

As evidenced by Marine involvement in world events during the 1990s, today's commander must prepare his unit to accomplish a multitude of missions that are influenced by legal ramifications. Once reserved for primarily garrison duties, the staff judge advocate has become an important and invaluable advisor to the commander on all matters pertaining to operational law. The following articles address the criticality of this fact.

The SJA in Future Operations

by LtGen Anthony C. Zinni

The following article is based on remarks made by the author at an Operational Law Seminar held at Camp Pendleton last November.

Based on my experiences over the last 5 years, I believe that we are seeing a trend in military operations. I just received an invitation to attend a session at the Air War College at Maxwell Air Force Base on "frontier missions," and I think our leaders are beginning to realize that conflict in the future is going to be significantly different than it was in the past. I think we have been prisoners of the memories of World War II, the "good war" that concluded over 50 years ago. Our fathers and grandfathers fought that war, and there were clear objectives and a decisive victory in the form of an unconditional surrender. There were the villains—Hitler, Togo, Mussolini—people you could really hate. The free world was

united because we were directly attacked. There was little question that our national interests were involved. We fought that war on a world scale, put coalitions together, and achieved a decisive result.

After World War II the American people expected the same, but Korea proved that all conflict is not that straightforward. We moved away from the "clear victory" model, and history repeated itself in the prolonged Vietnam conflict. But in 1991 we had Operation DESERT STORM, which could be described as a microcosm of World War II. There was a villain; the free world formed a coalition and stayed together; we had a clear victory; many people concluded that we were back to where we

should be. The problem is that DESERT STORM was an aberration, and the nature of military operations in the future is going to be significantly different from DESERT STORM.

In my judgment, what we have seen recently in Somalia, in Rwanda, in Northern Iraq, in the former Soviet Union, in Bosnia, and in Haiti tells us much about the future of military operations. Two weeks ago I was called to testify before the House National Security Committee on Bosnia, and I could tell that every member of that committee—Republican and Democrat—did not want U.S. troops in Bosnia. Yet, at the same time, they somehow wanted the conflict in Bosnia resolved. I got a list that one of the congressmen gave me of his "Ten Commandments" for the commitment of U.S. troops, and he wanted written comments on this proposal. If you followed those commandments you would never conduct military operations unless you were directly attacked. When the bad guys landed on the California beaches, then we could go to war. You can reach much the same conclusion from the Weinberger Doctrine, but I am not so sure that this is the best approach. In my judgment, we are going to have to take a broader look at things that threaten our interests. We're going to see drugs, international crime, terrorism, environmental disasters, catastrophic humanitarian crises, regional instability, ethnic fighting, and religious conflict. We may not be able to tolerate some of these if they spill



Marines participating in Operation PROVIDE COMFORT in northern Iraq.

over and threaten our interests directly.

It is difficult to explain to the American people why we need to deploy troops to these trouble spots around the world. These are not pure military operations in the sense that you have an easily identifiable enemy who can be crushed with military force. You cannot expect a surrender, a peace agreement that sets all the terms for the future. People say no more Somalis, no more Vietnams, no more Beiruts, but I'm afraid such operations are the trend in the world. I am in the minority, but I believe that we need to take on some of these missions. We need to prepare not only tactically and operationally, but legally as well. Operations in the future will open dimensions that we have not encountered before, and they will raise legal questions we have not seen before. In any given operation there will likely be a number of efforts underway in the military lawyer's area of responsibility. There may be civilian humanitarian efforts, economic recovery efforts, and U.S. political initiatives. Often they are the centerpiece and the military operations are not. All will have legal implications. Based on my experience in operations other than war, you will find that battlefield activities and functions must be modified for the particular environment. Instead of maneuvers, fires, and logistics, priority may shift to focus on some other aspect, such as civil/military operations.

In operations other than war, I have found that the staff judge advocate (SJA) becomes a principal officer on the staff of the commander. Let me give you examples of the type of things you can expect to encounter. Some of these things are not new, but I think the way you apply them may be new. For example, you all expect to be the right-hand man (or woman) of the commander when it comes to rules of engagement (ROE), but ROE aren't as simple as they used to be. The operational environment is constantly changing. In Operation UNITED SHIELD, the U.N. evacuation from Somalia, I asked for every less-lethal capability we could get in order to deal with unarmed hostile elements. This was a short fuse request based on the need to fill the gap between lethal force and verbal warnings. The staff did a great job of finding the less-lethal systems, and we were able to deploy with everything from rubber bullets and bean bag rounds up to sticky foam and more "high tech" items. There was a lot of pressure on the

SJA to come up with the right ROE—not only working with the local staff—but in this case, working directly with the Department of Defense (DoD). But the real burden that falls on an SJA is advising the commander and providing the means for the commander to translate ROE for that Marine on the ground. In UNITED SHIELD, this was an ongoing process. Even after we deployed we were being fed the new technology, some of which was not yet approved for use. As the approvals came in, with some language that was less than ideal, the SJA had to go from ship to ship, unit to unit, to translate this to the Marines who needed to employ the weapons. This is the kind of thing SJAs are going to be involved in.

I recently learned that the Marine Corps will be the executive agent for less-lethal technology for DoD. Marines are the ones who are interested in it, the ones who have taken the lead. The Marine Corps will be on the cutting edge, and it started out here at I Marine Expeditionary Force. We will see the development of a lot of unusual or innovative technology, and this will involve legal issues and the application of new and different ROE. SJAs will be heavily involved.

Another issue SJAs need to be prepared for is the creation of local security apparatus in operations other than war. There are legal limits on the help that the United States can provide, but an effective local police force may be an essential ingredient of success. I think we're going to see changes in the law about U.S. military involvement in training security forces. In Somalia we worked in developing a police force, a judiciary system, and a criminal code they could enforce. This will be an important part of many of our military operations in the future. There may be other programs already underway in the country. In the beginning we will get help and support from government organizations, nongovernmental organizations (NGOs), or the U.N. Even though people will say that it is "mission creep," the military commander will often become directly involved because there is no one else to do the job. The military force is the best organized, has the most clout, and has the respect of the people. The indigenous population may view the military commander as the governor and go to him for help and guidance. Although police and courts may not be included in the mission statement, the commander may be required to sup-

port these operations and get them to the point of self-sufficiency. The SJA is a natural choice to be the command advisor on this and perhaps also the planner for local police and courts.

If we look at Bosnia we see another area of responsibility for the judge advocate—the investigation and prosecution of war crimes. That will be an important part of many operations, and the commander will turn to his SJA for help. Most of these operations involve coalitions. In Somalia, for example, we had the forces of 24 nations on the ground, heading towards 44 when RESTORE HOPE ended in May of 1993. What are the legal implications of that? What is my responsibility as a commander? For example, in Somalia during Operation UNITED SHIELD we had the forces of 7 nations, and in northern Iraq in PROVIDE COMFORT we had 13 nations. What happens when individuals of those forces do something wrong? In Somalia we had incidents with the Canadian forces in Bele Twene where some Canadian troops allegedly beat to death a Somali detainee. There were reports of individuals in racist groups, and we had other coalition forces accused of running houses of ill repute and conducting black market activities. What are the responsibilities of the commander in dealing with these accusations? There will be some degree of responsibility that falls to the combined task force commander, even though command relationships are strictly "tactical control" and each nation is responsible for handling its own disciplinary problems. How will we structure the investigative process to account for national sovereignty? Coalition forces do not always have clear command relationships, and they are not all first line NATO countries. You may have Third World countries and former Warsaw Pact countries. Military interoperability is only one facet of the problem. There is no international code that sets forth the fundamental ethical and legal principles that apply. As the SJA your interaction with coalition legal personnel may be critical to the commander's ability to hold the coalition together.

Another area that will be critical is civil/military operations. We will be required to interact with a wide range of governmental organizations, NGOs, relief workers, and U.N. agencies. In northern Iraq, we had 50 NGOs, a large number of private voluntary organizations, and other

relief organizations. In Somalia we had 60. Right now in Bosnia there are more than 120 such organizations and coordination may not be enough. You may have to provide security for them. They come with all sorts of charters; some are faith-based organizations, while some come with a charter that can't let them get too close to the military. For example, the International Committee of the Red Cross (ICRC) is unique because it has to maintain neutrality. With each organization you may have a different relationship and definition of responsibilities. Each can generate its own legal problems and the SJA has to be prepared to deal with them. In Somalia, for example, we had the identification card system to determine who could carry weapons for self-defense. Many Somali gunmen were hired by the NGOs. What are the legal ramifications of that? By what authority do we issue identification cards? What procedures do we use in recognizing certain people with guns and empowering those people? This a whole new field, a whole new area, that will require careful planning.

Many traditional SJA activities such as claims and contracting will be much more difficult in this environment. There may be no standing government. Who can we deal with for "host nation support" contracts? How do we handle the claims, and who are the agencies that we deal with in a place where there's anarchy and chaos? The question SJAs are going to get from the commanders is "What is the legal basis for this proposal?" You may not have an immediate answer because you are plowing new ground.

Now think about the future, think about possibilities beyond peacekeeping and humanitarian operations. Looming on the horizon are potential operations against international crime or drug rings, environmental security operations, natural or manmade disasters, governments overwhelmed by a tide of illegal immigration threats, threats from terrorist groups with weapons of mass destruction, and other operations we can't imagine now. The U.S. military may be the only organization with the capability to act effectively. Military lawyers will be directly involved in all of them.

Operational law is going to become as significant to a commander as maneuver, as fire support, and as logistics. It will be a principal battlefield activity. The senior SJAs may be as close to the commander as his operations officer or his chief of staff. My SJAs have become the coordinator of independent media, command spokesmen, key players in information management and psychological operations, advisors on sovereign authority, and experts in police power and domestic law and order. Beyond question, the practice of law today in the Marine Corps is a very exciting opportunity. Operational law and international law are the future. We have a need for an SJA who is a man or a woman for all seasons. SJAs will find themselves more and more part of the operational aspects of the business. They will be the right hand of the commander, and he will come to them for advice.



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