THE NATIONAL SECURITY LAW QUARTERLY



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The Center for Law and Military Operations (CLAMO) has published the *National Security Law Quarterly* since 2015. Prior to the 20-3 issue, CLAMO published *NSLQ* as the *Operational Law Quarterly*.

As opposed to a traditional, academically focused law review, the *NSLQ* publishes articles of practical application for military legal professionals.

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The *NSLQ* welcomes submissions from every branch of the U.S. Armed Forces and international partners. Submissions may be in the form of a first-person account, law review, after-action review, or an account of lessons learned. Each submission must be a Microsoft Word file, single-spaced, and in 12-point Arial font. Authors should submit articles ranging from 1,500 to 3,000 words, but exceptions will be considered on an individual basis. The editors prefer that submissions adhere to *The Bluebook: A Uniform System of Citation* (21st ed. 2020), but understand that judge advocates and other legal personnel may have constraints on their time that prevent strict adherence. As such, any submission that faithfully cites its sources will be accepted regardless of format. Submissions should include a title, the author's command, and a short description of the submission. Submissions must be submitted via email to the editor-in-chief or to the CLAMO email at usarmy.pentagon.hqda-tjaglcs.mbx.clamo-tjaglcs@army.mil.

CONTENT:

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CLAMO Director Introduction

LTC Michael H. Lamphier, USA
Director, CLAMO

Welcome to 2024's second National Security Law Quarterly, Volume 24-2. The following contributors realize that "supporting the warfighter" through relevant articles is one way we all can steward the profession.

LTC Koon and LTC Zehtab kick off this issue with an intriguing article on the seizure of assets linked to the Iranian Republic Guard Corps. These assets went through judicial forfeiture and were then transferred to Ukraine.

MAJ Roan provides an in-depth overview of the Foreign Military Sales program and what authorities and restrictions are necessary to know when dealing in foreign military sales.

LTC Mahoney, CPT Fitzgerald and CPT Cuervo provide lessons learned on the protocol of military diplomacy. This article focuses on the Indo-Pacific and highlights what Judge Advocates should be keeping an eye out for if they find themselves dealing with such an issue.

SFC Angle conducted a 12-month capabilities assessment of the paralegals in the Army. Utilizing the Kotter Model for organizational change, SFC Angle provides an innovative concept to tackle the current gaps that have been observed in paralegal education and experience.

LTC Connaroe sheds light on counter-lawfare and how it has been utilized in context with the recent earthquake in Taiwan.

Mark your calendars for 3 June 2024! The Judge Advocate General's Legal Center and School will once again host the Fugh Symposium in June 2024.

Need a resource?

If you can't find something on our sharepoint, reach out to us directly. https://intelshare.intelink.gov/sites/clamo/_layouts/15/start.aspx#/

Remember to always Support the Warfighter. Publishing is "A" way.

Marwan 1: How U.S. Central Command Transferred Seized Iranian Ammunition to Ukraine

LTC Nolan T. Koon, USA
LTC Sean B. Zehtab, USA

"*With this weapons transfer, the Justice Department's forfeiture actions against one authoritarian regime are now directly supporting the Ukrainian people's fight against another authoritarian regime. We will continue to use every legal authority at our disposal to support Ukraine in their fight for freedom, democracy, and the rule of law*."

Attorney General Merrick B. Garland[1]

Introduction

On December 1, 2022, the USS *Lewis B Puller*, an expeditionary mobile base ship assigned to the U.S. 5th Fleet and U.S. Naval Forces Central Command, intercepted a fishing trawler, the *Marwan 1* (*Marwan*), a flagless vessel, in the Gulf of Oman.[2] A security team from the *Lewis B Puller* boarded the trawler and discovered more than 50 tons of ammunition, proximity fuses, and rocket propellant (lethal aid)[3], which was linked to the Iranian Republican Guard Corps (IRGC) and destined for Yemeni Houthis.[4]

Although there are longstanding law of armed conflict and law of the sea concepts regarding these situations, U.S. Central Command (USCENTCOM) could not simply take this lethal aid as war booty, like U.S. Forces did with insurgent weapons caches in Iraq, Syria, or Afghanistan. The Lieber Code recognizes the axiom "*Victori spolia*" (*i.e.*, to the victor the spoils); a belligerent State may appropriate property used for hostile purposes found on the battlefield.[5] However, the United States and Iran are not belligerents in a recognized international armed conflict, and the lethal aid was not found or

[1] Office of Public Affairs, U.S. Department of Justice Press Release, Attorney General Merrick B. Garland Statement on Transfer of Forfeited Munitions to Ukraine, October 4, 2023. (https://www.justice.gov/opa/pr/attorney-general-merrick-b-garland-statement-transfer-forfeited-munitions-ukraine).
[2] United States' Verified Complaint for Forfeiture *In Rem* at 8, *United States v. 1.063 Million Rounds of 7.62X54MM Ammunition; 24,000 Rounds of 12.7MMX99MM Ammunition; 6,960 Proximity Fuses for Rocket-Propelled Grenades; and 2,000 KG of Propellant for Rocket-Propelled Grenades*, No. 1:23-cv-00880, (U.S. District Court for the District of Columbia).
[3] The seized lethal aid included 1.063 million rounds of 7.62x54 mm ammunition; 24,000 rounds of 12.7x99 mm ammunition; 6,960 proximity fuses for rocket-propelled grenades; and 2,000 KG of propellant for rocket-propelled grenades.
[4] United States' Verified Complaint for Forfeiture *In Rem* at 10–11.
[5] "Private property, unless forfeited by crimes or by offenses of the owner, can be seized only by way of military necessity, for the support or other benefit of the army or of the United States. If the owner has not fled, the commanding officer will cause receipts to be given, which may serve the spoliated owner to obtain indemnity." Francis Lieber, INSTRUCTIONS FOR THE GOVERNMENT OF ARMIES OF THE UNITED STATES IN THE FIELD ¶¶ 38 and 45 (1898), https://tile.loc.gov/storage-services/service/ll/llmlp/Instructions-gov-armies/Instructions-gov-armies.pdf.

abandoned enemy property on some battlefield.[6]

The international laws applicable to these seizures include United Nations Security Resolution (UNSCR) 2216[7] and Article 110, U.N. Convention on the Law of the Sea (UNCLOS),[8] which concern an arms embargo against the Houthi and extraterritorial jurisdiction on the high seas, respectively. UNSCR 2216 calls on all member states to "immediately take the necessary measures to prevent the direct or indirect supply, sale or transfer" of arms to the Houthis.[9] The United States enforces UNSCR 2216 consistent with international and domestic law.

Additionally, U.S. domestic law provided several options to potentially seek the judicial forfeiture of the illicit aid, as assets of a foreign terrorist organization (FTO),[10] and then transfer the same to Ukraine under Presidential Drawdown Authority (PDA) or the Ukraine Security Assistance Initiative (USAI).

This endeavor operationalized actions supporting strategic competition and required a whole-of-government approach.[11] Over the span of several months, USCENTCOM led interagency coordination with other combatant commands, operational units, attorneys, law enforcement agents, and policymakers.[12] The interagency collaborated in the development of the legal and factual bases for using the judicial asset forfeiture process to take legal title of the lethal aid and then transfer it to Ukraine.

On October 4, 2023, after obtaining a successful civil forfeiture judgment in U.S. District Court, USCENTCOM and the Department of Justice (DOJ) announced the transfer of more than 1 million 7.62mm ammunition to Ukraine.[13] Not only could Ukraine use this ammunition to defend its territorial

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[6] DoD FMR Vol. 12, Chapter 25, 2.0 DISPOSITION OF UNCLAIMED PROPERTY (2502), https://comptroller.defense.gov/Portals/45/documents/fmr/current/12/12_25.pdf.

[7] United Nations Security Council Resolution 2216 S/RES/2216 (2015), https://www.undocs.org/S/RES/2216%20 (2015).

[8] United Nations Convention on the Law of the Sea, Dec. 10, 1982, 1833 U.N.T.S. 397 [hereinafter UNCLOS].

[9] United Nations Security Council Resolution 2216 S/RES/2216 ¶¶ 14-17 (2015), https://www.undocs.org/S/RES/2216%20 (2015).

[10] 18 U.S.C. § 981.

[11] Joint Chiefs of Staff, Joint Concept for Competing vii (February 10, 2023). The Joint Concept for Competing describes how the Joint Force must work with other agencies to compete with our adversaries:

> Recognizing the inherently strategic nature of competition, the Joint Force will routinely play a supporting role to other USG departments and agencies, allies and partners, and other interorganizational partners. Integrated competitive strategies and campaigns require **interdependence** and **mutual support**. The Joint Force supports national competitive strategies by conducting tasks, activities, or operations in conjunction with, and in support of, interorganizational partners. The Joint Force and its partners **leverage each other's authorities and capabilities** to optimize their mutual benefit and mitigate their strategic and operational risk.

Emphasis in the original. *Id.* at vii.

[12] Agencies involved included USCENTCOM planners and intelligence analysts, USCENTCOM Interagency Group (IAG), and the USCENTCOM Office of the Staff Judge Advocate (CCJA); the U.S. Department of Justice, Counterterrorism Section (DOJ); the U.S. Attorney's Office for the District of Columbia (USAO); the U.S. Immigration and Customs Enforcement, Homeland Security Investigations; the Office of the Chairman of the Joint Chiefs of Staff (OCJCS) and the Joint Staff; and the Office of the Secretary of Defense (OSD).

[13] Press Release, U.S. Department of Justice, Over One Million Rounds of Ammunition Seized En Route from Iran to Yemen Transferred to Ukrainian Armed Forces (October 5, 2023), https://www.justice.gov/opa/pr/over-one-million-rounds-ammunition-seized-en-route-iran-yemen-transferred-ukrainian-armed/. See Natasha Bertrand, *Exclusive: US will transfer weapons seized*

border against the Russian invasion, but the transfer could also sow dissension between Iran and Russia, while dissuading Iran from future smuggling operations.

The following sections discuss in greater detail several of the international and domestic legal issues related to seizure and forfeiture. First, this article examines UNSCR 2216 and UNCLOS 110, which provided the international legal authorities for the boarding and the seizure of the illicit cargo. Second, the article describes the domestic legal bases for forfeiting the seized material and then transferring it to Ukraine under PDA and the USAI.

UNSCR 2216

In February 2015, during Yemen's civil war, Houthi insurgents with links to Iran and Hezbollah captured Sana'a, the country's capital.[14] Shortly thereafter, on April 14, 2015, the U.N. Security Council adopted UNSCR 2216.[15] Pursuant to this security resolution, Member States[16] agreed:

> [To] immediately take the necessary measures to prevent the direct or indirect supply, sale or transfer [of arms] to, or for the benefit of the Houthis.[17]. . .
>
> Upon the discovery of such arms, Member States shall seize and dispose (such as through destruction, rendering inoperable, storage or transferring to a State other than the originating or destination States for disposal) of such items[.][18]

In addition to UNSCR 2216, the U.N. Security Council established a Panel of Experts (PoE) to monitor and publish annual reports regarding the Yemen civil war and the effectiveness of the targeted arms embargo.[19] The PoE identified a "repeated practice of Iran providing military support, particularly in the form of conventional weapons and munitions, to the Houthi."[20] Based on several interdictions of attempted arms embargo violations, it became clear that Iranian smuggling networks used traditional cargo vessels, such as dhows,[21] which operated without proper registration papers and without transmitting an automatic identification signal.[22] Importantly, the U.N. PoE documented maritime interdictions that involved similar routes, similar indicia

from Iran to Ukraine, CNN (Oct. 4, 2023, updated October 5, 2023), https://www.cnn.com/2023/10/04/politics/us-iran-seized-weapons-ukraine/index.html.

[14] United States' Verified Complaint for Forfeiture *In Rem* at 3.

[15] U.N. Panel of Experts on Yemen, transmitted by letter dated Feb. 21, 2023, from Debi Prasad Dash, Cornelius Nagbe, Lydelle Joubert, and Wolf-Christian Paes established pursuant to resolution 2140 (2014) concerning the Yemen Conflict between the Houthi and the U.N.-recognized Yemeni Government and Arms Embargo, ¶¶ 21-23, U.N. Doc. S/RES/2216 (Apr. 14, 2015).

[16] The member states of the U.N. comprise 193 sovereign states, including the United States. *See* United Nations, *Member States*, (Dec. 4, 2023), https://www.un.org/en/about-us/member-states.

[17] S.C. Res. 2216, ¶ 14, U.N. Doc. S/RES/2216 (Apr. 14, 2015).

[18] S.C. Res. 2216, ¶ 16.

[19] S.C. Res. 2216, ¶¶ 21-23.

[20] United States' Verified Complaint for Forfeiture *In Rem* at 3.

[21] A dhow is a traditional sailing vessel. See *Dhow*, Cambridge Dictionary, https://dictionary.cambridge.org/us/dictionary/english/dhow.

[22] United States' Verified Complaint for Forfeiture *In Rem* at 6.

(*i.e.*, traveled without displaying a national flag), and similar lethal contraband as those connected with the *Marwan*.[23]

While Iran's weapons smuggling enterprise clearly violated UNSCR 2216, USCENTCOM relied on another international legal authority to board the *Marwan*, to subject it to U.S. domestic law, and to seize its illicit cargo.

Right of Visit to Inspect Stateless Vessels under Article 110, UNCLOS

Under the flag State system, to maintain order on the high seas, a ship is subject to the exclusive jurisdiction of its flag State. Under Article 91, UNCLOS, every vessel at sea must sail under a national flag and every state must "fix the conditions for the grant of its nationality to ships . . . and for the right to fly its flag[.]"[24] This international norm establishes that a state is principally responsible for regulating the conduct on a vessel through the application of its domestic laws.[25]

Because a stateless vessel may attempt to elude state jurisdiction and control, the law of the sea recognizes certain limited circumstances when a non-flag state may exercise extraterritorial jurisdiction over a ship's navigation on the high seas. For instance, Article 110, UNCLOS, provides that a warship may board a foreign ship when there may be *reasonable grounds* to suspect the same is engaged in piracy, engaged in the slave trade, or is *without nationality*.[26]

Although, the United States is not a party to the UNCLOS, mostly because of disputes over deep seabed mining provisions, it has abided by its rules related to navigation on the high seas.[27] These navigation rules represent accepted state practice in the maritime domain, and *opinion juris* followed out of sense of legal obligation.[28] That the UNCLOS, including Art. 110, represents customary international law is the position of the U.S. Navy and has been reaffirmed repeatedly over the years in statements of policy by the United States.[29]

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[23] U.N. Panel of Experts on Yemen, ¶¶ 40-43.
[24] United Nations Convention on the Law of the Sea, Art. 91, Dec. 10, 1982, 1833 U.N.T.S. 438 [hereinafter UNCLOS].
[25] Art. 94, UNCLOS.
[26] Art. 110, UNCLOS.
[27] For a discussion and analysis of the U.S. position on UNCLOS: Office of the Staff Judge Advocate, U.S. Indo-Pacific, Captain Raul (Pete) Pedrozo, edited by Commander Matthew Wooten, and Lieutenant Commander Miles Young, U.S. POSITION ON THE U.N. CONVENTION ON THE LAW OF THE SEA, 97 INT'L L. STUD. 81 (2021).
[28] A recent federal court case observed:

> International law plainly provides that a nation's warship (or law enforcement ship) may stop and board a stateless vessel on the high seas. See UNCLOS art. 110(1)(d); Restatement (Third) of the Foreign Relations Law of the United States § 522(2)(b) (1987) . . . ."[A] warship or clearly-marked law enforcement ship of any state may board [a nongovernmental ship] . . . if there is reason to suspect that the ship . . . is without nationality . . . .")

United States v. Aybar-Ulloa, 987 F.3d 1, 6 (1st Cir. 2021). The right of visit by warships to suspected stateless vessels is a long-held position of U.S. courts. *Id.* at 9. See Department of State, Monica Medina, Assistant Secretary Bureau of Oceans and International Environmental and Scientific Affairs, Assistant Secretary Monica Medina Remarks at the United Nations: The Constitution of the Sea (December 8, 2022). ("[t]he United States' continued view that much of the convention reflects customary international law, and our steadfast commitment to upholding the rights, freedoms, and obligations of all UN member states as reflected in the convention."). *Id.*
[29] For example, the 1994 transmission of the signed UNCLOS treaty from the President to the Senate included stated UNCLOS Art. 110 "reaffirms the right of warships . . . to approach and visit other vessels to ensure that they are not engaged in various illegal activities. This is a right of great importance to the United States." Message From the President of the United

Under the right to approach, a nation's warship may stop and board a stateless vessel under international law for the purpose of ascertaining the vessel's nationality.[30] Stateless vessels do not enjoy the protection of any state and are subject to the domestic laws of the boarding state during inspection.[31] Thus, when the USS *Lewis B Puller* security team boarded the *Marwan* to ascertain her nationality, the vessel became subject to U.S. domestic laws – once it was determined by the USCENTCOM naval force to be without nationality, *i.e*., a stateless vessel.

Civil Asset Forfeiture

Having established the *Marwan* was subject to U.S. extraterritorial jurisdiction, the Department of Defense (DoD) and DOJ set out to identify domestic legal authority to obtain title over the seized IRGC-related lethal aid. Pursuant to 18 U.S.C. § 981(a)(1)(G)(i), all assets, foreign or domestic, of a foreign terrorist organization (FTO) engaged in planning or perpetrating "any Federal crime of terrorism . . . against the United States, citizens or residents of the United States, or their property, and all assets, foreign or domestic, affording any person a source of influence over any such entity or organization" is subject to forfeiture.[32]

Because § 981 entails a civil forfeiture proceeding, a criminal conviction beyond a reasonable doubt is not required. The Government must only demonstrate by a preponderance of the evidence particular property is the asset of an FTO.[33] The DOJ brings these legal actions against the defendant property by filing a civil complaint for forfeiture *in rem*.[34] Any person with an interest in said property is given notice of the proceeding and an opportunity to challenge the Government's forfeiture action in federal court.[35] If the Government prevails on the legal action, the court orders the defendant's property forfeited to the United States, which takes full title and interest in the same.[36]

A U.S. District Court's decision in *United States v. Anti-Tank Guided Missiles, et al*., provided a roadmap for USCENTCOM and the interagency. In this matter, DOJ brought a similar civil forfeiture action involving the smuggling of surface-to-air and anti-tank guided missiles linked to the IRGC.[37] The Government established the IRGC was an FTO for purposes of § 981; the U.S. Department of State had designated the IRGC an FTO as early as April 15, 2019.[38] Because no claimant came forward to declare an interest in the property or otherwise defend, the

States Transmitting United Nations Convention on the Law of the Sea, Treaty Doc. 103-39 30 (Oct. 7, 1994), https://www.foreign.senate.gov/imo/media/doc/treaty_103-39.pdf

[30] Art. 110, UNCLOS.

[31] Craig H. Allen, *The Peacetime Right of Approach and Visit and Effective Security Council Sanctions Enforcement at Sea*, 95 INT'L L. STUD. 400, 424 (2019).

[32] 18 U.S.C. § 981(a)(1)(G)(i).

[33] *Id*.; U.S. Department of Justice, Asset Forfeiture Program (Dec. 1, 2023), https://www.justice.gov/afp/types-federal-forfeiture.

[34] 18 U.S.C. § 983.

[35] *Id*.

[36] 18 U.S.C. § 981.

[37] *United States v. Anti-Tank Guided Missiles, et al.,* No. 20-cv-2299 (D.D.C. Nov. 15, 2021).

[38] United States' Verified Complaint for Forfeiture *In Rem* at 6.

Government moved for default judgment, which the U.S. District Court granted. In its opinion, the court stated:

> Having seized an arsenal of Iranian-made weapons from two vessels in the Arabian Sea, the United States brought this forfeiture action *in rem*. The Defendant Properties are collections of twelve different types of weapons, including anti-tank and surface-to-air missiles. The Government alleges that the Defendant Properties are subject to forfeiture . . . as assets of the [IRGC], a designated terrorist organization. As no one else has claimed an interest or otherwise defended the action . . . [t]he Government now moves for default judgment[.] As the United States has sufficiently demonstrated that the allegations in its Complaint warrant such judgment, the Court will grant the Motion.[39]

While claimants rarely come forward, DOJ policy in civil forfeiture actions requires marshalling enough evidence to meet the preponderance of the evidence standard in order to bring the case.[40] As detailed in the March 31, 2023 verified complaint, the property must be subject to seizure under "18 U.S.C. § 981(a)(1)(G)(i) as domestic and foreign assets of a designated foreign terrorist organization, the [IRGC], which has engaged in planning and perpetrating federal crimes of terrorism as defined in 18 U.S.C. § 2332b(g)(5)."[41]

As the investigative arm of the U.S. Department of Homeland Security focused on, *inter alia*, the cross-border movement of contraband, Homeland Security Investigations special agents worked with USCENTCOM to get the necessary information for DOJ to demonstrate a substantial connection between the seized property and the IRGC. The factual basis also supported an alternative theory of forfeiture set forth in the compliant; to wit, the lethal aid constituted an IRGC "source of influence."[42] The following unclassified information proved crucial in establishing the nexus between the lethal aid on the *Marwan* and the IRGC:

- In mid-November 2022, while the *Marwan* was in the waters off the coast of Iran, the Iranian Navy[43] boarded the vessel and loaded it with ammunition and explosives. The Iranian Navy personnel then attempted to conceal the lethal aid by placing oranges, apples, and soft drinks on top of it.[44]
- The *Marwan* was previously involved in smuggling operations of munitions with participation of

[39] *United States v. Anti-Tank Guided Missiles, et al.,* at 1.
[40] U.S. Department of Justice Criminal Division, Money Laundering and Asset Recovery Section, Asset Forfeiture Policy Manual at 5–16, (2023).
[41] United States' Verified Complaint for Forfeiture *In Rem* at 2.
[42] United States' Verified Complaint for Forfeiture *In Rem at* 11.
[43] The IRGC is understood to be within the supervisory and reporting structure. United States' Verified Complaint for Forfeiture *In Rem* at 9. In the subsequent related civil forfeiture action, the court described the IRGC and its role in providing lethal aid to the Houthis in Yemen. *U.S. v. 8,911 Type 56-1 Assault Rifles, et al., In Rem* at 1-2 (Dec. 1, 2023) (D.D.C.).
[44] United States' Verified Complaint for Forfeiture *In Rem* at 9. 18 U.S.C. § 2332b(g)(5) defines "federal crime of terrorism" and lists the applicable terrorism and terrorism-related crimes.

the Islamic Republic of Iran Navy.[45]
- Parts of the crew member manifest were written in Farsi and a date provided in the Persian calendar format.[46]
- The manifest revealed the port of departure as "Bandar Abbas," which is known as the main base for the Iranian Navy and the headquarters for the IRGC Navy.[47]

On March 31, 2023, DOJ filed a verified complaint against the Defendant Properties in the U.S. District Court for the District of Columbia (District Court).[48] On April 3, 2023, the District Court made a probable cause finding and issued a warrant for arrest *in rem*.[49] The United States sent direct notice of the forfeiture action and a copy of the complaint to the alleged owners of the *Marwan*.[50] In response, the potential claimants had to file a verified claim with the District Court within 35 days of service, but no one filed a claim.[51] Further, on April 22, 2023, the United States provided constructive notice by publicizing the forfeiture action on a public facing Government internet site, http://www.forfeiture.gov, for thirty consecutive days. Any verified claim in response to the constructive notice had to be filed no later than June 22, 2023. Again, no one filed a claim.[52]

Based on the absence of any claims, DOJ moved for entry of default judgment, which the District Court granted on July 20, 2023.[53] In its Default Judgment and Final Order of Forfeiture, the District Court ordered the Defendant Properties "*are forfeited to the United States of America and no right, title or interest in the property shall exist in any other party [and] shall be disposed of according to law*."[54]

USAI and PDA

During the pendency of the forfeiture action, USCENTCOM worked with the U.N. PoE to facilitate their inspection of the lethal aid as part of its UNSCR 2216 mandate.[55] Meanwhile, DoD considered and planned in coordination with the interagency the transportation of the lethal aid to Europe for follow-on divestment to the Ukraine armed forces. The ultimate decision to transfer the IRGC-sourced lethal aid to

[45] *Id.*
[46] *Id.*
[47] *Id.* at 10.
[48] Normally, a legal proceeding can be commenced in any district which any of the acts or omissions giving rise to the cause of action occurred. However, the lethal aid never entered the United States, so DOJ relied on the default venue provision for forfeiture actions. Per 28 U.S.C. § 1355(b)(2), whenever property "subject to forfeiture under the laws of the United States . . . has been . . . seized pursuant to legal process an action or proceeding for forfeiture may be brought . . . in the United States District Court the District of Columbia." 28 U.S.C. § 1355(b)(2).
[49] Memorandum of Law in Support of United States' Motion for Entry of Default Judgment and Order of Forfeiture at 4, *United States v. 1.063 Million Rounds of 7.62X54MM Ammunition, et al.*, No. 1:23-cv-00880, (U.S. District Court for the District of Columbia).
[50] *Id.*
[51] *Id.*
[52] *Id.*
[53] Default Judgment and Final Order of Forfeiture, *United States v. 1.063 Million Rounds of 7.62X54MM Ammunition, et al.*, No. 1:23-cv-00880, (U.S. District Court for the District of Columbia).
[54] *Id.* at 3. (Emphasis added).
[55] This assertion is based on the authors' recent professional experiences as the Chief, Fiscal Law and the Chief, Contract Law for USCENTCOM from July 2021 to December 2023.

Ukraine would involve significant policy implications. Based on the available security assistance authorities, only the President or the Secretary of Defense could authorize the transfer of the lethal aid to Ukraine.

The United States has provided billions in aid to Ukraine primarily through two authorities. After Russia first invaded Crimea, the United States commenced providing significantly increased security assistance to Ukraine. Since 2014, the United States has committed more than $46.7 billion in military aid, much of it through the Ukraine Security Assistance Initiative (USAI).[56] Pursuant to the FY2016 National Defense Authorization Act (NDAA), § 1250 (as amended), the Secretary of Defense, in coordination with the Secretary of State may provide "security assistance and intelligence support, including training, equipment, and logistics support, supplies and services, to the military and other security forces of" Ukraine to protect its territorial integrity and defend against Russia.[57]

Significantly, for purposes of any transfer of forfeited property to Ukraine, the USAI authorizes the Secretary of Defense, with the concurrence of the Secretary of State, to "make available to the Government of Ukraine weapons and other defense articles, *from the United States inventory and other sources, and defense services*."[58] Relatedly, under Presidential Drawdown Authority, 22 U.S.C. §2318(a)(1), the President can authorize the immediate transfer from *DoD stocks* defense articles and services from U.S. stocks, up to a funding cap established in law, in response to an "unforeseen emergency."

Conclusion

The *Marwan* forfeiture case resulted in the United States transferring 1.1 million 7.62mm rounds to Kyiv.[59] Although it may have been minor in aggregate terms, it demonstrated American resolve "to counter the flow of Iranian lethal aid . . . by all lawful means" and commitment to Ukraine.[60] Indeed, Oleksandr Vasiuk, a Ukrainian Member of Parliament, who co-chairs a committee on cooperation with the United States, said the transfer "proves once again that the US is our strong ally. . . . These seized weapons and ammunition could have been simply disposed of, but Washington understands how important it is for us to get help[.]"[61]

Notwithstanding its impact on the battlefield, the transfer of *Marwan's* illicit cargo has potential strategic implications. Iran has continuously

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[56] Christina L. Arabia *et al.*, Cong. R. Serv., IF12040, *U.S. Security Assistance to Ukraine, Oct. 5, 2023.* Accessed December 2, 2023.
[57] FY16 NDAA, §1250 (as amended).
[58] *Id.* (*Emphasis added*). An important distinction between the Ukraine Security Assistance Initiative (USAI) and Presidential Drawdown Authority (PDA) is that the USAI is more flexible. Because the USAI allows the President to provide Ukraine weapons from the "United States inventory," the forfeited illicit cargo did not have to be transferred to DoD stocks.
[59] Office of Public Affairs, U.S. Department of Justice*, Press Release: Over One Million Rounds of Ammunition Seized En Route from Iran to Yemen Transferred to Ukrainian Armed Forces*, October 5, 2023. (https://www.justice.gov/opa/pr/over-one-million-rounds-ammunition-seized-en-route-iran-yemen-transferred-ukrainian-armed).
[60] Christy Cooney and James Waterhouse, *Ukraine war: U.S. Gives 1.1. million rounds of ammunition seized from Iran to Kyiv*, BBC, (Oct. 5, 2023), https://www.bbc.com/news/world-europe-67014218.
[61] *Id.* .

supplied the Russian military with lethal drones to attack Ukraine.[62] As Jonathan Lord, a senior fellow and director at the Center for a new American Security, said: "There is poetic justice in Ukraine utilizing seized Iranian weapons to defend its people against Russia's criminal invasion and abuses."[63] Further, the arming of Ukrainian soldiers with seized IRGC materiel could "put greater pressure on the burgeoning relationship between Moscow and Tehran."[64]

The *Marwan* served as a successful proof of concept of a whole-of-government approach to lawfully degrade Iran's ability to destabilize the region. Working with USCENTCOM, in July 2023, DOJ and USAO initiated a subsequent civil forfeiture action, which covered multiple ship interdictions of IRGC illicit aid enroute to Yemen that included over 9,000 assault rifles, 284 machine guns, approximately 194 rocket launchers, over 70 anti-tank guided missiles, and over 700,000 rounds of ammunition.[65] On December 1, 2023, the District Court issued a similar Default Judgment and Final Order of Forfeiture to the one in the *Marwan* giving the United States title over the seized material.[66] The timelines in comparison to the 2019 case of 18 months compared to 4-5 months to the Marwan forfeiture constitutes a significant increase in efficiency. On April 4, just as the US had nearly exhausted its USAI funds then-currently available,[67] and the Ukraine military was suffering from shortages of ammunition and weapons,[68] the US transferred a large portion of this newly forfeited materiel (i.e., over 5,000 AK-47s, machine guns, sniper rifles, and RPG-7, and over 5000,000 rounds of 7.62mm ammunition) to the Ukrainian armed forces.[69]

As a result of interagency collaborating, the use of the civil asset forfeiture responsive to the need of the warfighter. These cases validated a DoD and interagency play book for competition against Russia and provided a viable legal option to use seized material for U.S. national interests while imposing additional costs for Iranian malign activities in the central region.

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[62] Natasha Betrand, *Exclusive: US will transfer weapons seized from Iran to Ukraine*, CNN (Oct. 5, 2023). (https://www.cnn.com/2023/10/04/politics/us-iran-seized-weapons-ukraine/index.html).
[63] *Id.*
[64] *Id.*
[65] *Id.*
[66] Order, *United States v. 8,911 Type 56-1 Assault Rifles, et al.*, No. 23-cv-2596 (U.S. District Court for the District of Columbia).
[67] Connor O'Brien and Paul McLeary, *Congress approved $300M for Ukraine last week. The Pentagon spent it 4 months ago*, Politico, (Mar. 25, 2024), https://www.politico.com/news/2024/03/25/congress-approved-300m-for-ukraine-last-week-the-pentagon-spent-it-4-months-ago-00148855
[68] Natasha Betrand, *US transfers thousands of seized Iranian guns, rocket launchers and munitions to Ukraine*, CNN (Apr. 9, 2024). (https://www.cnn.com/2024/04/09/politics/us-iran-arms-ukraine/index.html).
[69] Office of Public Affairs, U.S. Department of Justice, Press Release: Thousands of Machine Guns and Sniper Rifles and Over 500,000 Rounds of Ammunition Seized En Route from Iran to Yemen Transferred to Ukrainian Armed Forces, April 9, 2024. (https://www.justice.gov/opa/pr/thousands-machine-guns-and-sniper-rifles-and-over-500000-rounds-ammunition-seized-en-route).

Foreign Military Sales Program and Case Management Explained

MAJ Olesea Roan, USA

Largely driven by the continuing war in Ukraine, the sale of U.S. weapons abroad has reached well over $200 billion annually.[70] For perspective, the three-year average for U.S. weapons, security cooperation activities, and defense services was $55.9 billion for FY 2021 – FY 2023. This represented a 21.9% increase from the three-year average of FY2020 – FY2022.[71] While much of this total consists of direct sales by U.S. defense firms to foreign countries, the U.S. Government directs more than $80 billion worth of arms to foreign countries through the foreign military sales program (FMS).[72] Given the growing role of Foreign Military Sales (FMS) in U.S. strategy as well as conflicts around the globe, it is critical that Judge Advocate Legal Services (JALS) personnel have a baseline familiarity with the FMS program and how it shapes the current operating environment.

What is FMS and What Does it Do?

The FMS program falls under the umbrella of Title 22 of the United States Code.[73] It is a type of security assistance



to a foreign country that is authorized by the Arms Export Control Act (AECA) and is a fundamental instrument of U.S. foreign policy.[74] The United States may sell defense articles, services, and training to foreign countries and international organizations when the President formally determines that to do so "will strengthen the security of the U.S. and promote world peace."[75]

The sales process starts with a country submitting a formal letter of request (LOR).[76] The LOR includes both the desired military capability and an approximate cost of what the partner is able to spend.[77] When necessary, Department of Defense's Security Cooperation Agency (DSCA)

[70] Mike Stone, *U.S. Arms Exports Hit Record High in Fiscal 2023*, REUTERS (Jan. 29, 2024, 3:03 PM), https://www.reuters.com/business/aerospace-defense/us-arms-exports-hit-record-high-fiscal-2023-2024-01-29/.
[71] *Fiscal Year 2023 U.S. Arms Transfers and Defense Trade, Bureau of Political-Military Affairs*, U. S. DEP'T OF STATE (Jan. 29, 2024), https://www.state.gov/fiscal-year-2023-u-s-arms-transfers-and-defense-trade/#:~:text=The%20three%2Dyear%20rolling%20average,%2445.8%20billion%20for%20FY2020%2DFY2022.
[72] *See id.*
[73] 22 U.S.C. § 2751–2799aa-2.
[74] *See Security Assistance,* OFF. OF THE DEPUTY ASSISTANT SEC'Y OF THE ARMY FOR DEF. EXP. &COOPERATION, https://www.dasadec.army.mil/Security-Assistance/, (last visited Feb. 12, 2024).
[75] 22 U.S.C. § 2753.
[76] *FMS—What Happens First,* DEF. SEC. COOP. AGENCY, https://www.dsca.mil/foreign-customer-guide/fms-what-happens-first (last visited Feb. 12, 2024). There are three general types of Letter of Request (LOR): (1) LOR for Price and Availability (P&A); (2) LOR for a Letter of Offer and Acceptance (LOA); and (3) LOR for a change to an already existing LOA. *Id.* I
[77] *Id.*

provides Congress notification of LORs.[78] The Office of Regional Security and Arms Transfers of the Department of State's Bureau of Political-Military Affairs (PM/RSAT), while working in close cooperation with the DSCA, manages the approval process of FMS cases.[79]

Under the FMS, the U.S. Government and a foreign government enter into an agreement, called a letter of offer and acceptance (LOA).[80] When the U.S. Government approves a FMS sale, DSCA issues an LOA detailing exactly what the foreign country will receive.[81] The DSCA announces major FMS sales that it notified Congress of on its website.[82] Once the foreign customer signs and funds the LOA, the Department of Defense (DoD) either provides the item from the U.S. stock piles or enters in to a contract to purchase it from a U.S. manufacturer as if the United States were purchasing it for itself.[83] Partners may also purchase some defense article and services directly from U.S. corporations, through a direct commercial sales (DCS) program.[84] However, while partners may purchase some articles or services either through FMS or DCS, some sensitive military items are available only through the FMS program.[85]

The Foreign Military Finance (FMF) Program and FMS

The previous section covered the process for entering an FMS agreement, but how does the U.S. Government and its foreign partners fund these agreements? This is where the FMF comes in. The FMF program finances FMS using either direct credits that consists of a repayable (direct) loan or a non-repayable grant.[86] This process begins when the President sends Congress a report, due no later than 1 February each year, estimating the total dollar value of FMS and DCS sales for the upcoming fiscal year.[87] The annual presentation of security assistance (SA) programs encompasses this report to congress that the President intends to carry out in the next fiscal year[88] Next, the Executive branch compiles its requests for FMS credits into a Congressional Budget Justification (CBJ).[89] Following hearings in the appropriate Congressional committees, Congress passes authorization and appropriation acts providing the funds.[90] These acts may include certain constraints, such as dollar limits or special provisions.[91]

[78] *U. S. Arms Sales and Defense Trade: Fact Sheet, Bureau of Political-Military Affairs,* U.S. DEP'T OF STATE (Jan. 20, 2021), https://www.state.gov/u-s-arms-sales-and-defense trade/. [hereinafter *U. S. Arms Sales*].
[79] *Id.*
[80] *Id.*
[81] *Id.*
[82] *Id.*
[83] In this way, partners benefit: from the DoD's operational expertise, existing procurement infrastructure, transparent purchasing practices, and when we are able to combine partners and our own procurement, to achieve economies of scale that lowers the overall cost. FMS Video, *supra* note 3.
[84] FMS Video, *supra* note 3 at 5:25.
[85] FMS Video, *supra* note 3 at 6:00.
[86] DEF. SEC. COOP. AGENCY, SECURITY ASSISTANCE MANAGEMENT MANUAL sec. C9.7.2.1.1. (Feb. 7, 2024) [hereinafter SAMM].
[87] 22 U.S.C. § 2765(a).
[88] *Id*.
[89] *See* SAMM, *supra* note 86, sec. C9.7.2.1.1.
[90] *Id.*, sec. C9.7.2.9.2.1.2.
[91] *Id.*

FMF Fund Restrictions

The FMF funds are subject to legal and policy restrictions.[92] For instance, section 42(b) of the AECA forbids use of direct guaranteed loans "to finance co-production or licensed production of any defense article of U.S. origin outside the United States unless the Secretary of State notifies Congress in advance of the proposed transaction's potential impact on employment and production within the United States."[93] Foreign governments need to be aware of the limitations, imposed by the U.S. policies for the use of FMF funds.[94] Security Cooperation Organizations (SCOs) are responsible for ensuring that foreign partners know the limitations.[95] The SCOs must encourage the partner-nations to use funding in FMS cases properly.[96] Recipients of FMF credits should not use those funds to by the following items: (1) petroleum, oil, lubricants, and fuel, other than for DoS-funded training events or related to the procurement and initial set-up of new equipment; (2) resupply of small caliber ammunition (i.e., .50 cal. and below), other than for formal DoS-funded training events or initial acquisition with new weapons systems; (3) food; (4) routine clothing or uniform items, other than those necessary for coalition or peacekeeping deployments; (5) gym equipment (except for rehabilitation purposes); (6) construction and refurbishment projects that are not integral to the provision of a broader package of military articles; (7) headquarters support services, including janitorial services, academic research, personal computers, printers, and accessories; (8) generic software and software maintenance; (9) office supplies; (10) support for non-U.S.-origin equipment and systems; (11) national budget support, including salaries; and (12) lease of defense articles.[97]

Nevertheless, if the State Department determines that providing the restrictive items is critical to the mission, the bilateral relationship, or the defense articles or services are in direct support of coalition operations where U.S. forces are present, the restricted items may be permitted to be purchased with FMF funds.[98] The SCOs need to "initiate an early discussions of requests to use FMF funds with the DSCA and DoS (PM)."[99] The SCOs "should submit a detailed justification and rationale for purchasing each item with FMF funds rather than host-nation funds and any other relevant facts in support of the request."[100] The limitations guidance on FMF funds' use "applies to FMF used for standard FMS cases and Direct Commercial Contracts (DCCs)."[101] "The guidance does not affect DSCA management of FMF administrative accounts nor does it apply to packing, crating, handling, and transportation (PCH&T) costs associated with equipment transferred to partner nations

[92] *Id.*, sec. C9.7.2.9.6.
[93] *Id.*, sec. C9.7.2.7.2.
[94] *Id.*, sec. C9.7.2.9.6.
[95] *Id.*
[96] *Id.*
[97] *Id.*, table C9.T10.
[98] *Id.*, sec. C9.7.2.9.6.
[99] *Id.*
[100] *Id.*
[101] *Id.*

under the Excess Defense Article (EDA) program."[102]

Conclusion

The FMS program is an essential tool for advancing U.S. national security interests. It is important for JALS personnel to have a basic knowledge of what FMS is if they are going to fulfil their responsibility as professionals and pursue an understanding of the current operating environment.

[102] *Id.*

Lessons in Military Diplomacy for Attorneys: An East Asian Perspective

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Introduction

Diplomacy, and statecraft in general, is an instrument of national power. Military diplomacy is a subset of this field and seeks to further national power and purpose through military members. Protocol, the procedural considerations that accompany substantive diplomatic means, plays a vital role of providing guidelines and frameworks that allow diplomacy to take place.[103] United States Indo-Pacific Command (INDOPACOM) area of responsibility alone encompasses 36 nations, comprising more than half of the world's population, and it is a region involving five of the seven collective defense treaties to which the United is a party. Opportunities abound for Judge Advocates (JAs) and paralegals to learn hands-on, the intricacies of military diplomacy, and to be a part of enhancing joint security through existing international agreements and partnerships.

In Japan and the Republic of Korea (ROK), U.S. Forces Japan and Korea are the military organizations primarily responsible for maintaining security and building relationships with host-nation counterparts. Within the Army components of these two joint organizations, military diplomacy and adherence to the requirements of protocol are regular activities for the



Offices of the Staff Judge Advocate (OSJA) at U.S. Army Japan (USARJ), Eighth Army (8A), and the Second Infantry Division (2ID) with their counterpart legal offices in Japan and the ROK. Building and maintaining healthy relationships with legal counterparts requires continual effort given the importance of maintaining cooperation and interoperability in pursuit of a free and open Indo-Pacific. Ensuring that productive exchanges take place requires more than simply an understanding of international law or the intricacies of a Status of Forces Agreement. Effective Judge Advocate General's Corps personnel overseas must learn and exhibit an understanding of local customs, and confidence in representing the official positions of the Department of Defense (DoD).

Neither military diplomacy, nor protocol, are familiar topics to most Judge Advocates (JAs); this article seeks to provide an introduction. This article begins with an explanation of

[103] Capricia Penavic Marshall, Protocol: The Power of Diplomacy and How to Make it Work for You., 10 (2020).

military diplomacy and its applicability in the Indo-Pacific, then provides lessons learned in the protocol of military diplomacy.

Military Diplomacy and the Indo-Pacific

The oft-quoted proverb "[s]peak softly and carry a big stick . . . .,"[104] is ingrained in the American psyche. It is unsurprising that this saying continues to influence U.S. foreign policy with its partners and competitors. While this "big stick" may have initially referred to military might,[105] the U.S. has applied its meaning to different instruments of national power: Diplomacy, Information, Military, and Economics.[106] Each of these instruments can be viewed as a "big stick" owing to the U.S.'s role in the world, though diplomacy is arguably the best-correlated to foreign policy.

Diplomacy, and the diplomats that engage in the craft, are in the profession of persuasion.[107] The strategic employment of diplomacy comes in many forms, from gaining leverage over a competitor to consolidation and the improvement of a relationship.[108] At its core, the purpose of diplomacy is that of furthering national interests and addressing points of concern between states.[109] This requires skill in negotiation, trying to find common ground, and a high level of knowledge and the ability to hold one's ground in trying circumstances.[110]

In the case of U.S. forces in Japan and the ROK, it is important not to expect immediate answers during negotiations as broad non-committals are normal.[111] Personnel sent to negotiate may not have the authority to bind their organization – rarely are negotiators given the authority to act unilaterally on behalf of their principal.[112] It is also common for negotiations to take time, often ranging from days to months depending on the topic. As an example, it is common for JAs in the ranks of Captain or Major and any paralegal support they have, to represent the United States and their respective command in the crafting scenarios and injects for bi-lateral and multi-national exercises which can be of great consequence to both the countries we are engaged with, as well as their neighbors or competitors. Similarly, Majors, Lieutenant Colonels, or Colonels, may take part in working groups or committees negotiating international agreements to include terms of foreign humanitarian assistance or foreign military sales arrangements. All of these circumstances require advanced knowledge and mentoring beyond what can typically be taught in a classroom and volunteering for, or seeking out these opportunities, will exponentially grow the skills of the JA or paralegal.

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[104] Letter from Theodore Roosevelt to Henry L. Sprague (Jan. 26, 1900) https://www.loc.gov/collections/theodore-roosevelt-papers/about-this-collection/?loclr=blogtea
[105] With military might being the sharp edge of statecraft. *See* CHAS W. FREEMAN, JR., ARTS OF POWER: STATECRAFT AND DIPLOMACY, 3, (1997).
[106] JEFF FARLIN, INSTRUMENTS OF NATIONAL POWER: HOW AMERICA EARNED INDEPENDENCE, 1 (U.S. ARMY WAR COLLEGE, 2014).
[107] FREEMAN, JR. *supra* note 3 at 4.
[108] *Id.* at 72-73.
[109] *Id.* at 88.
[110] *Id.* at 101.
[111] R. E. Watts, Briefing the American Negotiator in Japan, 16 INT'L L. 597, 606 (1982).
[112] *Id.* at 605; *See also Supra* note 3 at 102.

Diplomats, like attorneys, are advocates as both seek to further the interests of their client.[113] However, diplomats arguably operate in a more ethically-demanding arena than their attorney counter-parts.[114] Where attorneys are often able to separate their advocacy and create distinction between public, professional, and private life – this is not the case with diplomats.[115] Similarly, the ethical concerns are different for diplomats and attorneys. While attorneys owe a duty of candor to the court and operate under rules of practice, there is no structure that guides diplomatic efforts, efforts that can severely damage, or terminate, relationships between nations.[116] The ethical standards for diplomat are understandably more critical, with breaches resulting in more harm than a jail term or the loss of a license.[117]

The demands placed on attorneys that operate in both diplomatic and legal realms is understandably high. Adding the element of military service further increases these demands, especially in the Indo-Pacific where there is no large mutual defense treaty such as the North Atlantic Treaty Organization (NATO), and where the 36 nations all have very diverse populations and competing priorities. The highest concentration of U.S. Army JAG Corps personnel in the Indo-Pacific are stationed in Japan and the ROK. Though the U.S. maintains strong partnerships with both countries, the interactions amongst the legal personnel of these nations continues to play a vital role. These interactions are vital as they build interoperability and trust. These efforts naturally combine two instruments of national power: the "soft power" of diplomacy and the "hard power" of military action – military diplomacy.

This form of diplomacy is carried out by military members with the intent of influencing other nations, militaries, and citizens in a given area or operating environment.[118] Military diplomacy by members of the U.S. Department of Defense (DoD) is informed by key policy documents. The U.S. National Security Strategy (NSS) is foremost amongst these documents as it contains overarching security policy and provides that U.S. foreign relationships are a vital strategic asset.[119] It notes the importance of building strong coalitions with allies and partners,[120] while affirming the importance of furthering the U.S. commitment to contributing to the "stability and peace" of a free and open Indo-Pacific.[121]

The NSS further informs two documents related to military diplomacy: the DoD National Defense Strategy (NDS), and the Department of State (DoS) Joint Strategic Plan (JSP). The NDS synthesizes NSS defense-related guidance and provides objectives that include developing U.S. warfighting

[113] *Id.* at 115.
[114] *Id.* at 116.
[115] *Id.*
[116] *Id.* at 117.
[117] *Id.*
[118] James E. Willard, Military Diplomacy: An Essential Tool of Foreign Policy at the Theater Strategic Level, 6-7 (School of Advanced Military Studies, U.S. Army Command and General Staff College, 2006).
[119] Off. of the President of the U.S., National Security Strategy of the United States of America, 11 (2022).
[120] *Id.* at 16.
[121] *Id.* at 38.

capabilities with partners[122] and maintaining security architecture in the Indo-Pacific to advance regional security goals.[123] It specifically calls for expanding and strengthening Indo-Pacific alliances and partnerships while deterring attempts to resolve issues with force.[124] The JSP provides guidance along diplomatic fronts, including strengthening security cooperation among U.S. allies and partners.[125] These documents lend both support to engaging in military diplomacy and encourage building relationships within the Indo-Pacific.[126]

U.S. Army Japan

The U.S. Indo-Pacific Command is the DoD entity responsible for the oversight and conduct of U.S. military diplomacy in the Indo-Pacific. Its tasks are derived from the U.S. Indo-Pacific Strategy, which focuses on integrated deterrence and fostering warfighting capabilities.[127] One line of effort of this strategy is the continual development of close cooperation between the U.S. and Japan.[128] USARJ is the U.S. Army element responsible for carrying out this mission and conducting military diplomacy with its Japanese counterpart, the Japanese Ground Self Defense Force (JGSDF).[129] The USARJ OSJA conducts its own form of legal military diplomacy along these lines to maintain and strengthen its relationship with legal offices in the tactical, operational, and strategic echelons of the JGSDF.[130]

This OSJA is responsible for conducting military diplomacy that enhances cooperation and interoperability in light of treaty obligations.[131] These tasks are mainly carried out by its Staff Judge Advocate (SJA), and by the national security and international law sections. The SJA and these section chiefs are responsible for liaising with all echelons of JGSDF legal offices and the staff of The Japanese Judge Advocate General (JTJAG). These engagements span a range of efforts, from bi-lateral and joint exercise planning to executive meetings and working groups aimed at increasing the cohesion and the interoperability of the U.S. and Japanese armies.

Eighth Army and Second Infantry Division

The continued close cooperation between the U.S. and the ROK is a mainstay of the U.S. Indo-Pacific Strategy.[132] For the past 70 years, the U.S. has maintained an ironclad treaty with the ROK, which has helped promote democracy in the region.[133]

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[122] U.S. DEP'T OF DEF, FACT SHEET: 2022 NATIONAL DEFENSE STRATEGY, 2 (2022).
[123] U.S. DEP'T OF DEF, NATIONAL DEFENSE STRATEGY OF THE UNITED STATES OF AMERICA, 14 (2022).
[124] *Id*.
[125] U.S. DEP'T OF STATE AND AGENCY FOR INT'L DEVELOPMENT, JOINT STRATEGIC PLAN FY 2022 – 2026, 20 (2022).
[126] Amy Ebitz, *The Use of Military Diplomacy in Great Power Competition: Lessons Learned from the Marshall Plan*, Brookings (Feb. 12, 2019), https://www.brookings.edu/blog/order-from-chaos/2019/02/12/the-use-of-military-diplomacy-in-great-power-competition/
[127] EXEC. OFF. OF THE PRESIDENT, NAT'L SEC. COUNCIL, INDO-PACIFIC STRATEGY OF THE UNITED STATES, 12 (2022).
[128] *Id.* at 17.
[129] U.S. ARMY JAPAN MISSION, https://www.usarj.army.mil/milabout/mission (last visited May. 12, 2022).
[130] The JGSDF is comprised of five regional armies, the Ground Component Command, and the Ground Support Office respectively.
[131] Treaty of Mutual Cooperation and Security Between Japan and The United States of America, Japan – U.S., Jan. 19, 1960, 11 U.S.T. 1633.
[132] EXEC. OFF. OF THE PRESIDENT, NAT'L SEC. COUNCIL, INDO-PACIFIC STRATEGY OF THE UNITED STATES, 9 (2022).
[133] INDO-PACIFIC STRATEGY OF THE UNITED STATES at 4.

The U.S. is committed to its relationship with the ROK as it continues to improve its defensive capabilities to lead an effort of combined defense.[134]

In particular, there are two aspects of the U.S. Army's presence and part in military diplomacy with the ROK that JAs and Paralegals serving in the ROK will immediately become acquainted with. First, the Korean Augmentation to the U.S. Army (KATUSA) program, was established during the Korean War and enlisted Soldiers from the ROK Army. These ROK Soldiers are selected based on their advanced English language skills, educational background, and interpersonal skills, and train to be KATUSAs to be embedded in U.S. Army offices as augmentees. [135] The 8A OSJA currently has KATUSAs assisting with Client Legal Services, National Security Law, and Criminal Law tasks. The 2ID OSJA has both KATUSA and ROK Army attorneys assisting in their OSJA.

Second, of the several notable U.S. Army elements based in the ROK, 2ID is particularly noteworthy because it is the only combined military unit in the U.S. military. ROK and U.S. Soldiers serve together in the same units and live together in the same barracks. Soldiers of the 2ID, including legal personnel, conduct military diplomacy on a daily basis as they live, work, and train as part of this combined division.

The JAs, both ROK and U.S. Army, are responsible for enhancing interoperability and cooperation owing to treaty obligations[136] and a bona-fide need for a strong working relationship owing to regional threats. This diplomatic function is carried out by JAs across the OSJA through engagements with the Combined Forces Command down to the tactical level. In addition to day-to-day efforts, there is also an annual international law symposium on security and military law, hosted by the ROK Ministry of Defense, which features JAs from both the U.S. and the ROK and provides an opportunity to speak about operational topics in an academic environment.

The Protocol of Military Diplomacy

As in Japan, an understanding of Korean business culture, etiquette, and customs are important when conducting military diplomacy. The close working relationship shared by JAs from the U.S. Army and ROK helps to remove some of more glaring faux pas, however there are still critical aspects of Korean culture that can be overlooked. While learning by doing is the easiest way to learn about and navigate the challenges faced by U.S. Army JAs as guests in the ROK, there are certain aspects that can be just as easily explained, and avoided. This article provides some of the protocol-related lessons learned at the OSJAs of USARJ and 2ID for JAs to apply in their own current and future military diplomatic endeavors.

[134] NATIONAL DEFENSE STRATEGY OF THE UNITED STATES OF AMERICA at 15.
[135] The KATUSA program began on 15 July 1950. Kenji Thuloweit, *At 72 years old, KATUSA program continues to strengthen ROK-U.S. alliance*, Army.mil (Nov. 20, 2022), https://www.army.mil/article/259166/at_72_years_old_KATUSA_program_continues_to_strengthen_rok_u_s_alliance
[136] Mutual Defense Treaty Between the United States and the Republic of Korea, Republic of Korea – U.S., Oct. 1, 1953.

Formal diplomatic etiquette[137] is the standard when engaging in military diplomacy. Many JAs are already familiar with similar levels of formality, as practice in a courtroom requires a high degree of decorum. While different nations and regions have unique traditions, and Japan and the ROK are no exception, there is an underlying foundation of diplomatic etiquette is applicable regardless of locale.

1. Preparation

Preparation begins long before a bilateral or multilateral event occurs. While protocol offices normally handle these activities for commands, it often falls to JAs to plan for events involving legal personnel.[138] This often includes set-up and flag support, coordinating greeting lines, and the arrangement at personnel by precedence.[139] It can also involve obtaining funding, coordinating for space at a venue, creating name tags, and sending out invitations.[140]

Invitations should be sent electronically for a majority of events.[141] An invitation should include, at a minimum: (1) the name and title of the host; (2) name or event; (3) date and time; (4) location; (5) attire (including the specific uniform); and (6) RSVP information.[142] Invitations should be sent 3-4 weeks prior to the event, with cancellation notices and new invitations sent should an event be postponed or cancelled.[143]

Planning should occur until the day of the event itself, ideally with interim progress reports occurring along the way. It is important to have every detail correct, especially the presentation of the flags. The nuances of flag set-up can be a challenge, but without fail the U.S. flag should be first in the order of precedence.[144] The flags of foreign nations that are flown with the U.S. flag should all be comparable size, the tops equal distance from the ground, and the flagpole or staff of equal height.[145] If flags are displayed, the U.S. flag is always on the right, which is to the left of the observer facing the display.[146] There are numerous other rules for flags depending on the set-up,[147] and the same is true for determining precedence and the seating of guests.

At ceremonies or events, the host and guest of honor take precedence.[148] For active military members, the rank and date of rank determine the precedence.[149] For retired military members and those who previously held leadership positions, they immediately follow their active counterparts that

[137] A framework of basic societal and hierarchical relationships (*See* PROTOCOL FOR THE MODERN DIPLOMAT (2013)).
[138] Planning for Article 6 visits are a helpful intra-JAG Corps example of the kind of planning and preparation required for military diplomacy.
[139] *Id.* at 1.
[140] U.S. DEP'T OF ARMY, PAM. 600-60, A GUIDE TO PROTOCOL, 1 (2022) (hereinafter DA-PAM 600-60).
[141] *Id.* at 2.
[142] *Id.*
[143] *Id.* at 2-3.
[144] *Id.* at 17.
[145] *Id.* at 19.
[146] *Id.* at 20.
[147] *See* U.S. DEP'T OF ARMY, REG. 840-10, FLAGS, GUIDONS, STREAMERS, TABARDS, AND AUTOMOBILE AND AIRCRAFT PLATES (2020).
[148] *Supra* note 34 at 5.
[149] *Id.*

currently possess the same grade or leadership position.[150] This concept of precedence is also helpful when determining seating at an event, depending on the purpose of the event and the host's intent.[151]

The culmination of this planning should be the creation of a nuanced schedule of events.[152] This document, also known as a tick-tock, is a script of what is to occur and when.[153] At its most comprehensive, a tick-tock should include all the cues, the sequence of events, and possible red flags and issues that may arise.[154] Having a tick-tock that counts down for several days prior to event execution can help to ensure that venue setup and issues that arise are addressed ahead of time.[155] This planning document should, if time allows, include a dress-rehearsal of the event to work out any last minute challenges.[156] Creating a tick-tock is not the work of a sole person – it is a team effort results in a document constantly under review, revision, and improvement.[157]

2. Planning for, and Overcoming, Language Barriers

By virtue of being stationed in Japan or the ROK, JAs who have lived amongst these cultures have a better understanding of them.[158] However, to know and embrace the Japanese and Korean languages is to understand a nation's soul and understand its ideals.[159] A majority of JAs stationed in Japan and Korea will have little more than a grasp of the basics of either language, a challenge that can frustrate military diplomatic efforts.

Working closely with host-nation support staff, and including them in the planning process at its inception, is one of the ways to overcome the language barrier. While many host-nation employees are not translators by trade and should not be expected to provide such support at an event, they are often invaluable when it comes to coordination and explaining unique cultural considerations that would be lost on those foreign to either nation. There are also several valuable lessons that can be applied in the event that there is interpretation at an event involving military diplomacy.

Use plain and accurate language when communicating.[160] In addition to being an important element of successful statecraft, it is of particular relevance for JAs. Relying on jargon, something that attorneys occasionally do, should be avoided – your counterparts may not know what you're talking about.[161] The same is true of acronyms, while they are commonplace

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[150] *Id.*
[151] *Id. at 7.*
[152] *Id.* at 1.
[153] *Supra* note 1 at 308.
[154] *Id.*
[155] *Id.*
[156] *See Id.* at 310.
[157] *Id.* at 308-09.
[158] *Supra* note 3 at 41.
[159] *Id.*
[160] *See generally* U.S. DEP'T OF STATE OFF. OF DIRECTIVES MGMT, *Plain Writing Guidance*, https://www.state.gov/key-topics-office-of-directives-Management-2/plain-writing-at-the-department-of-state-2/plain-writing-guidance/ (last visited May. 13, 2022); *Supra* note 1 at 107.
[161] *Supra* note 1 at 107.

in military life, they can have vastly different meanings depending on context.[162] Rather, plain language should be used that clearly conveys the message with the goal of ready translatability into the relevant foreign language.

Prepare briefing materials ahead of time and deliver them (if permitted) to your non-native English-speaking counterparts. This can be a great help as it allows for the content of a brief to be translated for dissemination ahead of time to the listening audience. This also provides additional time for question development and offers the opportunity for a robust conversation.

3. Greetings and Business Cards

Greetings vary around the world, though a handshake is arguably the most ubiquitous physical manifestation.[163] In the ROK and Japan this handshake may be replaced with a nod of the head or a slight bow.[164] In Japan there is a great deal of formality and ritual to the bow itself, with the depth and hold of a bow often dependent on its receiver.[165] In the ROK, there are often bows at both the beginning and end of a meeting, with a longer departing bow indicating a sign of respect and possibly a productive meeting.[166] However, the act of bowing is often not expected by the ROK Army or JGSDF of their foreign counterparts,[167] and a handshake may still suffice. In the event of uncertainty, follow the lead of those around you.

Business cards[168] are commonly exchanged in meeting situations and giving and receiving these cards have its own customs.[169] Business cards should ideally be provided, and accepted, with two hands, followed by a brief examination.[170] If it is known at the time, the person of lesser status presents their business card below that of the other person. A comment about the information contained on the card is appropriate, and the card can be placed on the table where the meeting is taking place until the meeting concludes.[171] A further step in this custom is to have a separate business card holder that keeps cards clean and uncluttered.

Conclusion

Military diplomacy is an important consideration for JAs stationed outside of the continental U.S. However, this is not a common skill set and is one that is usually gained through experience. JAG Corps personnel interested in gaining this experience and a working level knowledge of military diplomacy can seek out opportunities to take part in bi-lateral or multi-lateral exercises. They can also indicate an interest in overseas assignments to include opportunities in

[162] *Id.* at 18.
[163] *Id.* at 371.
[164] *Id.*
[165] *Id.* at 374.
[166] *Id.*
[167] U.S. DEP'T OF STATE BUREAU OF EAST ASIAN AND PACIFIC AFFAIRS, JAPANESE ETIQUETTE, https://1997-2001.state.gov/regions/eap/japan/fs-japan_etiq_000626.html
[168] *See* Robert J. Walters, *"Now That I Ate the Sushi, Do We Have A Deal?" – The Lawyer as Negotiator in Japanese-U.S. Business Transactions*, 12(2), Nw. J. Int'l L. & Bus., 335, 339 (1991) (business cards in Japanese are referred to as *meishi*).
[169] U.S. DEP'T OF STATE BUREAU OF EAST ASIAN AND PACIFIC AFFAIRS, JAPANESE ETIQUETTE.
[170] *Id.*
[171] *Id.*

exchange programs the JAG Corps currently has with the United Kingdom and Australia, and permanent assignments primarily in the Indo-Pacific and European Theaters; and over time working to establish a regional specialization through multiple assignments and/or academic work in a particular region such as the Indo-Pacific. Working in Japan, the ROK, and throughout the Indo-Pacific with the legal offices of partner nations provides a unique opportunity for JAs to gain this experience. It is hoped the lessons provided in this article can be applied by JAs in similar roles throughout the JAG Corps and beyond.

Leading Organizations Through Change: Paralegal Employment in Combat Operations

SFC William W. Angle III (Trey), USA

"I love a staff that moves fast. If I have a staff that plauds along, I will find three guys and we'll go out and plan the operation ourselves."

General (R) Scott Miller

Introduction

When I arrived at CLAMO in November 2022, I was charged with solving a twenty-year problem-set, "how to best employ paralegals in an operational setting." It had been somewhat common knowledge that many Judge Advocates and senior paralegals struggle to properly utilize and employ their paralegals in combat operation scenarios. However, this notion was ripe for change as the Army is actively relooking, revising and publishing doctrine across the warfighting functions. Coming from a decade in various special operations forces, I understood the art of the possible when a paralegal armed with the right training, a grasp of staff operations, and trust from their supervising judge advocate, can be a true force-multiplier in the operational environment. In short, the JAG Corps has the opportunity to synch with the rest of the Army as we prepare to transform to multi-domain operations (MDO) and large-scale combat operations (LSCO) and make the broader force unequivocally more lethal.

This article showcases how a perceived capability gap processes through various phases to ultimately ascertain if a change is needed, and if so, how the change is implemented to fill capability gaps. This process then evolves from the "good idea" phase through the planning process into eventual implementation. Currently, TJAGLCS is exploring ways to change paralegal integration in operational settings. As this project progresses, the Army JAG Corps seeks feedback from the field about how to better train and equip paralegals moving towards operating in a dispersed, communication degraded LSCO environment.

Leading Change: The Kotter Model

In researching how to transform organizations in an attempt to solve the unanswered paralegal employment in combat operations question, I came

across the "Kotter Model for leading and managing change."[172]

"The Army War College uses the book *Leading Change* by John P. Kotter as a text for instruction in leading and managing change. The Kotter model offers a logistical construct with which to examine the formation of paralegal employment in combat operation scenarios. His model consists of eight stages."[173]

"Establish a Sense of Urgency: Identifying and discussing crises, potential crisis, or major opportunities."[174] In our paralegal example, the urgency is the reemerging threat of large-scale combat operations with a near-peer competitor.

"Creating the Guiding Coalition: Put together a group with enough power to lead change."[175] The Judge Advocate General's Legal Center was created and organized in a way to create synergy between critical thinkers in the various directorates led by a senior Army Colonel.

"Developing a Vision and Strategy: Create a vision to help direct change effort; developing strategies for achieving that vision."[176] For CLAMO, we started with an end-state of what we believed paralegals are capable of in combat operation scenarios and used that as our vision to develop a strategy to tackle the current paralegal employment issue.

"Communicating the Vision: Using every vehicle possible to constantly communicate the new vision."[177] CLAMO's strategy was to create an information operations campaign that presents paralegal capabilities whenever and wherever possible. Over the course of 2023, CLAMO presented classes at every NCOA, as well as 9 institutional courses and conferences.

"Empowering Broad-Based Action: Getting rid of obstacles; changing systems or structures that undermine the change vision. Encouraging risk taking and non-traditional ideas."[178] For the employment of paralegals in LSCO, we had to try and change the dynamic of what paralegals can and cannot do during legal support to operations; this meant a cultural shift to what it means to be a paralegal serving in the Army. CLAMO emphasized the reason we wear a uniform instead of a shirt and tie to work every day and the need to be prepared to respond to emerging and evolving threats.

"Generating Short-Term Wins: Planning for visible improvements in performance; creating those wins, visibly recognizing people who made

[172] RANGERS LEAD THE WAY: THE VISION OF GENERAL CREIGHTON W. ABRAMS
[173] *Id.* p. 2
[174] *Id.*
[175] *Id.*
[176] *Id.*
[177] *Id.*
[178] *Id.*

those wins possible."[179] At CLAMO, we have the benefit of a close relationship with the Combat Training Centers (CTC). Through our outreach and lessons learned feedback loop with the observer, controller trainers (O/C-Ts), we were able to identify high performing paralegals during various CTC rotations and recognize them during presentations at institutional courses.

"Consolidating Gains and Producing More Change: Using increased credibility to change all systems, structures and policies that fit the transformation vision; reinvigorating the process with new projects, themes, and change agents."[180] While still a work in progress, CLAMO is using the framework of the Legal Center collaboration process to propose doctrinal change that will incorporate more specified roles for paralegals during legal support to operations. CLAMO unveiled a new logo and slogan "Supporting the Warfighter," specifically tailored to reflect that everything we do or don't do affects the singular mission.

"Anchoring New Approaches in the Culture: Creating Better Performance Through Customer and Product Oriented Behavior."[181] With an eye to create products that support the warfighter, CLAMO created a short course to bridge the gap in paralegal performance at CTCs and demonstrate to the rest of the force that paralegal success can be accomplished in a combat operation scenario.

With the Kotter Model for leading large organizations through change, let's take a more granular look into how CLAMO and the Legal Center are trying to solve the legacy problem of employing paralegals in combat scenarios to better inform the situational environment.

Case Study: Paralegal National Security Law Concept

The Army Operating Concept tells us that we must operate and win in a complex strategic environment.[182] However, looking across the globe, we can see that the strategic environment is complex in the here and now, and only getting more complex by the day. We are also told that conditions in which we may operate will be uncertain. Our new threats may be conventional, or they may be unconventional, but more likely a hybrid of both.[183] At CLAMO and the Legal Center, our responsibility is to take the Army Operating Concept and develop the Paralegal National Security Law (NSL) Concept. The Paralegal NSL Concept will then integrate into the various warfighting functions. Though still an internal document inside the Legal Center, the Paralegal NSL Concept has been shared with subject

[179] *Id.*
[180] *Id.*
[181] *Id.*
[182] U.S. DEP'T OF ARMY, TRADOC Pamphlet 525-3-1, THE U.S. ARMY OPERATING CONCEPT (AOC) – WIN IN A COMPLEX WORLD para. 2-2(d) (31 Oct. 2014) [hereinafter TP. 525-3-1].
[183] *Id.* at 10

matter experts in national security law to help us think about these big ideas. The legacy question of "how to employ paralegals in an operational environment" is no longer a problem to pontificate on as an L.L.M paper topic, it is a real-time pressing problem we need to address as we contemplate how to provide legal support when we must fight a pacing threat. Thus, the Paralegal NSL Concept is "a" solution for how the institution prepares paralegals that are "ready to meet the demands of a complex world."[184]

Method: 2023 Capability-Based Assessment

A 2023 27D NSL capability-based assessment conducted by CLAMO at each Combat Training Center (CTC) identified several notable capability gaps in 27D NSL knowledge. Participants at the 2023 CTC Working Group discussed solutions and developed consensus. The capability assessment discovered that the current active-duty paralegal force lacks the education and experience to provide legal support and guidance to the operations process, consequence management, support to FIRES/targeting and detention operations if needed in a dispersed, communications denied/degraded LSCO environment (See Figure 1). Paralegals routinely are without robust doctrine in an operational environment and must rely on personality and best practices to be successful on Combat Training Center rotations or on deployments. CLAMO found that as rotational units dispersed Brigade Legal Staff for survivability, and forces were put under pressure, units struggled to maintain legal support to operations, mobility, survivability and maintain lethality. With those observations in mind, Doctrine, Organization, Training, Material, Leadership and Education, Personnel, Facilities, and Policy (DOTMLPF-P) solutions needed to be created and implemented. We needed to create solutions to push legal support capabilities down to point of tactical need at the dispersed battalion paralegal level so Soldiers can be equipped to inform LOAC analysis questions from their command teams and understand their role in generating situational understanding for their judge advocate. [185]

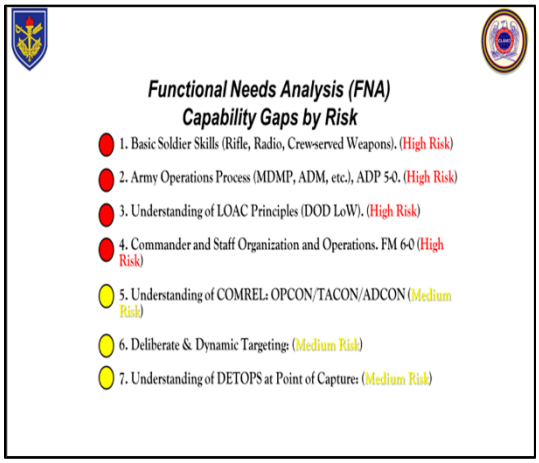


Figure 1 27D NSL Knowledge Capability Based Assessment (FEB-OCT 2023)

Mastery of the Basics

In 1974, after the Vietnam War, the Army had a culture problem with

[184] *Id. at 3*

[185] MILLER: A LEGACY OF SMART, FAST, LETHAL AND PRECISE WWW.ARMY.MIL, https://www.army.mil/article/164329/miller_a_legacy_of_smart_fast_lethal_and_precise (last visited Apr 29, 2024)

lack of discipline, tactical atrophy, and lack of trust in the government; General Creighton Abrams looked at this problem and decided to stand up the Ranger Regiment to rectify tactical and cultural issues.[186] When strategizing how to create solutions for the Paralegal NSL capability gap, CLAMO looked to Abrams Charter establishing the 75th Ranger Regiment for a framework. General Abrams had excellent foresight in that he didn't task the Rangers with anything too complex, such as the mastery of modern tactics, techniques and procedures (TTPs); his emphasis was on the mastery of the basics and professionalizing performance and that's the framework that we envision for paralegals in the national security law space.[187] We wanted masters of the basics in national security law and staff operations to shape situational understanding before, during and after operations.[188]

SMART, FAST, LETHAL & PRECISE

With mastery of the basics in mind and harkening back to service with retired General Scott Miller when he commanded the Joint Special Operations Command (JSOC), we took the framework from the Fort Moore "Maneuver Center of Excellence's (MCoE's) vision for future maneuver concepts and force modernization"[189] and applied it to fit the end-state of an ideal para-professional national security law practitioner of the future: "SMART, FAST, LETHAL and PRECISE." [190]

SMART: Generate situational understanding for the supervising judge advocate and commanders before, during, and after operations through cognitive dominance. Be smarter than our adversary to provide an advantage on the battlefield. [191]

FAST: The ability to cognitively outmaneuver our adversaries. Speed of thought equals speed of action. [192]

LETHAL: Deadly in our ability to identify risk and inform commanders to apply force when necessary to enable unequivocal lethality. [193]

PRECISE: Accurate application of institutional and operational knowledge in space and time. Precise application of the right knowledge for the situation at hand. [194]

When we look at the framework of what we want paralegals on the next battlefield to be, SMART, FAST, LETHAL and PRECISE, CLAMO started looking at the range of DOTMLPF-P solutions to get us to our end state. We

[186] RANGERS LEAD THE WAY: THE VISION OF GENERAL CREIGHTON W. ABRAMS
[187] *Id.*
[188] MILLER: A LEGACY OF SMART, FAST, LETHAL AND PRECISE WWW.ARMY.MIL, https://www.army.mil/article/164329/miller_a_legacy_of_smart_fast_lethal_and_precise (last visited Apr 29, 2024)
[189] MANEUVER CENTER OF EXCELLENCE A 21ST CENTURY APPROACH TO TALENT MANAGEMENT… U.S. ARMY TRAINING AND DOCTRINE COMMAND, https://www.tradoc.army.mil/tradoc-onboarding/maneuver-coe/ (last visited Apr 29, 2024)
[190] *Id.*
[191] *Id.*
[192] *Id.*
[193] *Id.*
[194] *Id.*

observed that we needed to apply some adjustments to training, and as our concepts become more solidified, to our doctrine and our non-material solutions (See Figure 2). [195]

Multi-Prong Solution Approach

As we worked through the 27D NSL capability-based assessment at the CTC Working Group, we came to consensus that we have some disconnect in our training pathways for paralegals. If we must operate "in a complex and uncertain environment", what is the critical training path that takes paralegals routinely from the beginning of their military career and makes them as good as they possibly can be in the operational environment. Utilizing the synergy within Directorates at the Legal Center, the Paralegal NSL Concept was created to provide solutions across the immediacy spectrum with new training, FM 3-84 doctrine additions and AIT and NCOES modifications to remedy the capability gaps. [196]

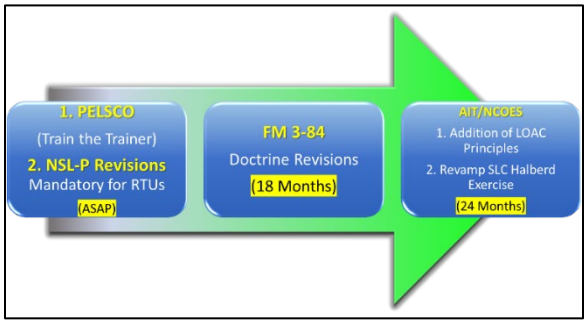


Figure 2 CLAMO 27D NSL Concept Diagram (MAR 2024)

Short Term Solutions: Training

Paralegal Employment in LSCO (PELSCO) Course: As we look across the range of DOTMLPF-P solutions, the closest target is institutional training with a one-week course of instruction to remedy capability gaps. From January 23 through January 26, 2024, USARPAC hosted CLAMO for the verification of the first proof-of-concept PELSCO course. Sixteen paralegals from the USARPAC area of operations (AO) participated as the training audience. PELSCO aimed to provide paralegals with two to six years' experience with the knowledge and tools to effectively integrate with and contribute to tactical and operational staffs. Topics included Employment of 27Ds in a LSCO environment, LOAC Principles and Doctrinal Role of the Paralegal NCO as the Unit Legal Trainer, MDMP, Authorities and COMREL, Counter Lawfare, CONOP Legal Review and Targeting Packet Review. CLAMO then observed the paralegals who graduated PELSCO apply the knowledge gained during participation in KEEN EDGE—a trilateral, USINDOPACOM exercise.

CLAMO's View:

To quickly address capability gaps observed during a 2023 27D NSL capability-based assessment, CLAMO designed a program of instruction (POI) and utilized several Judge Advocate Tactical Staff Officer Course (JATSOC)

[195] *Id.*
[196] TP. 525-3-1].

products, to build approximately twenty hours of instruction with four practical exercises in concept of operations (CONOP) review and targeting packet review. CLAMO conducted mid-course and end-of course after-action reviews (AARs) with the students and USARPAC OSJA leadership with very positive feedback. The overall sentiment was that the students felt they were much better prepared to conduct their duties as NSL NCOICs and participate in future exercises. Further, paralegals attended operational working groups with confidence and drafted for judge advocates the legal reviews of all concepts of operations during KEEN EDGE.

Training Package Possibilities:

Pending the assessment of assets and capabilities, we need feedback from the field on how to export this product to the operational force. This feedback is critical on how this training package will mold into a sustainable product that is scalable at echelon and can be easily replicated.



Figure 4 USARPAC OSJA and graduates of the 1st PELSCO class



Figure 5 SFC Angle instructs at pilot PELSCO Course hosted by USARPAC



Figure 6 SSG Jackson, a PELSCO graduate, receives a coin from Gen. Charles Flynn for outstanding work during exercise KEEN EDGE

Revamp NSL-Primer (NSL-P):

After nearly two years of querying SLC and ALC students on the positives and negatives of the respective courses, the resounding sentiment is that the NSL-Primer is a fantastic self-paced distance learning course to give an overall basic understanding of national security law. In CLAMO's view NSL-Primer (NSL-P) should be sustained and should be a prerequisite to attend PELSCO. Completion of NSL-P provides an excellent foundation for NSL paralegals and demonstrates their willingness to gain additional knowledge outside of operational and institutional training to their supervising judge advocate. However, nearly 50% of the PELSCO students and 60% of SLC and

ALC students surveyed stated that it was difficult to retain the course content due to the self-paced and distance learning format, thus, demonstrating the need for PELSCO. Some notable negative comments were that the course slides were not retainable upon graduation for reference before going to a CTC rotation or deployment. Training Development Directorate (TDD) and CLAMO have remedied these problems and future students will now be able to retain the course slide decks. CLAMO has suggested adding several classes from PELSCO that address staff operations to make the course more effective for the student. Possible course additions include Employment of 27Ds in LSCO; Staff Operations – Working Groups, Cells and Boards; Command Relationships (COMREL); Detention Operations (DETOPS); Operational Terms and Symbols; Authorities; CONOP Legal Review and Preparation and Common Tactical Staff Abbreviations and Terms. With these course additions, the NSL-Primer can become more beneficial to a staff NCO and basic NSL paraprofessional.

Mid-term Solutions: Doctrine

Training is essential for the Paralegal NSL Concept; however, the best trained paralegal lacks doctrinal backing to be truly successful during legal support to operations. For the better part of two decades, paralegals relied on sharing best practices and personality to be successful in CTC rotations, field training exercises (FTX), warfighter training exercises (WFX), and deployments. As the rest of the Army operates pursuant doctrine, CLAMO envisions the future paralegal to be armed with more robust doctrine to get placement and access to be a necessary sensor for their judge advocate. The current version of FM 3-84 specifically mentions paralegal NCOs or paralegals only five times and the tenants in these paragraphs are very vague. If we want paralegals to do more legal support to operations, we must provide the doctrinal backing. In preparation for a new edition of FM 3-84 Legal Support to Operations, Mission Command and Training Program (MCTP) and CLAMO have joined to spearhead the Paralegal Doctrine Addition Working Group to brainstorm potential doctrine additions. Doctrine recommendations will then be provided to the Future Concepts Directorate, Legal Center and OTJAG-NSLD for proper vetting.

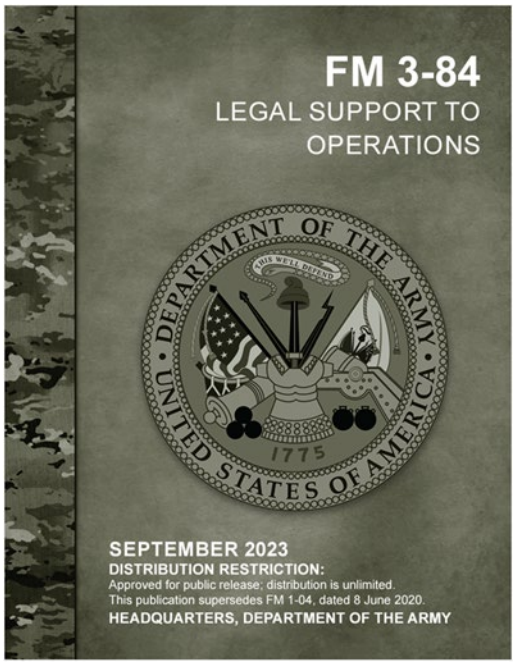


Figure 7 FM 3-84: Legal Support to Operations

Emphasize Army Regulation (AR) 350-1 Doctrinal Role of Paralegal NCO as Unit Legal Trainer:

Pursuant to AR 350-1, "For the purposes of the training objectives…a qualified trainer is defined as a JAGC Officer or Paralegal Noncommissioned officer certified to conduct such training by a JAGC Officer."[197] By expanding the role of the paralegal to conduct LOAC training when a judge advocate is pressed for time or dealing with other matters will create more bandwidth for the judge advocate.[198] These paralegal NCO's would be vetted by a judge advocate on two to three LSCO vignettes. This model helps both the Army and JAG Corps as paralegals get more facetime with leaders, gaining placement and access, as well as expanding the reach of LOAC training to the operational force. Though the window for doctrinal changes is open, these changes would not likely be developed, approved, and implemented for another eighteen months. Accordingly, while the most important portion of the concept, it is a temporary solution.

Long-term Solutions: AIT Instruction

To change the culture of what paralegals can do in national security law, we need to get LOAC principles to paralegals at the very beginning of their military career to understand the art of possible of what they can do in the operational environment. Currently, paralegals are not institutionally exposed to LOAC principles until the Army Paralegal Competency Course (APCC). While the APCC is an excellent distance learning course, it is not required and is not usually taken until the paralegal reached the junior NCO ranks. Gleaned from observations at CTC rotations, it is the battalion paralegal that needs to understand LOAC principles the most due to geographical disbursement and communications degradation issues with their judge advocate. It is CLAMO's position that we need to introduce in-person LOAC principles training at AIT to arm to expose paralegals to NSL before they are confronted with a LOAC analysis in the field. There is the old term from an unattributed author "you never want to meet your boss in a crisis," that is also true for confronting a new subject, you never want to learn when people's lives are on the line.

Conclusion

Though still in development, we can see how utilizing Kotter's Model for organizational change can provide a roadmap for lasting change for how we employ paralegals in combat scenarios through the Paralegal NSL Concept. If we want to create positive change, we must ask ourselves if we are willing push intellectual bandwidth down to the point of tactical need where it is needed the most.[199] The world is only getting more complex; it is not getting less

[197] [U.S. Army Publishing Directorate], REG. [350-1], [ARMY TRAINING AND LEADER DEVELOPMENT] Table F-2, para.c(2) ([Dec 10, 2017]) [hereinafter [AR 350-1]]
[198] *Id.*
[199] TP. 525-3-1.

complex. There will be friction and fights in the gray zone where other nations will test our resolve."[200] As we move into uncertain times, paralegals need to be ready to fight, give great legal support to military operations and help us win our Nation's wars. We need to provide the best training for America's Service members. As the Army changes its concept of warfighting to more disbursed and mobile command and control, the JAG Corps needs to change in order to meet the Army's demand for legal support. By incorporating the short-term, mid-term and long-term solutions mentioned above, NSL paralegals can continue to be the SMART, FAST, LETHAL and PRECISE warfighters needed to deter war and ensure our nation's security.[201]

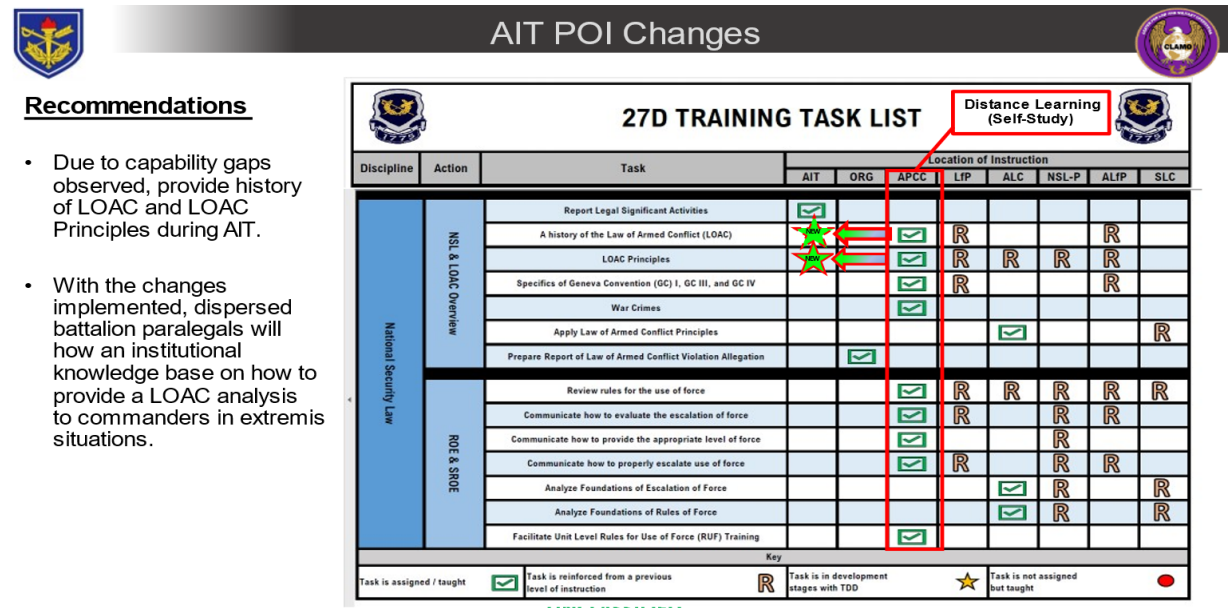


Figure 8 CLAMO Proposed LOAC Training at AIT

As we improve ideas to foster change, TJAGLCS needs your help formulating and refining our concepts. If you or your teammates have any input or suggestions relating to paralegal capabilities in regard to soldier skills, legal acumen, and staff integration, please submit them to the CLAMO inbox at usarmy.pentagon.hqda-tjaglcs.mbx.clamo-tjaglcs@army.mil.

Thank you for continuing to support the WARFIGHTER

[200] 75TH RANGER COMBAT CAMERA RELEASES VIDEO ON AFGHAN WITHDRAWAL TASK & PURPOSE, https://taskandpurpose.com/news/army-ranger-regiment-video-afghanistan/ (last visited Apr 29, 2024)
[201] MILLER: A LEGACY OF SMART, FAST, LETHAL AND PRECISE WWW.ARMY.MIL, https://www.army.mil/article/164329/miller_a_legacy_of_smart_fast_lethal_and_precise (last visited Apr 29, 2024)

Lawfare and Counter Lawfare from the 2024 Taiwan Earthquake

LTC Richard J. Connaroe, USA

On Wednesday, April 3, 2024, a magnitude 7.4 earthquake struck Taiwan, killing at least 13 people and injuring over 1,100 more.[202] The shaking started just before 8 a.m. and spanned about a minute.[203] In that time, residents of the rural area of eastern Hualien County endured power outages, falling objects in their homes, and pieces of their homes breaking off.[204] Falling boulders trapped people inside tunnels and coal mines, and a rockslide on a hiking trail killed at least five hikers.[205] This was the strongest and most deadly earthquake to strike Taiwan since 1999, when a 7.7 magnitude earthquake killed 2,400.[206] Taiwan was devastated.[207]

The international community promptly expressed condolences to Taiwan.[208] The United States, Japan, the Philippines, the European Union, Britain, Guatemala, Paraguay, and India all sent messages of solidarity and offered support.[209] Paraguayan President Santiago Pena wrote, "All our solidarity and support to the government and people of the sister Republic of China (Taiwan) in this difficult moment. Today more than ever we ratify our support."[210] The People's Republic of China (PRC) also made a statement.

[202] The earthquake monitoring agency in Taiwan measured the earthquake at 7.2 magnitude, and the U.S. Geological Survey measured it at 7.4. *See*, Johnson Lai and Huizhong Wu, *Survivors of Taiwan's historic quake recall harrowing moments of tremors, being trapped under rocks*, AP (Apr. 5, 2024), https://apnews.com/article/taiwan-earthquake-survivors-experiences-da4bce5f81c5c708c24603f4f3ec1373

[203] *Earthquake in Taiwan blamed for at least 9 deaths as buildings and roads seriously damaged*, CBS NEWS (Apr. 3, 2024), https://www.cbsnews.com/news/earthquake-taiwan-tsunami-warnings/; Hundreds of aftershocks continued for days, including an aftershock of 5.4 magnitude on Saturday three days later. Earthquake aftershocks halt the demolition of a leaning building in Taiwan. Death toll rises to 13, AP (Apr. 6, 2024), https://apnews.com/article/taiwan-hualien-earthquake-taroko-shakadang-a20431a309e21d74f9ec62e097efa530.

[204] Lai and Wu, *supra* note 1.

[205] *Id.*; Johnson Lai and Christopher Bodeen, Rescue teams in Taiwan searching for family feared trapped in rockslide following earthquake, AP (Apr. 4, 2024), https://apnews.com/article/taiwan-earthquake-taroko-national-park-family-missing-bd01953781a73c29d09902f784543293.

[206] *See*, Yimou Lee and Fabian Hamacher, *Taiwan's strongest earthquake in 25 years kills 9 people, 50 missing*, REUTERS (Apr. 3, 2024), https://www.reuters.com/world/asia-pacific/strong-72-magnitude-earthquake-hits-taipei-2024-04-03/; Amy Hawkins, *'As well prepared as they could be': how Taiwan kept death toll low in massive earthquake*, The Guardian (Apr. 7, 2024), https://www.theguardian.com/world/2024/apr/07/as-well-prepared-as-they-could-be-how-taiwan-kept-death-toll-low-in-massive-earthquake (describing building codes since 1999 earthquake resulting in less damage in the 2024 earthquake).

[207] *See e.g.*, *Tilted buildings pose new danger in wake of Taiwan quake*, REUTERS (Apr. 5, 2024), https://www.reuters.com/pictures/tilted-buildings-pose-new-danger-wake-taiwan-quake-2024-04-05/.

[208] *See*, *Leaders voice solidarity after quake*, TAIPEI TIMES (Apr. 4, 2024), https://www.taipeitimes.com/News/taiwan/archives/2024/04/04/2003815935.

[209] *Id.*

[210] *Id.*



Figure 1 Hualien leaning building

After news of the earthquake reached the United Nations, The PRC's Deputy Permanent Representative to the United Nations commented on "China's Taiwan."[211] The PRC expressed purported condolences, announcing: "We thank the international community for its expressions of sympathy and concern."[212] Taiwan's foreign ministry promptly responded in anger that Taiwan "solemnly condemns China's shameless use of the Taiwan earthquake to conduct cognitive operations internationally" and that "this shows China has no goodwill towards Taiwan."[213] This article discusses legal warfare ("lawfare") and counter lawfare, using this example of ongoing public opinion warfare, psychological warfare, and lawfare campaigns, and explains that counter lawfare matters in preserving customary international law.

So What Exactly is Lawfare?[214]

While not defined in Department of Defense doctrine, lawfare is commonly defined as the use of the law to achieve a policy objective.[215] Academics postulate at least five overlapping types of lawfare.[216] First, battlefield exploitation lawfare is the exploitation of an adversary's law abidingness.[217] Second, instrumental lawfare is the use of legal tools, like sanctions, to achieve effects similar to conventional military actions.[218] Third, proxy lawfare is legal action against an adversary's proxy.[219] Fourth, information lawfare is the use of law to control the narrative of competition or conflict.[220] Fifth, institutional lawfare is the creation of law to achieve strategic efforts.[221] The PRC, however, has clearly defined lawfare.[222]

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[211] *See*, Eric Chang, Taiwan slams China for accepting global sympathy over quake, TAIWAN NEWS (Apr. 5, 2024), https://www.taiwannews.com.tw/news/5137106; *Taiwan condemns 'shameless' China's thanks for global sympathy on quake*, REUTERS (Apr. 4, 2024), https://www.reuters.com/world/asia-pacific/taiwan-condemns-shameless-china-accepting-worlds-concern-quake-2024-04-04/.

[212] *Id.*

[213] *Id.*

[214] A similar version of this section will largely appear in my article—*Countering Lawfare of the People's Republic of China Starts with 'PRC,' Not 'China'*—in the 2024 issue 1 of The Army Lawyer.

[215] In 2021, Jill Goldenziel provided two expansive definitions of lawfare. Jill Goldenziel, *Law as a Battlefield: The U.S., China, and the Global Escalation of Lawfare*, 106 CORNELL L. REV. 1085, 1094 (2021).

[216] *See, e.g.*, Jill Goldenziel, *Law as a Battlefield: The U.S., China, and the Global Escalation of Lawfare*, 106 CORNELL L. REV. 1085, 1099 (2021) (posing five bins of lawfare: "battlefield exploitation lawfare," "instrumental lawfare", "proxy lawfare," "information lawfare," and "institutional lawfare"); Orde F. Kittrie, LAWFARE: LAW AS A WEAPON OF WAR 11 (2016) (suggesting two types of lawfare: "instrumental lawfare" and "compliance-leverage lawfare").

[217] Jill Goldenziel, *Law as a Battlefield: The U.S., China, and the Global Escalation of Lawfare*, 106 CORNELL L. REV. 1085, 1099 (2021).

[218] *Id.*

[219] *Id.*

[220] *Id.* at 1100.

[221] *Id.*

[222] *See* Dean Cheng, *Winning Without Fighting: Chinese Legal Warfare*, THE HERITAGE FOUNDATION (May 21, 2012), https://www.heritage.org/asia/report/winning-without-fighting-chinese-legal-warfare#_ftnref3.

The PRC has codified three reinforcing warfares (referred to as "the Three Warfares"): legal warfare, public opinion warfare, and psychological warfare.[223] The PRC views lawfare as an offensive weapon to seize the initiative—a form of combat that facilitates their strategic objectives to redefine international norms.[224] PRC lawfare involves "arguing that one's own side is obeying the law, criticizing the other side for violating the law, and making arguments for one's own side in cases where there are also violations of the law."[225] Conversely, public opinion warfare is the struggle over media dominance, and psychological warfare involves erosion of political will.[226]

One example in which the lawfare is immediately clear is the PRC's disregard of a 2016 Arbitral Tribunal determination that the Philippines possess sovereign rights to resources at Second Thomas Shoal (2TS) and that the PRC has no lawful claim to 2TS.[227] In 2021, 2023, and 2024, the PRC interfered with the Philippines' activities at 2TS, ramming and using water cannons against Philippine vessels.[228] The PRC is normalizing their unlawful behavior at the risk of triggering the U.S. and Philippines' Mutual Defense Treaty obligations to act in the event of an "armed attack" on either.[229] While this PRC malfeasance conveys public opinion and psychological effects, the lawfare effects are direct and significant.

"You...will join me for dinner. That's not a request!"[230]

Coming back to the earthquake in Taiwan, the PRC used the occasion to further its campaign in "the Three Warfares" against Taiwan and the international community writ large, though the lawfare may seem less direct. In referring to Taiwan as "China's Taiwan,"[231] the PRC is both asserting that it is the rightful 'China' and that Taiwan belongs to the PRC. These positions are in furtherance of its 2021 Land Borders Law, which purports to "standardize and strengthen" border control and communicates the PRC's intent to "resolutely defend territorial sovereignty and land border security," and its 2023 "standard map," which

[223] *Id.*; *see also*, *Peter Mattis, China's 'Three Warfares' in Perspective*, War on the Rocks (Jan. 30, 2018), https://warontherocks.com/2018/01/chinas-three-warfares-perspective/.
[224] Dean Cheng, *supra* note 21.
[225] *Id.* (quoting Han Yanrong, Legal Warfare: Military Legal Work's High Ground: An Interview with Chinese Politics and Law University Military Legal Research Center Special Researcher Xun Dandong, LEGAL DAILY (PRC) (Feb. 12, 2006)).
[226] *Id.*
[227] *Sierra Madre, Second Thomas Shoal, and the U.S. Commitment to Defense of the Philippines*, USINDOPACOM TACAID (2023), https://www.pacom.mil/Portals/55/Documents/Legal/J06%20TACAID%20-%202TS-SIERRA%20MADRE%20V4%20(FINAL).pdf?ver=d7gU3t5OjFllS3PhT0ExIw%3d%3d.
[228] *Id.*
[229] *Id.*
[230] BEAUTY AND THE BEAST (Walt Disney Studios Motion Pictures 1991) (Beast demands subordination in his relationship with Belle, slamming the door behind him).
[231] Similarly, for years prior to its 2022 invasion of Ukraine, Russia referred to Ukraine as "the Ukraine," implying it was an area of Russia, and to its capital Kyiv as "Kiev," the Russian spelling, with some international parties (sometimes unwittingly) following suit. *See, e.g.*, Patrick Donahue and Daryna Krasnolutska, Understanding the Roots of Russia's War in Ukraine, BLOOMBERG (Mar. 2, 2022), https://www.bloomberg.com/news/articles/2022-03-02/understanding-the-roots-of-russia-s-war-in-ukraine-quicktake; Mark Rice-Oxley, How to Pronounce and Spell 'Kyiv', and Why it Matters, THE GUARDIAN (Feb. 25, 2022), https://www.theguardian.com/world/2022/feb/25/how-to-pronounce-and-spell-kyiv-kiev-ukraine-and-why-it-matters.

expands PRC boundaries to include disputed areas and sovereign territory of other nations.[232] A word-for-word reading of the PRC's statements conveys to Taiwan a message similar to "we own you." Further, accepting sympathy from other countries on behalf of Taiwan could be read as a reminder—or even a warning—to the international community that the PRC is in charge. Such strong-handed messages may have a deep psychological effect on both Taiwan and the international community that could lead to submission, but the long-term legal effect from a lawfare perspective may not be as immediately clear. If left unchallenged, PRC assertions of the validity of the PRC's "standard map" could result in apparent acceptance under customary international law, achieving the lawfare goal of redefining international norms. Instead, Taiwan took action to maintain international norms.

"You've taken me prisoner and now you want to have dinner with me? Are you insane?"[233]

Taiwan promptly and discerningly responded to counter PRC messaging and the adverse public, psychological warfare, and legal aspects. Focusing on the counter lawfare, which are actions to counter another party's lawfare, consistently and reliably identifying lawfare, malfeasance, and violations prevents the lawfare from going unnoticed. International disregard, rejection, or condemnation of overtures to redefine international norms prevents redefinition of customary international law. In this case, Taiwan shamed the PRC for its assertions and identified PRC lawfare—specifically labeling it as "cognitive operations internationally," exposing the PRC's attempt to achieve international effects including long-term legal effects.[234] A plain reading of Taiwan's response that "China has no goodwill towards Taiwan" suggests acknowledgement that the PRC is 'China' but also that Taiwan is separate.[235]

Conclusion

Lawfare includes various methods to exploit the law to achieve effects, particularly redefining international norms. Once malfeasance is accepted as normal, that behavior or language may either constitute custom or, at least, provide a debatable basis for a shift in customary international law.

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[232] *See*, Jill Goldenziel, *How to Decode China's Imperial Map —and Stop It from Becoming Reality*, FORBES (Sept. 5, 2023, 2:11 AM EDT), https://www.forbes.com/sites/jillgoldenziel/2023/09/05/how-to-decode-chinas-imperial-map--and-stop-it-from-becoming-reality/?sh=639dc6ef5a2d (discussing the 2023 standard map of China and its inclusion of the "Nine-Dash Line" among other controversial features); *The PRC's Land Borders Law*, USINDOPACOM TACAID (2023), https://www.pacom.mil/Portals/55/Documents/Legal/J06%20TACAID%20-%20PRC%20LAND%20BORDERS%20LAW%20-%20FINAL.pdf?ver=zp6y0pfpaAWoL5KOv0KDYg%3D%3D (a counter lawfare piece originally by MAJ Jayne Leemon that exposes PRC malfeasance/lawfare in the PRC's 2023 Land Borders Law and its "standard map" and establishes why the international community must reject it).

[233] BEAUTY AND THE BEAST (Walt Disney Studios Motion Pictures 2017) (Belle identifies Beast's malfeasance and rejects his demands, refusing his attempts to redefine social norms).

[234] *See*, Eric Chang, Taiwan slams China for accepting global sympathy over quake, TAIWAN NEWS (Apr. 5, 2024), https://www.taiwannews.com.tw/news/5137106; *Taiwan condemns 'shameless' China's thanks for global sympathy on quake*, REUTERS (Apr. 4, 2024), https://www.reuters.com/world/asia-pacific/taiwan-condemns-shameless-china-accepting-worlds-concern-quake-2024-04-04/.

[235] *Id.*

For example, artificial islands are not included in the definition of 'island' and are not entitled to a territorial sea or an exclusive economic zone (EEZ) in accordance with the United Nations Convention on the Law of the Sea (UNCLOS).[236] Therefore, we guard customary international law by referring to artificial islands as 'artificial islands,' conscious of the possibility that referring to an artificial island as an 'island' could provide a basis to the erroneous argument that human manipulation can upgrade a rock to an 'island.'[237] Similarly, countering lawfare regarding international borders and sovereignty not only guards against redefining of customary international norms long term but identifying malfeasance also galvanizes international support.

[236] United Nations Convention on the Law of the Sea, Dec. 10, 1982, 1833 U.N.T.S. 397 (defining 'island' in Article 121 an as "naturally formed area of land")

[237] *See,* Imogen Saunders, *Artificial Islands and Territory in International Law*, VANDERBILT JOURNAL OF TRANSNATIONAL LAW vol. 52:643 (particularly the discussion of islands versus artificial islands at 647-648).

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13-17 ADV Contract Law Course, TJAGLCS, Charlottesville, VA

14-16 6th Annual Alexander C. Cushing International Law Conference, Newport, RI

20-24 IIHL Detention and Captured Personnel, San Remo, ITA

20-24 IIHL Peace Support Operations, San Remo, ITA

June 2024

3-7 Advanced Course on IHL (IIHL), San Remo, ITA

3-5 Fugh Symposium, TJAGLCS, Charlottesville, VA

10-14 (ICRC) International Human Rights Law Training Course, San Remo, ITA

17-21 NATO Joint Targeting Staff Course, Oberammergau, GER.

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