

Structural Ethical Conflicts in U.S. Military Law: Rethinking the Role of the Judge Advocate

I. Condensed Introduction

In modern military operations, legal judgment has become central to decision-making rather than a peripheral constraint. Military lawyers, particularly those in the Judge Advocate General's Corps (JAG), are increasingly embedded in operational processes, advising on matters ranging from targeted killings to transnational enforcement actions. They are expected not only to interpret the law but also to facilitate mission execution under conditions of uncertainty, urgency, and political sensitivity. This dual role creates a structural tension: the military lawyer is both an officer within a hierarchical command system and a legal professional bound by independent ethical obligations.¹

The foundation of legal ethics in the United States lies in the American Bar Association Model Rules of Professional Conduct.² These rules assume a relatively stable environment in which the identity of the client is clear, the lawyer exercises independent judgment, and legal advice is given within a system that values procedural regularity.³ However, military operations challenge each of these assumptions. Military lawyers operate within a chain of command that demands loyalty and responsiveness, often in situations where legal ambiguity is the norm.⁴ As a result, traditional ethical rules, particularly those governing client identity, confidentiality, and candid advice, become difficult to apply.

This paper argues that the current system governing the ethical obligations of U.S.

¹ See Gary D. Solis, *The Law of Armed Conflict: International Humanitarian Law in War* 23–25 (2d ed. 2016).

² American Bar Association, *Model Rules of Pro. Conduct* (2020).

³ See Geoffrey C. Hazard, Jr. & W. William Hodes, *The Law of Lawyering* § 1.2 (4th ed. 2015).

⁴ See Harold Hongju Koh, *The War on Terror and the Future of International Law*, 34 *Yale J. Int'l L.* 1, 3–5 (2009).

military lawyers is fundamentally incompatible with the principles of legal ethics reflected in the Model Rules. This incompatibility is structural rather than incidental. It arises from a fundamental mismatch between the hierarchical, mission-oriented nature of the military and the independence-centered framework of professional legal ethics.⁵ Accordingly, ethical conflict in this context is not an occasional problem but an inevitable feature of the system.

A central issue is the identity of the client. Under Rule 1.13, a lawyer representing an organization represents the organization itself rather than its individual constituents.⁶ While this principle is manageable in civilian corporate settings, it becomes unstable in the military context. A JAG officer advising on the legality of an operation must navigate competing conceptions of the client: the commander, the military institution, the executive branch, or the Constitution.⁷ This indeterminacy directly shapes how legal advice is formed. If the commander is treated as the functional client, legal interpretation may align with operational goals. If the client is understood as the broader legal order, the lawyer may be obligated to challenge command decisions. The Model Rules offer limited guidance in resolving this tension.

This ambiguity is compounded by the conflict between professional independence and the chain of command. The Model Rules require independent judgment and candid advice,⁸ yet military lawyers are commissioned officers subject to the Uniform Code of Military Justice (UCMJ).⁹ The same system that demands independence also places lawyers within a hierarchy that may discourage dissent. In such a setting, refusing to support a proposed action may be perceived as insubordination rather than ethical compliance.¹⁰

These tensions are most visible in legally ambiguous and politically sensitive

⁵ See David Luban, *Legal Ethics and Human Dignity* 198–205 (2007).

⁶ ABA, *Model Rules of Pro. Conduct R. 1.13* (2020).

⁷ See Eugene R. Fidell, *Military Justice: A Very Short Introduction* 45–52 (2016).

⁸ ABA, *Model Rules*, *supra* note 2, R. 2.1.

⁹ *Uniform Code of Military Justice*, 10 U.S.C. §§ 801–946.

¹⁰ See Dan Maurer, *JAGs Alone Can't Defend the Rule of Law*, *Lawfare* (2024).

operations, such as targeted killings or actions against state actors. Military lawyers are often asked to provide legal justification for conduct that pushes the boundaries of existing legal frameworks.¹¹ This raises a critical question: at what point does legal interpretation become legal rationalization? When lawyers facilitate such actions, they risk becoming complicit in conduct that may later be deemed unlawful.¹²

Recent developments, including strikes against foreign officials and discussions of operations involving states such as Iran or Venezuela, highlight the increasing overlap between military, intelligence, and law enforcement functions.¹³ In these contexts, military lawyers play a central advisory role, yet the ethical framework governing their conduct has remained largely unchanged. The result is a widening gap between operational demands and ethical guidance.

These challenges cannot be resolved through doctrinal clarification alone. The problem lies not in the insufficiency of the Model Rules, but in the structural conditions under which military legal advice is produced. A system that simultaneously requires loyalty to command and independence of judgment places military lawyers in an inherently conflicted position. Case-by-case analysis risks obscuring this deeper institutional contradiction.

Accordingly, meaningful reform must address the structural foundations of military legal ethics. This includes clarifying the identity of the client, strengthening the independence of military lawyers, and developing specialized ethical rules tailored to military operations. Without such reforms, ethical conflict will remain an unavoidable consequence of the system rather than an exception.

II. Historical Foundations of the Ethical Tension

The origins of the U.S. military legal system and, by extension, the role of the Judge Advocate, can be traced to the earliest days of the American Republic. During the Revolutionary War, George Washington recognized the necessity of legal oversight

¹¹ See Koh, *supra* note 4, at 3–5.

¹² See David Luban, *Torture, Power, and Law*, 91 *Geo. L.J.* 1425 (2003).

¹³ See Jack Goldsmith, *The Terror Presidency* 95–120 (2007).

within the Continental Army and appointed officers to perform functions analogous to modern judge advocates.¹⁴ These early legal officers were tasked with administering military justice, advising commanders on disciplinary matters, and ensuring adherence to the Articles of War. Their role, however, was firmly embedded within the command structure, reflecting a system in which law served primarily as an instrument of discipline rather than as an independent constraint on authority.

The foundational legal framework governing these early practices was derived from the British Articles of War, adapted for use by the Continental Congress.¹⁵ These Articles established a system of courts-martial and codified offenses and procedures, but they did not create an independent legal profession within the military. Instead, legal authority was closely tied to command authority, and legal officers operated as extensions of that authority. This early structure laid the groundwork for a persistent feature of the U.S. military legal system: the integration of legal functions within a hierarchical command environment.

Throughout the nineteenth century, the role of military legal officers remained largely administrative and disciplinary. Although Congress formally recognized the position of the Judge Advocate General in 1775, the office evolved slowly and was not initially conceived as a professional legal corps in the modern sense.¹⁶ Judge Advocates were often line officers assigned additional legal duties, rather than specialized legal professionals with independent institutional status. As a result, the development of military legal practice during this period did little to alter the fundamental relationship between law and command.

A significant shift began in the late nineteenth and early twentieth centuries, as the U.S. military expanded and became more professionalized. The increasing complexity of military operations and the growing influence of civilian legal norms led to calls for reform in military justice. This culminated in the enactment of the Articles of War of 1916, which introduced more formalized procedures and expanded the role of legal

¹⁴ See George Washington, General Orders (1775).

¹⁵ Articles of War (Continental Congress 1775).

¹⁶ See Eugene R. Fidell, *Military Justice* (2016).

officers.¹⁷ Despite these changes, however, the underlying structure remained intact: Judge Advocates continued to function within the chain of commands, and their authority remained derivative rather than independent.

The most substantial transformation occurred with the enactment of the Uniform Code of Military Justice (UCMJ) in 1950.¹⁸ The UCMJ represented a concerted effort to modernize military justice and align it more closely with civilian legal standards. It established a uniform system of military law across all branches of the armed forces, enhanced procedural protections for service members, and formalized the role of Judge Advocates as legal advisors and participants in the military justice process. Importantly, the UCMJ also contributed to the professionalization of the JAG Corps, promoting the development of a specialized legal community within the military.

Yet, even as the UCMJ elevated the status and expertise of military lawyers, it did not fundamentally resolve the structural tension between legal independence and command authority. Judge Advocates remained commissioned officers, subject to the same hierarchical structures and institutional pressures as other military personnel. Their role continued to be defined by dual obligations: to provide legal advice consistent with the law, and to support the effective functioning of the command structure.

This duality reflects a deeper continuity in the evolution of military law. While the formal legal framework has become increasingly sophisticated, the institutional position of military lawyers has remained largely unchanged. Law has been progressively integrated into military operations, but without a corresponding transformation in the structural conditions that shape legal practice. As a result, the expansion of legal responsibility has not been matched by an expansion of institutional independence.

Understanding this historical evolution is essential for analyzing the ethical challenges facing military lawyers today. It reveals that the tensions identified in this paper are not the product of recent developments, but rather the continuation of a longstanding structural arrangement. From Washington's early appointment of legal officers to the

¹⁷ Articles of War, Chapter. 227, 39 Stat. 650 (1916).

¹⁸ Uniform Code of Military Justice, 10 U.S.C. §§ 801–946.

modern JAG Corps, the role of the military lawyer has been defined by the coexistence of legal obligation and command subordination. This coexistence, while functional in many respects, creates an enduring tension that lies at the heart of military legal ethics.

The ethical tensions confronting U.S. military lawyers are not a recent development but rather a persistent feature of the military legal system, rooted in its historical evolution. From early conceptions of military justice to contemporary operational law, military lawyers have long occupied a position at the intersection of legal constraint and command authority. This section traces the historical foundations of this tension, demonstrating that the challenges faced by modern Judge Advocates are deeply embedded in the structure and function of military law itself.

The origins of the American military legal system can be traced to the Articles of War¹⁹, which governed military discipline prior to the adoption of the Uniform Code of Military Justice (UCMJ) in 1950. Under this framework, legal advisors primarily served the interests of command, functioning as instruments of discipline rather than independent legal actors. Their role was largely administrative and prosecutorial, focused on maintaining order and enforcing military regulations rather than providing neutral legal analysis. In this early period, the notion of professional independence, central to modern legal ethics, was largely absent from military legal practice.

The post-World War II era marked a significant transformation in military law with the enactment of the Uniform Code of Military Justice.²⁰ The UCMJ introduced procedural safeguards and aimed to align military justice more closely with civilian legal standards. It also formalized the role of Judge Advocates as legal advisors within the military system. However, while the UCMJ enhanced the legal framework governing military conduct, it did not fundamentally alter the structural relationship between military lawyers and the chain of command. Judge Advocates remained commissioned officers, subject to military hierarchy, even as they were increasingly expected to perform functions analogous to civilian attorneys.²¹

¹⁹ Articles of War, ch. 227, 39 Stat. 650 (1916).

²⁰ Uniform Code of Military Justice, 10 U.S.C. §§ 801–946.

²¹ See generally Eugene R. Fidell, *Military Justice: A Very Short Introduction* (2016).

This dual identity became particularly salient during the Vietnam War, where questions of legality, obedience, and accountability came to the forefront. The My Lai Massacre²² serves as a stark example of the consequences of failures in legal and ethical oversight. Although the massacre itself was carried out by combat forces, subsequent investigations revealed broader systemic issues, including the limited capacity, or willingness, of legal advisors to intervene in unlawful conduct. The episode underscored the difficulty of translating legal norms into operational constraints within a command-driven environment. It also highlighted the risks associated with a system in which legal authority is subordinated to command priorities.

In response to such failures, the latter half of the twentieth century saw the emergence of “operational law” as a distinct field within military legal practice. Judge Advocates were increasingly embedded in planning and execution processes, providing real-time legal advice on the conduct of military operations. This development reflected a growing recognition that legal considerations were integral to mission success. At the same time, however, it intensified the ethical tension inherent in the military lawyer’s role. As legal advisors became more closely integrated into operational decision-making, the line between advising on legality and facilitating action became increasingly blurred.²³

The expansion of U.S. military operations in the post-9/11 era further amplified these dynamics. Counterterrorism operations, including detention practices, interrogation techniques, and targeted killings, placed unprecedented demands on military legal advisors. In these contexts, legal frameworks were often evolving or contested, and military lawyers were called upon to interpret and apply the law in a novel way. The pressure to support operational objectives, combined with the ambiguity of applicable legal standards, created conditions in which the risk of ethical compromise was significantly heightened.

Notably, debates surrounding interrogation practices during the early years of the War

²² See Report of the Department of the Army Review of the Preliminary Investigations into the My Lai Incident (Peers Report) (1970).

²³ See Gary D. Solis, *The Law of Armed Conflict: International Humanitarian Law in War* (2d ed. 2016).

on Terror revealed the extent to which legal analysis could be shaped by policy objectives. Legal memoranda addressing the permissibility of enhanced interrogation techniques were widely criticized for adopting expansive interpretations of executive authority and narrow definitions of legal constraints.²⁴ While many of these memoranda were produced outside the military chain of command, they nonetheless influenced military operations and the advice provided by military lawyers. The episode illustrates how legal reasoning, when closely aligned with strategic goals, can drift toward justification rather than objective analysis.²⁵

Recent scholarships on the War on Terror and international law further highlights how legal uncertainty and evolving interpretations have complicated the role of military lawyers.²⁶ As legal frameworks become more fluid, the burden placed on individual legal advisors to navigate these uncertainties increases correspondingly.

Across these historical developments, a consistent pattern emerges. Military lawyers are expected to function as both guardians of legality and enablers of military operations. Yet the institutional structure within which they operate provides limited mechanisms for reconciling these roles when they come into conflict. The historical record suggests that ethical tension is not an anomaly but a recurring feature of military legal practice, shaped by the enduring coexistence of hierarchical authority and professional responsibility.

Understanding this history is essential for evaluating the present system. It reveals that the ethical challenges faced by contemporary military lawyers are not merely the product of new technologies or evolving threats, but rather the continuation of longstanding structural dynamics. As such, any effort to address these challenges must grapple with the foundational design of the military legal system itself.

²⁴ See Jack Goldsmith, *The Terror Presidency* (2007).

²⁵ See David Luban, *Legal Ethics and Human Dignity* (2007).

²⁶ See Harold Hongju Koh, *The War on Terror and the Future of International Law*, 34 *Yale J. Int'l L.* 1 (2009).

III. Structural Problem: Client Identity, Independence, and Complicity

The ethical conflict confronting U.S. military lawyers is not merely a product of difficult cases but arises from a deeper structural problem embedded in the design of military legal practice. At its core, this problem reflects a fundamental incompatibility between the assumptions underlying professional legal ethics and the institutional realities of military command. Three interrelated dimensions illustrate this structural tension: the indeterminacy of client identity, the erosion of professional independence within the chain of command, and the risk of legal complicity in potentially unlawful conduct.

First, the question of client identity, central to any system of legal ethics, becomes fundamentally unstable in the military context. Under Rule 1.13 of the American Bar Association Model Rules of Professional Conduct, a lawyer representing an organization represents the entity itself rather than its individual constituents.²⁷ In civilian settings, this framework presupposes a relatively coherent organizational structure through which the client's interests can be articulated. However, in military operations, a Judge Advocate advising on the legality of a strike or detention must navigate multiple and often conflicting conceptions of the client: the immediate commander, the military institution, the executive branch, or the Constitution itself. This multiplicity creates a condition in which the identity of the client is not only ambiguous but situationally contingent.

This indeterminacy has direct consequences for legal advice. If the commander is treated as the functional client, legal interpretation may be shaped, consciously or unconsciously, by operational objectives. Conversely, if the lawyer understands the client to be the United States or its legal order, the obligation may be to resist or challenge command decisions that appear unlawful. The Model Rules offer little guidance in resolving this conflict, as they assume that the organization's interests can ultimately be harmonized. In the military context, however, such harmonization cannot be presumed.

²⁷ Model Rules of Professional Conduct R. 1.13.

Second, the requirement of professional independence is structurally constrained by the military chain of commands. The Model Rules emphasize that a lawyer must exercise independent professional judgment and render candid advice, even when that advice may be unwelcome.²⁸ Yet military lawyers are commissioned officers subject to the Uniform Code of Military Justice (UCMJ), including obligations to obey lawful orders and maintain discipline.²⁹ This dual status creates a systemic tension: the same institutional framework that demands independent legal judgment also embeds the lawyer within a hierarchy that may discourage dissent.

In practice, this tension manifests in subtle but powerful ways. Legal advisors may face implicit pressure to align their interpretations with command intent, particularly in time-sensitive operational settings. More critically, the possibility of adverse career consequences, ranging from marginalization to negative evaluations, can shape the willingness of military lawyers to offer dissenting views. While formal protections for professional independence exist, they are often insufficient to counterbalance the structural incentives favoring conformity within the chain of commands.

Third, and perhaps most troubling, is the risk that military lawyers may become complicit in conduct that is legally questionable or even unlawful. This concern arises most acutely in situations where legal interpretation plays a central role in enabling operational decisions. Under Article 77 of the UCMJ, individuals who aid, abet, or otherwise assist in the commission of an offense may themselves be held criminally liable.³⁰ Although legal advice is not inherently equivalent to participation in unlawful conduct, the boundary between interpretation and facilitation can become blurred when legal reasoning is used to justify actions at the edge of legality.

This problem is particularly salient in contexts involving evolving or indeterminate legal standards, such as targeted killings, cyber operations, or transnational uses of force. In such settings, military lawyers are often tasked with constructing legal frameworks that support operational objectives. The ethical question, however, is whether such

²⁸ Model Rules of Professional Conduct R. 2.1.

²⁹ Uniform Code of Military Justice, 10 U.S.C. §§ 801–946.

³⁰ *Id.* § 877 (Article 77).

efforts remain within the bounds of legitimate interpretation or cross into the realm of rationalization. As scholars have noted, when legal analysis becomes closely aligned with policy goals, the risk increases that the lawyer's role shifts from independent advisor to enabler of contested conduct.³¹

Taken together, these three dimensions, client indeterminacy, constrained independence, and potential complicity, reveal a structural problem that cannot be resolved through doctrinal clarification alone. The Model Rules were not designed for a context in which the lawyer is simultaneously embedded within a command hierarchy and tasked with constraining it. As a result, military lawyers operate within an ethical framework that is internally inconsistent, requiring them to reconcile obligations that may be fundamentally irreconcilable.

This structural incompatibility has significant implications. It suggests that ethical dilemmas faced by military lawyers are not exceptional cases requiring better judgment, but rather predictable outcomes of an institutional design that places competing obligations on the same actor. Addressing these challenges therefore requires more than interpretive guidance; it demands a reconsideration of how legal ethics is structured and applied within the military system.

IV. Case Studies: Soleimani Strike and Venezuela Operation

The structural tensions identified in the previous section are not merely theoretical but are vividly illustrated in recent high-profile military operations. The 2020 strike against Iranian General Qasem Soleimani and the 2026 U.S. operation to capture Venezuelan leader Nicolás Maduro provide two paradigmatic examples. These cases demonstrate how military lawyers are required to operate in legally indeterminate environments where the boundaries between lawful interpretation, policy advocacy, and potential complicity become increasingly blurred.

The killing of General Qasem Soleimani in January 2020 represents one of the most controversial uses of force in recent U.S. military history. The United States justified the strike as an act of self-defense, asserting that Soleimani posed an imminent threat

³¹ See David Luban, *Legal Ethics and Human Dignity* (2007).

to U.S. personnel.³² However, this justification was widely contested. The strike occurred on Iraqi territory without the consent of the Iraqi government, raising serious questions under international law, particularly regarding the prohibition on the use of force under Article 2(4) of the United Nations Charter.³³ A United Nations Special Rapporteur concluded that the strike was “most likely unlawful,” citing insufficient evidence of an imminent attack and characterizing the killing as a violation of international human rights law.

From the perspective of legal ethics, the Soleimani strike highlights the challenge of advising under conditions of legal ambiguity. Military lawyers were tasked with assessing the legality of a preemptive strike against a state actor in a third country—an issue that sits at the frontier of both *jus ad bellum* and international human rights law. The central ethical question is not merely whether a plausible legal argument can be constructed, but whether the legal advice provided reflects independent professional judgment or is shaped by strategic objectives. When legal reasoning is mobilized to support a desired operational outcome, the distinction between interpretation and rationalization becomes increasingly tenuous.

A similar, but even more structurally complex, set of issues arises in the 2026 U.S. operation to capture Nicolás Maduro. In that case, U.S. forces conducted a military operation on Venezuelan territory to apprehend a foreign head of state and transfer him to the United States for criminal prosecution on narcoterrorism charges. The U.S. government characterized the operation as a law enforcement action, supported by existing indictments and statutory authority. However, legal experts have questioned this characterization, noting that the use of military force against another sovereign state without its consent is presumptively unlawful under international law.

The Maduro operation exposes a critical ethical tension at the intersection of military force and law enforcement authority. By framing the operation as a law enforcement action, the government effectively collapsed the distinction between military and civilian legal paradigms. This hybrid characterization placed military lawyers in a

³² See Assassination of Qasem Soleimani, justification by U.S. self-defense claim.

³³ U.N. Charter art. 2, 4.

particularly difficult position: they were required to provide legal justification for an operation that simultaneously invoked domestic criminal law, international law, and the law governing the use of force. The result is a form of legal hybridity that complicates the application of traditional ethical frameworks.

Moreover, the operation raises significant concerns regarding the manipulation of legal categories to achieve strategic ends. Reports indicate that the operation was not clearly justified under traditional self-defense principles and may have violated the foundational prohibition on the use of force in international law.³⁴ At the same time, U.S. courts have historically held that even unlawful extraterritorial abductions do not necessarily preclude criminal prosecution.³⁵ This doctrinal position creates a troubling dynamic: actions that may be unlawful under international law can nonetheless produce legally valid outcomes within the domestic legal system. For military lawyers, this disconnect intensifies the ethical dilemma. Should legal advice prioritize international legal norms, or focus on the likelihood of domestic judicial acceptance?

Taken together, these cases illustrate the convergence of several structural pressures. First, legal ambiguity allows for multiple plausible interpretations, increasing the risk that legal advice will align with policy preferences. Second, the integration of military operations with law enforcement objectives blurs the boundaries between distinct legal regimes. Third, the divergence between international and domestic legal standards creates opportunities for selective reliance on favorable doctrines.

For military lawyers operating within this environment, the ethical challenge is profound. They must navigate competing legal frameworks, uncertain factual predicates, and institutional pressures, all while maintaining fidelity to professional ethical standards. The Soleimani and Maduro cases demonstrate that, under current conditions, this task may be not only difficult but structurally untenable.

V. Why Existing Ethical Frameworks Fail

The preceding analysis demonstrates that the ethical dilemmas faced by U.S. military

³⁴ See critiques of use of force and legality.

³⁵ See extraterritorial abduction doctrine.

lawyers are not simply the result of difficult operational environments but instead reflect a deeper failure of the existing ethical framework to account for the structural realities of military practice. The American Bar Association Model Rules of Professional Conduct, while comprehensive in the civilian context, rest on foundational assumptions that do not hold in the military setting. This section argues that the Model Rules fail in three critical respects: they presume a determinate client, rely on meaningful professional independence, and assume a stable and coherent legal framework. Each of these assumptions collapses in the context of modern military operations.

First, the Model Rules are predicated on the existence of a clearly identifiable client. Rule 1.13 provides that a lawyer representing an organization represents the entity itself, not its individual constituents.³⁶ This principle presupposes that the organization's interests can be articulated through a unified structure. In the military context, however, such unity is often illusory. As discussed in Part III, military lawyers must navigate competing conceptions of the client, including the commander, the military institution, and the broader legal order. The Model Rules provide no mechanism for resolving conflicts among these competing identities. As a result, the framework fails at the most basic level: it cannot specify to whom the lawyer owes primary loyalty.

Second, the Model Rules rely heavily on the notion of professional independence. Rule 2.1 requires that a lawyer exercise independent professional judgment and render candid advice.³⁷ In civilian practice, this requirement is supported by institutional norms and safeguards that protect lawyers from undue influence. In the military, by contrast, the lawyer is embedded within a hierarchical command structure governed by the Uniform Code of Military Justice (UCMJ).³⁸ This structure not only permits but in many respects depends upon obedience and conformity. Although military lawyers are formally expected to provide independent advice, the institutional incentives they face often pull in the opposite direction. The Model Rules do not account for this structural

³⁶ Model Rules of Professional Conduct R. 1.13.

³⁷ Model Rules of Professional Conduct R 2.1.

³⁸ Uniform Code of Military Justice, 10 U.S.C. §§ 801–946.

asymmetry. They assume that independence can be maintained through professional norms alone, without recognizing that institutional context may systematically undermine those norms.

Third, and most fundamentally, the Model Rules assume a relatively stable and coherent legal framework within which legal advice is rendered. This assumption is increasingly untenable in modern military operations, where legal norms are often contested, evolving, or strategically interpreted. As illustrated by the Soleimani strike and the Maduro operation, military lawyers frequently operate at the margins of legal doctrine, where the boundaries of lawful conduct are uncertain and subject to competing interpretations. In such environments, the task of the lawyer shifts from applying settled law to constructing legal justifications for novel forms of state action. The Model Rules provide little guidance for this shift. They do not adequately address the ethical implications of advising in contexts where the law itself is indeterminate.

This indeterminacy creates a particularly acute risk: the transformation of legal advice into legal rationalization. When multiple interpretations of the law are available, and when institutional pressures favor a particular outcome, legal analysis may become oriented toward justifying that outcome rather than objectively assessing legality. Scholars of legal ethics have long warned of this danger, noting that the lawyer's role can shift from independent advisor to facilitator of contested conduct.³⁹ In the military context, this risk is amplified by the integration of legal advisors into operational decision-making processes. The closer the lawyer is to the action, the greater the pressure to produce legally acceptable pathways for that action.

Importantly, the failure of the Model Rules in this context is not merely a matter of under-inclusiveness but of structural mismatch. The Rules were designed for a professional environment in which the lawyer stands outside the client's decision-making apparatus, providing advice from a position of relative independence. In the military, however, the lawyer is embedded within that apparatus, participating in the very decisions that the law is meant to constrain. This dual role creates a form of ethical circularity: the lawyer is both advisor and participant, both constraint and enabler.

³⁹ See David Luban, *Legal Ethics and Human Dignity* (2007).

The consequences of this mismatch are significant. Military lawyers are left without a coherent ethical framework that can guide their conduct in situations of genuine conflict. Instead, they must rely on individual judgment, professional courage, and informal norms to navigate complex ethical terrain. While these qualities are undoubtedly important, they are insufficient as a systemic solution. A framework that depends on individual virtue rather than structural clarity is inherently unstable.

Accordingly, the failure of existing ethical frameworks suggests the need for a fundamental rethinking of how legal ethics is conceptualized in the military context. Rather than attempting to adapt civilian rules to military practice through incremental interpretation, reform efforts must address the structural conditions that give rise to ethical conflict. Only by aligning ethical obligations with institutional realities can the legal system provide meaningful guidance to those tasked with advising at the intersection of law and war.

VI. Proposed Reforms

If the ethical dilemmas confronting U.S. military lawyers are structural, as argued above, then reform must directly address the institutional conditions under which these dilemmas arise. The preceding case studies—particularly the Soleimani strike and the Maduro operation—demonstrate that existing ethical frameworks do not merely struggle in extreme cases; they systematically fail in precisely the types of operations that define modern military practice. Accordingly, reform must not be abstract, but grounded in the realities these cases expose.

A. Clarifying Client Identity in Operational Contexts

The ambiguity of client identity is not merely a theoretical concern but a systemic flaw with tangible consequences. In both the Soleimani and Maduro cases, legal justifications appeared to shift depending on the operational objective, suggesting that the “client” was implicitly defined by the desired outcome rather than by a stable legal principle.⁴⁰ This dynamic undermines the legitimacy of legal advice and raises the risk that law becomes an instrument of policy rather than a constraint upon it.

⁴⁰ See Harold Hongju Koh, *The War Powers and Human Rights*, 108 Harv. L. Rev. 238 (1994).

To address this issue, reform must not only define the client but also operationalize that definition. Military legal doctrine should explicitly identify the client as the United States understood as a constitutional and legal order, encompassing both domestic and international obligations.⁴¹ However, formal definition alone is insufficient. Legal advisors should be required to articulate, within written opinions, the conception of the client that underlies their analysis. This requirement would introduce a level of transparency that is currently lacking, particularly in high-stakes operations where competing loyalties are most acute.

Additionally, mechanisms for retrospective review should be established. Independent legal bodies—either within or external to the Department of Defense—could assess whether legal advice was consistent with the articulated client identity and applicable legal standards. Such review would not only enhance accountability but also contribute to the development of institutional norms over time.

B. Institutionalizing Independence Under Operational Pressure

The failure of independence in the military context is not simply a matter of individual weakness, but a predictable outcome of institutional design. Military organizations are structured to prioritize unity of command, rapid decision-making, and mission accomplishment.⁴² These priorities, while operationally necessary, can create an environment in which dissenting legal views are discouraged or marginalized. The Soleimani and Maduro cases suggest that legal interpretations aligned closely with executive preferences despite significant legal uncertainty, indicating that institutional incentives shape legal outcomes.⁴³

To counteract these pressures, independence must be embedded within the decision-making process itself. One approach would be the establishment of a “dual-track legal review” system for operations involving significant legal uncertainty. Under such a system, legal assessments would be conducted both by embedded military lawyers and by an independent legal review panel. Divergent opinions would be formally

⁴¹ U.S. Const. art. II; Model Rules of Professional Conduct R. 1.13.

⁴² See Samuel P. Huntington, *The Soldier and the State* (1957).

⁴³ See Jack Goldsmith, *The Terror Presidency* (2007).

documented and presented to decision-makers, ensuring that legal ambiguity is acknowledged rather than obscured.

Furthermore, reforms should address the role of performance evaluation and career advancement. As long as military lawyers are evaluated primarily by the commanders they advise, the incentive to conform will remain strong. Introducing independent evaluation mechanisms within the Judge Advocate General's Corps, or incorporating peer review into promotion decisions, could help mitigate this dynamic.⁴⁴ Importantly, these reforms do not aim to isolate legal advisors from operational structures, but to ensure that their professional judgment is not subordinated to them.

C. Creating Ethical Safe Harbors in High-Risk Operations

The ability of military lawyers to adhere to ethical obligations depends on whether doing so is institutionally viable. In contexts such as the Maduro operation—where the legality of the use of force has been widely questioned under international law⁴⁵—legal advisors may face significant personal and professional risks if they challenge prevailing interpretations. Without meaningful protection, ethical obligations risk becoming aspirational rather than enforceable.

To address this, reform must establish robust ethical safe harbors. First, statutory protections should shield military lawyers from adverse personnel actions when they refuse to support conduct they reasonably believe to be unlawful.⁴⁶ Second, legal doctrines governing complicity, such as Article 77 of the Uniform Code of Military Justice, should be clarified to ensure that good-faith legal advice does not give rise to criminal liability.⁴⁷ Third, confidential reporting mechanisms should be strengthened to allow legal advisors to raise concerns without fear of retaliation.

Crucially, these protections must extend beyond formal safeguards to address informal pressures, including reputational harm and career stagnation. Without addressing these

⁴⁴ See Eugene R. Fidell, *Military Justice* (2016).

⁴⁵ U.N. Charter art. 2(4).

⁴⁶ Cf. Whistleblower Protection Act, 5 U.S.C. § 2302.

⁴⁷ Uniform Code of Military Justice art. 77, 10 U.S.C. § 877.

subtler dynamics, even well-designed protections may fail to alter behavior in practice.

D. Addressing Legal Indeterminacy and Preventing Rationalization

Legal indeterminacy is an unavoidable feature of modern military operations. The law governing the use of force, particularly under the United Nations Charter, provides general principles but often leaves significant room for interpretation.⁴⁸ The Soleimani strike and Maduro operation illustrate how this indeterminacy can be leveraged to support expansive readings of self-defense or law enforcement authority.⁴⁹

The challenge, therefore, is not to eliminate indeterminacy, but to prevent it from becoming a vehicle for rationalization. To this end, reform should impose methodological constraints on legal reasoning. Legal opinions should be required to engage with the strongest counterarguments, rather than presenting only a single, favorable interpretation.⁵⁰ This requirement would introduce a form of internal adversarial testing, enhancing the rigor and credibility of legal analysis.

Additionally, transparency mechanisms should be strengthened. Legal opinions related to high-stakes operations could be subject to declassification after a defined period, enabling external scrutiny by scholars, courts, and the public.⁵¹ The prospect of future review may incentivize more balanced and principled reasoning at the time advice is given.

E. Toward Structural Alignment Between Law and Military Practice

Taken together, the lessons of Soleimani and Maduro reveal that the failure of ethical frameworks is not incidental but systemic. When legal ambiguity, institutional pressure, and strategic objectives converge, legal ethics ceases to function as an effective constraint. Instead, it risks becoming a flexible instrument that legitimizes predetermined outcomes.

⁴⁸ U.N. Charter art. 2(4).

⁴⁹ See Koh, *supra* note 1.

⁵⁰ See David Luban, *Legal Ethics and Human Dignity* (2007).

⁵¹ See Geoffrey S. Corn, *Operational Law and the Judge Advocate*, 45 *Tex. Int'l L.J.* 653 (2010).

Reform must therefore aim at structural alignment. By clarifying client identity, embedding independence within institutional design, protecting ethical decision-making, and constraining legal reasoning, the military legal system can restore coherence between ethical obligations and operational realities. As scholars have long emphasized, the legitimacy of legal systems depends not only on the content of rules but on the conditions under which they are applied.⁵²

Ultimately, the goal of reform is not to eliminate tension between law and military necessity—such tension is both inevitable and, in some respects, desirable. Rather, the objective is to ensure that this tension is resolved through principled legal reasoning rather than institutional pressure or strategic convenience. Only under such conditions can military legal ethics fulfill its intended role: not merely to enable action, but to define its lawful limits.

VII. Conclusion

The ethical dilemmas confronting U.S. military lawyers are often framed as the product of difficult circumstances—hard cases arising from the complexity of modern warfare. This paper has argued that such a framing is fundamentally incomplete. The challenges faced by military legal advisors are not merely situational but structural, rooted in a persistent misalignment between the institutional design of military organizations and the foundational principles of professional legal ethics.

From their historical origins under the Articles of War to their contemporary role in operational decision-making, military lawyers have occupied a dual position that is inherently unstable. They are expected to function simultaneously as loyal officers within a hierarchical chain of command and as independent legal professionals bound by ethical obligations that require candor, objectivity, and, at times, resistance.⁵³ This duality is not a temporary tension to be managed, but a structural condition that shapes the production of legal advice itself.

The analysis of modern case studies, including the Soleimani strike and the Maduro

⁵² See Lon L. Fuller, *The Morality of Law* (1964).

⁵³ See Model Rules of Professional Conduct R. 2.1.

operation, illustrates how this structural tension manifests in practice. In both cases, legal frameworks characterized by ambiguity and contestation are intersected with institutional pressures and strategic objectives. The result was not simply controversial outcomes, but a deeper erosion of the distinction between legal interpretation and legal justification.⁵⁴ When legal reasoning becomes aligned with operational goals, the role of the lawyer risks shifting from that of an independent advisor to that of an enabler of contested conduct.

Existing ethical frameworks, particularly those embodied in the American Bar Association Model Rules of Professional Conduct, are ill-equipped to address these dynamics. As this paper has demonstrated, these frameworks rest on assumptions—clear client identity, meaningful professional independence, and a stable legal environment—that do not hold in the military context.⁵⁵ Their failure is not simply one of application, but of design. They were not constructed for a setting in which the lawyer is embedded within the very structure that the law is meant to constrain.

The consequence of this mismatch is not merely theoretical inconsistency, but practical instability. In the absence of a coherent ethical framework, military lawyers are forced to rely on individual judgment, professional courage, and informal norms to navigate situations of profound legal and moral uncertainty. While these qualities are indispensable, they cannot serve as a substitute for institutional clarity. A system that depends on individual virtue rather than structural alignment is inherently fragile, particularly in high-stakes environments where the costs of dissent are significant.

The reforms proposed in this paper seek to address this structural problem by realigning ethical obligations with institutional realities. Clarifying the identity of the client, strengthening the independence of legal advisors, establishing ethical safe harbors, and developing a specialized framework of military legal ethics are not merely technical adjustments. They represent a shift in how the role of the military lawyer is conceptualized, from an auxiliary function within command to a distinct institutional

⁵⁴ See Jack Goldsmith, *The Terror Presidency* (2007).

⁵⁵ Model Rules of Professional Conduct R. 1.13; see also David Luban, *Legal Ethics and Human Dignity* (2007).

actor responsible for maintaining the integrity of legal constraint.⁵⁶

Importantly, these reforms do not aim to eliminate tension between law and military necessity. Such tension is both inevitable and, in many respects, desirable. Law derives much of its normative force from its capacity to constrain power, and this constraint is most meaningful when it operates in contexts where the stakes are highest.⁵⁷ The objective, therefore, is not to remove conflict, but to structure it, to ensure that when legal and operational considerations diverge, the resulting tension is addressed through principled reasoning rather than institutional pressure or strategic convenience.

The stakes of this issue extend beyond the internal functioning of military legal systems. They bear directly on the legitimacy of the use of force in international order. When legal justification appears contingent on strategic objectives, rather than employ consistent principles, the credibility of legal norms is undermined.⁵⁸ This erosion of legitimacy carries long-term consequences, not only for the state employing force but for the broader system of international law.

Ultimately, the question is not whether military lawyers can resolve every ethical dilemma they face. It is whether the system within which they operate enables them to act as lawyers in any meaningful sense of the term. A legal advisor who cannot identify their client with clarity, who cannot exercise independent judgment without fear of reprisal, and who must construct legal justification within an indeterminate framework is not merely challenged—they are structurally constrained from fulfilling the role that legal ethics envisions.

If law is to function as a genuine constraint on the use of force, rather than as a flexible instrument of policy, then the role of the military lawyer must be reimagined accordingly. This requires not only doctrinal refinement, but institutional reform that recognizes the unique position of legal advisors at the intersection of law and war. Only by addressing the structural conditions that shape legal practice can ethical obligations

⁵⁶ See Geoffrey S. Corn, *Operational Law and the Judge Advocate*, 45 *Tex. Int'l L.J.* 653 (2010).

⁵⁷ See Lon L. Fuller, *The Morality of Law* (1964).

⁵⁸ See Harold Hongju Koh, *The War Powers and Human Rights*, 108 *Harv. L. Rev.* 238 (1994).

regain their practical significance.

In this sense, the ethical challenges confronting military lawyers are not simply problems to be solved, but signals to be interpreted. They reveal the limits of existing frameworks and the need for a more coherent integration of law and military practice. Whether the legal system responds to these signals with meaningful reform will determine not only the future of military legal ethics, but the extent to which law can continue to serve as a credible constraint in an era of evolving conflict.