BENGOSHI 弁護士

Volume III Issue I

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Featured Articles

Preventative Law Series

The Bengoshi, which means "lawyer" in Japanese, is designed 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. In particular, this issue offers three articles focusing on strategically important geographies historically administered by the U.S. The articles ask:

- How do the Compact of Free Association states affect China's strategy in the Pacific?
- Why have Guam and the Philippines taken such divergent paths, and what does that portend for future U.S. strategy?
- What lessons can the Navy and the Joint Force learn from the Typhoon Mangkhut DSCA effort?
- What laws apply in the space domain, and what do they mean for national security?
- What are the answers to common misconceptions about marrying foreign nationals in Japan?
- How do drug offenses affect the ability to possess firearms?

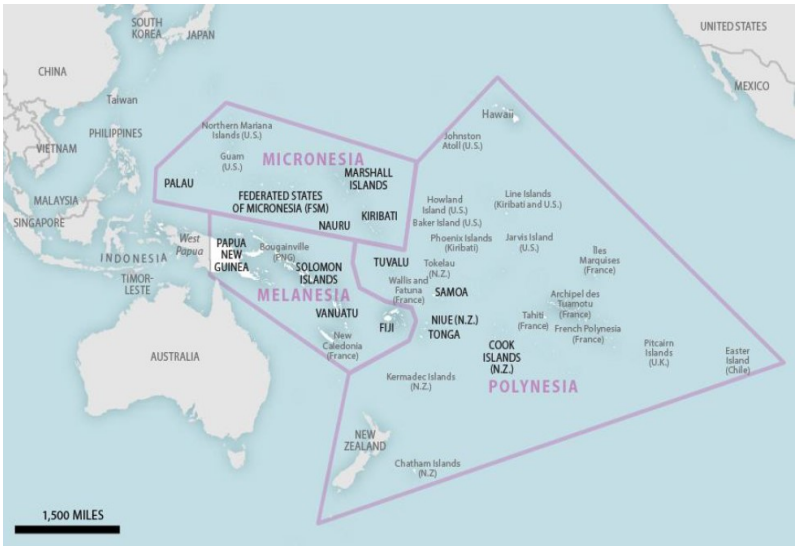
These questions, and more, are answered by our exceptional team of legal professionals in this edition of the Bengoshi!

CAPT Flo Yuzon, JAGC, USN
Commanding Officer
RLSO Japan

USE AND DENIAL: THE FREELY ASSOCIATED STATES, THE UNITED STATES, AND CHINA

LCDR Billy Holt, JAGC, USN; LT Ashley Belyea, JAGC, USN; LTJG Chris "Fish" Salmon, JAGC, USN

Two years after the Permanent Court of Arbitration ruled China's claims in the Spratley Islands excessive, China continues to expand its influence in the Pacific. Military "hard power" options may work in the South China Sea, but U.S. military use agreements with the Freely Associated States (FAS) mean – for now at least – the PRC is limited to economic "soft power" influence on the FAS. However, this influence is still great. Increasingly, Beijing is projecting soft power in the Micronesian Region through the weaponization of tourism.



Source: Congressional Research Service, The Pacific Islands: Policy Issues, February 2, 2017

The United States has compacts with three Micronesian nations, known as Freely Associated States (FAS): the Federated States of Micronesia; the Republic of the Marshall Islands; and the Republic of Palau.[1] From 1947 to 1990, these three island nations were part of the Trust Territory of the Pacific Islands, which the United States governed. At the dissolution of the trust, the Marshall Islands, Micronesia, and Palau voted by plebiscite to enter into "free association" with the United States.[2] Free association is the free and voluntary choice of two nations of unequal power to establish formal and durable links.[3]

COFA – Soft and Hard Power, Use and Denial

Under the Compact of Free Association (COFA), the United States provides significant economic assistance with the aim of the FAS becoming fully self-sustaining by 2023. The United States has provided over $3.5 billion in economic assistance to the FAS since the COFA's inception in 1987. FAS citizens may work and reside in the United States as "lawful non-immigrants" and may serve in the U.S. armed forces, but are not subject to the draft. Approximately 12 FAS citizens have died in Iraq or Afghanistan while serving in the U.S. armed forces.[4] These arrangements provide significant opportunities for soft power engagement.

Importantly, the COFA also contains numerous defense provisions.[5] Under the COFA, the United States will provide for the defense of the FAS. In return, the FAS give the United States the right of "use and denial," i.e., the United States has the ability to establish military bases in the FAS and the right to deny potential military activities of third countries.[6] Partially because of this use and denial, the Marshall Islands are home to the

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world's preeminent ballistic missile testing range on Kwajalein Atoll. Although the COFA is set to expire in 2024, the use and denial provisions of the COFA remain in effect 50 years after the compact expires, unless both parties mutually agree to terminate those provisions earlier.[7]

Source: U.S. Department of Defense, *Annual Report to Congress: Military and Security Developments Involving the People's Republic of China 2012*, May 2012, 40.

COFA and the PRC – Strategic Impact

The PRC's maritime strategy is tiered, aligning with the region's geography in first and second island chains.[8] In the first island chain, the PRC's maritime strategy involves building artificial islands in the South China Sea.[9] The FAS make up part of the "second island chain." United States use of the FAS region for military bases and the U.S. ability to deny other militaries access to that region inhibits China's development of a second island chain maritime strategy.

Soft Power – Use and Denial

Although the COFA inhibits China's ability to project military (or "hard") power into the second island chain, China has increased its economic influence on the FAS (often called "soft power") by issuing grants, preferential loans and through tourism. Unlike other major donors in the region, who provide mostly grant assistance, nearly 80% of Chinese aid is given in the form of preferential loans, which require the use of Chinese labor and companies.[10] The other significant way that China exerts its soft power in the FAS is through tourism.

China is a major source of tourism for the FAS and the only non-Pacific island nation to be a member of the South Pacific Tourism Organization.[11] Palau is currently feeling the pressure that China can exert when it weaponizes tourism. Palau is a country with a population of 21,431 people where tourism accounts for 42.3% of GDP.[12] In 2008 Chinese tourists accounted for 1% of visitors to Palau. In 2017, they accounted for 45%.[13] In 2018 China effectively banned tourist travel to Palau in retaliation for its refusal to give up diplomatic relations with Taiwan. China has also reportedly banned Palau as an internet search term. Use of tourism as a means of soft power is an emerging trend for the PRC; in 2017 China banned tourism to the Republic of Korea during the PyeongChang Olympics over the

Use and Denial: The Freely Associated States, The United States, and China

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U.S. deployment of THAAD in the region.[14]

Looking to 2024 and Beyond

As 2024 approaches, Beijing appears committed to cementing its influence in the region before the COFA's expiration and to preempting any discussion of renewal. The 50 year extension of the military use and denial provisions provides a buffer during which the FAS may have an opportunity to expand their military and economic security through savvy negotiation with the U.S., the PRC, or both. Only time will tell whether China will transition from soft to hard power exertion in the FAS region, or whether China's hard tactics will alienate the FAS and further solidify the close relationship they have with the United States.

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[1] Compact of Free Association: Federated States of Micronesia and Republic of the Marshall Islands, 48 U.S.C. 1901-121 (1986); Compact of Free Association: The Government of Palau, 48 U.S.C. 1931-121 (1986).

[2], [3], [4], [10] Free Association: The United States Experience, 39 Tex. Int'l L.J. 1 (2003).

[5] 48 U.S.C. 1901-311. The parallel provision for Palau is codified at 48 U.S.C. 1931-312.

[6] Title Three, Section 311 of the COFA.

[7] See 48 U.S.C. 1901-452(a)(3) & 1901-453(a)(2); 48 U.S.C. 1931-452(b) & 1931-453(a).

[8] https://thediplomat.com/2016/02/americas-micronesia-problem/.

[9] https://amti.csis.org/island-tracker/china/.

[11]Congressional Research Service, "The Pacific Islands: Policy Issues", February 2, 2017.

[12]https://www.theguardian.com/global-development/2018/sep/08/palau-against-china-the-tiny-island-defying-the-worlds-biggest-country; https://www.cia.gov/library/publications/the-world-factbook/geos/print_ps.html .

[13]https://www.reuters.com/article/us-pacific-china-palau-insight/empty-hotels-idle-boats-what-happens-when-a-pacific-island-upsets-china-idUSKBN1L4036; https://www.theguardian.com/global-development/2018/sep/08/palau-against-china-the-tiny-island-defying-the-worlds-biggest-country.

[14]https://www.theguardian.com/global-development/2018/sep/08/palau-against-china-the-tiny-island-defying-the-worlds-biggest-country.

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The Philippines and Guam: Intertwined Histories, Presently Divergent

LT Michael McBride, JAGC, USN

In October of 2016, President Rodrigo Duterte of the Philippines signaled an end to sixty-five years of military cooperation with the United States when he ordered a halt to joint exercises with U.S. forces and the departure of all remaining U.S. military personnel from the Philippines. That same month, the U.S. Marine Corps broke ground on a $54 million aviation support and maintenance hangar for the MV-22B Osprey at Andersen Air Force Base in Guam. After five centuries of twinned fates and sailing in the winds of foreign-power struggles, the Philippines and Guam are poised to enter the third decade of the twenty-first century steering near-reciprocal courses. As one continues to cast off ties and turn toward near-peer competitors of the United States, the other is preparing to host an additional 5,000 American Marines.

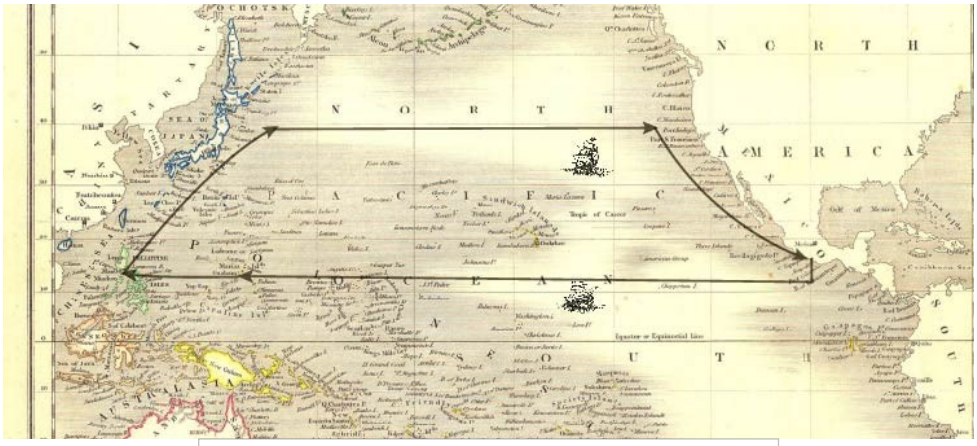

Image: The Manila Galleon Route, http://www.guampedia.com

In March of 1521 Portuguese explorer Ferdinand Magellan's fleet arrived in the Southwest Pacific on its journey to circumnavigate the world for the King of Spain. On 6 March, Magellan landed on Guam and was greeted by the indigenous Chamorro people native to the island. Over the next 150 years, Spain warred with the Chamorro and consolidated its control over the island colony until only 5,000 Chamorro were left of the more than 50,000 present when Magellan first arrived. This annihilation of the native population through war and disease reverberated for the next four hundred years. From 1669 on, Guam was a small part of the Spanish empire in the Pacific, serving as an important stop-over for Spanish trading vessels en route to Manila, its most prized possession.

Two weeks after his fleet first sighted Guam, Magellan dropped anchor off Homonhon Island in the Philippine archipelago. Over the next two months, the Spaniards set out to gain the allegiance of locals who would pledge themselves to the King of Spain, or compel by force those who would not. Marking the first ominous sign for colonial powers in the Philippines, Magellan himself was cut-down by forces of Lapu-Lapu in the Battle of Mactan. Nevertheless, from the 1540s until the end of the nineteenth century, Spain ruled over "*Las Islas Filipinas*" in varying degrees, transforming Manila into the most important city for trans-Pacific trade.

Spain's once dominant empire was crumbling around the world by the time *USS Maine* mysteriously sank at Havana Harbor in February 1898, igniting the Spanish-American War. During the ten week war, American naval forces under Commodore George Dewey defeated the Spanish without any losses at Manila Bay, and ground troops collaborating with

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Filipino rebels captured Manila City. In Guam, a small contingent of U.S. Navy ships fired thirteen cannon shots off the coast of Piti and captured the small Spanish garrison, who did not know the two nations were at war. The Treaty of Paris on 10 December 1898 formalized American possession of Guam and the Philippines.

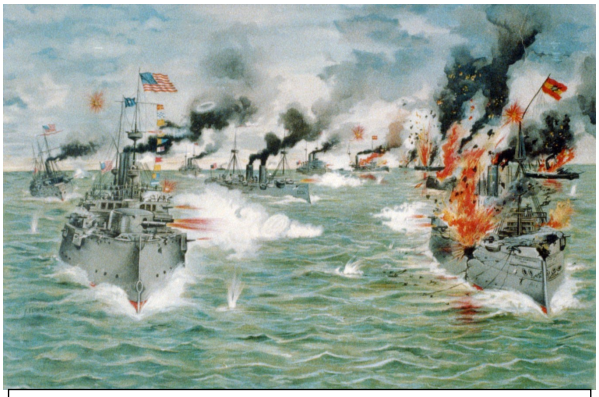

Image: Battle of Manila Bay, Library of Congress

Once more, the two island nations' fates were intertwined and subject to the struggles of foreign powers. Once more, the Philippines were thrust to the fore as a strategic outpost for a trading and naval power. Once more Guam became an important stop-over point between Manila and the Americas. Now, however, it was the U.S. Navy steaming on coal and later oil instead of Spanish galleons which relied on stops in Guam.

As the twentieth century began, the paths of Guam and the Philippines began to diverge on the global stage. Having been mistreated by American forces after the fall of Manila, Philippine nationalists moved aggressively for independence. Following the brief, but bloody, Philippine-American war, the United States gradually introduced autonomy to Manila, where a commonwealth was declared in 1935 with a 10-year plan toward independence under the Tydings-McDuffie Act.

Guam, on the other hand, steadily marched toward increasingly close ties to the United States. Shortly after the Spanish-American war had ended, the U.S. Navy established a naval yard at Piti – where Naval Base Guam still sits – and the U.S. Marine Corps set up garrison at Sumay.

On 8 December 1941, only a few hours after the Japanese Empire launched its surprise attack on Pearl Harbor, air raid sirens on Guam and around the Philippines began to sound. Subjected to brutal treatment under Japanese occupation, both peoples aided American forces in the "leapfrogging" campaign of the Pacific theater. At war's end, over 200,000 Filipinos had fought for the U.S.

In keeping with its pre-war agreements, in 1946, the Treaty of Manila formally granted the Philippines independence. By contrast, the Guam Organic Act of 1950 formalized Guam's status as an American territory, granting American citizenship and cementing sovereign control by the United States.

Throughout the Cold War, close relations between the U.S. and the Philippines were important in containing the Soviet Union. The massive U.S. Naval base at Subic Bay and U.S. Air Force base at Clark Field were hubs of American military power in the Southwest Pacific through the Vietnam War. As the Cold War came to an end, however, tensions mounted over the cost of maintaining the American installations, and crimes committed by American service members. Additionally, Philippine leaders perceived a disconnect between effusive language of trust and respect, and dwindling American military and economic aid. Philippine-American relations have since soured and military cooperation dwindled.

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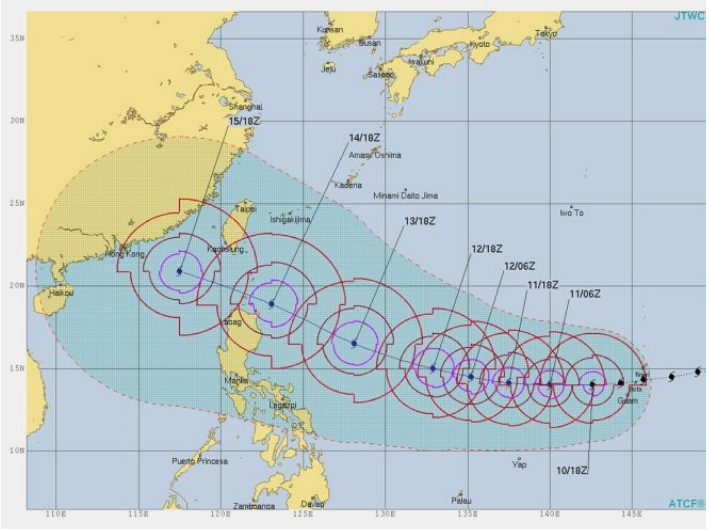
THE UNIQUENESS OF DSCA IN THE MARIANAS: LESSONS FROM TYPHOON MANGKHUT

CDR Sylvaine Wong, JAGC, USN; LCDR Andrea Leahy, JAGC, USN; LT Maria Deguzman, JAGC, USN

This article is an excerpt from a draft of a longer article intended for future publication. The article evaluates DoD efforts in the aftermath of Typhoon Mangkhut, which passed over the U.S. territory of Guam and the Commonwealth of the Northern Mariana Islands (CNMI), collectively known as the Marianas, on 10 September 2018. Their remote but strategic location in the Pacific always presents challenges to DSCA operations, but Typhoon Mangkhut presented a number of unique circumstances that highlighted the inadequacy of current DSCA preparedness in INDOPACOM.



Track of Typhoon Mangkhut. Public domain.

Defense Support to Civil Authorities (DSCA) is the use of federal military forces, DoD resources, and National Guard forces (in Title 32 status or when federalized) to support assistance requests from civil authorities for domestic activities in the United States and U.S. territories, including domestic disaster relief. The Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act) (42 U.S.C. § 5121) allows the President to direct federal agencies (including DoD) to support disaster relief in one of three scenarios: (1) a presidential declaration of a major disaster, (2) a presidential order to perform emergency work for the preservation of life and property, or (3) a presidential declaration of emergency.[1] The Economy Act (31 U.S.C. § 1535) allows a federal agency with lead responsibility over a task, like FEMA, to request the support of other federal agencies, including the DoD, without a presidential declaration of an emergency, when requested services cannot be obtained more cheaply or conveniently by contract.

Among a complex framework of DSCA authorities, Immediate Response Authority (IRA)[2] permits a local military commander to provide support in order to save lives, prevent human suffering, or mitigate great property damage, in response to a request for assistance from civil authorities under "imminently serious conditions" and when time does not permit approval from higher authority.[3] The support must end when the "necessity giving rise to the response is no longer present,"[4] which should be reassessed as soon as practicable, but no later than 72 hours after the request was received. Various standing DSCA execute orders (EXORDs) impose additional notification and coordination requirements with higher headquarters to assist in evaluating the necessity and alternatives to immediate response by DoD forces.

The Uniqueness of DSCA in the Marianas: Lessons from Typhoon Mangkhut

CDR Sylvaine Wong, JAGC, USN; LCDR Andrea Leahy, JAGC, USN; LT Maria Deguzman, JAGC, USN

The Dual Status Commander (DSC) concept allows one commander to have operational control of both Title 10 federal forces and state National Guard forces (in Title 32 or State Active Duty status), with the consent of the cognizant governor and authorization of the President as delegated to the Secretary of Defense. This enables a common operating picture for both the federal and state chains of command and facilitates unity of effort among all responding forces.[5] Although a DSC has the power to exercise command on behalf of and may receive orders from both federal and state chains of command, the DSC has a duty to exercise its authority in a completely mutually exclusive manner.[6]

DSCA Emphasis in NORTHCOM versus PACOM

U.S. Northern Command (NORTHCOM) is, among other missions, specifically tasked with providing military support for civil authorities in an area of operations (AOR) that includes the 48 continental States, Alaska, Puerto Rico, and the U.S. Virgin Islands.[7] As such, it has a robust DSCA practice that has developed significant training programs and standard operating procedures that are routinely practiced to and utilized in real world operations. Further, almost all of NORTHCOM's subordinate components have mission statements including DSCA as a primary mission.

In contrast, U.S. Indo-Pacific Command (INDOPACOM) is responsible for DSCA operations only in Hawaii, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands (CNMI). And as a DSC may only be appointed where there is a National Guard, utilization of the DSC construct that is well-developed throughout NORTHCOM's AOR can occur only in Hawaii and Guam. Instead of DSCA, INDOPACOM units are most often involved in Foreign Disaster Relief (FDR),[8] for mission sets commonly referred to as humanitarian assistance/disaster relief (HA/DR),[9] in support of the United States Agency for International Development (USAID). HA/DR missions rely on a completely different set of legal authorities than DSCA. As a result, there is potential for confusion when INDOPACOM units that train for HA/DR missions are unexpectedly tasked with a DSCA mission.

2018 Typhoon Mangkhut Response

The DoD's response efforts under DSCA to Typhoon Mangkhut should have been easy, in line with the numerous DoD responses on Guam and CNMI over the previous two decades. But 2018 presented a unique set of circumstances that coalesced in a perfect storm of firsts that complicated efforts and exposed the stark difference of DSCA practice in INDOPACOM versus NORTHCOM.

1) The first-time activation of a Guam Air National Guard Dual Status Commander. Authorized by MOA in 2011, the DSC construct had not previously been used in Guam. As a result, the clear federal chain of command (both up and down) and the cadre of experienced officers so well established in NORTHCOM's practice were noticeably absent in

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this inaugural appointment. While the Guam National Guard, supported by the National Guard Bureau, provided significant DSCA experience and technical expertise in the establishment of the DSC, the Title 10 force coordination proved to be slow in development. Had Typhoon Mangkhut resulted in greater damage to Guam or CNMI, it is unclear how efficiently or quickly Title 10 forces would have successfully been chopped to DSC operational control.

Sailors refuel an MH-60S on the deck of USS ASHLAND, which later participated in DSCA for Typhoon Mangkhut (Photo by Petty Officer 2nd Class Joshua Mortensen)

2) The close presence of 15,000 additional personnel, 15 surface ships, 160 aircraft and an aircraft carrier due to exercise Valiant Shield. The biennial field training exercise in the Marianas was postponed due to the typhoon, but more than 3,000 personnel, including those on the amphibious assault ship USS WASP and the 31st Marine Expeditionary Unit were retasked to assist with recovery efforts in CNMI under the tasking of Commander, Task Force 76 (CTF 76).[10] CTF 76's primary mission is coordination of amphibious matters in the SEVENTH Fleet AOR. Their response authority under DSCA was neither envisioned in the existing DSCA concept of operations for INDOPACOM, which places responsibility for DSCA response in Guam and CNMI under Task Force West (previously Task Force Guam), nor practiced under their own unit training.

3) Non-traditional employment of DSCA support. A group of about 51 Navy and Marine Corps personnel, who were deployed to the island of Tinian in CNMI for the exercise,[11] rode out the typhoon in a gymnasium due to inability to evacuate the island. After the storm passed, personnel in the group volunteered to help clear debris from public lands. This assistance was requested by the mayor of Tinian, but it was not assessed to be necessary to save lives, prevent suffering, or mitigate great property damage, thereby negating authority under IRA. Instead, the personnel organized a community relations (COMREL) project to assist the island's residents, numbering fewer than four thousand, to get their community back together. The mission involved no additional cost to the DoD due to their existing presence on island for the cancelled exercise. Although not a traditional DSCA response, the effort established tremendous goodwill, with the mayor making a public statement thanking the group for doing "the work of

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200 people," in significantly less time than local resources would have been able to accomplish.[12] Due to the limited resources on Tinian, the island would have otherwise taken months to complete the task using sparsely available local labor.

4) The assignment of U.S. Army Pacific (USARPAC) as the Supported Component Commander with overall responsibility for leading DSCA efforts in Guam and CNMI. INDOPACOM's concept of operations for Task Force West established that U.S. Pacific Fleet should be the Supported Component Commander, with its knowledge of the Marianas AOR and familiarity with the potential maritime units providing DSCA support. The assignment of USARPAC was likely due to the pending landfall of Hurricane Olivia in Hawaii at the same time, which required the Joint Force Land Component Commander (JFLCC) to stand up its operations center regardless. Although the shift from USPACFLT proved to be cumbersome initially, while establishing the command and control structure, the DSCA knowledge USARPAC brought to the table was unquestionable.

CH-53E Super Stallion crew members secure food and water aboard a helicopter with Marine Medium Tiltrotor Squadron 262 as part of Typhoon Mangkhut relief efforts. Navy photo.

Lessons Learned/Way Forward

Ultimately, the DSCA expertise brought by USARPAC and the Guam National Guard were mission enablers, and the efforts of CTF 76 units built goodwill critical to DoD interests in the Marianas. Eventually, they coalesced to form a better representation of what Task Force West was designed to achieve, but not resourced to accomplish. However, had the damages from Typhoon Mangkhut been greater in severity, the initial confusion over the command and control relationships could have proven disastrous. Unclear tactical control could have impeded the unity of effort the DSC concept was designed to achieve, and the efficiency that pre-scripted FEMA mission assignments (MAs) are intended to advance. When USARPAC took tactical control of CTF 76, it removed two layers of the chain of command that were not required for mission effectiveness. Had tactical control of units carrying out FEMA MAs been further delegated to Task Force West, it would have placed the assessment and tasking authority back with the Commander located at the site of disaster (instead of over 3,000 miles away and 20 hours be-

hind in Hawaii), familiar with the resources, needs, alternatives and impact of providing or not providing requested DSCA support.

The USARPAC lessons learned from Typhoon Mangkhut captured many of these issues, including the need to better resource Task Force West, which would have streamlined the redundant coordination with the Defense Coordinating Officer. The common thread in all the lessons is that confusion arose due to the assignment and/or utilization of forces for Typhoon Mangkhut in a manner not usually trained or planned to. INDOPACOM could better advance its mission of enhancing stability in the Asia-Pacific region by taking on the lessons learned from USARPAC and NORTHCOM and better resourcing its standing DSCA responsibilities through Task Force West.

[1] http://www.jcs.mil/Portals/36/Documents/Doctrine/pubs/jp3_28.pdf at D-1.

[2] DODD 3025.18; 32 CFR 185.3 .

[3] http://www.esd.whs.mil/Portals/54/Documents/DD/issuances/dodm/302501_vol01.pdf (page 8).

[4] DODD 3025.18 .

[5], [6] http://www.jcs.mil/Portals/36/Documents/Doctrine/pubs/jp3_28.pdf at C-1.

[7] JP 3-28, Chapter 2, Para 8.

[8] The overall authority for DOD FDR missions is found in 10 USC §404, and in implementation guidance from Executive Order 12966.

[9] FDR is the title preferred by the January 2014 iteration of Joint Pub 3-29 (Foreign Humanitarian Assistance).

[10] https://www.af.mil/News/Article-Display/Article/1644211/indo-pacom-wraps-up-valiant-shield-2018/.

[11] Werner, Ben, "Wasp ESG Completes Typhoon Assistance to Northern Marianas, Guam" (https://news.usni.org/2018/09/14/36565.

[12] https://www.facebook.com/tinianmayor96952 (Sept 26, 2018) .

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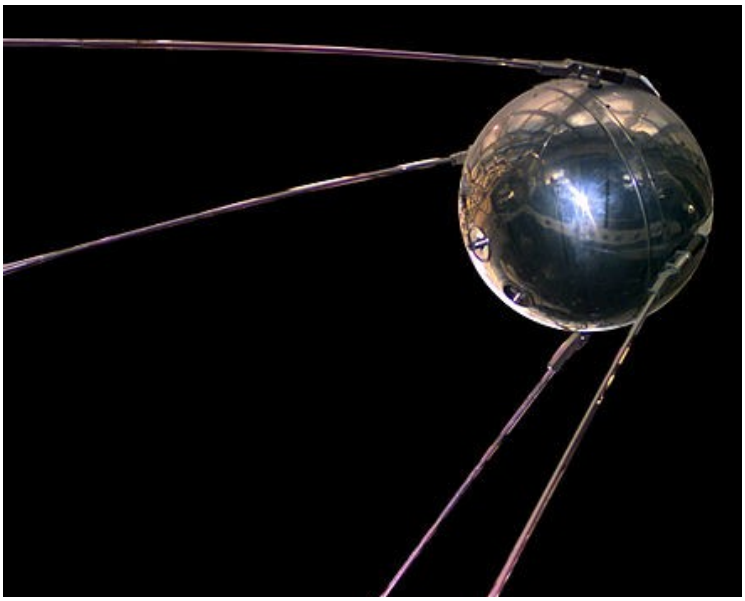
Space Law and National Security

LTJG Zach Osterloh, JAGC, USN

The laws governing space are, by necessity, international in nature and consist mostly of United Nations (UN) treaties. Beginning with the Outer Space Treaty in 1967, there are now several dozen treaties, conventions, and other international agreements regulating the use and militarization of space, the ownership of natural space objects, and liability for manmade objects in space.



The Sputnik satellite. Smithsonian Air and Space Museum

In the decades following the launch of Sputnik I in 1957, there were only two forces in the world capable of space exploration: the governments of the United States and the Soviet Union. The prohibitive costs kept most countries out of spaceflight and the lack of viable returns limited the growth of the commercial space sector. As costs have fallen and technology has improved, however, many countries have created national space programs and entrepreneurs have founded commercial space companies.

The Outer Space Treaty:

At the start of the space race, even before the launch of Sputnik, the U.S. and Soviet Union researched putting weapons in space. However, President Eisenhower addressed the UN General Assembly in 1962, suggesting a "non-armament" treaty in the same vein as the Antarctic Treaty. The Outer Space Treaty, as it came to be known, was unanimously ratified by the U.S. Senate on April 25, 1967. The treaty has two main purposes: first, it mandates all celestial bodies be used only for peaceful purposes and prohibits establishing military bases, weapons testing, or conducting military maneuvers on the moon. Second, it prohibits nuclear weapons and weapons of mass destruction from being placed in orbit, on the moon, or on any other celestial body. Weapon of mass destruction is not, however, defined in the treaty. This has led to questions of exactly what types of weapons could be stationed in space.

Many different types of space-based weapons were proposed by the U.S. and USSR during the Cold War, but only one was ever launched. In the 1970s, the Soviet Union deployed the only known armed, crewed military spacecraft ever flown. The three Almaz space stations were manned reconnaissance platforms, each armed with a modified tail gun from a Tu-22 bomber capable of firing

Space Law and National Security

LTJG Zach Osterloh, JAGC, USN

2,000 rounds per minute. The cannon was test-fired once, but never used against a target.

Other Treaties:

There are a number of other treaties regulating the use of space. The Space Liability Convention, ratified in 1972, states that signatory countries are liable for damage caused by any object launched within their borders. The only claim ever made under this treaty was when Canada billed the Soviet Union for the massive cleanup effort needed after the nuclear powered Kosmos 954 reconnaissance satellite reentered the atmosphere and broke apart over northern Canada in 1978. The convention also requires that claims be made by one state against another state, an anachronism in the age of commercial space companies launching private payloads.

The Centralization of Space Law--Title 51:

In 2010, Title 51 of the U.S. Code was created to gather all space law in the U.S. together in one place. Prior to Title 51, space law was found in a number of different titles, such as Commerce and Trade or Transportation. Its creation did not change any existing laws, but created a new title specifically for space law. In 2015, Congress passed the *U.S. Commercial Space Launch Competitiveness Act*, which modified a number of sections of Title 51 with the effect of easing restrictions on existing companies and making it easier to form a new space company.

Flags of Convenience and Launch Forum Shopping:

Much like maritime law, countries may start drafting space law in order to attract private companies. A potentially disastrous consequence of flags of convenience comes from Article VI of the Outer Space Treaty. This article states that "activities of non-governmental entities in outer space . . . shall require authorization and continuing supervision by the appropriate State Party to the Treaty." Companies may choose a flag of convenience country because it has lower registration costs, lower safety standards, or because the country requires less liability coverage in case of a catastrophic launch event. Beyond the obvious safety concerns, this creates a great concern for technology transfer should the United States not remain the launch forum of choice. Space technology development will be increasingly driven by commercial interests, and a loss of leadership in this area would be of great detriment to U.S. security interests.

National Security Interests

The U.S. relies heavily on satellites for reconnaissance, GPS, communication, and detection of missile launches or nuclear tests. The recent designation of space as a warfighting domain and President Trump's call for the creation of a space force demonstrates how important space is to U.S. defense strategy. As Russia and China have increased their focus on developing technology to counter U.S. satellites through both kinetic and

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electronic means, the U.S. is looking toward increasing military capabilities to defend space assets. This defense must, however, conform to the treaties the U.S. is a party to, and may rely heavily on commercially developed technologies. For much of its history, space exploration and the military have been very closely tied together. Where the "buy American" policy of the Cold War ensured only American companies developed components for the U.S. space program, the expanded commercial space sector has led to non-U.S. subcontractors and suppliers providing parts and technology even to national security launches.

Conclusion:

The world of space law is very young compared to other legal fields. As space exploration rapidly expands into the commercial sector, the legal framework must expand correspondingly to encompass the myriad problems posed by cheaper and easier spaceflight, and to limit unintended technology proliferation. The treaties of the 1960s and 70s are no longer appropriate to the task of governing commercial space activity. The competitiveness of U.S. companies in space may be as important to national security as U.S. government capabilities. Therefore, national security interests must be a driving factor in decisions about space law and domestic commercial space policy.

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The Philippines and Guam, Continued from p. 6

In Guam, although resentment persists over American treatment of the island territory, a sense of "American-ness" has grown among its 160,000 residents. U.S. Customs agents greet you at the airport, the National Park Service runs War in the Pacific National Historical Park, the island's north and south are capped by Andersen Air Force Base and Naval Base Guam, and 5% of Guam's residents are veterans of the U.S. military.

As the third decade of the twentieth Century dawns, both the Philippines and Guam are once again strategic assets on the world stage. For two partners whose cooperation has been key to American interests over the last 100 years, two different approaches over the twentieth century have left current policy-makers in vastly different positions. As a result of foreign policy and military differences, the U.S. is no longer the only player in the long-standing competition for Manila's cooperation, and indeed seems to be on the outs. For Guam, on the other hand, close cooperation has been facilitated by daily interaction with all the facets of American government and culture. A reinvestment in the Philippines – not just militarily, but also economically and diplomatically – could aid in transforming it back into a reliable partner for the twenty-first century and beyond.

LT McBride is a prosecutor at RLSO Japan in Yokosuka. He has a JD from the University of Minnesota, Twin Cities, and a BA in English and Political Science from the University of Minnesota, Morris. His views are his own and do not reflect official views of the U.S. Navy or Department of Defense.

Royal Navy Barristers and Her Majesty's Navy in the Far East

LTJG Jere'l D. Hough, JAGC, USN

The relationship between the United States and the United Kingdom is one that is storied in time. This summer, members of Region Legal Services Office Japan gained insight into that relationship by interacting with members of the Royal Navy while HMS ALBION was moored in Yokosuka, Japan.

On July 23, 2018 Lt Cdr Ric Smith, Logistics Officer and Barrister of the Royal Navy, guided us through the world of Barristers in the Royal Navy. There are only about fifty-five Barristers in the entire Royal Navy, with four or five new Barristers minted each year. Of those fifty-five, approximately thirty are actually practicing Barristers, because many of them are billeted to a different role. Unlike the U.S. Navy and its dedicated staff corps, Royal Navy Barristers begin their careers as typical Warfare Officers, Royal Marines, pilots, or other designations. Only later do they become Barristers and, even then, law is not their primary designation.

Image: Public Domain

TRIAL BY FIRE: THE JOURNEY TO BECOMING A ROYAL NAVY BARRISTER

Just like becoming a U.S. Navy JAG, becoming a Royal Navy Barrister is not easy. The Royal Navy holds a two-part selection process each year. First, candidates spend three days at the Royal Navy's Service Prosecuting Authority. There, they are introduced to various parts of advocacy. Candidates may be asked to perform a cross-examination or demonstrate their ability to successfully advocate in a closing argument. Second, candidates sit for an interview with the head of the Royal Navy's Legal Services to test whether a candidate has the demeanor, intellect, and confidence to become a Royal Navy Barrister. After selection, the program is very similar to the JAG Corps Law Education Program. Future Barristers are sent to law school on active duty for three years. After completion of their formal education and other Royal Navy requirements, officers are awarded the new title of Royal Naval Barrister.

PROVIDING LEGAL SERVICE ON THE SEAS

Legal matters can manifest anywhere, including at sea. However, there are no sea billets for Royal Navy Barristers. Nevertheless, because they are dual-hatted, Barristers may go to sea in their non-Barrister capacity. Sometimes a Carrier Strike Group will have a lawyer aboard while underway, but it is not (yet) a permanent billet.

Disciplinary and administrative matters underway are the responsibility of a Deputy Logistics Officer . This person may have only limited training on service law provided at an officer training school. The Royal Navy has legal advisers, solicitors, and Barristers located around the United Kingdom, standing by to provide legal advice to Navy units. Barristers, like their American JAG counterparts, are essential to guaranteeing legal and effective operations on the high seas.

LTJG Hough is a command services attorney at RLSO Japan. He holds a JD from North Carolina Central University School of Law and a BA from the University of North Carolina, Chapel Hill. His views are his own and do not reflect official views of the U.S. Navy or Department of Defense.

Preventive Law Series: New Marriage Instruction for CNFJ

Ms. Kazumi Takahara

The CNFJ instruction on marriage, COMNAVFORJAPAN INST 1752.1, was revised on 12 July 2018. The following are new requirements for obtaining command authorization to marry a foreign national in Japan.

New Requirement 1: Service member must report their intent to marry a foreign national to their command security manager. The command security manager will advise the service member that marrying a foreign national may affect the service member's ability to obtain or keep a security clearance.

New Requirement 2: If a service member is unable to attend the Fleet and Family Support Center (FFSC) premarital seminar, a waiver request must be routed through the member's chain of command to the FFSC Director. If the FFSC Director approves the waiver, the service member must complete counseling from a designated marriage counselor or the command must provide substantially equivalent training.

Servicemembers often come to the RLSO Legal Assistance Office seeking advice about getting married in Japan. They visit us either to seek information regarding the process or assistance in obtaining command approval. They often come misinformed. The following are common misconceptions about getting married in Japan.

Misconception 1: Command approval is not required for marrying a foreign national in the U.S.

Correct Information: The CNFJ marriage instruction requires all servicemembers stationed in Japan to obtain command approval when marrying a foreign national, regardless of the location of the marriage, unless the fiancé is already a legal resident of the U.S. If a servicemember did not obtain command approval, he or she may be required to obtain the approval after the fact in order to satisfy the requirements for command sponsorship.

Misconception 2: A service member's foreign national fiancé needs to attend the marriage seminar.

Correct Information: While prospective spouses are encouraged to attend, the CNFJ marriage instruction does not require fiancés to attend the seminar. Only the servicemember marrying a foreign national is required to attend the seminar for command approval.

Misconception 3: A servicemember must follow the COMNAVMARIANAS instruction when his or her Filipino fiancé is in Japan under a visitor visa.

Correct Information. The CNFJ marriage instruction applies to all marriages to foreign nationals that live in Japan, regardless of the fiancé's residency status in Japan. The COMNAVMARIANAS instruction applies only to marriages being performed in their jurisdiction.

Misconception 4: The Ship's legal office or legal officer can notarize an affidavit of competency to marry.

Correct Information. The CNFJ instruction directs servicemembers to the RLSO Legal Assistance Office to obtain an affidavit of competency to marry. Yokosuka City Hall only accepts affidavits notarized by the RLSO Legal Assistance Office when an applicant is U.S. military or civilian personnel.

Command representatives who have additional questions about the marriage instruction are encouraged to contact their SJA or the RLSO Command Services Department. Service members who need assistance should be referred to the RLSO Legal Assistance Office.

Kazumi Takahara works in the Legal Assistance Department of RLSO Japan. She holds a bachelor of law degree from Chuo University and a master of law degree from University of Hawaii. She has passed the California State Bar Examination.

Preventive Law Series: Drug Offenses and the Gun Control Act

LCDR Christian Colburn, JAGC, USN

The Air Force had a rude awakening to the "CNN test" or "front page test" in November of 2017. The New York Times wrote on November 7th, "A day after a gunman massacred parishioners in a small Texas church, the Air Force admitted on Monday that it had failed to enter the man's domestic violence court-martial into a federal database that could have blocked him from buying the rifle he used to kill 26 people." The Times went on, "Under federal law, the conviction of the gunman, Devin P. Kelley, for domestic assault on his wife and toddler stepson… should have stopped Mr. Kelley from legally purchasing the military-style rifle and three other guns he acquired in the last four years." That law is the Gun Control Act of 1968, codified at 18 U.S.C. Chapter 44. After the shooting, each service began examining its compliance with reporting laws, and meeting reporting requirements is now of prime importance.

Reporting is not limited to court-martial convictions, so individual commands have an important role to play. Nowhere is this truer than for drug offenses. Pursuant to 18 U.S.C. § 922(g)(3) and service guidance, members who have been adjudicated at NJP, BOI, an Administrative Separation Board, or a court-martial as an unlawful user of any controlled substance must be notified by commands that he or she is prohibited from receiving, possessing, shipping, or transporting firearms or ammunition for personal purposes. This does not extend to use of firearms for official purposes, such as watchstanding. For NJP and ADSEP/BOI adjudications, the prohibition lasts for 12 months. In order to properly report this data, the Navy uses ADMITS. It is essential that command DAPAs properly enter NJP, ADSEP, or other dispositions of drug cases in ADMITS, because without this data the Navy cannot comply with federal law.

There is a broad range of conduct under the Act which must be reported to federal databases, and it is not limited to court martial convictions or drug offenses. A full list is contained in enclosure (2) of DoDI 5505.11. However, this list is long and complicated, so we recommend commands consult with an SJA or the RLSO Command Services Department. In summary, Navy compliance with the Gun Control Act of 1968 is of paramount importance, and both unit-level officers and JAGs must be knowledgeable on when and how reporting is to be accomplished.

LCDR Colburn is the RLSO Japan Command Services Department Head. He holds a JD from Northwestern University School of Law and a BS from Iowa State University.

RESULTS OF TRIAL

August 2018:

At a General Court-Martial in Yokosuka, Japan, an E-6 was tried for sexual assault and abusive sexual contact. On 10 August 2018, a panel of members returned a verdict of not guilty.

At a General Court-Martial in Yokosuka, Japan, BM1 Gilbert Sandoval, USN, was tried for attempted sexual assault of a child, attempted sexual abuse of a child, attempted production of child pornography, indecent language, and attempted enticement of a minor. On 15 August 2018, a panel of members returned a verdict of guilty to all charges and specifications. The panel sentenced him to be discharged with a Dishonorable Discharge, reduction in rank to E-1, to forfeit all pay and allowances, and confinement for 3 years.

October 2018:

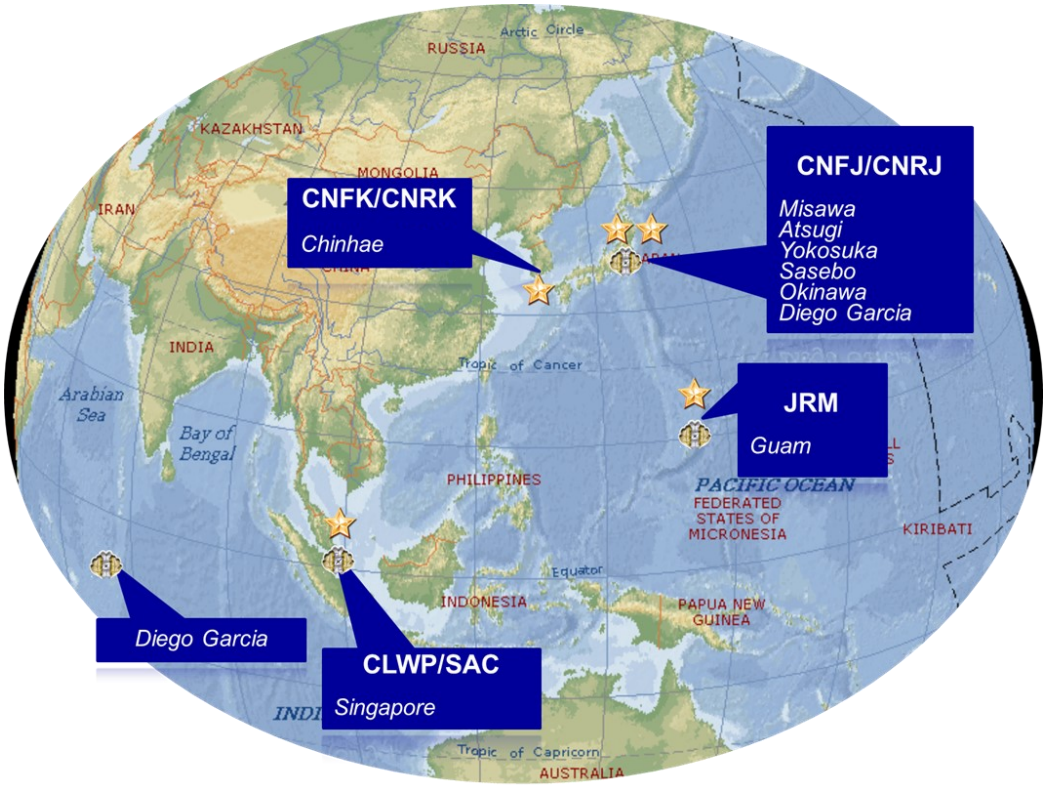
At a Special Court-Martial in Guam, PS3 Diontre L. McLoyd, USN, pled guilty pursuant to a pretrial agreement to communicating a threat. On 3 October 2018, the military judge sentenced him to a bad conduct discharge and confinement for 120 days. Pursuant to the pretrial agreement, the bad conduct discharge will be disapproved but the accused waives his administrative separation board.

At a Special Court-Martial in Yokosuka, Japan, ABHAA Sergio Zaratin, USN, pled guilty pursuant to a pretrial agreement to drunk and disorderly conduct. On 10 October 2018, the military judge sentenced him to a reduction in rate to E-1 and confinement for 30 days. The pretrial agreement had no effect on his sentence.

At a Special Court-Martial in Okinawa, Japan, MASA Elijah Fuller, USN, pled guilty pursuant to a pretrial agreement to assault consummated by a battery and communicating a threat. On 23 October 2018, the military judge sentenced him to be discharged with a Bad Conduct Discharge, reduction in rate to E-1 and confinement for 60 days. Pursuant to the pretrial agreement, the bad conduct discharge will be disapproved but the accused waived his administrative separation board.

CONTACT INFORMATION

Your Nearest Legal Advisors



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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