

No. 3

Multi-Domain Operations

Judge Advocate Legal Services' Role in MDO and Bridging the Eighteenth Capability Gap

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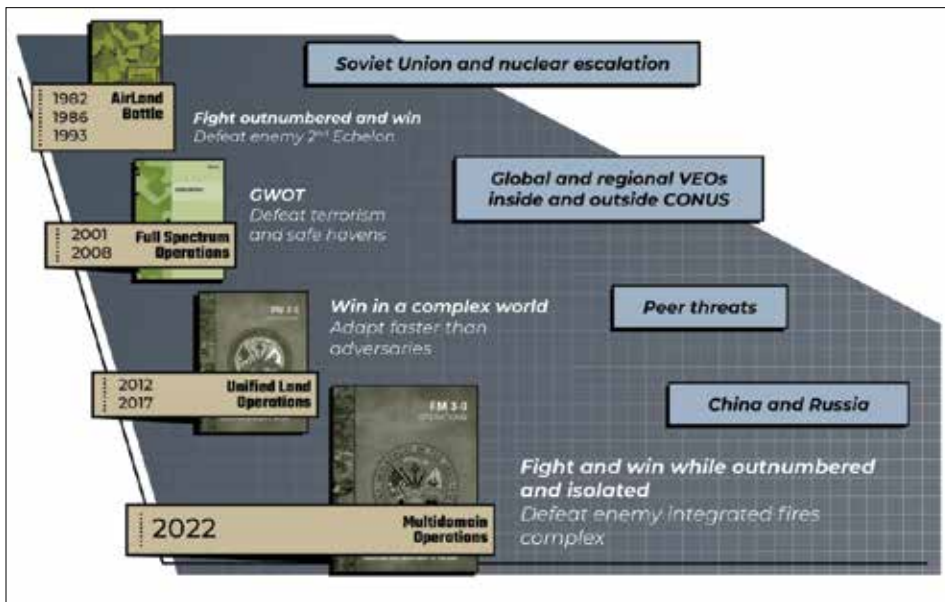
The existential threat to the world order is arguably higher than it has been at any point since the end of the Cold War.¹ Russia is conducting a drawn-out, unprovoked war against Ukraine and poses a bona fide threat to European economic stability.² China, our pacing challenge, continues to exhibit hegemonic tendencies, engage in coercive economic expansion, and conduct aggressive military posturing to reshape international order in its favor.³ Malign states and rogue actors, such as North Korea, Iran, and violent extremist organizations, remain credible threats to U.S. national interests and regional stability.⁴ Our competitors and adversaries use tactics below the threshold of armed conflict, operating in the “gray zone” through the physical and information dimensions, to disrupt international order and gain strategic advantage.⁵ Such activities place us at grave risk of geopolitical miscalculation, particularly when the world’s nations are confronting food insecurity, climate change, water scarcity, and the expanding reach of authoritarianism.

The Eighteen Capability Gaps

Lieutenant General Charles Pede, the Army’s 40th Judge Advocate General, and Colonel Pete Hayden proved prescient in their article, “The Eighteenth Gap, Preserving the Commander’s Legal Maneuver Space on ‘Battlefield Next.’”⁶ Focused on concerns re-

garding public misperception about “normative rules in warfighting” and the U.S. military’s counterinsurgency (COIN) “hangover,” the authors warned that the “next fight may not be with an asymmetric blend-into-the-market enemy.”⁷ Adding to the Combined Arms Center’s list of seventeen gaps in conventional warfighting, which developed after decades of military operations against non-state armed groups and terrorist organizations, the authors rightly identified that an eighteenth capability gap has materialized.⁸ The eighteenth gap threatened to obstruct commanders’ “legal maneuver space” in the future fight.⁹

At the time the article was published in 2021, the Army was emerging from being fully engaged in stability operations, low-intensity conflicts, and counterterrorism (CT) operations with a COIN hangover. This COIN hangover resulted from experiential and policy spillover, in which commanders and judge advocates (JAs) inadvertently imported policy or viewed future warfighting doctrine and policy through the lens of their prior experiences.¹⁰ The doctrine and policies associated with COIN are not the same as that which is necessary to compete, deter, and, if deterrence fails, prevail in armed conflict.¹¹ In the next fight, commanders must be comfortable making rapid decisions rife with risk and ambiguity and be versed in their legal authorities.



(Image courtesy of authors)

Our Army has leaned forward, as it always does, to close the seventeen capability gaps. First, the Army introduced the concept of multi-domain operations (MDO), which is approved doctrine in the latest update to Field Manual 3-0 – Operations.¹² Multi-domain operations is how the Army will close the seventeen capability gaps. Through MDO, the Army will compete, deter, and, if necessary, defeat adversaries using technological advances, increased lethality and reach, improved talent management, and an impervious global network of allies and partners.

Concomitant with MDO, the Army established the Army Futures Command (AFC) in 2018.¹³ The AFC serves as the headquarters for Army “research, doctrinal development, acquisitions, testing, and modernization efforts.”¹⁴ Combining priorities of existing organizations, leading cross-functional teams, and serving as the home to integration and synch teams, the AFC leads the Army’s modernization efforts.¹⁵ These efforts include the Army’s ambitious campaign of learning called Project Convergence, an Army-hosted, joint force and multinational effort to “collect data, evaluate effectiveness, reduce risk and optimize warfighting capability.”¹⁶ In Project Convergence, the Army is leading and collaborating with the joint force, international partners, and the defense industrial base to develop and demonstrate artificial

intelligence and technology that augments human functions and improves lethality in the MDO environment.¹⁷

Army JAG Corps national security law (NSL) experts are essential to advising Army leaders in efforts to close the seventeen capability gaps. The Army JAG Corps also continues to do its part in closing the eighteenth gap by “flood[ing] the zone” in international legal discourse to preserve commanders’ warfighting legal authorities.¹⁸ However, the specter of the COIN hangover lingers, and the symptoms are now more nuanced.

As the Army narrows the seventeen capability gaps, our Corps must facilitate the Army bridging the eighteenth gap. As Lieutenant General Pede and Colonel Hayden predicted, combat training center rotations and warfighter exercise feedback indicates that some commanders and JAs continue to apply overly-prescriptive limitations typical of COIN and CT operations. Further, some commanders are overly hesitant, some even showing a proclivity towards inaction, without a lawyer physically present to advise on each lethal effect decision. On the other hand, there are indications that the mandate to turn the page on COIN has led some leaders to overcorrect when it comes to what rules do and do not apply. Our Corps must ensure that we do not maneuver off the bridge in the Army’s effort to cross the eighteenth gap.

There is little doubt that the future fight will be violent and result in significant damage and destruction.¹⁹ As the late Senator John McCain said, “[w]ar is wretched beyond description.”²⁰ Russia illustrates this point today in its means and methods of conducting warfare against Ukraine. It reminds us that our future enemies will likely not adhere to international humanitarian law principles and the rule of law. However, as so eloquently said by the late senator, “[w]e live in a land made of ideals. . . . We are the custodians of those ideals at home and their champion abroad.”²¹ With the next fight, the speed, violence, and risk to the joint force will necessitate more permissive policies and authorities than were implemented in COIN and CT operations. However, we must maintain the legal and the moral high ground, ensuring that we lawfully target military objectives and take feasible precautions to protect civilians and civilian objects.²² Successfully bridging the eighteenth gap can only be accomplished in reliance on, and upholding of, the law of armed conflict (LOAC).

Army JAG Corps Bridging Strategy

How does our Corps prepare for the next fight and prepare itself to advise the Army of 2030 and beyond? This is not business as usual, and the stakes could not be higher. Fortunately, the Army JAG Corps will persevere in the most consequential practice of law because of the commitment and ingenuity of our people. However, our Corps owes its personnel the guideposts, training, education, and experiences to ensure individual readiness and future success. Regardless of your present position, you must be competent, operational law attorneys and paraprofessionals prepared to advise tactical and operational commands. Some of you will need to specialize and become true NSL experts, prepared to advise in-depth at the operational and strategic levels within a multi-domain environment.

This article frames the challenge, provides an azimuth, and defines expectations for each of you. The Army JAG Corps must maintain a deep bench of ready, competent NSL practitioners for the future; our people are the bridging strategy—that is you, and your preparation begins now!



U.S. Soldiers assigned to 11th Armored Cavalry Regiment train with the Integrated Visual Augmentation System and the Enhanced Night Vision Goggles during Project Convergence 2022 at Fort Irwin, CA. Project Convergence 2022 brings together members of the all-service and multinational force to rigorously test the effectiveness and interoperability of cutting-edge weapons and battle systems. (Credit: SGT Thiem Huynh)

First, to prepare for the next fight, you must understand the character of the future threat.²³ The future threat is multi-domain and cross-dimensional. This means our peer and near-peer competitors and rogue adversaries will simultaneously present complex symmetric and asymmetric challenges in the physical and virtual world across multiple theaters. The future threat is not static. Our competitors and adversaries continuously and tirelessly work to gain strategic advantage and degrade the current international order. As a result, we must surpass their intensity in these critical areas.

Second, to prepare for the next fight, the Army and the Army JAG Corps must get back to the basics of NSL—understanding LOAC. The law of armed conflict is the binding legal framework derived from treaties and customary international law within which states conduct armed conflict.²⁴ Regulations, policy, and doctrine govern

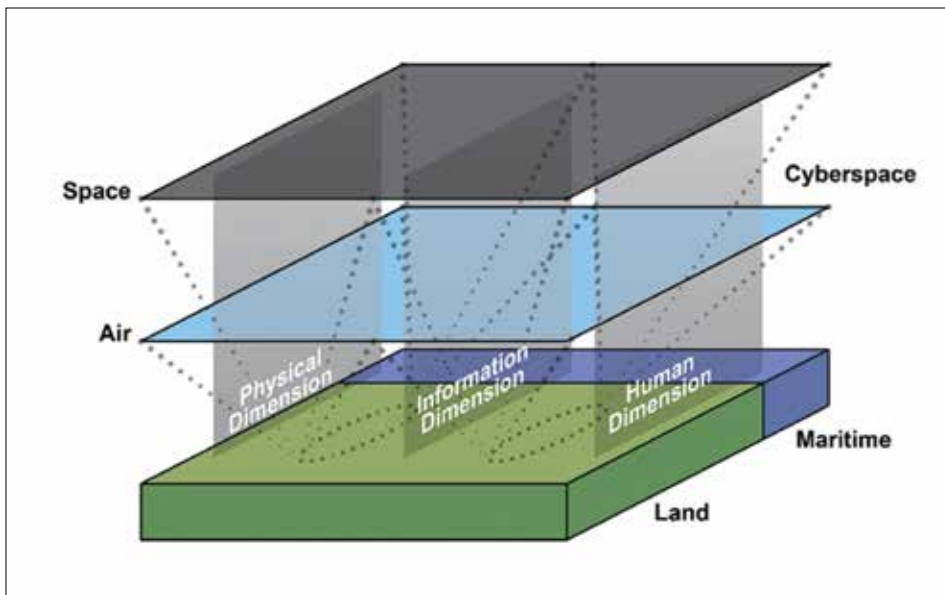
how the U.S. military conducts its business. While the U.S. military's governance framework evolves, it must always comport with LOAC. Therefore, all uniformed Judge Advocate Legal Services (JALS) personnel must have a solid foundation in LOAC.

Third, all JALS leaders must assist commanders in ensuring they train their units at echelon on LOAC well before conflict ensues. Unit awareness of LOAC is a command responsibility.²⁵ In the next fight, JAs may not be physically present with target decision authorities. Therefore, purposeful LOAC training at home station and during exercises is essential to mitigate misconceptions arising from policy and experiential spillover from recent conflicts of a wholly different character. It is also essential to guard against overcorrection. Once conflict ensues, commanders and JALS practitioners must already be steeped in LOAC and appropriately informed of

applicable regulations, policy, and doctrine governing the conflict.

Fourth, NSL is more than operational law. In other words, NSL encompasses *all* aspects of law impacting our national, defense, and theater strategies and campaigning. National security law transcends all military activities and operations at echelon in competition, crisis, and conflict and is the bedrock of authorities necessary to make MDO a reality. Focus areas for expert national security lawyers include intelligence, cyber, space, the electromagnetic spectrum, information, fiscal law, and acquisition law.

Finally, through MDO, new capabilities and authorities will reside at conventional units.²⁶ Additionally, the Army continues to establish units specifically tailored to conduct MDO: Multi-Domain Task Forces.²⁷ The Army JAG Corps must have an MDO mindset and be prepared to



The operational environment consists of five domains (land, maritime, air, space, and cyberspace) with three dimensions (physical, information, human). Army leaders must understand the complementary and reinforcing ways in which they can employ capabilities from all the domains in support of operations on land. (Image courtesy of authors)

advise the Army for the future. The law of armed conflict remains the *lex specialis* in armed conflict, therefore strategic-level commanders and NSL practitioners must understand the implications of applying LOAC in emerging and maturing domains, such as space and cyberspace. Ultimately, commanders must ensure that lower echelons are proficient in employing conventional and emerging weapons systems and that their formations can do so legally.

Future Conflict and the Multi-Domain Threat

Geopolitical competition for global power is not new, nor are crisis and war; some may argue it is the natural state of humanity.²⁸ However, while the nature of humanity's proclivity towards violence remains unchanged, the character of future threats to peace changes continuously.

Clausewitz posits that the most critical strategic decision nations face is identifying the type of conflict they are entering.²⁹ Civilizations, ideologies, geopolitics, and technological advancement directly influence hostilities' current and future conduct.³⁰ The only constant about the character of war is change.³¹

Unlike any fight U.S. forces have ever engaged in, the next fight will occur over greater distances, at faster speeds, and

simultaneously through the physical, information, and human domains.³² Tactical and operational commanders will confront conventional armored columns accompanied by infantry supported by warplanes overhead, long-range land and maritime-based fires located well beyond our corps' deep areas but still able to fire into our rear areas, cyber and electronic warfare attacks, and lawfare—all at once.³³

In the next fight, the multi-domain threat will not provide commanders the luxury of time, nor will the joint force be able to employ kinetic effects with near certainty regarding collateral effects.³⁴ The speed, mass, and scale of operations and near-peer lethal effects on the battlefield will be significant.³⁵ The resulting risk to our forces will be higher than we have experienced in decades. Commanders will lack the capability to remain in static, hardened command-and-control facilities, under the protection of air superiority, with large joint operations centers running on high-demand energy and signal systems.³⁶ Target engagement authorities will be unable to deploy unmanned aircraft systems to loiter over single targets for hours, let alone days.

Further, competition today will greatly influence future conflict.³⁷ The United States competes abroad while under con-

stant threat of competition in the homeland.³⁸ State competitors and adversaries have gained physical and virtual access to our borders.³⁹ Our democracy and our citizens' liberties are at risk, as evidenced by competitors and adversaries' repeated actions to disrupt electoral processes and stoke domestic civil discord.⁴⁰ Recently, alarming news has emerged that China has established Chinese "police stations" in major U.S. metropolitan areas.⁴¹ Claiming legitimacy as government offices established to support local Chinese citizens, U.S. officials are gravely concerned these stations are established to "pursue influence operations."⁴² These actions, and many others, make it more likely that U.S. forces will likely encounter contested freedom of movement from domestic garrisons and ports due to foreign intervention in the event of a future conflict.⁴³ Therefore, the United States must conduct MDO in competition to secure lines of communication and logistics, and to protect U.S. infrastructure and the domestic defense industrial base. Otherwise, the joint force may not be appropriately postured and ready to project combat power when needed.

The multi-domain threat of the next LSCO is of a character we have never experienced before. It portends significant friction and uncertainty as commanders at echelon will face multiple, simultaneous problems with little time to react to scenarios that pose a significant risk to the force.⁴⁴ Additionally, unlike in recent armed conflicts, the United States will likely encounter domestic disruptions to force employment due to adversary infiltration.⁴⁵ However, the nature of war remains constant, rendering it a "contest of wills."⁴⁶ The JAG Corps will be more relevant than ever in this contest, and the Army will ultimately prevail through MDO.

Back to the Basics: LOAC and Becoming a Competent Operational Lawyer

The JAG Corps's mission is to fully apprise Army and joint force commanders, staff, and units of their legal obligations in conflict.⁴⁷ The Army JAG Corps can only do this if JALS personnel have a solid foundation in LOAC. Competence in operational law rests on that bedrock.



BG Alison Martin speaks to a class on national security and LOAC at TJAGLCS. (Credit: Billie Suttles, TJAGLCS)

When two countries engage in armed conflict, inflicting violence and destruction upon the enemy is not only lawful; it is the objective. Equally important, protecting civilians and civilian objects from the scourge of war is both a legal and moral obligation.⁴⁸ In other words, LOAC serves as both positive authority to inflict violence as well as affirmative obligations to take feasible precautions in conducting military operations.⁴⁹ Therefore, operational law practitioners must be able to advise commanders and units on the appropriate means and methods of warfare and on the protections extended to persons, places, and objects.⁵⁰ Operational law practitioners must understand and be able to effectively communicate the legal obligations of LOAC, applicable treaties, and customary international law during both tactical and operational planning and in current operations.

It will be too late for JALS personnel to wait until the Army is engaged in the

next armed conflict to become proficient in LOAC. As principled counsel charged with achieving mastery of the law, operational law practitioners must purposefully educate, train, and prepare for the multi-domain fight now. This critical work can occur through formal education, self-study, and on-the-job training. Education begins but does not end, with LOAC courses provided at our officer basic course (JAOBC).⁵¹ All JALS personnel must build expertise through self-study, attendance at short courses, deliberate leader development programs at home station, and realistic field training with units at multinational, joint, warfighting, and combat training center exercises.

At JA OBC, The Judge Advocate General's Legal Center and School (TJAGLCS) trains new entrant JAs on LOAC.⁵² This course is invaluable in educating the newest members of the Regiment. Furthermore, at JA OBC, JAs receive a copy of the TJAGLCS

National Security Law Department Operational Law Handbook.⁵³ Cited often by the international legal community and inter-agency attorneys and renowned throughout the joint force, the Operational Law Handbook is considered part of an operational lawyer's essential kit. However, more than attending the JA OBC and possessing the Operational Law Handbook is required. Judge Advocate Legal Services personnel must seek additional educational opportunities such as courses run or hosted by TJAGLCS, including the National Security and Law of Armed Conflict course, Emerging Topics in International Law course, and the Intelligence Law course.⁵⁴

In addition to institutional learning, JALS personnel must pursue a lifetime of learning through self-study and improvement. The Judge Advocate General's Legal Center and School recently implemented a new educational platform, the Leadership, Education and Professional Development



The U.S. Army's first multi-domain task force in Europe gets to work. (Credit: SPC Joshua Thorne)

Portal (LEAPP), to facilitate individual-led learning.⁵⁵ A self-development and training curriculum platform, LEAPP provides JALS personnel with updated training materials, resources, and templates.⁵⁶ It delivers resources across the JAG Corps's core legal competencies and contains a plethora of NSL material. An invaluable resource and excellent starting point, LEAPP also supplies links to NSL forums, such as the Lieber Institute for Law & Land Warfare, the Stockton Center for International Law, Lawfare, and the Strategic Competition Series.⁵⁷

However, self-study alone will not render the number of principled counsel in operational law we require. As stewards of the profession, staff judge advocates and other leaders must meaningfully implement the DoD Law of War (LOW) program at their home stations.⁵⁸ The DoD mandates that military personnel conduct periodic LOW training. Leaders should use this as an opportunity to provide office personnel with real-world, vignette-based training. For example, Russia's targeting and treatment of civilians and civilian infrastructure in Ukraine is replete with examples of LOAC violations that JALS personnel can use to conduct robust and engaging LOW training.⁵⁹

The DoD LOW program does not specify the frequency of LOW training; it only requires that it be conducted annually at a minimum.⁶⁰ Judge Advocate Legal Services leaders must do more than the minimum and should program iterative, deliber-

ate, in-the-field, NSL-focused professional development training events. Empower subordinate leaders, especially NCOs, to conduct meaningful Soldier hip-pocket training and situational training exercises. Deliberate, planned LOAC training events can accomplish multiple objectives simultaneously, including leadership development, team building, and readiness checks such as equipment accountability and inspections. Going to the range, conducting land navigation, and training on radio operations are all examples of teaching opportunities that can incorporate LOAC training scenarios.

Education and iterative leadership development programs, while essential, are insufficient to prepare our personnel. Operational law practitioners require experiential repetitions to achieve mastery. Depending on their unit of assignment, uniformed JALS personnel should take advantage of opportunities to participate in unit readiness and warfighting exercises and rehearsals. Rest assured, if you are not currently assigned to an operational unit, you likely will be in the next assignment.

Opportunities at operational units are boundless. Brigades will continue to conduct combat training rotations through the combat training centers. Army service component commands, corps, divisions, and functional/multi-functional brigades, partnered with the Army's Mission Command Training Program, conduct exercises throughout their training cycles, culminating in certification events called the War-

fighter Exercise.⁶¹ For example, U.S. Army Pacific and U.S. Army Europe and Africa, both Army service component commands and theater Army warfighting headquarters, conduct theater-level, multinational exercises in support of the joint force and the Army's role as the land component.⁶²

Importantly, we will not conduct the next fight alone. The Army and the joint force will fight with and through its allies and partners. The United States has forged alliances and friendships with numerous nations that we will continue to count on moving forward. Therefore, to truly be baselined in LOAC, operational law practitioners must be familiar with the legal interpretations and obligations of our allies and partners.

These allies and partners operate under their sovereign understanding of international law, which they usually express through treaty reservations and national caveats.⁶³ Competent operational law practitioners must understand our allies and partners' legal parameters to properly advise on how those limitations will impact future multinational operations. Therefore, seeking out opportunities to conduct NSL training with ally and partner attorneys is imperative. Offices of the staff judge advocate should work through the NSL Division – Office of the Judge Advocate General, Center for Law & Military Operations, and if aligned, an Army service component command office of the staff judge advocate for these opportunities.

Command Legal Responsibility in the Future Fight and Access to JAs

As previously stated, the next fight will be violent, complex, and present U.S. forces with simultaneous threats across multiple domains and dimensions.⁶⁴ In a multi-domain environment, our adversaries will use all means to identify and destroy our command posts, which will stress our conventional systems and processes.⁶⁵ The need for command post survivability will likely necessitate conducting the next fight through distributed command and control.⁶⁶ In such an environment, commanders will have imperfect information. Moreover, in some cases, they may lack in-person access to their command staff's full complement during the conflict, including a JA.



U.S. Soldiers, assigned to 82d Airborne, 3d Brigade, Combat Team, train with the Integrated Visual Augmentation System as a part of Project Convergence 2022 at Camp Talega, CA. During Project Convergence 2022, the Army tested many systems to determine how it can integrate future command-and-control capabilities with all-service, multinational partners. (Credit: SGT Thiem Huynh)

However, the nature of the future threat does not obviate commanders of their legal responsibilities under LOAC. No doubt, the physical absence of a JA will come with some consternation; the role of the operational lawyer since the Vietnam War has evolved to the point of JAs being an essential in-person part of the target decision and target engagement process.⁶⁷ However, this best practice evolved through conflicts that look markedly different from the threat faced today, and in-person advice is not required by law.⁶⁸

Requiring legal advisors to advise commanders and provide instruction on LOAC is codified in Article 82 of Additional Protocol (AP) I.⁶⁹ This is our duty, and adhering to Article 82 of AP I is essential to how our Nation honors its legal requirement to “respect and to ensure respect” of LOAC.⁷⁰ By policy, the DoD requires attorneys to assist commanders in executing their duty to implement and enforce the law of war.⁷¹

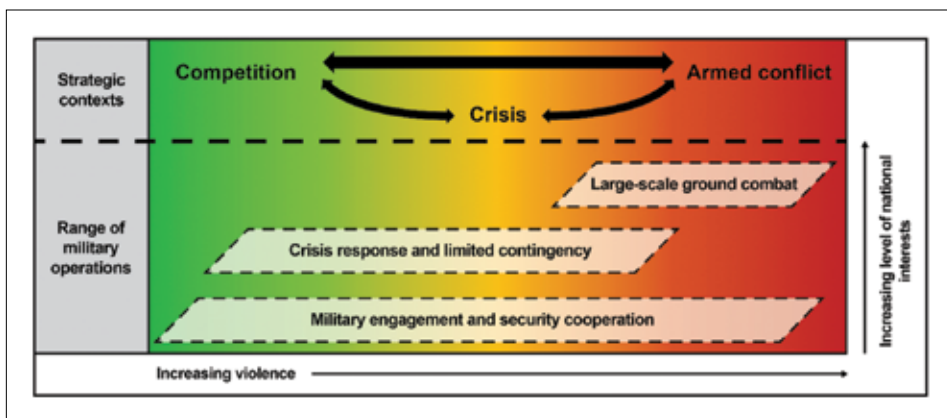
Specifically, the DoD requires “qualified legal advisors [be made] available at all levels of command to provide advice about law of war compliance during planning and execution of exercises and operations.”⁷² To that end, the DoD and military departments and services assign legal advisors to strategic, operational, and tactical echelons.

However, Article 82 of AP I does not define the term “available.” Further, Article 82 uses conditional language, such as “when necessary” and “at the appropriate level.”⁷³ It is also worth noting that the drafters acknowledged in the commentary that expecting legal advisors to be physically present at lower echelons amid armed conflict may not be feasible. This was because “[i]t is hardly compatible with the rapid decisions and actions required” in the tactical fight.⁷⁴

In the future multi-domain fight, being “made available” may take a virtual form with intermittent access. No doubt, virtual communications will be disrupted through

adversary actions. The language in Article 82 of AP I may be purposefully ambiguous, but Article 1 of the Geneva Conventions is clear.⁷⁵ Commanders are responsible for ensuring their units are prepared to conduct hostilities lawfully, regardless of the character of the next armed conflict, and it is the JAG Corps’s mission to make this happen. This further emphasizes the need for the JAG Corps to engage in robust training with Army commanders and units well before crisis and conflict.

The JAG Corps is taking a hard look at the legal training the Army provides. The Judge Advocate General’s Legal Center and School’s Training Developments Directorate is reviewing and assessing the legal training of commanders and leaders.⁷⁶ This review will result in updates to training, including how we train on LOAC during our various courses.⁷⁷ However, the Training Developments Directorate’s review and assessment are of all legal training across all our core



Our competitors and adversaries continuously and tirelessly work to gain strategic advantage and degrade the current international order. As a result, we must surpass their intensity in these critical areas. (Image courtesy of authors)

competencies. Therefore, JALS leaders and personnel must proactively engage in unit education, training, and exercises.

The law of armed conflict is commander business. As commanders prepare for the multi-domain fight, they must also consider how they will ensure their subordinate commanders and units will employ force lawfully. The commander must guard against inadvertently conflating the limitations and risk aversion they experienced in COIN and CT but avoid overcorrecting and going outside the bounds of LOAC. As with other Soldier skills, expertise comes with continuous training. Viewing LOAC and policies implemented to ensure LOAC compliance as strictly JAG Corps business is an abdication of command responsibility. Commanders must inculcate LOAC training in all planning, exercises, and operations.

But LOAC is, in the end, also JAG Corps business. The JAG Corps owes Army commanders the expertise and advice they require to satisfy their legal command responsibility. Judge advocates have an affirmative responsibility to ensure that commanders are fully trained now in LOAC so they are equipped and confident to direct military operations in the future fight, even if an operational lawyer is not physically present.

National Strategy and the Competition Continuum: Integrated Deterrence, Campaigning, Crisis, and National Security Law Experts

All international relations, at some level, is competition. States compete to advance their

“diplomatic, economic, and strategic advantage.”⁷⁸ As described in the National Defense Strategy, the DoD supports U.S. competition through integrated deterrence, campaigning, and building enduring advantages.⁷⁹

The DoD and joint force conduct integrated deterrence by using all instruments of national power and our global network of allies and partners across warfighting domains and theaters.⁸⁰ Maintaining a combat-credible force capable of conducting MDO is essential to integrated deterrence.⁸¹ Properly arrayed combat-credible forces enable combatant commands, joint force commanders, and theater armies to reassure allies and partners, bolster allies’ and partners’ national defense, promote restraint of coercive international relations, and maintain international peace and security.⁸²

Strategic-level commands set the theater through campaigning.⁸³ Campaigning consists of synchronized military initiatives supporting “well-defined, strategy-aligned priorities over time.”⁸⁴ Integrated deterrence and campaigning serve to “counter forms of competitor coercion, complicate competitors’ military preparations, and develop our . . . warfighting capabilities together with those of our Allies and partners.”⁸⁵

To prevail in competition, the DoD, the defense industrial base, the private sector, and academic enterprises must work together to build enduring advantages for the United States. The joint force must remain modern, innovative, agile, and resilient to persevere against threats from competitors, adversaries, and changes in the natural environment. This will be

accomplished through more than mere reliance on technology. To build enduring advantages, the U.S. military, and especially the Army, must continue to recruit and retain a talented pool of diverse, creative, and innovative people necessary to “solve national security challenges in a complex global environment.”⁸⁶

It is hard to overstate the centrality of JAs serving as national security legal advisors in achieving this end. Expert NSL attorneys are essential to facilitating competition investments and activities. As previously stated, all uniformed JALS members must be proficient in LOAC, and all JAs must be able to provide operational law advice at tactical and operational levels. However, the DoD and the Army need Army JAs and Department of the Army civilian attorneys prepared to advise as experts in NSL at the strategic and, at times, geostrategic level.

To advise at the strategic level, expert NSL practitioners must first understand where they fit within the national defense and Army strategies. Expert NSL practitioners must be familiar with strategic documents and statements, such as the National Security Strategy,⁸⁷ National Defense Strategy,⁸⁸ National Military Strategy,⁸⁹ combatant command posture statements,⁹⁰ and Army theater campaign plans.⁹¹ Expert NSL practitioners must genuinely understand the interplay of *jus ad bellum* principles of national self-defense and the joint force’s lawful operations, activities, and investments employed to compete at a global scale.

Further, experts in NSL come in many flavors. Acquisition experts are essential to facilitate work with the defense industrial base. Intelligence law and information operations experts are critical in navigating authorities that impact domestic activities and activities abroad. As new domains mature, NSL experts must be prepared to advise on operations that involve space, cyber, and the electromagnetic spectrum. Further, attorneys prepared to advise on countering lawfare as our competitors use existing laws and revisionist legal paradigms to disrupt international systems and tip the balance of power to their advantage will be critical.⁹² In sum, our Corps needs personnel of varied backgrounds and disciplines dedicated to fighting the future conflict as a team.



A relocatable unattended ground sensor undergoes evaluation at Project Convergence 2022, Fort Irwin, CA. The Army uses ground sensors to collect coordinates and detect vehicles in simulated combat environments. During Project Convergence 2022, the Army tested many systems to determine how it could integrate future command-and-control capabilities into the all-service, multinational force. (Credit: SPC Monyae Alexander)

In the end, our forces must support defense industrial base innovation, strengthen strategic alliances, build multinational interoperability through vigorous exercises and rehearsals, and engage in global posturing of forces and materiel in accordance with applicable law. The authorities and laws that directly impact our operations, activities, and investments across the competition continuum govern the ability to develop and procure new tech, engage globally with allies and partners, and maintain turn-key locations necessary to ensure a ready and capable “inside” Army.⁹³ We put our Army at grave risk if we do not field a bench of NSL experts dedicated to navigating the various legal frameworks governing competition efforts.

Multi-Domain Operations and the JAG Corps

“The Army’s primary mission is to organize, train, and equip its forces to conduct prompt and sustained land combat to defeat enemy ground forces and seize, occupy, and defend land areas.”⁹⁴ It supports the joint force in four strategic roles: “shap[ing] operational environments, counter[ing] aggression on

land during a crisis, prevail[ing] during large-scale ground combat, and consolidate[ing] gains.”⁹⁵ “The Army fulfills its strategic roles by providing forces for joint campaigns that enable integrated deterrence of adversaries outside of conflict and the defeat of enemies during conflict or war.”⁹⁶

Ever cognizant of the axiom that the nature of war remains unchanged but its character is ever-changing,⁹⁷ the Army updated Field Manual 3-0 to codify MDO as Army doctrine.⁹⁸ The Army conducts MDO through all domains and dimensions of the operational environment. Domains are physically defined portions of an operational environment requiring a unique set of warfighting capabilities and skills.⁹⁹ Dimensions consist of each domain’s physical, information, and human dimensions.¹⁰⁰

War remains an act of force to compel the enemy’s will.¹⁰¹ Multi-domain operations incorporate doctrinally nascent domains such as space and cyberspace. In conflict, it employs joint and Army capabilities to create and exploit relative advantages that achieve objectives, defeat enemy forces, and consolidate gains on behalf of joint force commanders. During conflict, MDO

is how Army forces close with and destroy the enemy, defeat enemy formations, seize critical terrain, and control populations and resources to deliver sustainable political outcomes. However, MDO is not glass to be broken only in times of conflict. The Army is in a persistent state of competition. Below the threshold of armed conflict, Army forces accrue advantages and demonstrate readiness for conflict using MDO, deterring adversaries while assuring allies and partners.¹⁰²

In furtherance of MDO, among numerous other actions, the Army is standing up multi-domain task forces (MDTF), “the organizational centerpiece in the Army’s operationalization of MDO.”¹⁰³ First established as an experimental unit at JBLM in 2017, the Army has stood up two additional MDTFs in Germany and Hawaii and is working through plans to establish two more.¹⁰⁴ Multi-domain task forces will actively compete by remaining postured to maintain contact, transition to crisis or conflict, and provide flexible response options.¹⁰⁵ They are scalable, theater-level maneuver elements that can synchronize precision effects and precision fires across all domains against adversary anti-access/

area denial networks.¹⁰⁶ Multi-domain task forces will be capable of employing conventional lethal effects and emerging capabilities such as long-range hypersonic weapons, joint integration of multi-domain sensors, and artificial intelligence.¹⁰⁷

Multi-domain task forces will receive legal support from a JALS team led by a lieutenant colonel or a major. No doubt, JALS members assigned to MDTFs must be NSL experts. However, MDO is the Army's doctrine, and Army corps, divisions, conventional combat forces, enabling forces, and the institutional Army are all part of MDO. Army corps will train and be certified to operate as MDO theater-level joint force headquarters.¹⁰⁸ Furthermore, units will be regionally aligned and utilized globally as part of the joint force's efforts to conduct integrated deterrence, campaign, and to prevail in crisis and conflict.¹⁰⁹

Therefore, no matter where assigned, JALS personnel must understand MDO and their role in its execution across the competition continuum. Whether assigned to Army force-generating commands, Army operational commands, the joint force, or at headquarters-level departments or agencies, it is essential that the JAG Corps fields NSL experts with an MDO mindset.

Conclusion

Our Corps is at an inflection point with competing demands. We continue to experience increased demand for our Soldiers and Family legal service, especially from victims of domestic and sexual violence. We are beginning the initial steps of re-organization and growth as we establish the Office of the Special Trial Counsel, an independent organization sourced with JALS personnel, at numerous regional locations across our force. We must also meet the requirements of growth as the Army grows and establishes new organizations, such as the 11th Airborne Division in Alaska, a forward presence of V Corps, and the creation of more MDTFs. Further, we must account for the potential need to restructure our OSJAs as the Army moves away from brigade modularity and back to divisions that serve as units of action.

I am confident that our Corps will succeed, as it always has, because of its people. Although Sun Tzu speaks of change

as inevitable—and it is—I am confident each of you will lead through the change. Our Corps owes you the resources and opportunities to meet the challenge. However, you, too, have a responsibility to educate and train so that when the opportunity presents itself, you can take full advantage of the chance to exercise your skills. Use our Four Constants – Principled Counsel, Servant Leadership, Stewardship, and Mastery of the Law – as your guide. Stay on azimuth! I will meet you on the high ground! **TAL**

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Notes

1. See THE WHITE HOUSE, NATIONAL SECURITY STRATEGY 6 (2022) [hereinafter 2022 NAT'L SEC. STRATEGY].
2. *Id.* at 8 U.S. DEP'T OF DEF., 2022 NATIONAL DEFENSE STRATEGY OF THE UNITED STATES OF AMERICA 2 (2022) [hereinafter 2022 NAT'L DEF. STRATEGY]; U.S. DEP'T OF DEF., FACT SHEET: 2022 NATIONAL DEFENSE STRATEGY 1 (2022).
3. 2022 NAT'L SEC. STRATEGY, *supra* note 1, at 8; see also THE WHITE HOUSE, INDO-PACIFIC STRATEGY OF THE UNITED STATES (2022) [hereinafter 2022 INDO-PACIFIC STRATEGY]; 2022 NAT'L DEF. STRATEGY, *supra* note 2, at iii-iv; UNITED STATES ARMY PACIFIC, USARPAC: AMERICA'S THEATER ARMY FOR THE INDO-PACIFIC (2022) [hereinafter USARPAC].
4. 2022 NAT'L SEC. STRATEGY, *supra* note 1, at 8; see also 2022 INDO-PACIFIC STRATEGY, *supra* note 3; 2022 NAT'L DEF. STRATEGY, *supra* note 2, at iii-iv; U.S. ARMY, ARMY MULTI-DOMAIN TRANSFORMATION: READY TO WIN IN COMPETITION AND CONFLICT, CHIEF OF STAFF PAPER #1, at i-ii (2021) [hereinafter CHIEF OF STAFF PAPER #1]; see generally U.S. DEP'T OF ARMY, FIELD MANUAL 3-0, OPERATIONS, (1 Oct. 2022) [hereinafter FM 3-0].
5. 2022 NAT'L SEC. STRATEGY, *supra* note 1, at 6; 2022 NAT'L DEF. STRATEGY, *supra* note 2, at 23.
6. Lieutenant General Charles Pede & Colonel Peter Hayden, *The Eighteenth Gap: Preserving the Commander's Legal Maneuver Space on "Battlefield Next,"* MIL. REV., Mar.-Apr. 2021, at 6.
7. *Id.* at 6-7.
8. See *id.*
9. *Id.* at 6.
10. See *id.* at 17.
11. See *id.*
12. FM 3-0, *supra* note 4; U.S. ARMY TRAINING & DOCTRINE COMMAND, PAM. 525-3-1, THE U.S. ARMY IN MULTI-DOMAIN OPERATIONS 2028 (6 Dec. 2018) [hereinafter TRADOC PAM. 525-3-1].

13. Headquarters, U.S. Dep't of Army, Gen. Order No. 2018-10 (4 June 2018).

14. CONRAD C. CRANE ET AL., U.S. ARMY HERITAGE AND EDUC. CTR., A HISTORY OF THE ARMY'S FUTURE: 1990-2018, at 27 (2019).

15. See *Army Futures Command*, U.S. ARMY, <https://armyfuturescommand.com> (last visited 6 Apr. 2023).

16. Army Futures Command, *Project Convergence 2022 Kicks Off with AUSA Warriors Corner Presentation*, U.S. ARMY (Oct. 14, 2022), https://www.army.mil/article/260985/project_convergence_2022_kicks_off_with_ausa_warriors_corner_presentation.

17. Megan Gully, *Project Convergence 22: Sustaining the Future Fight*, U.S. ARMY (Nov. 1, 2022), https://www.army.mil/article/261643/project_convergence_22_sustaining_the_future_fight.

18. Matthew J. Festa & Lieutenant Colonel Patrick M. Walsh, *Why Scholarly Publishing Matters for JAs*, ARMY LAW., no. 4, 2020, at 38, 38; accord Joshua F. Berry & Michael W. Meier, *Hays Parks on the Means and Methods of Warfare*, ARTICLES OF WAR (Oct. 20, 2021), <https://lieber.westpoint.edu/hays-parks-means-methods-warfare>.

19. ARMY FUTURES COMMAND PAM. 525-2, FUTURE OPERATIONAL ENVIRONMENT: FORGING THE FUTURE IN AN UNCERTAIN WORLD 2035-2050, at 9 (2020).

20. "War is wretched beyond description": John McCain's Greatest Quotes, CBS NEWS (Aug. 25, 2018), <https://www.cbsnews.com/news/war-is-wretched-beyond-description-john-mccains-greatest-quotes> (quoting John McCain's 6 May 6 1999 speech to the American Red Cross).

21. *Id.* (quoting John McCain's 17 October 2017 speech at the National Constitutional Center).

22. See U.S. DEP'T OF DEF., CIVILIAN HARM MITIGATION AND RESPONSE ACTION PLAN (CHMR-AP) i (2022) [hereinafter CHMR-AP] ("The protection of civilians is a strategic priority as well as a moral imperative.").

23. See, e.g., FM 3-0, *supra* note 4, paras. 2-32 to 2-53.

24. OFF. OF GEN. COUNS., U.S. DEP'T OF DEF., DEPARTMENT OF DEFENSE LAW OF WAR MANUAL § 1.3 (12 June 2015) (C2, 13 Dec. 2016) [hereinafter LAW OF WAR MANUAL]; U.S. DEP'T OF ARMY, FIELD MANUAL 6-27, THE COMMANDER'S HANDBOOK ON THE LAW OF LAND WARFARE para 1-4 (Aug. 2019) (C1, 20 Sept. 2019).

25. See Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts, art. 87, June 8, 1977, 1125 U.N.T.S. 3 [hereinafter Protocol I].

26. See FM 3-0, *supra* note 4, paras. 3-15 to 3-17.

27. See TRADOC PAM. 525-3-1, *supra* note 10, at F-1.

28. For example, Thomas Hobbes famously argued that the natural condition of mankind is a state in which life is "solitary, poore [sic], nasty, brutish, and short." 2 THOMAS HOBBS, LEVIATHAN 102 (G.A.J. Rogers & Karl Schuhmann eds., Continuum Int'l Publishing Grp. 2005) (1651).

29. CARL VON CLAUSEWITZ, ON WAR 88 (Michael Howard & Peter Paret, eds. and trans., Princeton Univ. Press, 1984) (1832) ("The first, the supreme, the most far-reaching act of judgment that the statesman and commander have to make is to establish by that test the kind of war on which they are embarking.").

30. FM 3-0, *supra* note 4, para. 1-35; see also 2022 NAT'L DEF. STRATEGY, *supra* note 2, at iii-iv.

31. See SUN TZU, *THE ART OF WAR* (Samuel B. Griffith trans., Oxford Univ. Press 1971) (n.d.) (analogizing war to the changing seasons and celestial impacts on Earth); H.R. McMaster, *Continuity and Change: The Army Operating Concept and Clear Thinking About the Future*, MIL. REV., Mar.-Apr. 2015, at 6, 10.
32. CHIEF OF STAFF PAPER #1, *supra* note 4, at 1.
33. Pede & Hayden, *supra* note 6, at 7, 17.
34. The White House, *Fact Sheet: U.S. Policy Standards and Procedures for the Use of Force in Counterterrorism Operations Outside the United States and Areas of Active Hostilities*, THE WHITE HOUSE: PRESIDENT BARACK OBAMA (May 23, 2013), <https://obamawhitehouse.archives.gov/the-press-office/2013/05/23/fact-sheet-us-policy-standards-and-procedures-use-force-counterterrorism>.
35. See FM 3-0, *supra* note 4, para. 1-19 to 1-21.
36. See FM 3-0, *supra* note 4, para. 1-20.
37. See generally, FM 3-0, *supra* note 4, ch. 4.
38. CHIEF OF STAFF PAPER #1, *supra* note 4, at 3.
39. See FM 3-0, *supra* note 4, para. 1-17.
40. See P.W. SINGER & EMERSON T. BROOKING, *LIKE WAR: THE WEAPONIZATION OF SOCIAL MEDIA 137-47* (2019).
41. Michael Martina & Ted Hesson, *FBI Director 'Very Concerned' by Chinese 'Police Stations' in U.S.*, REUTERS (Nov. 17, 2022), <https://www.reuters.com/world/us/fbi-director-very-concerned-by-chinese-police-stations-us-2022-11-17>.
42. *Id.*
43. See CHIEF OF STAFF PAPER #1, *supra* note 4, at 18.
44. See CLAUSEWITZ, *supra* note 25, at 101 (describing the uncertain nature of war).
45. See CHIEF OF STAFF PAPER #1, *supra* note 4, at 18.
46. McMaster, *supra* note 27, at 10; see also TRADOC PAM. 525-3-1, *supra* note 10; CLAUSEWITZ, *supra* note 25, at 75.
47. See, e.g., Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, Aug. 12, 1949, 75 U.N.T.S. 31 [hereinafter GC I]; Convention (II) for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea, Aug. 12, 1949, 75 U.N.T.S. 85 [hereinafter GC II]; Convention (III) Relative to the Treatment of Prisoners of War, Aug. 12, 1949, 75 U.N.T.S. 135 [hereinafter GC III]; Convention (IV) Relative to the Protection of Civilian Persons in Time of War, Aug. 12, 1949, 75 U.N.T.S. 287 [hereinafter GC IV].
48. CHMR-AP, *supra* note 19, at i.
49. See Protocol I, *supra* note 22, arts. 57-58.
50. See, e.g., Hague Convention (IV) Respecting the Laws and Customs of War on Land and Its Annex: Regulations Concerning the Laws and Customs of War on Land, arts. 22-41, Oct. 18, 1907, 36 Stat. 2277 [hereinafter Hague Convention IV]; GC I, *supra* note 37; GC II, *supra* note 37; GC III, *supra* note 37; GC IV, *supra* note 37; Protocol I, *supra* note 22.
51. See *Judge Advocate Officer Basic Course (JAOBC)*, THE JUDGE ADVOC. GEN.'S LEGAL CTR. AND SCH.: JA PRO. MIL. EDU./COMMAND COURSES, <https://tjagls.army.mil/en/pmecourses> (last visited Apr. 7, 2023).
52. OFF. OF THE JUDGE ADVOC. GEN., U.S. ARMY, *JUDGE ADVOCATE LEGAL SERVICES PUBLICATION 1-1, PERSONNEL POLICIES 54 fig.7-3* (June 2020).
53. NAT'L SEC. L. DEP'T, *THE JUDGE ADVOC. GEN.'S LEGAL CTR. & SCH., U.S. ARMY, OPERATIONAL LAW HANDBOOK* (2020).
54. For information on upcoming courses, see *Course Information*, THE JUDGE ADVOC. GEN.'S LEGAL CTR. AND SCH., <https://tjagls.army.mil/en/course-information> (last visited Apr. 5, 2023).
55. *LEAPP: Leadership, Education and Professional Development Portal*, THE JUDGE ADVOC. GEN.'S LEGAL CTR. AND SCH., <https://tjagls.army.mil/leap> (last visited Apr. 5, 2023).
56. *Id.*
57. *Id.*
58. U.S. DEP'T OF DEF., DIR. 2311.01, DoD LAW OF WAR PROGRAM (2 July 2020) [hereinafter DIR. 2311.01].
59. Examples from LOAC SLIDE
60. U.S. DEP'T OF ARMY, REG. 350-1, ARMY TRAINING AND LEADER DEVELOPMENT 188 fig.F-2 (10 Dec. 2017).
61. See *Mission Command Training Program (MCTP)*, U.S. ARMY COMBINED ARMS CTR., <https://usacac.army.mil/organizations/cact/mctp> (last visited Apr. 5, 2023).
62. USARPAC, *supra* note 3, at 5.
63. See UNITED NATIONS, 2011 TREATY EVENT TOWARDS UNIVERSAL PARTICIPATION AND IMPLEMENTATION: UNDERSTANDING INTERNATIONAL LAW (2011).
64. See FM 3-0, *supra* note 4, paras. 1-16 to 1-19.
65. See FM 3-0, *supra* note 4, para. 1-20.
66. CHIEF OF STAFF PAPER #1, *supra* note 4, at 4; USARPAC, *supra* note 3, at 16.
67. Craig Jones, *Legal Advice in Modern Aerial Warfare*, LIEBER INST. WEST POINT: ARTICLES OF WAR (Nov. 22, 2021), <https://lieber.westpoint.edu/legal-advice-modern-aerial-warfare>.
68. *Id.*
69. Protocol I, *supra* note 22, art. 82. LAW OF WAR MANUAL, *supra* note 21, para. 19.20. Note that the U.S. has not ratified AP I but considers many of its provisions customary international law.
70. GC I, *supra* note 37, art. 1.
71. See LAW OF WAR MANUAL, *supra* note 21, para. 18.5.1.
72. LAW OF WAR MANUAL, *supra* note 21, para. 18.5.1.
73. Protocol I, *supra* note 22, art. 82.
74. *Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts (Protocol I)*, Geneva, 8 June 1977: *Commentary of 1987: Article 82*, note 3349, INT'L COMM. OF THE RED CROSS, <https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/Comment.xsp?action=openDocument&documentId=0C548EB8FF7F49D5C-12563CD00437238>.
75. See GC I, *supra* note 37, art. 1.
76. See *Training Developments Directorate (TDD)*, THE JUDGE ADVOC. GEN.'S LEGAL CTR. AND SCH., <https://tjagls.army.mil/tdd> (last visited Apr. 8, 2023).
77. These include the commander/first sergeant courses, the Pre-Command Course, Senior Officer Legal Orientation courses, General Office Legal Orientation courses, and Army Strategic Education programs.
78. U.S. DEP'T OF DEF., JOINT DOCTRINE NOTE (JDN) 1-19, *COMPETITION CONTINUUM* (3 June 2019), https://www.jcs.mil/Portals/36/Documents/Doctrine/jdn_jg/jdn1_19.pdf.
79. 2022 NAT'L DEF. STRATEGY, *supra* note 2, at iii-iv.
80. 2022 NAT'L DEF. STRATEGY, *supra* note 2, at 8-11; U.S. DEP'T OF DEF., 2022 MISSILE DEFENSE REVIEW 5 (2022) [hereinafter 2022 MISSILE DEF. REV.].
81. See 2022 MISSILE DEF. REV., *supra* note 70, at 5; 2022 NAT'L DEF. STRATEGY, *supra* note 2, at 8.
82. See UN Charter pmb., arts. 1, 2; USARPAC, *supra* note 3, at 4; U.S. ARMY EUR. AND AFR. PUB. AFFS. OFF., *FACT SHEET: U.S. ARMY EUROPE AND AFRICA* (2022).
83. USARPAC, *supra* note 3, at 13.
84. 2022 NAT'L DEF. STRATEGY, *supra* note 2, at 1.
85. 2022 NAT'L DEF. STRATEGY, *supra* note 2, at 1.
86. 2022 NAT'L DEF. STRATEGY, *supra* note 2, at 2.
87. 2022 NAT'L SEC. STRATEGY, *supra* note 1.
88. 2022 NAT'L DEF. STRATEGY, *supra* note 2.
89. JOINT CHIEFS OF STAFF, *DESCRIPTION OF THE NATIONAL MILITARY STRATEGY 2018* (2018).
90. See, e.g., *Hearing on Posture of USCENTCOM and USAFRICOM in Review of the Defense Authorization Request for FY24 and the Future Years Defense Program Before the S. Armed. Servs. Comm.*, 118th Cong. (2023) (statement of Gen. Michael "Erik" Kurilla, Commander, U.S. Central Command).
91. "Mandated by the Guidance for Employment of the Force, . . . the [theater campaign plan's] main function is to provide guidance to combatant commanders . . . to coordinate Phase 0 and steady state activities across their Area of Responsibility." *Theater Campaign Plans (TCP)*, ARMY WAR COLLEGE, <https://ssl.armywarcollege.edu/dde/documents/jsps/terms/tcp.cfm> (last visited Apr. 5, 2023).
92. See Charles Dunlap, Jr., *Lawfare 101: A Primer*, MIL. REV., May-June 2017, at 8, 9.
93. See CHIEF OF STAFF PAPER #1, *supra* note 4, at 6-7.
94. FM 3-0, *supra* note 4, para. 1-1.
95. FM 3-0, *supra* note 4, para. 1-1.
96. FM 3-0, *supra* note 4, para. 1-1.
97. See CLAUSEWITZ, *supra* note 25, at 75-89.
98. FM 3-0, *supra* note 4, at iii.
99. FM 3-0, *supra* note 4, para. 1-82.
100. FM 3-0, *supra* note 4, para. 1-106.
101. CLAUSEWITZ, *supra* note 25, at 75.
102. FM 3-0, *supra* note 4, para. 1-9.
103. *Multi-Domain Task Forces: A Glimpse At the Army of 2035*, ASS'N OF THE U.S. ARMY (Mar. 2, 2022), <https://www.ausa.org/publications/multi-domain-task-forces-glimpse-army-2035>.
104. ANDREW FEICKERT, CONG. RSCH. SERV., IF11797, *THE ARMY'S MULTI-DOMAIN TASK FORCE (MDTF) 1* (2023).
105. CHIEF OF STAFF PAPER #1, *supra* note 4, at 12.
106. CHIEF OF STAFF PAPER #1, *supra* note 4, at 12.
107. *Multi-Domain Task Forces: A Glimpse At the Army of 2035*, *supra* note 93.
108. CHIEF OF STAFF PAPER #1, *supra* note 4, at 8.
109. See CHIEF OF STAFF PAPER #1, *supra* note 4, at 24.