



# Hostile Venue: Practicing Law in a Combat Zone

By Thomas L. Harper

A

ll eyes were locked on the massive screen at the front of the room, which displayed the live feed from the MQ-9 Reaper drone circling high above a compound somewhere in southern Afghanistan. Several insurgents moved in and out of the buildings, bathed in the ghostly light of the drone's infrared optics. As the pilot's request for authority to strike the target came through, the commander weighed the options.



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This type of scene is a typical one in a combat zone, but it might be the last place you would expect to find an attorney. Yet military lawyers are usually found front and center in these situations. From multimillion-dollar defense contracts to soldiers' family law matters back home, legal issues are ever-present in combat zones. With this reality, military units typically deploy with a contingent of attorneys in tow. Military attorneys also play a key role in helping guide how we fight, advising in the military-specific field of law known as operational law.

#### **Bringing Order to Chaos**

Armed conflict is often thought of as a lawless affair. Long ago, the phrase *inter arma*

*enim silent leges*, or “in times of war, the law falls silent,” was used to describe the chaos that typified war and the extreme measures that often went along with it. While modern armed conflict is still chaotic, it is most certainly not a legal free-for-all. In reality, a complex web of laws, customs and treaties has developed over the course of millennia and still continues to shape the way war is waged. Those rules are collectively known as the Law of War or the Law of Armed Conflict.

The concept of trying to apply laws to something as destructive and frenzied as war might seem oxymoronic. However, the Law of Armed Conflict serves several essential functions, such as helping to rein in the destructiveness of war, guarding against unnecessary suffering and protecting certain fundamental human rights. Compliance with the Law of Armed Conflict is taken seriously and every American service member must abide by it. From the tragic 2015 airstrike on a hospital in Kunduz Province, Afghanistan, to the recent high-profile court-martial of a Navy SEAL for alleged war crimes, the importance of these laws and the resulting consequences when they





are violated have repeatedly been highlighted in the media.

### **The Operational Law Attorney**

Operational law attorneys play a key role in helping the U.S. military adhere to the Law of Armed Conflict. Across all branches of the armed forces, these attorneys are uniformed military officers who belong to their respective service's Judge Advocate General's Corps, more commonly known as the JAG Corps. As subject matter experts, operational law attorneys are tasked with providing rapid analysis and legal advice to battlefield commanders throughout the planning and execution of combat operations.

Operational law attorneys can be found at numerous echelons of the military. For example, a brigade combat team (BCT), the Army's basic deployable maneuver unit, will typically contain two attorneys who advise on the Law of Armed Conflict, among their other legal duties. As members of the brigade, these attorneys train and advise the brigade's commanders and soldiers, both at their home station and during any overseas deployments. Opera-

tional law attorneys at higher levels of command, such as a division or corps, share similar duties, albeit on a larger scale. While brigade-level operational law attorneys advise on the unit's specific missions, division-level attorneys might find themselves advising on the combat operations of dozens of subordinate units spread across a much larger land area. During my own deployment to Afghanistan in support of Operation Enduring Freedom, I served as part of a regional command responsible for combat operations across four provinces encompassing thousands of troops.

### **Deployment Preparations**

While operational law attorneys play a key role in combat zones, their jobs usually begin long before any deployment. Training in the Law of Armed Conflict is a mandatory and regular requirement for almost all military units, but those lessons become especially important in the extensive preparation that happens in the months leading up to a deployment. Rather than lecturing in a classroom, operational law attorneys help implement scenario-based training to teach the core principles of the Law of Armed Conflict.

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For example, BCT soldiers in a field exercise might be faced with how to handle surrendering enemy troops, while a division or corps might be forced to react to reports of civilian casualties following a large-scale operation. It is the job of operational law attorneys to help instill in soldiers and their leaders at all echelons the knowledge and confidence to make rapid and intelligent decisions under pressure.

Designing these scenarios around real life events helps both to enhance the sense of realism and to expose soldiers to a wide variety of unpredictable challenges. One of the most memorable training scenarios from my own predeployment training was reacting to an unmanned drone that had reportedly crashed into the power grid of a small village, completely knocking out power. The situation demanded analysis on a number of fronts, including the need to defend the wreckage and how to get the power back on by potentially using U.S. funds to help repair the grid.

Those same simulated combat zone exercises also help train the attorneys who will soon be advising on combat operations. Scenarios based on real life situations force the attorneys to rapidly react, analyze and advise in an environment that mirrors what they will experience while deployed. By the

time a military unit deploys, its operational law attorneys will have spent months training and advising the commander and staff. In the lead-up to my own deployment, I spent nearly nine months training alongside the same commanders and soldiers. This not only helped build my expertise, but it was also essential in forging a level of trust between the commanders and soldiers who would eventually rely on my legal advice in Afghanistan.

#### **Combat Operations: The Planning Phase**

Once in a combat zone, operational law attorneys provide legal advice on all aspects of combat operations, including their planning and execution. While war itself can be chaotic, military units strive to plan and manage their combat operations efficiently and effectively. The military accomplishes this by using a "battle rhythm," which is a daily 24-hour cycle of activities designed to process information, facilitate decision-making and plan and synchronize operations. A unit's battle rhythm usually involves a series of recurring briefings and strategic meetings that address topics from tactical updates for the commander to targeting decisions. Operational law attorneys are deeply involved throughout the entire battle rhythm.









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For example, a mission might call for an artillery strike on a building being used by the enemy to assemble roadside bombs. An operational law attorney would analyze intelligence and other information about the building that would inform his or her advice on a range of legal questions, such as whether the building is a valid military target or the possible collateral effects of the strike. The operational law attorney would then offer tailored advice on everything from whether the strike was a lawful one to whether any adjustments were warranted, such as to the type of munition to be used for the strike.

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A substantial portion of my time in Afghanistan was dedicated to advising during the operational planning process. My shift typically began with a major meeting known as the operations synchronization, or “OPSYNC” meeting, in which combat operations for the next 24 to 96 hours were analyzed and discussed. Operations discussed during the OPSYNC meeting have typically been through an intensive planning process, including a legal vetting, but I would remain on hand in case other issues or developments arose. The remainder of my shift would include a wide variety of strategy and planning meetings, including reviewing battlefield intelligence, discussing high-value targets and analyzing ongoing psychological operations, leveraging my expertise to help ensure operations were planned in accordance with the Law of Armed Conflict.

#### **Combat Operations: The Execution Phase**

Operational law attorneys are also heavily involved in advising during ongoing com-



bat operations. This does not mean that every foot patrol has an attorney tagging along as a living rule book. Instead, these attorneys help analyze live data from the battlefield, from streaming drone footage to intelligence reports, in order to actively advise and assist commanders as operations unfold. For example, a commander may weigh whether to conduct a drone strike on a suspicious looking parked car that is believed to be rigged as a large bomb. An operational law attorney would help review available footage to determine whether the car is a valid military target, while also providing the commander with advice on possible alternative courses of action, such as the possibility of cordoning off the car from a safe distance in order to prevent casualties and to allow for further observation.

During my time in Afghanistan, when I was not assisting in the mission planning process, I was engaged in advising on active combat operations. I worked from the middle of a joint command center, which was a cavernous room resembling a

large NASA mission control center, complete with tiered seating and massive screens at the front displaying battlefield maps, live feeds and other data. Each soldier in the command center worked to provide support for troops in the field, ensure combat operations were executed fluidly and provide a rapid response to battlefield developments. Due to the unpredictable nature of the battlefield, each day was different from the previous one, which meant that I had to stay on my toes at all times.

While operational law attorneys do not have any command or decision-making authority, they are indispensable advisers to any military commander. Although stories of Law of Armed Conflict violations tend to make big headlines, they are thankfully quite infrequent. This is a credit to the exceptionally well-trained ground troops, as well as the large teams of soldiers who dedicate their efforts to ensuring missions are carefully and lawfully planned and carried out. ⚖



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