

The Dilemma of a ‘Tactical’ Surrender

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As the training focus shifts from counterinsurgency (COIN) to large-scale combat operations (LSCO) in the near-peer strategic environment, a different set of dilemmas with legal implications will present themselves to maneuver leaders. The majority of maneuver leaders are not strangers to conducting detention operations in a COIN environment, and some have recently experienced detention operations associated with a LSCO environment at one of the Combat Training Centers (CTCs). However, the concept of a “tactical” mass surrender by enemy forces in the vicinity of the forward line of own troops (FLOT) is a dilemma that maneuver leaders should be aware of as they prepare their formations for a LSCO fight.

The concept of the enemy purposefully utilizing their forces to inhibit the maneuver of an adversary’s formation is always a planning consideration. However, the idea of the enemy accomplishing this via the execution of a “tactical” mass surrender is an unconventional but distinct possibility. Whether the adversary’s decision to execute this course of action (COA) is due to their enemy organization being under-trained and out of supplies, or simply because they believe this COA is their best option to delay friendly forces, options and implications associated with this COA should be understood throughout respective formations. A brigade combat team (BCT) experiencing a “tactical surrender” of an enemy battalion tactical group (BTG) with all their associated personnel, weapons, vehicles, and equipment at their FLOT could extensively impact an operation. This impact could be exponentially compounded if the affected BCT is en route to a time-sensitive objective that is a critical element of the higher headquarters’ mission.

*The **dilemma**: A relatively isolated maneuver unit encounters a number of personnel that are willing and able to surrender, which amounts to 25-35 percent of the friendly maneuver force on the ground, and that will be on the ground for a period of time between 4-36 hours. (Example: 400 personnel surrender to a 1,455 Soldier ground force.)*



An Infantry Soldier in 1st Battalion, 26th Infantry Regiment, 101st Airborne Division (Air Assault), strips a surrendering enemy combatant of weapons during Exercise Southern Vanguard 24 in Oiapoque, Brazil, on 15 November 2023. (Photo by SPC Joseph Liggio)

In a LSCO environment, the options for maneuver leaders posed with this dilemma are extensive thanks to *reasonableness* and the *risk* that must be assumed due to *military necessity*. The initial tactical decision that the maneuver leader must make is whether or not they detain the surrendering personnel. If the decision to detain is made, ensuring that applicable international law is followed is the next challenge.¹ What the “detention” of the surrendering personnel will look like over time will be heavily mission and situation dependent, especially for a relatively isolated unit. Maneuver leaders need to understand their options concerning the detention of personnel in a LSCO environment should a similar situation present itself, and how these options can be tailored with respect to what is required by the applicable law when *military necessity* is factored in. We encourage maneuver leaders to consult their legal teams and explore this dilemma (at scale) at training events, as this is a dilemma that should be experienced and understood as we prepare to fight and win in a LSCO environment.

What this Impact Could Look Like: Joint Forcible Entry (JFE) Mission

Examining this unique dilemma in an example may offer more context. Through the lens of the 82nd Airborne Division (hereinafter “82nd”), we will explore this dilemma with respect to a JFE operation. The JFE is a significant capability of the 82nd, and due to the nature of these operations, a mass surrender incident occurring during the execution of the JFE could be detrimental to the success of the operation. The JFE doctrinally has five phases:

- Preparation and Deployment (Phase I),
- Assault (Phase II),
- Stabilization of the Lodgment (Phase III),
- Introduction of Follow-On Forces (Phase IV - situational dependent), and
- Termination or Transition Operations (Phase V).²

This article will focus on Phase III of the JFE for analysis. Further, the mission of the hypothetical JFE we will analyze includes time-sensitive follow-on objectives intended to expand the lodgment achieved during the assault phase.

For the hypothetical JFE, the personnel encountered that are willing and able to surrender is a BTG-minus comprised of 400 combatants and associated individual equipment and weapons systems (no vehicles). The mass surrender occurs during Phase II (assault phase) of the JFE, while only the *alpha echelon* has reached the objective. The alpha echelon is comprised of approximately a brigade-sized element that arrives on the objective via air drop capabilities.

JFE Phase II (Assault): Inserting enemy actions into any plan complicates the execution of an operation. However, this is exacerbated when enemy forces use unexpected non-doctrinal means to cause dilemmas for friendly forces. During the assault phase of the JFE, a brigade minus will be the first wave to reach the objective, doctrinally known as the *alpha echelon*. Alpha echelon’s paratroopers and their associated equipment arrive at the objective and begin to establish security on the objective, assemble, and accomplish follow-on tasks to ensure the feasibility for the airland arrival of bravo and charlie echelons of the JFE. Within the first 90 minutes, in the vicinity of the objective, the alpha echelon makes contact with approximately 400 combatants waiving white flags, weapons slung (not in hand), verbally confirming their intent to surrender (for this scenario the 400 combatants’ surrender is “genuine” and “clear and unconditional”).³ Currently, with roughly 1,200 paratroopers on the ground and the tasks to expand the lodgment and secure/improve the objective for the arrival of the bravo echelon (second wave) in approximately four hours, the commander comes to the staff asking for his/her options for dealing with the dilemma they are now facing. As the staff and subordinate commanders begin offering solutions, the brigade commander asks the judge advocate: What are my left and right limits legally? What is the capability of this finite number of troops to manage detainees and the continued needs of the mission?

JAG: As the judge advocate on the ground, what do you advise? In reference to international humanitarian law, is it feasible to accept surrender? If surrender is accepted, what requirements does that trigger?

CDR: As the commander, what are you comfortable with doing? Where will you assume risk?

Detention Operations and Some Expected Challenges During a JFE

Detention Operations:

The implied standard is for U.S. service members to *treat all detainees humanely at all times*, and a detainee is any person captured by or transferred to Department of Defense personnel pursuant to the Law of War. Detainees' status can vary from combatants (lawful and unlawful) to noncombatants and civilians.⁴ Depending upon their status, detainees are afforded different protections. Of note, the presumption, until proven otherwise, is that all persons taken into custody by U.S. forces will be provided with the protections of prisoners of war (POWs) under the Geneva Convention. In summary, when detainees are under the control of the United States, the detainees and their property must be protected, and they must be provided adequate food, water, shelter, medical care, hygiene facilities, sufficient clothing, and the ability to exercise their religion.⁵

Detention operations requirements are cumbersome, and the scale of the detention operation can accentuate the associated challenges. In an austere environment with limited assets, what options are available to commanders regarding detention operations, especially when these operations impact the potential success or failure of the mission? There are options, and these will be heavily fact/situation dependent. However, the first time this dilemma is contemplated should not be during a kinetic operation amid a conflict, but rather during a training exercise or professional development discussion.

JAG: As the judge advocate, what are the legal requirements, and where can the requirements expressed in law or regulations be reasonably flexible with regard to military necessity?

CDR: As the commander, what is required for the mission, and what risk is willing to be assumed?

Isolated Unit with Limited Assets and Supplies:

Providing detainees with adequate food, water, and shelter.

Detainees are to be treated humanely at all times; inherent to this is an adequate supply of food and water. During the initial phases of the JFE operation, supplies are extremely limited. Paratroopers plan to insert loaded with limited supplies on their person and no "shelter" capability. The ability to provide these limited supplies to personnel outside the formation is a risk to the welfare of the paratrooper and the mission. This supply issue pertaining to detainee operations is an area where specific facts/circumstances can lay the grounds for *military necessity* as to the *temporary* abandonment of the requirements for providing detainees with food and water. The time period will be limited, and the decision on what can/will be provided should be reevaluated continuously as the operational environment evolves. In the hypothetical JFE, it would be reasonable for the commander of the alpha echelon element to not provide the 400 detainees with food, water, and shelter during the infancy of the operation; however, this decision should be reevaluated as the operation matures and airland elements arrive. The analysis may be a math problem that will change upon the arrival of bravo and charlie echelons in Phase III (stabilization of the lodgment). At this point in the JFE operation, there would be multiple battalion-sized elements on or within the vicinity of the JFE objective to assist with the 400 combatants willing to surrender.

Detainees and their property must be protected.

The JFE operation is likely in the vicinity of an airfield or open area that could support the airborne insertion of the assault force and subsequent airland operations. Until the lodgment is stabilized and improved, there will likely be limited cover and concealment available for detainees. Commanders should protect their detainees reasonably during this phase of the operation. They need not provide the limited battle positions offering cover to these detainees nor construct assets providing cover during the infancy of the operation. However, this decision on protection and what constitutes protection for the detainees should be reevaluated periodically. In the hypothetical JFE, it is reasonable for the commander to not provide

the detainees with covered positions during Phase II and Phase III of the operation as the lodgment is stabilized. However, a prudent legal advisor would recommend that this decision is reevaluated periodically and that the opportunity and tools are reasonably provided to the detainees to construct their own covered positions (foxholes) to provide themselves protection.

What “type” of detainee?

Once a surrender occurs that is genuine, clear and unconditional, and feasible to accept, the ground force commander will have a number of detainees to care for. The first step in understanding the legal requirements tied to caring for these detainees is understanding what type of detainee you have within your control. Generally, the categories of persons detained will be combatants (lawful and unprivileged belligerents), non-combatants, and civilian internees. Each respective classification has nuances for the required rights and privileges associated with their status; when there is any doubt as to the status of the detainee, provide the status with more privileges in the interim (typically POW status), and when feasible, use the tools available such as a Geneva Convention III Article V tribunal to determine the detainee[s] status. However, understand that no matter the classification of detainee or conflict, humane treatment is the minimum standard of care. *Military necessity* can dictate the level of care provided; as practicable consult with your servicing judge advocate when dealing with detainee operations.

Takeaway

This limited analysis of a hypothetical JFE operation was to provide an example and drive the discussion as to what the dilemma of a “tactical mass surrender” may mean to your respective organization. Whether during the execution of a JFE, a defense in depth, or a convoy operation, the dilemma of a “tactical mass surrender” can delay and disrupt friendly forces and the mission. An operation encountering a surrender is an operation with a unique legal role, and ensuring our commanders understand their options when dealing with this potential situation is paramount as we shift into the LSCO environment. Commanders have options — insert this dilemma or similar dilemmas into your organization’s training plan!

Notes

¹ Applicable dependent upon the classification of the conflict, International Armed Conflict (IAC) or Non-International Armed Conflict (NIAC), the proper provision[s] of the Geneva Convention (GC) and Department of Defense Directive (DoDD) 2310.01E, Joint Publication (JP) 3-63, and Field Manual 3-63 are followed; GC III, Article 12, 118 apply to prisoners of war (POW) in an IAC, and GC Common Article III and Additional Protocol II* in a NIAC.

² JP 3-18, *Joint Forcible Entry Operations*, 9 July 2021.

³ DoD Law of War Manual 5.9.3.3.

⁴ Detainee classification will also be dependent upon the classification of the conflict, IAC or NIAC.

⁵ Requirements are nested in Common Article 3 of the Geneva Conventions and further directed in DoDD 2310.01E and Army Regulation 190-8, *Enemy Prisoners of War, Retained Personnel, Civilian Internees and Other Detainees*, October 1997.

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Soldiers with the 2nd Brigade Combat Team, 2nd Infantry Division watch over a detained enemy combatant during training as part of Decisive Action Rotation 17-09 at the National Training Center on Fort Irwin, CA.

(Photo by SPC J.D. Sacharok)