ANNEX C:

OPERATIONAL LAW

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1. Purpose. Provide an overview of the practice of operational law in the Marine Corps as part of the Marine Corps Legal Services Strategic Action Plan, 2010-2015.

2. Background

a. Operational law, as a practice area, addresses the entire range of legal issues that arise as a part of planning and executing military operations. While traditionally focused on areas such as the law of armed conflict, status of forces agreements, and rules of engagement (ROE); it also encompasses such divergent areas as fiscal law, military justice, intelligence oversight, cyber operations and environmental law. Operational lawyers also play a key role in military missions such as rule of law and civil affairs tasks as part of security and stabilization operations. The art of the operational legal practice is identifying the legal issues in these divergent areas and rapidly synthesizing them into timely, coherent legal advice for a military commander engaged in operational planning and execution.

b. The International and Operational Law Branch (JAO) supports the Staff Judge Advocate to the Commandant of the Marine Corps (SJA to CMC) in providing legal advice to the Commandant and to Headquarters, U.S. Marine Corps staff agencies on international and operational law matters. JAO also represents the SJA to CMC when addressing international and operational law matters with our sister services, the Joint Staff, Department of Defense (DoD) General Counsel, and other organizations. JAO provides representation to the DoD Law of War (LoW) Working Group and to various other working groups and committees. JAO assists the SJA to CMC as the HQMC resource for judge advocates, commanders and staffs throughout the Marine Corps to facilitate consistent application of law, policy, and regulation on matters related to international and operational law.

3. Discussion

a. <u>History</u>. Formalization of operational law as a distinct practice area within military law is a relatively recent development. Focus on operational law has been driven by the increased significance given to legal matters arising out of military operations, and the increasing complexity of the legal issues involved. Events highlighting this increased concern include the establishment of the DoD LoW program, implemented as a result of war crimes arising out of the Vietnam war, increased political and media attention paid to targeting decisions made during the NATO air campaign in Kosovo and the Gulf War, ROE implementation during U.S. operations in Somalia, and allegations of detainee mistreatment arising from the conflicts in Iraq and Afghanistan.

Since the late 1970's, operational law has grown significantly within DoD. These years saw the establishment of programs of instruction in operational law at the service legal schools, and the establishment of operational legal departments within the service judge advocate headquarters. In 1981, the Judge Advocate, Research and Civil Law Branch (JAR) maintained the portfolio of international and operational legal issues within JAD. In 1986, Brigadier General David Brahms, then SJA to CMC, established the JAO branch. The

branch has been a resource to the SJA to CMC, the HQMC staff, and the Marine Corps legal community on matters of operational and international law ever since.

From the mid-1980's, within the Marine Corps operating forces, operational law support was provided primarily by the Marine Forces (MARFOR), Marine Expeditionary Forces (MEF) and major subordinate command SJAs, and additional support was provided, as needed, by the Legal Services Support Section (LSSS). Consistent with then existing legal doctrine, an operational law billet was created within the LSSS organization. This operating concept was successfully utilized in the Gulf War.

This historical evolution informed the employment of judge advocates after September 11, 2001. Commanders, recognizing the increased complexity of the operating environments in Afghanistan and Iraq, requested that legal support be integrated into their planning, training and operations. This requirement was initially met by the command SJA offices, which used organic and reserve personnel. As demand increased, additional judge advocates were taken from their T/O billets (usually from the LSSS) and sent to augment operational units. The culmination of this trend was the decision to assign judge advocates to each deploying infantry battalion and regiment. Often the judge advocates at the battalion level were junior company grade officers with little operational experience. However, due largely to their training as Marine Air-Ground Task Force (MAGTF) officers, functional supervision at the regimental and division level, and predeployment training, these assignments proved successful.

As a result of this evolution, day-to-day practice of international and operational law is now almost exclusively the province of the command judge advocate or the staff judge advocate directly supporting a Marine Commander.

b. <u>Current Training, Education, and Resources</u>. The most effective method for improving the provision of operational legal advice is ensuring command and staff judge advocates are properly trained and resourced. An occupational field sponsor who knows the judge advocates and their experience levels, and the requirements of these jobs is crucial to support the best assignment decisions. In addition, a robust and relevant training program, and resources adequate to backstop these attorneys if they encounter novel issues helps ensure success. As the lead for international and operational law matters within JAD, JAO will continue to act as a clearinghouse of information, as well as work as part of overall efforts to establish standards and oversight of the operational law practice in the Marine Corps. The most significant effects will be achieved by developing and implementing training and education that accurately reflects the most significant current operational law issues as well as those priorities of effort identified by the SJA to CMC on behalf of the Commandant.

(1) <u>Basic Operational Legal Training (BOLT)</u>. BOLT is a five-day training program that gives new judge advocates a working foundation in international and operational law. BOLT was created by JAO in response to a lack of international and operational law training at the Naval Justice School's (NJS) Basic Lawyer's Course (BLC). Originally, BOLT was a "Marine-only" program given at the beginning or end of the 10-week BLC. Realizing the benefits of providing such training to junior judge advocates, the Navy began participating in the program in August 2006. BOLT has become a formal part of the NJS BLC curriculum. JAO continues to participate in curriculum development and provides instructors for BOLT.

(2) Pre-Deployment Legal Training (PDLT). PDLT is a program in which judge advocates preparing to deploy receive the latest updates on legal issues affecting their deployment. These training periods are organized and managed by the respective Marine Expeditionary Force SJA's. JAO is available to support curriculum development as well as instruction.

(3) Training and Education Command (TECOM) coordination. JAO has played an important role in the development of curriculum for all students at Command and Staff College, Expeditionary Warfare School, and other formal Marine Corps Schools. JAO has also provided instruction at these formal schools on international and operational law matters. JAO continues to maintain a relationship with TECOM and assists in the maintenance and validation of formal Marine Corps school curriculum in the areas of international and operational law. JAO also provides instructors, as requested, to support the TECOM mission.

(4) Corps-wide Support. JAO provides support to Marine Corps judge advocates, commanders and staffs on international and operational law issues whenever requested. In addition to responding to direct phone and e-mail requests for assistance, JAO is continually increasing their use of internet-based resources to act as a clearinghouse for information of interest to the community.

(a) JAO Share PointPage. JAO is currently maintaining both a public internet site and a restricted access site using SharePoint. The SharePoint page allows FOUO reference documents to be posted and establishes a collaboration site for exchanging training material, legal opinions, and other work-product.

(5) Policy. JAO continues to engage and participate as the leading USMC agency on the development of policy relating to international and operational legal matters.

(a) Law of War Working Group. By direction of the Secretary of Defense, the SJA to CMC is a member of the DoD Law of War (LoW) Working Group, which develops and coordinates LoW initiatives and issues, manages other LoW matters as they arise, and provides advice to the DoD General Counsel on legal matters relating to the DoD LoW Program. JAO is the SJA to CMC's representative to the LoW Working Group. This participation provides JAO with insight into LoW matters affecting the ability of the Marine Corps to conduct operations. In addition, it provides the SJA to CMC the opportunity to shape the development of international and operational law policies at the DoD level. Conversely, this participation allows JAO to provide up-to-date guidance on such matters to command SJAs throughout the Marine Corps.

(b) Marine Corps LoW Program. The Marine Corps LoW Program is contained in Marine Corps Order (MCO) 3300.4. The Order currently implements the DoD and the Secretary of the Navy's LoW Programs. It also establishes the Marine Corps Program for ensuring training and compliance with the LoW. The program does so by creating four levels of training, training requirements, a baseline for curriculum, and reporting requirements for violations of the LoW. JAO maintains primary coordination responsibility for the program and ensures it meets the needs of the Marine Corps.

(c) Legal Policy Review. JAO is the office of primary responsibility within JAD for reviewing and commenting on all international and operational law matters tasked to the

SJA to CMC that could impact the ability of the Marine Corps to conduct training, exercises, and operations.

c. Recent JAO Initiatives. JAO has taken a more active role in shaping and supporting the provision of international and operational law advice within the Marine Corps.

(1) Legal Doctrine Development. JAO has the administrative lead in coordinating input, drafting, reviewing, and submitting for publication revisions to Marine Corps legal doctrine. The historic doctrinal documents for the provision of legal services and command legal advice are Operational Handbook 4-10 and Chapter 3 of Marine Corps Warfighting Publication 4-11.8. These documents provide detailed discussions on the role of the LSSS, but do not address the significant changes in the organization and structure of the Marine Corps since their publication, or the changes to how legal support is provided in response. As a result, these documents have become less relevant to current practice and future planning, and will be replaced by a new doctrinal publication MCWP 4-12.2, Provision of Legal Services within the Marine Corps. JAO has also been managing a doctrine development SharePoint collection site for all relevant reference material useful for the development of legal doctrine and allows collaboration in the writing of doctrinal material.

(2) JAO and the U.S. Army's Center for Law and Military Operations (CLAMO). CLAMO is a joint, interagency, and multinational legal center responsible for collecting and synthesizing data relating to legal issues arising in military operations, managing a central repository of information relating to such issues, and disseminating resources addressing these issues to facilitate the development of doctrine, organization, training, material, leadership, personnel, and facilities as these areas affect the military legal community. JAO collaborates directly with CLAMO on the development, revision, and distribution of publications including:

(a) Deployed Marine Air-Ground Task Force (MAGTF) JA Handbook. JAO is coordinating the revision of the Deployed MAGTF JA Handbook. Originally published in 2002, it remains a useful reference for deployed judge advocates. Written from the perspective of a Marine Expeditionary Unit (MEU) SJA, the handbook is undergoing revisions in light of the experiences and lessons learned in Iraq and Afghanistan.

(b) BN JA Handbook. Based on the emergence of battalion and brigade command judge advocates, JAO and CLAMO are developing a Battalion/Brigade JA handbook for use as a source of information for judge advocates in this developing role.

d. Vision and Strategic Goals of JAO for Area of Practice. The requirements for international and operational law expertise within the Marine Corps will continue to increase. The SJA to CMC, as part of his responsibility to establish standards and oversight and set priorities for the provision of legal services within the Marine Corps, will constantly reevaluate and reassess these requirements to ensure training remains relevant, manpower remains properly allocated, and commanders receive the best legal advice. JAO will continue to work within JAD to advocate for international and operational law. By leveraging available technology and existing relationships with sister services and other agencies, JAO will remain positioned to act as the clearinghouse for Marine Corps knowledge, policy, and best practices in the area of international and operational law.