



BENGOSHI 弁護士

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The Bengoshi was created as a means to educate and inform fleet leaders, legal officers, and others in the Indo-Pacific area of operations who might have an interest in the complex legal issues that uniquely impact those who serve here.

- What is the legal significance of China's realignment of its Coast Guard under their Central Military Commission?
- Why does the UN Flag fly on so many of our U.S. installations here in Japan?
- Who handles crimes committed by civilians on overseas military installations?
- How can child custody disputes turn into treaty violations and who is there to help our Sailors?
- What important role does the command now play in naturalization of our Sailors?
- What are the central changes of the most significant overhaul of the Uniform Code of Military Justice in its history?

These questions, and more, are answered by our exceptional team of legal professionals in this edition of the Bengoshi!

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THE REALIGNMENT OF CHINA'S COAST GUARD UNDER THE GOVERNMENT'S MILITARY BRANCH

LCDR Brandi Orton, JAGC, USN

In the Indo-Pacific region, maritime nations have increasingly invested in Coast Guards to enforce domestic law in the South and East China Seas.[1] A Coast Guard tends to conjure images of search and rescue as much as law enforcement but in the South China Sea, Coast Guards are instruments of asserting state power and enhancing claims in disputed waters. For instance, China is employing larger, more heavily-armed and more capable offshore patrol vessels in the South China Sea while simultaneously engaging in dredging and artificial island-building in the



Spratly Islands—Johnson Reef (2017)

Imagery courtesy of CSIS/AMTI: <https://amti.csis.org/>



Johnson Reef (2012)

Spratlys—creating 3200 acres of new land on rocks, reefs and islets disputed among five Pacific nations as a means to assert sovereignty.[2] In response, Japan, Vietnam, Indonesia and the Philippines are making similar commitments to greater use of the Coast Guard. In this context, how has the legal character of Coast Guards evolved?

In 2013, China's Coast Guard was set up under the State Oceanic Administration. The China Coast Guard is responsible for search and rescue efforts, fighting smugglers, managing fisheries, as well as protecting the nation's claims in the disputed waters of the East and South China Seas. [3] When acting under the State Oceanic Administration, actions taken by the Coast Guard in disputed

waters, despite how they appeared, were not attributed as military actions. Not exactly military, where internationally agreed-upon accords regulate standard operating procedures, and not exactly civilian law enforcement regulated by domestic laws, China's Coast Guard ships previously fell into in a legal grey zone. China strategically exploited this ambiguity.[4]

VADM John Alexander, Commander of U.S. 3rd Fleet, defined the grey zone as "...[N]on-state actors executing state security objectives and utilizing the ambi-

guity that they have to make it hard to respond." [5] For example, paragraph 58 of the San Remo Manual on International Law Applicable to Armed Conflicts at Sea (hereafter "the Manual") states, "[i]n case of doubt whether a vessel or aircraft exempt from attack is being used to make an effective contribution to military action, it shall be presumed not to be so used." [6]

Five years later, on 21 April 2018, China announced that the China Coast Guard would now fall under the administration of the People's Armed Police, which falls under the direct command of the Central Military Commission. This realignment may remove some of the diplomatic leeway the Chinese Coast Guard had enjoyed

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while handling conflicts in disputed waters. [7] Paragraph 65 of the Manual states, “[u]nless they are exempt from attack under paragraphs 47 or 53, enemy warships and military aircraft and enemy auxiliary vessels and aircraft are military objectives within the meaning of paragraph 40.” [8]

Now, with the China Coast Guard's realignment under the control of the Central Military Commission, the U.S. military can apply international standards with sureness actions taken by China's Coast Guard are, in fact, military actions and, in turn, China Coast Guard units are valid military objectives, if warranted.

While this may ensure the U.S. may respond to Chinese Coast Guard actions, the actions of China's large fleet of fishing vessels present an altogether different challenge. It is far more difficult to attribute a fisherman's actions to the state, even if armed and hostile. Actions against civilian actors are far more limited under international law. Therefore, while China's realignment may simplify some analysis during operations of their Coast Guard cutters, the complexity of assessing China's larger activities in this Region remain and the dialog regarding “grey zone” continues.



China's second “10,000 tonne” displacement cutter (<https://www.maritime-executive.com/article/china-s-coast-guard-is-now-a-military-police-unit#gs.LEC24BE>)

[1],[2] Lyle Morris, *The Era of Coast Guards in the Asia Pacific is Upon Us*, <https://www.rand.org/blog/2017/03/the-era-of-coast-guards-in-the-asia-pacific-is-upon.html>.

[3] Liu Zhen, *China's Military Police Given Control of Coast Guard as Beijing Boosts Maritime Security*, SOUTH CHINA MORNING POST, (March 21, 2018), [http://www.scmp.com/news/china/diplomacy-defence/article/2138257/chinas-](http://www.scmp.com/news/china/diplomacy-defence/article/2138257/chinas-military-police-given-control-coastguard-beijing)

[military-police-given-control-coastguard-beijing](http://www.scmp.com/news/china/diplomacy-defence/article/2138257/chinas-military-police-given-control-coastguard-beijing).

[4] Asia Maritime Transparency Initiative and the Center for Strategic and International Studies, <https://amti.csis.org/island-tracker/>

[5] Ben Werner, *Panel: Navy and Coast Guard Operating More in a Maritime 'Grey Zone'*, USNI News, (February 9, 2018), [https://](https://news.usni.org/2018/02/09/panel-navy-coast-guard-operating-maritime-grey-zone)

news.usni.org/2018/02/09/panel-navy-coast-guard-operating-maritime-grey-zone.

[6] San Remo Manual on International Law Applicable to Armed Conflicts at Sea (Louise Doswald Beck ed., 1995)

[7] Zhen, *supra* note [1]

[8] San Remo Manual on International Law Applicable to Armed Conflicts at Sea (Louise Doswald Beck ed., 1995)

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A BRIEF HISTORY OF THE UNITED NATIONS COMMAND

LT Blake Roberts, JAGC, USN

On June 25, 1950, North Korean forces surged across the border into the Republic of Korea (ROK), overwhelming defenses. Over the next month, with North Korean forces capturing Seoul and U.S./ROK forces unable to check their rapid advance, the United Nations Security Council passed resolutions 83, 84, and 85. These resolutions paved the way for what we now know as the United Nations Command (UNC).

One might wonder how were these resolutions passed without Chinese or Soviet veto? A year earlier, in 1949, Communist forces drove the Nationalist government off the mainland and established the People's Republic of China (PRC). They then sought to assume the Republic of China's (ROC) seat on the Security Council. The U.S. and allied nations continued to recognize the ROC as the legitimate government, and refused to allow the PRC to be seated. In January of 1950, the Soviet Union boycotted the UN in protest. Consequently, neither the PRC nor the USSR were participating in the Security Council when the resolutions were adopted.

The resolutions are short and relatively simple. Resolution 83 recommended that UN member nations furnish assistance to the ROK to repel the

attack, and to restore peace and security. Resolution 84 recommended members providing military assistance make those forces available to a unified command under the U.S., requests the U.S. designate a commander

of such forces, and authorizes the unified command to use the UN flag during its operations against North Korea. Resolution 85 requested the unified command be responsible for relief and support of the Korean civilian population.

The newly established United

Nations Command assumed operational control of ROK, U.S., and UN forces in Korea. It conducted combat operations for the duration of hostilities, with a maximum troop strength of 932,964. On July 27, 1953, it was the Commander of the UNC who signed the Armistice Agreement (AA) with North Korea, not the ROK or a representative from the U.S. State Department. In fact, the AA makes no direct reference to the ROK or the U.S., it only vaguely references "belligerents" involved in Korea.



A Republic of Korea (ROK) sailor waves flags as Nimitz-class aircraft carrier USS Carl Vinson (CVN-70) pulls into ROK Fleet headquarters. The Carl Vinson Carrier Strike Group is on a regularly scheduled Western Pacific deployment as part of the U.S. Pacific Fleet-led initiative to extend the command and control functions of U.S. 3rd Fleet. (Photo by MC2 Jermaine M. Ralliford)

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The AA instead considers itself a temporary, “purely military” arrangement, stating in the preamble its goal is to ensure hostilities cease until a peaceful settlement is achieved. Rights, duties, and responsibility for obeying the AA rests on the Commander of the UNC, as the signatory. Although North Korea has repeatedly stated it no longer considers itself bound by the AA, in the sixty-eight years since the end of open hostilities the UNC has worked to maintain the AA until permanent, diplomatic peace can be achieved.

Today, the UNC consists of two elements: the UNC (located in Korea), and the UNC Rear Command (UNC-R), an element of the UNC located in Japan. The UNC, comprised of sixteen sending state nations (the ROK is not considered a sending state), maintains its duties under the Armistice, which include monitoring the DMZ, providing members to the Military Armistice Commission, providing security to the Joint Security Area, and providing security to the Taesung Village (a civilian village located with the UNC controlled portion of the DMZ).

The UNC-R consists of seven bases in Japan that are intended to provide logistical support to the UNC. These bases are co-located on US military bases in Japan, with UNC-R existing to maintain the UNC presence required to avoid a lapse in the UN-Government of Japan SOFA agreement.

This agreement requires that the UNC-R be multinational, that the UNC maintain continuous presence, and that the UNC must fly the UN flag at the designated bases. In furtherance of these requirements, the Commanding Officer of UNC-R is a Group Captain from the Australian Air Force, and the Deputy Commander is a Major from the Canadian Air Force.



Senior leaders from the Republic of Korea and U.S. military pose for a photo after a ceremony welcoming the new ROK Chairman of the Joint Chiefs of Staff Gen. Jeong, Kyeong Doo at United States Army Garrison Yongsan, Sept. 26. General Jeong was making his first trip to USAG Yongsan as ROK CJCS. (U.S. Army photo by Staff Sgt. Steven Schneider)

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THE LONGEST ARM OF THE LAW: THE MILITARY EXTRATERRITORIAL JURISDICTION ACT

LT Andrew F. Giddings, JAGC, USN

A military dependent commits a horrendous crime against another dependent onboard a military installation in Japan. Who decides the case? Where does that case go?

Jurisdiction—the legal “hook” that allows an authority to decide a case—is a complicated topic even for lawyers. But it is of fundamental importance. After all, *who* decides a case can be the critical factor and often matters to a victim or a victim’s family. This tends to be even more so overseas, far from a justice system everyone at least knows somewhat from TV.

Finding the jurisdictional basis against service members overseas is relatively straightforward: it will be with the host country or the U.S. military justice system depending on any Status of Forces Agreement (SOFA). [1] Prosecuting cases against civilians is different. If the host nation does not take the case—if they even had a right to—how are laws enforced against civilians who are not subject to the Uniform Code of Military Justice (UCMJ)?

There is a general presumption U.S. statutes do not apply outside the United States unless specifically provided for by Congress. Also, most criminal cases are under state law and a state generally cannot extend its jurisdiction. A long held percep-

tion was that overseas jurisdiction over civilians was a “Legal Bermuda Triangle” with a perceived lack of accountability if the host nation declined to take action.

The main effort to resolve this was the Military Extraterritorial Jurisdiction Act of 2000 (“MEJA”), 18 U.S.C. §§ 3261-3267. Under MEJA, there have been federal court convictions and U.S. federal prison sentences—including for civilians based in Japan. [2]

Background & Application

MEJA covers Department of Defense civilians, contractors, and dependents and was a distant follow-up to the Special Maritime and Territorial Jurisdiction Act

(SMTJ). MEJA covers the same crimes as the SMTJ. [3] The shorthand is if an offense is a felony—a serious crime that could result in over a year in prison—on a military installation located inside the U.S., that offense is covered under MEJA. Where the case is tried—the “venue”—can be where the defendant is first brought or arrested, the last known U.S. residence of the defendant or co-defendant, or Washington D.C. as a default.

For example, in Japan, if a dependent sexually assaults another dependent, Japan would have primary jurisdiction under the SOFA. But Japanese action would be unlikely. If the Japanese did not take action, the United States could prosecute under



Image: Public Domain

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MEJA. If the family of the accused had recently PCS'd from San Diego and are residents of California, then the U.S. District Court for the Southern District of California would be the most likely venue.

Debate over MEJA

There have been concerns that military dependent-on-dependent crimes, particularly overseas, have not been sufficiently addressed. [4] This has led to a number of calls for investigations and explanations. [5]

MEJA cases can be difficult to prosecute. They involve cooperating with foreign law enforcement, evidence issues, remote crime scenes, language, cultural, and time zone issues, and potential interactions with the SOFA and other laws. MEJA also has specific arrest, detention, and removal requirements. Because of the complexity there is a specialized office at the Department of Justice – the Human Rights and Special Prosecutions Section – that advises on these cases. And though there are hurdles, MEJA cases are taken exceptionally serious by multiple actors including (in Japan): U.S. Forces Japan; the Department of Justice; Commander Naval Forces Japan; Naval Criminal Investigative Services; and Installation Commanding Officers (ICOs), Staff Judge Advocates, and investigators. There are also ongoing efforts to improve the process. One recent success was establishing remote hearings in Yokosuka with the Department of Justice, helping reduce costs and travel time and avoiding unnecessary delay.

Other Options

There are other ways to address civilian misconduct. Civilians who are military retirees are subject to

the UCMJ and, particularly in Japan, there have been recent efforts to militarily prosecute retirees. MEJA also does not preclude administrative action by an ICO. While not a substitute for criminal prosecution, such actions can have a range of consequences including community service or even debarment from installations in Japan.

Conclusion

Accountability for crimes committed by civilians overseas is complex. All parties concerned must coordinate closely to bring justice to those victims of crimes committed by civilians overseas.

[1] For a primer on how this works in Japan see Andrew Giddings, "How to: Foreign Criminal Jurisdiction (FCJ) Cases in Japan", *Bengoshi*, Volume I, Issue I, pages 3-4, October 2016 (http://www.jag.navy.mil/legal_services/documents/Bengoshi_VolI_IssueI.pdf).

[2] See, e.g., U.S. Department of Justice, "Department of Defense Employee Pleads Guilty to Sexually Abusing Co-Worker on Military Base", April 19, 2018, <https://www.justice.gov/opa/pr/department-defense-employee-pleads-guilty-sexually-abusing-co-worker-military-base> (a case involving a Department of Defense civilian employee in Yokosuka).

[3] The Special Maritime and Territorial Jurisdiction Act covers areas under U.S. maritime (and air and space) jurisdiction but not under the jurisdiction of any particular U.S. state.

[4] See, e.g., Justin Pritchard and Reese Dunklin, "Child-on-child sex assault cases languish on US bases", *Associated Press*, March 14, 2018. [5] See, e.g., Justin Pritchard and Reese Dunklin, "Congress demands Pentagon, DOJ investigate child sex assault", *Associated Press*, March 16, 2018.

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IMPLEMENTATION OF THE HAGUE CONVENTION IN JAPAN

LTJG Clinton Barker, JAGC, USN

A service member is having disagreements with their spouse. Not uncommon, perhaps, but this time the spouse has gone a step further. They have taken the couple's child out of the country, away from the service member. The service member might not know where the spouse is, where their child is, or where to turn to for help.



Image: Public Domain

Fortunately, ninety-eight countries have signed the Convention on the Civil Aspects of International Child Abduction, commonly referred to as the Hague Convention. On 25 April 2018, Japan's Hague Convention Division of the Ministry of Foreign Affairs visited CFAY to explain how the Hague Convention is implemented in Japan. The Hague Convention establishes a framework for handling situations where a child has been wrongfully removed from his or her habitual residence. [1]

If a service member or spouse knows their child has been taken back to the United States, they may contact the U.S. embassy—but not everyone will know where their child has been taken. In that case, the Hague Convention Division of the Ministry of Foreign Affairs here in Japan can help. The Hague Convention Division gives assistance

to either party present in Japan—either the “taking parent,” this being the parent who has taken the child to Japan, or the “left behind parent”, the parent currently residing in Japan who is attempting to regain custody of the child. [2] This means a service member or their spouse could receive assistance even if they are being accused of illegally removing their child from his or her habitual residence.

To qualify for assistance the applicant must meet several criteria. The child must be under 16 years of age, and either the applicant or the child must be in Japan. The child and “left behind parent” cannot both be in Japan—this would not be an international abduction covered by the Hague Convention, but rather one covered by domestic Japanese law. The applicant must also have either a right to custody or a right to visitation or access with respect to the child. Finally, the potential violation must have occurred after Japan signed the Hague Convention on 1 April 2014. If a child was taken from Japan before then, the Convention would not apply. [3]

There are three child abduction scenarios covered by the Hague Convention. The first is a removal case, where a parent takes a child out of the child's country of habitual residence without the other parent's consent, with no intention to return. The second is a retention case, where a parent takes a child with the other parent's consent intending to return, but then stays in the second country.

IMPLEMENTATION OF THE HAGUE CONVENTION IN JAPAN

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The third is an access case, where the “taking” parent does not allow communications with the child. [4]

For qualified applicants, the Hague Convention Division can assist in several ways. They can help find a child in Japan for overseas applicants, or work with foreign nations to find children taken abroad. [5] The Hague Convention Division can also assist in mediations between the parents to find a mutual solution and set up teleconferencing between the “left behind parent” and the child to allow continued access. [6] If the case is taken to Japanese court, the Hague Convention Division can translate documents into Japanese and provide a list of attorneys to contact for representation. [7]

If the parents cannot agree and the case reaches court, the court would apply the Hague Convention to determine where the child goes. If the child is under 16, located in Japan, and the “left behind parent’s” custodial rights were breached, the court will generally order the child to be returned to the child’s place of habitual residence. [8] However, the court will generally not order the child returned if the petition was filed more than one year after the child was removed, if the “left behind parent” was not exercising custody at the time of removal, if consent had been given by the “left behind parent”, if the child objects to being returned, or if there is a grave risk to the child’s physical or psychological wellbeing. [9]

The Hague Convention Division of the Ministry of Foreign Affairs can be reached by phone at

03-5501-8466, by email at hagueconventionjapan@mofa.go.jp, or through their website at <http://www.mofa.go.jp/index.html>.

In Korea, sailors should contact the International Affairs Division at the Ministry of Justice. In Singapore, sailors should contact the Singapore Central Authority at the Ministry of Social and Family Development. In Hawaii, Guam, or elsewhere in the United States, sailors should contact the Office of Children’s Issues at the Department of State. As always, a visit to your local legal assistance office will result in you or members of your command being pointed in the right direction.

[1] Hague Convention, Art I.

[2] http://www.mofa.go.jp/fp/hr_ha/page22e_000274.html; http://www.mofa.go.jp/fp/hr_ha/page22e_000276.html.

[3] http://www.mofa.go.jp/fp/hr_ha/page22e_000274.html; http://www.mofa.go.jp/fp/hr_ha/page22e_000276.html.

[4] http://www.mofa.go.jp/fp/hr_ha/page22e_000250.html.

[5] http://www.mofa.go.jp/fp/hr_ha/page22e_000274.html; http://www.mofa.go.jp/fp/hr_ha/page22e_000276.html.

[6] http://www.mofa.go.jp/fp/hr_ha/page22e_000344.html; http://www.mofa.go.jp/fp/hr_ha/page22e_000275.html; http://www.mofa.go.jp/fp/hr_ha/page22e_000279.html.

[7] http://www.mofa.go.jp/fp/hr_ha/page22e_000253.html.

[8] Hague Convention Art. III, Art. IV.

[9] Hague Convention Art. XII, Art. XIII

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OVERVIEW OF THE MILITARY JUSTICE ACT OF 2016

LT Michael McBride, JAGC, USN

In 1950, Congress crafted the Uniform Code of Military Justice to standardize the administration of military justice among the nation's armed services. By the middle of the Vietnam War the code came under withering scrutiny for its perceived flaws. Wrote one contemporary critic,

"Every year 100,000 Americans in uniform find themselves facing court-martial. They get no bail, no trial by peers, no guarantee of an impartial judge, no due process. Ninety-five percent of the defendants are convicted, for military justice is pre-fabricated according to the wishes of the local commander, and trial is tantamount to a verdict of guilty." [1]

Congress responded by enacting significant changes to the UCMJ in 1968, inaugurating the first of many makeovers that continue today. As our military has changed, so too has the code, adapting to the legal, social, and operational paradigms of each new era.

In December 2016, after years of tinkering around the edges, Congress passed the most comprehensive reform of the UCMJ in a generation. The Military Justice Act of 2016 [2] will come into full effect on 1 January 2019, and with it will come a host of new structures, tools, and responsibilities for Commanders, Judge Advocates, and service members.

Structural Update

Perhaps the most noticeable changes enacted by the MJA are a host of structural reforms that will standardize courts-martial and bring the military

justice system closer than ever to federal courts. Currently, there are three different types of court-martial: summary, special, and general.

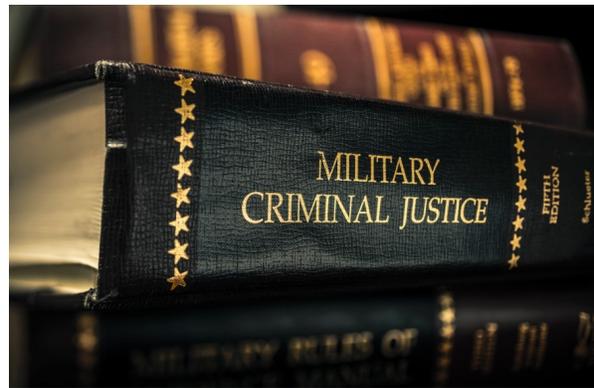


Image: Public Domain

Special and general courts have set minimum memberships (aka jury panels) – three and five members, respectively. Aside from death penalty cases, which require twelve members, these courts do not have a defined maximum sizes. General courts-martial are frequently composed of as many as a dozen members. So long as the court meets its minimum membership, it sits.

This becomes problematic when you consider the vote needed to reach a guilty verdict: two-thirds under the current rules. That means a court composed of nine members, needs six to vote guilty. But an eight member court also needs six votes for a guilty finding. This oddity of the UCMJ encourages counsel to game numbers to gain an advantage.

Under the MJA, special and general courts will jury sizes will be standardized. Special courts will require four members and general courts will require eight members. The threshold for a guilty

OVERVIEW OF THE MILITARY JUSTICE ACT OF 2016

LT Michael McBride, JAGC, USN

finding will also increase to three-quarters – three votes at a special, and six votes at a general court martial.

Although this modification is a big step in the direction of standardizing military justice, it does not come without burdens on area commands. An increase from five to eight court members will require more officers and enlisted to take time away from normal duties to hear a case. Consequently, commands should expect Region Commanders to increase the number of court-martial questionnaires each command must provide.

Sentencing procedures are also in for a change. Current law requires sentencing to be completed by the members immediately following a finding of guilty. The MJA provides for judge-alone sentencing in most cases, unless the accused specifically requests to be sentenced by the members.

Finally, a pre-trial agreement between the convening authority and an accused presently sets the upper limit for the punishment that a judge may award. But the accused can “beat the deal” by getting a lighter sentence adjudged. The MJA eliminates this quirk, and makes a plea deal binding on all parties, so long as the Military Judge accepts it.

New Tools

In addition to modifying court structures, the MJA also created a set of powerful new tools for commanders, prosecutors, and investigators. Chief

among them is a second type of special court-martial: a Military Judge-alone special court-martial. This new court is authorized to adjudge reductions in rank, up to six months of confinement, and up to six months of forfeitures, but no discharge. This option will be especially useful for commanders seeking to quickly dispose of NJP-refusal cases, and low-level offenses. This type of court-martial is already being informally dubbed “the short-martial.”

Addressing a gap in investigative powers, the MJA grants new power to Military Judges before formal charges are filed. Under current law, no mil-

“An increase from five to eight court members will require more area officers and enlisted to take time away from normal duties to hear a case.”

itary court can handle investigative issues until a case has been referred. Although we

frequently use Command Authorizations for Search and Seizure to find evidence in the possession of service-members or on an installation, we have no ability to gather evidence off-post. Rather, investigators have to convince a nearby U.S. Attorney’s office to apply to a U.S. District or Magistrate Court for warrants and subpoenas. Beginning 1 January 2019, Military Judges will have the authority to issue pre-referral warrants and subpoenas, significantly boosting the investigative tools available to NCIS and prosecutors.

In an effort to further codify offenses under the UCMJ and bring the punitive articles into the twenty-first century, the MJA also enacted a number of big changes to offenses under the code.

OVERVIEW OF THE MILITARY JUSTICE ACT OF 2016

LT Michael McBride, JAGC, USN

First, it moved most offenses currently under article 134 (the general article) to their own articles. This move eliminates the need to prove the extra element of service discrediting or good-order and-discipline-damaging conduct. No longer will burning with intent to defraud need to discredit the armed forces or damage good order and discipline; lighting something on fire is enough.

Second, the MJA created new offenses that will fill gaps left in the code by new technology. Of note, the MJA creates a punitive article addressing credit card fraud (Article 121a), and another for the

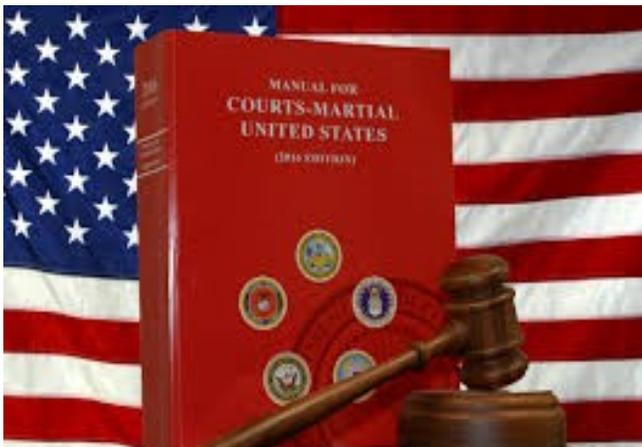


Image: Public Domain

misuse of government computers (Article 123).

The act further clarifies the definition of “sexual act” and “incapable of consenting”, and modifies the stalking article to include internet stalking.

The End of a Beloved Punishment

Not all changes in the MJA will be welcome by commanders. A remnant of the days of fighting sail— punishment of three days confinement on

bread and water —is no more. NJP may still award three days confinement, but those in confinement must be fed normal rations.

Conclusion

As the UCMJ approaches its seventieth birthday the pace of change shows no sign of abating. The FY18 NDAA took even more steps in the direction of modernizing the code and adapting to new trends in military and criminal justice. There are likely to be growing pains in the implementation, but as we approach January 2018, area Staff Judge Advocates and the team at RLSO Japan will ensure unit level legal officer and convening authority training opportunities.

[1] R. Sherrill, *Military Justice is to Justice as Military Music is to Music* (1969)

[2] National Defense Authorization Act, Pub. L. No. 114-328, § 5001, 130 Stat. 2000 (2016)

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EXPERTISE SPOTLIGHT: GENERAL COUNSEL, SINGAPORE AREA COORDINATOR

Editor's note: There is a wealth of legal experience and expertise throughout the Indo-Pacific. Whether civilian or military, Navy or Army, U.S. or partner, sometimes it doesn't matter where the advice and counsel come from, just that it arrives on time and on target. This new segment gives broader exposure to these legal resources.

When he is not drilling as the Staff Judge Advocate (SJA) of Navy Region Southeast Reserve Component Command in Fort Worth, Texas, Mr. Garrett Triplett (and CAPT, JAGC, USNR) is the sole attorney within the Navy's Office of the General Counsel ("OGC") at Commander, Singapore Area Coordinator.

There is no Status of Forces Agreement with Singapore and no treaty obligations between our two nations; yet, there is a legal framework for our presence and relationship. Since 1990, the U.S. Navy's presence in Singapore has been guided by a Memorandum of Understanding ("MOU") between the U.S. and Singapore. Any items not addressed in the original MOU are addressed in implementing arrangements (IAs). These IAs are created on a case-by-case basis, as the need arises. Creating IAs can be a time consuming and lengthy process. The last one, which involved the building a structure on a

separate base in Singapore for the United States to use, took two years of coordination with the various stakeholders in Singapore and Washington, DC. The bulk of Mr. Triplett's practice in support of Singapore Area Coordinator has been this "deckplates level" international law work in support of our Navy in Singapore. His work consists of interpreting the MOU and IAs, as well as conducting the research and laying the legal groundwork and courses of action for new IAs which are ultimately negotiated by the Office of the Secretary of Defense and Singapore's Ministry of Defense.

In addition to his international law portfolio, Mr. Triplett has three other practice areas: ethics/

standards of conduct, civilian personnel law, and fiscal law. Mr. Triplett's ethics portfolio is the one practice area in which there is overlap between his work as a Judge Advocate and his position as an OGC attorney. Mr. Triplett's civilian personnel portfolio consists of counsel on equal opportunity, merit systems protection boards, performance/discipline, assisting with hiring determinations, and post government employment. Lastly, Mr. Triplett's fiscal law portfolio assists operators in determining the constraints on how specific appropriations or "colors of money" may be spent.



Image: Public Domain

PREVENTIVE LAW SERIES: NATURALIZATION THROUGH MILITARY SERVICE

Special provisions of the Immigration and Nationality Act (INA) authorize U.S. Citizenship and Immigration Series (USCIS) to expedite the application and naturalization process for current members of the U.S. armed forces and veterans.

Qualifications

A member of the U.S. armed forces must have served honorably, be a lawful permanent resident and demonstrate:

- good moral character
- knowledge of the English language
- knowledge of U.S. government and history (civics), and
- an attachment to the principles of the U.S. Constitution.

A person who obtains U.S. citizenship through his or her military service and separates from the military under "other than honorable conditions" before completing five years of honorable service may have his or her citizenship revoked.

Requirements for Minimum Time in Service for Active Duty Members

For members whose date of enlistment or accession is before 13 Oct 17, the minimum length of service is 45 days.

For members whose date of enlistment or accession is on or after 13 Oct 17, the minimum length of service is 180 days.

Applying for Naturalization

The Command Citizenship Representative or Legal Officer in each command assists members with preparing and filing their naturalization application packet. The packet should include:

- A cover sheet requesting USCIS Seoul Field Office to process the application and to schedule an interview in Yokosuka, Japan
- Form N-400, Application for Naturalization
- Form N-426, Request for Certification of Military or Naval Service
This form must be signed by the first O-6 or higher in the permanent or temporary duty chain of command of the member, and shall not be signed "By Direction of the Commanding Officer" or "BYDIRCO".
- Form G-1145, e-Notification of Application/Petition Acceptance
- A photocopy of both sides of the Permanent Resident Card (green card)
- Two color photographs
- Two properly completed FD-258 fingerprint cards taken by the security
- Any other supporting documents required by the N-400 instruction and checklist

Where to Mail

A completed application and all required materials should be mailed to:

USCIS

P.O. Box 4446

Chicago, IL 60680-4446

The Rest of the Process

After an application is processed in the USCIS domestic office, it will be forwarded to the USCIS Seoul Field Office. The USCIS Seoul Office will contact the member to schedule an interview. Naturalization interviews and ceremonies in Yokosuka are generally scheduled three times a year.

To check the status of your case, visit the USCIS at <https://egov.uscis.gov/casestatus/landing.do> or contact military helpline at 1-877-247-4645 or militaryinfo@uscis.dhs.gov.

RESULTS OF TRIAL



January 2018:

At a General Court-Martial in Yokosuka, Japan, HM1 Danny F. Brown, Jr., USN, was tried for assault consummated by a battery and aggravated assault . On 11 January 2018, a panel of members returned a verdict of guilty to assault consummated by a battery and sentenced him to forfeit \$1972 per month for 6 months, 60 days restriction, and hard labor without confinement for 3 months.

At a General Court-Martial in Yokosuka, Japan, an E-6, USN, was tried for larceny. On 31 January 2018, the panel of members returned a verdict of not guilty.

February 2018:

At a General Court-Martial in Yokosuka, Japan, an E-3, USN, was tried for sexual assault and abusive sexual contact. On 28 February 2018, a panel of members returned a verdict of not guilty.

March 2018:

At a General Court-Martial in Yokosuka, Japan, STG2 Matthew J. Lytle, USN, was tried for attempted sexual assault of a child, attempted sexual abuse of a child, and indecent language. On 21 March 2018, a panel of members returned a verdict of guilty to attempted sexual assault of a child and attempted sexual abuse of a child, and a verdict of not guilty to indecent language. The panel sentenced him to be discharged with a Dishonorable Discharge, to forfeit all pay and allowances, reduction in rank to E-1, and confinement for 6 months.

At a Special Court-Martial in Yokosuka, Japan, ABHAA Israel A. Sotomeserve, USN, pled guilty pursuant to a pretrial agreement to striking a petty officer, multiple specifications of failure to obey orders, damaging military property of a value more than \$500, incapacitation for performance of duties due to drunkenness, and drunk and disorderly conduct. On 8 March 2018, the military judge sentenced him to be discharged with a Bad Conduct Discharge, reduction in rate to E-1, and confinement for 11 months.

April 2018:

At a Special Court-Martial in Yokosuka, Japan, MMN1 Seth Horton, USN, pled guilty pursuant to a pretrial agreement to reckless operation of a vehicle and fleeing the scene of an accident. On 19 April 2018, the military judge sentenced him to forfeit \$1000 pay for one month, reduction in rate to E-4, and confinement for 30 days.

RESULTS OF TRIAL



June 2018:

At a General Court-Martial in Yokosuka, Japan, AM2 Fabian Moreno, USN, pled guilty pursuant to pretrial agreement to two specifications of attempted sexual abuse of a child. On 8 June 2018, the military judge sentenced him to be discharged with a Dishonorable Discharge and confinement for 18 months.

At a Special Court-Martial in Yokosuka, Japan, SN Raul Depena, USN, pled guilty pursuant to a pretrial agreement to assault consummated by a battery. On 1 June 2018, the military judge sentenced him to reduction in rate to E-1 and confinement for 90 days. The pretrial agreement contained a waiver of the accused's administrative separation board.

At a Special Court-Martial in Yokosuka, Japan, MMFR Austin Greene, USN, pled guilty pursuant to a pretrial agreement to attempted sexual abuse of a child and distribution of child pornography. On 8 June 2018, the military judge sentenced him to a bad conduct discharge and confinement for 6 months.

At a Special Court-Martial in Yokosuka, Japan, HTFR Gorge Flores, USN, pled guilty pursuant to a pretrial agreement to attempted larceny, wrongful possession and use of a controlled substance, and four specifications of larceny. On 14 June 2018, the military judge sentenced him to a bad conduct discharge and confinement for 6 months.

At a Special Court-Martial in Yokosuka, Japan, OS2 Matthew Bowen, USN, pled guilty pursuant to a pretrial agreement to receipt of child pornography. On 18 June 2018, the military judge sentenced him to reduction in rate to E-1 and confinement for 6 months. The pretrial agreement contained a waiver of the accused's administrative separation board.

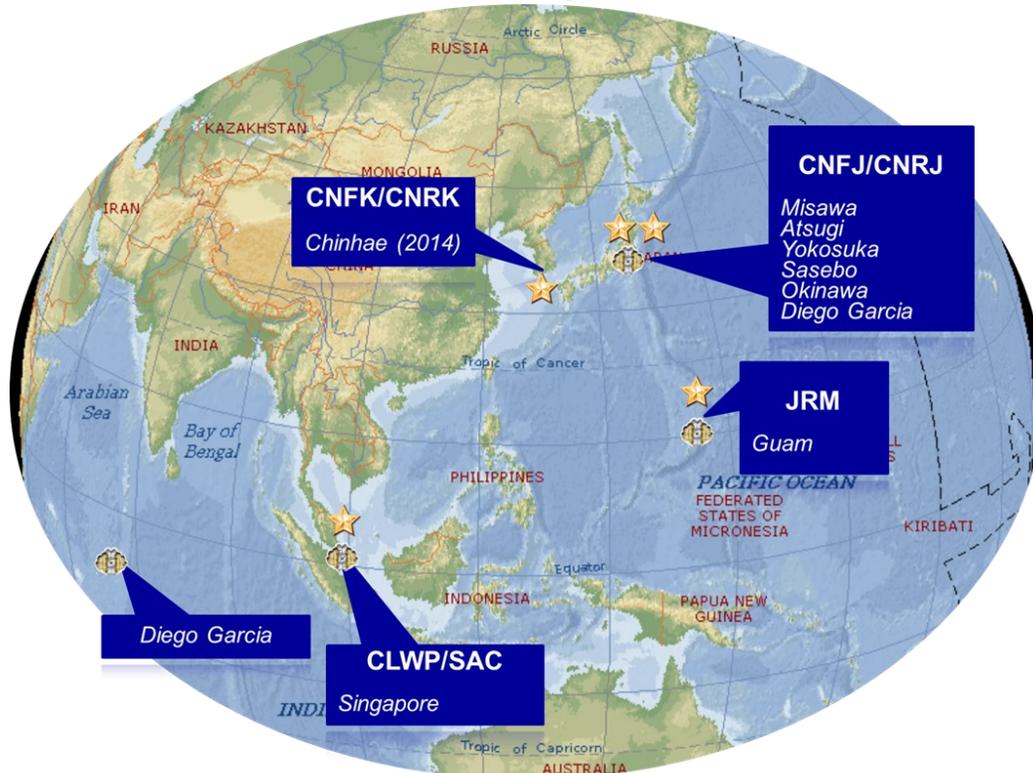
July 2018:

At a General Court-Martial in Yokosuka, Japan, AZC Jason R. Theaux, USN, was tried for attempted sexual assault of a child and attempted sexual abuse of a child. On 12 July 2018, a panel of members returned a verdict of guilty to all specifications. The panel sentenced him to be discharged with a Dishonorable Discharge, reduction in rank to E-1, and confinement for 172 days.

At a Special Court-Martial in Yokosuka, Japan, MNCS Scott Severs, USN, pled guilty pursuant to a pretrial agreement to indecent language. On 16 July 2018, the military judge sentenced him to reduction in rate to E-6. The pretrial agreement contained a waiver of the accused's administrative separation board and retirement grade determination.

CONTACT INFORMATION

Your Nearest Legal Advisors



Yokosuka Command Services: 315-243-9437

Yokosuka Legal Assistance: 315-243-8901

CFAY Legal: 315-243-7335

CNFJ/CNRJ: 315-243-3149

Atsugi: 315-264-4585

Sasebo SJA: 315-252-3387

Sasebo Legal Assistance: 315-252-2119

Misawa: 315-226-4022

Diego Garcia: 315-370-2922

Okinawa: 315-632-3974

Guam Legal Assistance: 315-333-2061

Joint Region Marianas: 315-349-4134

Singapore: 315-421-2305

CNFK: 315-763-8010

C7F: 315-241-9104

CTF70: 315-243-7113

CTF72: 315-264-2860

CTF76: 315-622-1620

USS RONALD REAGAN: 315-243-6656