () Administration. Provide requirements for special reports.

5. () Command and Control. Refer to the appropriate section of Annex K. Provide pertinent extracts of information required to support the Base Plan, including:

a. () Identification, friend or foe, or neutral (IFFN) ROE policy.

b. () Relation of ROE to use of code words.

c. () Specific geographic boundaries or control measures where ROE are applicable.

d. () Special systems and procedures applicable to ROE.

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(Standardized APEX Format, **Legal Appendix**)

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APPENDIX 2 TO ANNEX E TO USEUCOM OPLAN 4999-12 () LEGAL ()

() References: Cite the documents specifically referred to in this plan element.

1. () Situation.

- a. () Legal Basis for the Operation. Recite appropriate international and domestic law.
- b. () General Order Number One. Recite for wide dissemination.
- c. () General Guidance. See appropriate references, including inter-Service support agreements.

2. () Mission.

3. () Execution.

- a. () Concept of Legal Support. Describe how legal will support the overall operation.
- b. () Tasks. Identify tasks to accomplish legal support. For the following state policies, assign responsibilities, and cite applicable references and inter-Service support agreements:

- (1) () International Legal Considerations.
- (2) () Legal Assistance.
- (3) () Claims.
- (4) () Military Justice.
- (5) () Acquisitions During Combat or Military Operations.
- (6) () Fiscal Law Considerations.
- (7) () Legal Review of Rules of Engagement.
- (8) () Law of War.
- (9) () Environmental Law Considerations.
- (10) () Intelligence Law Considerations.
- (11) () Humanitarian Law.
- (12) () Operations Other Than War.
- (13) () Nuclear, Biological and Chemical Weapons.
- (14) () Targeting and Weaponry (including nonlethal weapons).
- (15) () Enemy Prisoners of War.
- (16) () Interaction with the International Committee of the Red Cross and other nongovernmental and Private Voluntary Organizations (NGOs/PVOs).

4. () Administration and Logistics. Identify administrative and logistics requirements for legal support.

5. () Command and Control. Identify command relationships for legal support.

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SAMPLE LEGAL APPENDIX

APPENDIX 4 TO ANNEX E TO USFORHAITI OPORD(U)
LEGAL (U)

(U) **REFERENCES:**

- a. UN Charter (U)
- b. UN Security Council Resolutions 867 (1993), 905, 917, 933, 940, 949, 964 (1994), 975 (1995)(U)
- c. Multinational Force (MNF) Status of Forces Agreement, dated 8 Dec 1994 (U)
- d. UN Status of Mission Agreement, dated XXXXXXXX (U)
- e. Agreement for Support of UNMIH, dated 19 Sep 1994 (U)
- f. Governors Island Agreement of 3 July 1993 (U)
- g. UN Participation Act (UNPA), 22 U.S.C. § 287 (U)
- h. Foreign Assistance Act (FAA), 22 U.S.C. § 2151-2429 (U)
- i. Joint Pub 0-2, Unified Action Armed Forces (UNAAF) (U)
- j. U.S.-Haiti, Bilateral Mutual Defense Assistance Agreement, dated 28 Jan 1955 (U)
- k. International Agreement Negotiation: DoD Directive 5530.3, and CINCUSACOM 5711.1A (U)
- l. Service regulations on Legal Assistance: AFI 51-504, AR 27-3, JAGMAN (USN/USMC) (U)
- m. Uniform Code of Military Justice and Manual for Courts-Martial, United States, 1984 (U)
- n. Service regulations on Military Justice: AFI 51-201, AFI 51-202, AR 27-10, JAGMAN (U)
- o. CINCUSACOMINST 5710.3A, Political Asylum (U)
- p. Claims: AR 27-20, DA Pam 27-162, JAGMAN, JAGINST 5890.1 AFM 112-1B, DoD Directive 5515.8 (U)
- q. International Law: DA Pam 27-1 (Treaties Governing Land Warfare), DA FM 27-10 (Law of Land Warfare), NWP 9 (Rev. A)/FMFM 1-10 (Commander's Handbook on the Law of Naval Operations), AFP 110-20 (Selected International Agreements), AFP 110-31 (International Law-The Conduct of Armed Conflict and Air Operations), AFP 110-34 (International Law-Commander's Guide to the Law of Armed Conflict) (U)
- r. Control and Registration of War Trophy Firearms: AR 608-4, OPNAVINST 3460.7A, AFR 125-13, MCO 5800.6A (U)

1. a. (U) **General Guidance.** JTF USFORHAITI will conduct operations in Haiti as the U.S. military component of the United Nations Mission in Haiti (UNMIH), OPCON to the Commander, UNMIH. Reference (a) establishes the general legal foundation for peacekeeping operations (Chapter VI) and peace enforcement operations (Chapter VII). References (b), (d), (e), and (f) are the specific authorizations for the UNMIH. References (g) and (h) contain statutory authority for U.S. manpower and logistics contributions to United Nations operations. Reference (i) establishes the general policy for addressing legal issues of U.S. joint service operations.

- b. (U) The JTF SJA will:
 - (1) Provide legal advice to JTF and Staff.
 - (2) Serve as a single point of contact for operational legal matters affecting forces under the operational command of JTF within Haiti.
 - (3) Monitor foreign criminal jurisdiction matters involving U.S. personnel within Haiti.
 - (4) Ensure all plans, rules of engagement (ROE), policies, and directives, are consistent with the DoD Law of War Program and domestic and international law.
 - (5) Monitor foreign claims activities within country.

2. (U) **Specific Guidance.**

- a. (U) **Claims.**
 - (1) (U) U.S. Claims. The Department of the Army (DA) has been assigned Executive Agency, UP ref (p), for claims arising from U.S. operations in Haiti. An Army Judge Advocate will be appointed as a Foreign Claims Commission to adjudicate U.S. claims, where possible, and forward them to DA. Any residual claims resulting from U.S. operations should be addressed through the SJA, USFORHAITI, to the Chief, Foreign Claims Branch, U.S. Army Claims Service, Ft. Meade, Maryland, DSN 923-7009, Ext. 255.
 - (2) (U) UN Claims. Per ref (e), the UN has held the United States and all U.S. members of the UNMIH harmless from all claims arising from acts or omissions committed by U.S. personnel serving with the UNMIH.

Commanding officers of U.S. personnel assigned to the UNMIH will be sensitive to any damage caused by members of their command. Claims arising from UN operations will be submitted per UN direction, in accordance with the UN claims procedures, ref (d), and UN directives.

(3) (U) Claims investigations. Any injury of a civilian or damage of personal property will be reported to the SJA, JTF USFORHAITI, immediately. JTF USFORHAITI will coordinate with the commanding officer of the service member involved in any alleged claim to ensure that an officer from that service is appointed to conduct a thorough investigation into the matter. All claims investigations will be promptly completed and forwarded to the SJA for review. Information copies will be forwarded to the SJA, U.S. Atlantic Command (USACOM). Unless otherwise directed, the SJA, JTF USFORHAITI, will review the investigation, and after approval by JTF USFORHAITI, forward the report through the appropriate chain of command for adjudication and payment.

b. (U) International Legal Considerations.

(1) (U) Status of Forces. UP of para. 52, of ref (c), any residual MNF personnel in country after transition to UNMIH will be covered by the MNF SOFA, ref (c). Reference (d) details the status of UNMIH, its component personnel, and assets. All questions regarding status and privileges should be referred to the Legal Advisor, Commander, UNMIH. Any U.S. bilateral security assistance elements will be given administrative and technical status of embassy personnel, as provided for in Article V of ref (j), upon negotiation of an implementing agreement.

(2) (U) Peacekeeping Operations. The UNMIH is a peacekeeping operation as described in Chapter VI, reference (a). It is organized under the command of the United Nations, exercised on behalf of the Security Council and the Secretary-General by a Special Representative. Both a military and a civilian component report to the Special Representative. Logistics support may be provided in part by one or more contractors. Participating nations give operational control of their military component forces to the Military Component Commander, UNMIH, but retain all other functions of command.

(3) (U) Jurisdiction Over Non-UNMIH Personnel. Per ref (d), jurisdiction over non-UNMIH personnel remains with the GOH.

(4) (U) Political asylum. UNMIH personnel are not authorized to grant political asylum. U.S. personnel should forward requests for asylum in the U.S. by immediate message to CINCUSACOM and refer applicant to the U.S. diplomatic mission. Temporary refuge will be granted only if necessary to protect human life. Reference (o) provides detailed information concerning political asylum and temporary refuge.

c. (U) Legal Assistance. JTF USFORHAITI will make arrangements for legal assistance for U.S. personnel of the UNMIH. U.S. service components should ensure maximum use of pre-deployment screening for wills and powers of attorney to reduce demands for emergency legal assistance. Component commanders will make arrangements for legal assistance for personnel assigned or attached to their respective forces. Use inter-service support to maximum extent. Ref (l) applies.

d. (U) Military Justice.

(1) (U) The inherent authority and responsibilities for discipline of the commanders of U.S. military personnel assigned to UNMIH, described in references (i), (m) and (n), remain in effect.

(2) (U) Courts-martial and nonjudicial punishment are the responsibility of service component commands, IAW service regulations.

(3) (U) Component commanders will establish appropriate arrangements for disciplinary jurisdiction, including attachment orders for units and individuals, where appropriate.

(4) (U) Immediately report to component and the JTF SJA all incidents in which foreign civil authorities attempt to assume jurisdiction over U.S. forces. The SJA, JTF USFORHAITI, will coordinate all military justice actions with the SJA, USACOM.

(5) (U) Jurisdiction. Under the privileges and immunities enjoyed by the UN, criminal and civil jurisdiction over U.S. members of UNMIH resides solely with the United States. Detailed guidance on the jurisdictional status of the UNMIH is contained in ref (d).

(6) (U) Criminal investigations. JTF USFORHAITI will coordinate with the commanding officer of any U.S. service member who is allegedly involved in an act of criminal misconduct to ensure that an official from the appropriate investigative service is appointed to conduct a thorough investigation into the matter. Allegations against non-military U.S. nationals should be forwarded to an appropriate investigative service after consultation with the SJA, JTF USFORHAITI. Allegations against non-U.S. persons will be forwarded to the UNMIH Special Representative for proper disposition. Completed reports of investigation that involve U.S. nationals shall be reviewed by the SJA, approved by JTF USFORHAITI, and forwarded to the appropriate authority, with copies to the SJA, USACOM, and the UNMIH Special Representative.

e. (U) Reporting violations of the Law of War and ROE.

(1) (U) Acts of violence. UNMIH personnel will report all acts of violence, to include homicides,

assaults, rapes, robberies, abductions, and instances of mayhem or mass disorder, immediately to their commanding officer. Those officers shall immediately pass reports to JTF USFORHAITI and the UNMIH Special Representative. UNMIH personnel will interfere with the actions of Haitian military or police personnel only as authorized by the rules of engagement.

(2) (U) Law of War. Ref (d) requires that military personnel assigned to UNMIH apply the minimum standards of the Law of War contained in ref (q). Component commanders who receive information concerning a possible violation of the Law War and ROE will:

(A) (U) Conduct a preliminary inquiry to determine whether violations were committed by or against U.S. personnel.

(B) (U) Cooperate with appropriate allied authorities should their personnel be involved.

(C) (U) Report all suspected violations to the JTF SJA, as well as through service component channels, according to service regulations, utilizing OPREP-3 procedures.

(D) (U) When U.S. personnel are involved as either victims or perpetrators, or when directed by CINCUSACOM, conduct a complete investigation, preserve all evidence of the suspected violation, and take appropriate corrective and/or disciplinary action.

(E) (U) Provide copies of all OPREPs, initial reports and reports of investigation to SJA, JTF USFORHAITI, and SJA, USACOM.

f. (U) Captured Weapons, war trophies, documents, and equipment. Component commanders will establish immediate accountability for all captured property, including weapons, trophies, documents and equipment. See refs (q) and (r), and MNF Guidelines, for disposition of captured public and private property remaining from MNF operations. UN directives apply to any items seized during the duration of UNMIH.

g. (U) Host Nation Support and Fiscal Authority.

(1) (U) Refs (c) and (d) contain basic provisions for host nation support, which is acquired by bilateral logistics agreements or off-shore contracts.

(2) (U) Fiscal authority is always available for U.S. support to U.S. forces, even when they are assigned a UN mission. UN operational requirements, even those involving U.S. personnel, should be supported under the authority discussed below. However, logistics support for U.S. forces which is above and beyond the capacity of UN logistics operations, and determined by the command to be essential to the sustainment of U.S. forces, is authorized under Article II of the U.S. Constitution and 22 U.S.C. § 2261.

(3) (U) Authority for support to other nations participating in MNF, provided under provisions of sections 506 (Drawdown), 451 and 632 (Peacekeeping) of the FAA [ref (h)], will terminate upon transition of those contingents to UNMIH.

(4) (U) U.S. support to UN operational requirements, the UNMIH staff, or UNMIH contingent nations should be effected pursuant to ref (e). Ref (e) and section 2357 of ref (h) require a request in writing from the UN, with a commitment for reimbursement. UN procedures should be used to ensure proper documentation of the request, and proper accounting of funds for reimbursement. Support for the UN may also be provided under separate authority, pursuant to section 7 of the UN Participation Act (22 U.S.C. § 287), where reimbursement may be waived by the NCA.

(5) (U) Economy Act reimbursement from DoS, cross-servicing agreements, separate 607 agreements with participating countries, and other alternate authorities may be relied on to support third countries in the absence of a UN request. Cross-servicing agreements are currently in effect with several nations participating in UNMIH. Copies of the agreements can be obtained from J-4 or SJA, USACOM. As a last resort, in cases of an emergency request for food or shelter from other contingents, the President's Article II authority may be relied on to support a DoD response.

h. (U) Legal Review of the Rules of Engagement (ROE). UNMIH ROE are in effect as of 31 March 95. In cases not covered by the UNMIH ROE, U.S. Standing ROE (SROE) are in effect. U.S. MNF forces remaining in Haiti after transition to UNMIH will continue to operate under MNF ROE until redeployment to home station. The Commander, UNMIH, may promulgate further UN ROE policies. The SJA should review any policies or proposed changes to the UNMIH ROE, to ensure compliance with PDD 25 and other U.S. law and policy. Any modifications to the UNMIH ROE that will effect U.S. forces should be coordinated with USACOM prior to implementation.

i. (U) Law Enforcement and Regulatory Functions. All MNF General Orders are in effect until 31 March; they remain in effect for residual MNF forces in country. Commander, USFORHAITI may promulgate appropriate disciplinary regulations for U.S. forces in Haiti.

j. (U) Component and Supporting Commanders' and Staff Responsibilities: Subordinate component commanders will:

(1) (U) Ensure that all plans, orders, target lists, policies, and procedures comply with applicable law and

policy, including the Law of War and ROE.

(2) (U) Report on all legal issues of joint origin or that effect the military effectiveness, mission accomplishment, or external relations of USFORHAITI to the JTF SJA.

(3) (U) Provide a weekly status of general legal operations for their component to the JTF SJA. This report should include, at a minimum, the following information:

(A) (U) International law - incidents effecting any bilateral or UN agreements, a potential violation of the law of war or ROE, and diplomatic incidents involving U.S. forces the forces, government agents, or nationals of another country.

(B) (U) Military justice - incidents which may give rise to disciplinary action under the UCMJ, as well as the final disposition of such actions, and any U.S. forces in pretrial confinement. Immediately report serious incidents.

(C) (U) Claims - any incidents which may give rise to a claim against the United States or the UN.

k. (U) Acquisitions During Combat or Military Operations.

(1)(U) U.S. forces will acquire most goods and services in Haiti in accordance with UN procedures for contracting, per the authority discussed in paragraph g, above.

(2) (U) Goods and services to satisfy U.S.-specific requirements will be obtained in accordance with applicable U.S. and host nation laws, treaties, international agreements, and directives. Commander, USFORHAITI, does not have the authority to waive any of the statutory or regulatory requirements contained in the Federal Acquisition Regulation (FAR).

(3) (U) Only contracting officers may enter into and sign contracts on behalf of the U.S. Government. Only those persons who possess valid contracting warrants may act as contracting officers and then only to the extent authorized. Only those persons who have been appointed as ordering officers by competent authority may make obligations under the terms of, or pursuant to contracts.

(4) (U) Avoid unauthorized commitments. Although an unauthorized commitment is not binding on the U.S. Government, in appropriate cases it may be ratified by an authorized person in accordance with the FAR provisions. Unratified unauthorized commitments are the responsibility of the person who made the commitment. In appropriate cases, such persons may also be subject to disciplinary action.

l. (U) International Agreements and Congressional Enactments. All international agreements will be in writing. Pursuant to reference (k), agreements of any kind in which the U.S. or a U.S. military component is a party require the written authorization of CINCUSACOM. Agreements made under UN authority and procedures are not affected by reference (k).

m. (U) Nuclear, Biological, and Chemical Weapons. Riot control agents are an authorized method of employing non-deadly force under the UNMIH ROE. No further U.S. authorization is required for their employment.

n. (U) Targeting. A judge advocate will review all fire support targeting lists to ensure compliance with the Law of War and ROE, and will act as a member of the JTF targeting cell.

o. (U) Detainees. [The UNMIH will exercise only that degree of control over non-UNMIH persons that is necessary to establish and maintain essential civic order. UNMIH is not tasked to perform Haitian law enforcement or judicial responsibilities.] Wherever practicable, and as soon as possible, deliver custody of non-UNMIH personnel detained for suspected offenses against UN personnel or property to official representatives of the GOH. Further guidance regarding the detention of non-UNMIH persons is contained in the UNMIH rules of engagement, and ref (d).

p. (U) Interaction with the International Committee of the Red Cross (ICRC). All interaction with non-governmental organizations (NGOs) should be accomplished through the UNMIH staff, including the civilian staff of the Special Representative. The SJA will continue to monitor all Law of War issues and provide subject matter expertise to the UNMIH staff.

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