

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

NASSER AL-AULAQI,

Plaintiff,

v.

BARACK H. OBAMA, *et al.*,

Defendants.

No. 10-cv-1469 (JDB)


DECLARATION OF JONATHAN MANES

I, Jonathan Manes, under penalty of perjury declare as follows:

1. I represent Plaintiff Nasser al-Aulaqi in this action.
2. I submit this declaration in support of Plaintiff's Reply Memorandum in Support of Plaintiff's Motion for a Preliminary Injunction and in Opposition to Defendants' Motion to Dismiss. The purpose of this declaration is to bring to the Court's attention an official government disclosure regarding details of the military's policy regarding targeted strikes using lethal weapons.
3. Attached hereto as Exhibit A is a true and correct copy of General Counsel, Joint Chiefs of Staff, Joint Targeting Cycle and Damage Estimation Methodology, Nov. 10, 2009. This exhibit is a complete copy of a set of 47 briefing slides that were disclosed to the ACLU in response to a Freedom of Information Act request seeking records relating to the use of unmanned aerial vehicles—commonly known as “drones”—for the purpose of targeted killing. The briefing slides disclose in considerable detail the various steps that are undertaken and considerations that are taken into account when the military engages in targeted strikes.

4. Attached hereto as Exhibit B is a true and correct copy of a letter addressed to me from Mark H. Herrington, Associate Deputy Counsel, Department of Defense Office of Litigation Counsel. This letter accompanied the disclosure of the briefing slides attached hereto as Exhibit A. The letter states that “generally speaking, weapons fired by drones are treated identically to weapons fired by other aircraft” and indicates that the briefing slides disclosed to plaintiff’s counsel (Exhibit A) “describe the Joint Targeting Cycle including selection and prioritization criteria, no-strike and collateral damage estimation methodology, and the sensitive target approval and review (STAR) process.”

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief. Executed on October 8, 2010.



Jonathan Manes

Exhibit A



Joint Targeting Cycle and Collateral Damage Estimation Methodology (CDM)



General Counsel
10 Nov 2009

ACLU DRONES JOINT STAFF Briefing 000001 Unclassified//FOUO



Agenda

- Background
- References
- Targeting and Collateral Damage
 - Definitions
 - Targeting Overview
 - Targeting Cycle key elements
 - Collateral Damage Estimation
- Summary
- Questions/Discussion



References

- DOD Directive 2311.01, 9 May 2006, “DoD Law of War Program”
- CJCSI 5810.01, “Implementation of the DOD Law of War Program”
- CJCSI 3160.01, “No-Strike and Collateral Damage Estimation Methodology”
- CJCSI 3122.06, “Sensitive Target Approval and Review (STAR) Process”
- Joint Publication 3-60, 13 April 2007, “Joint Targeting”
- DIA Instruction 3000.002, 15 July 2008, “U.S./Allied Targeting Analysis”
- JTCG-ME Publication, 61 JTCG/ME-05-4, 29 September 2008, “Collateral Damage Estimation (CDE) Table Development”
- JTCG-ME Accredited CDE Tables, 9 January 2009



Joint Targeting Definitions and Processes

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Targeting and Fires Definitions

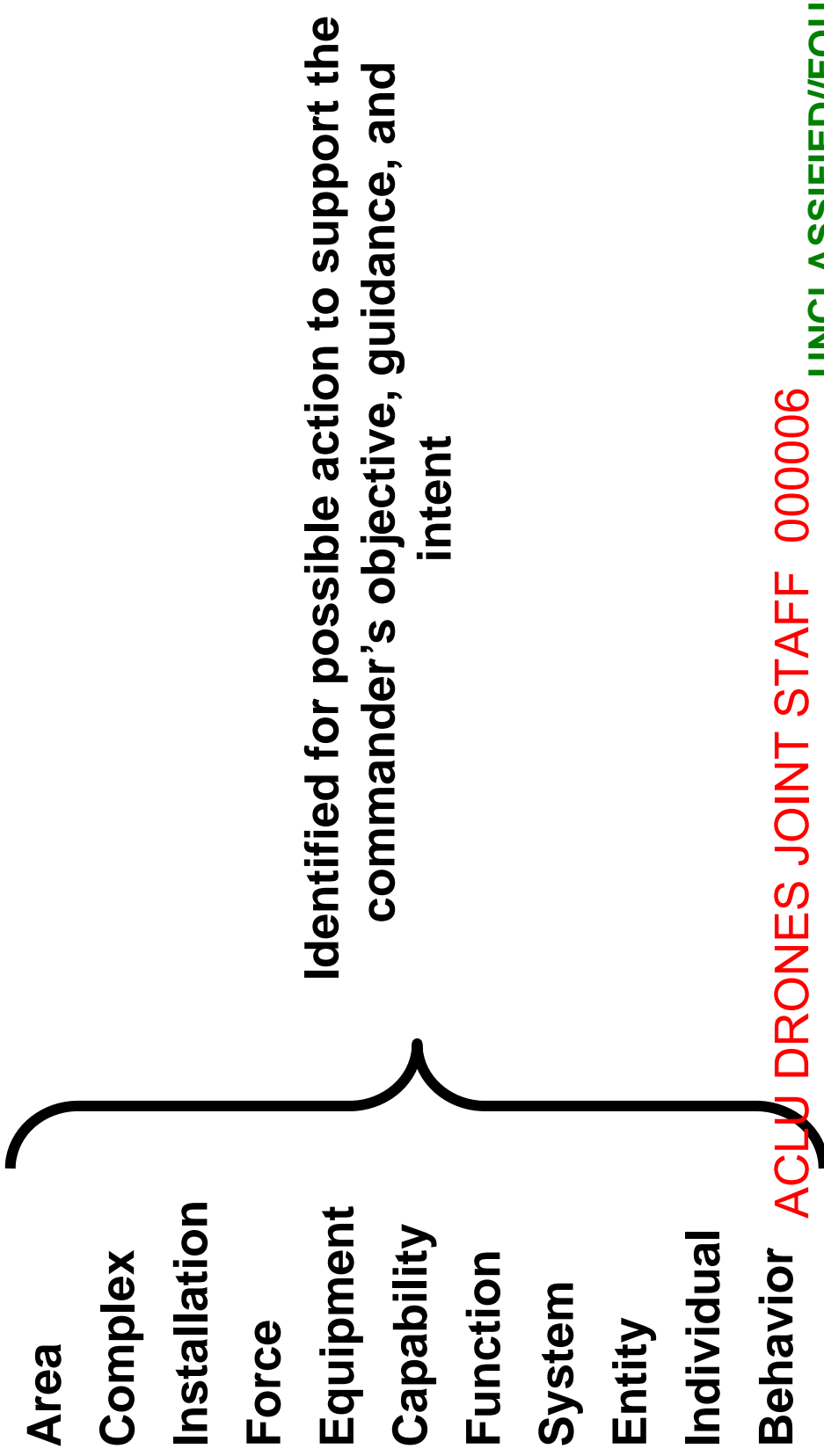
- Targeting: the process of selecting and prioritizing targets and matching the appropriate response to them, considering operational requirements and capabilities
 - The purpose of targeting is to integrate and synchronize fires into joint operations
 - Targeting supports the process of linking desired effects of fires to actions and tasks at the joint force component level
- Fires: the use of weapon systems to create a specific lethal or nonlethal effect on a target (JP 1-02)



Target Definition



Target: An entity or object considered for possible engagement or other action

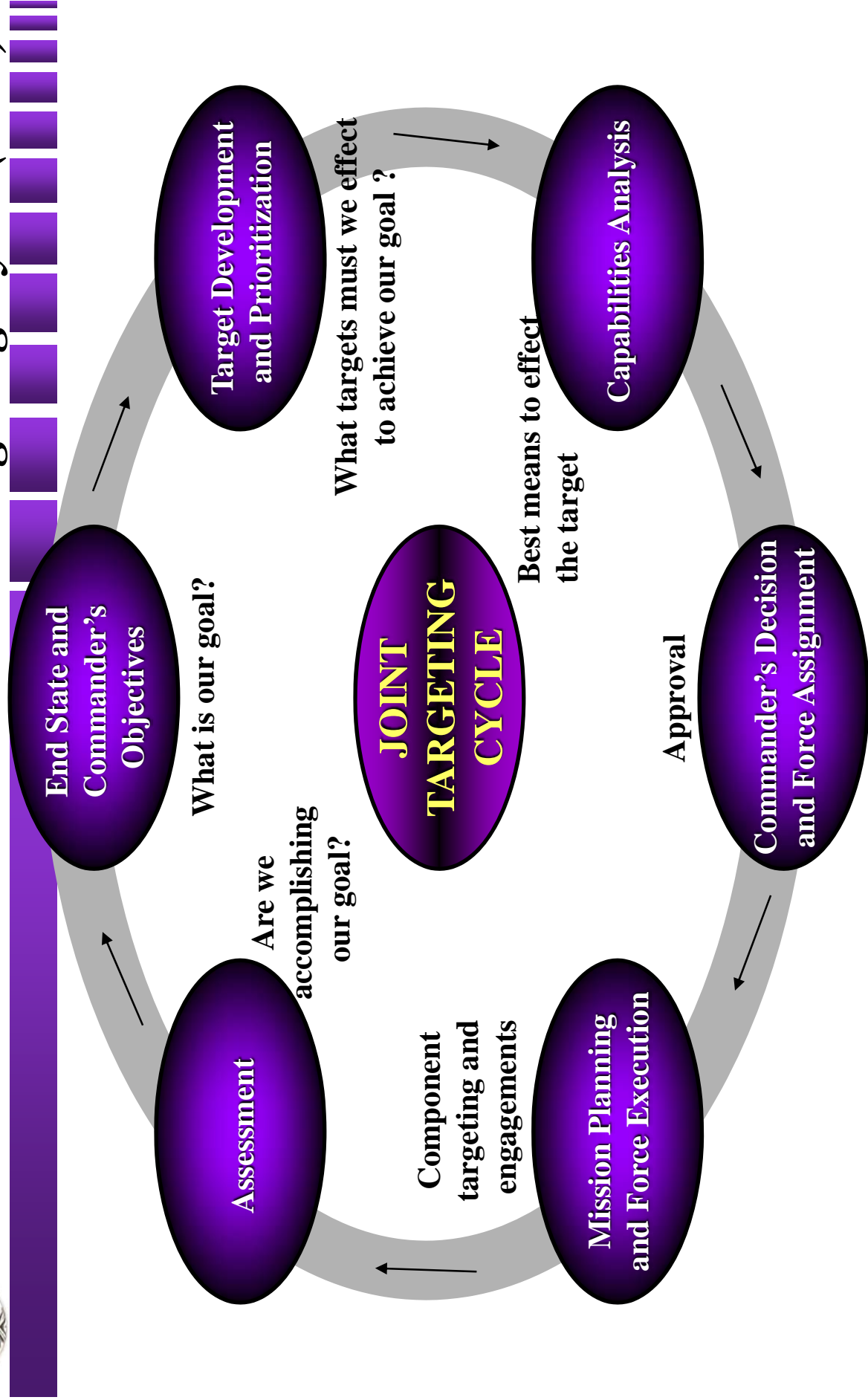


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Joint Targeting Cycle (JTC)

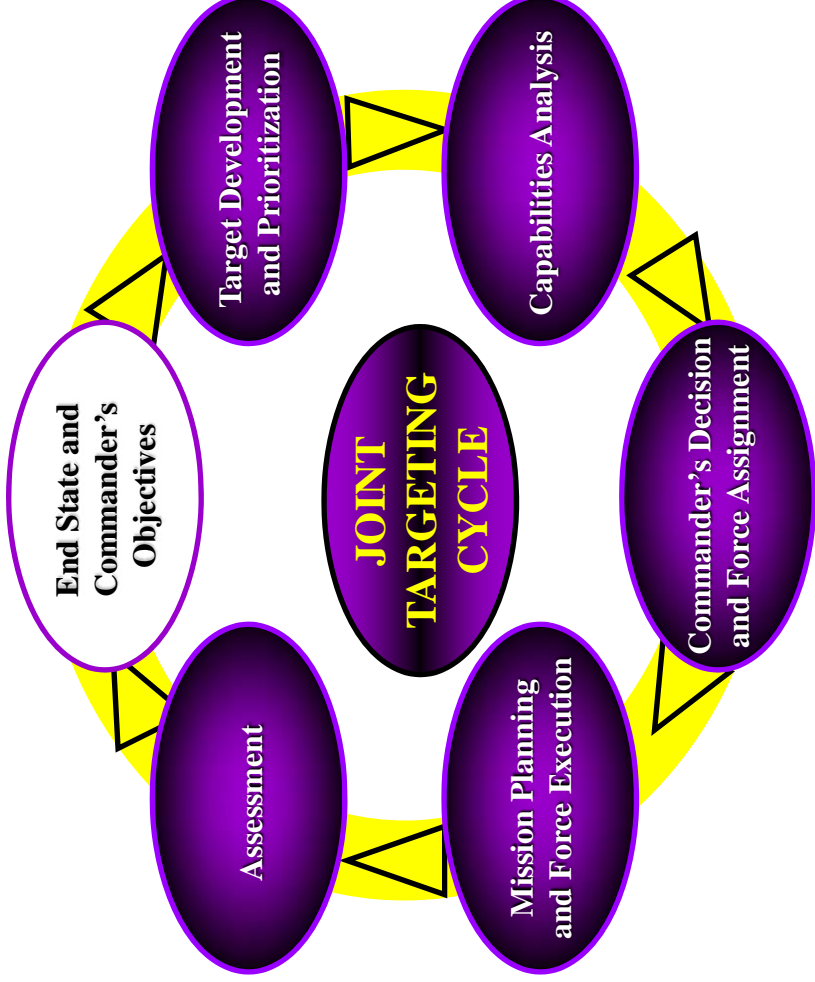


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Designed to provide a means to support achievement of JFC's objectives JP 3-60



End State and Commander's Objectives



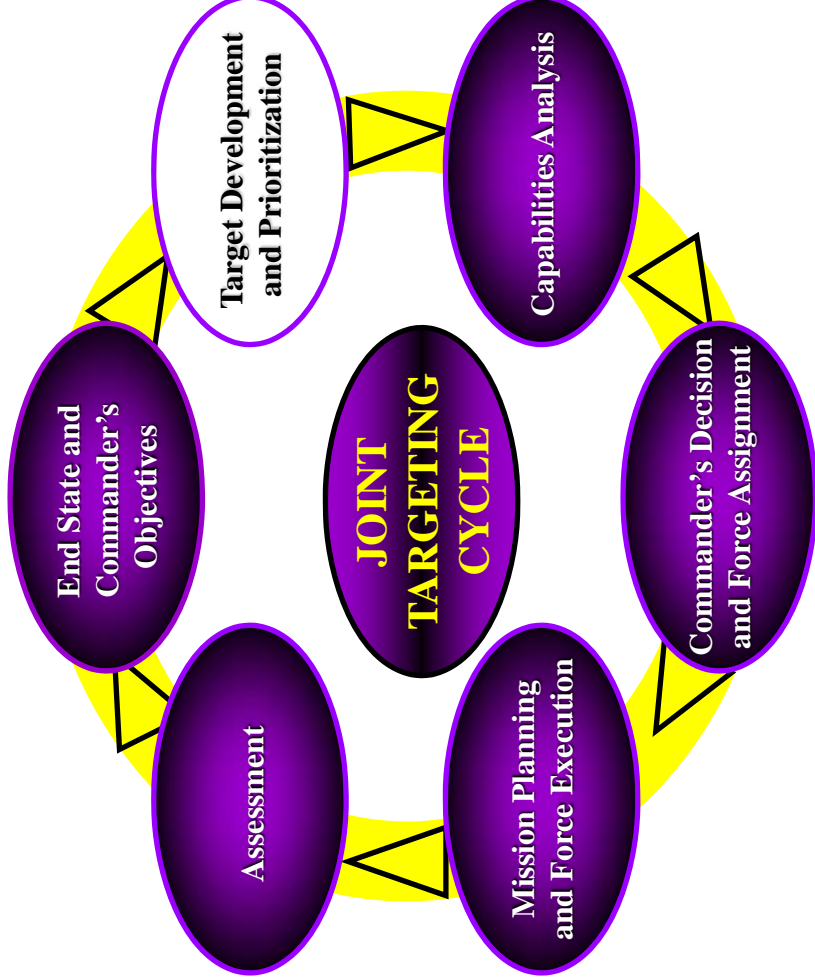
What is our goal?

- Guidance:
 - Ground Rules/Policies
 - Establishes Scope/Restrictions
 - Drives subsequent phases of the targeting cycle
- Comes From:
 - Pres/SECDEF, CoCom, JFC
 - Law of Armed Conflict
 - Rules of Engagement

Provides the critical link to Military Necessity
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Target Development and Prioritization

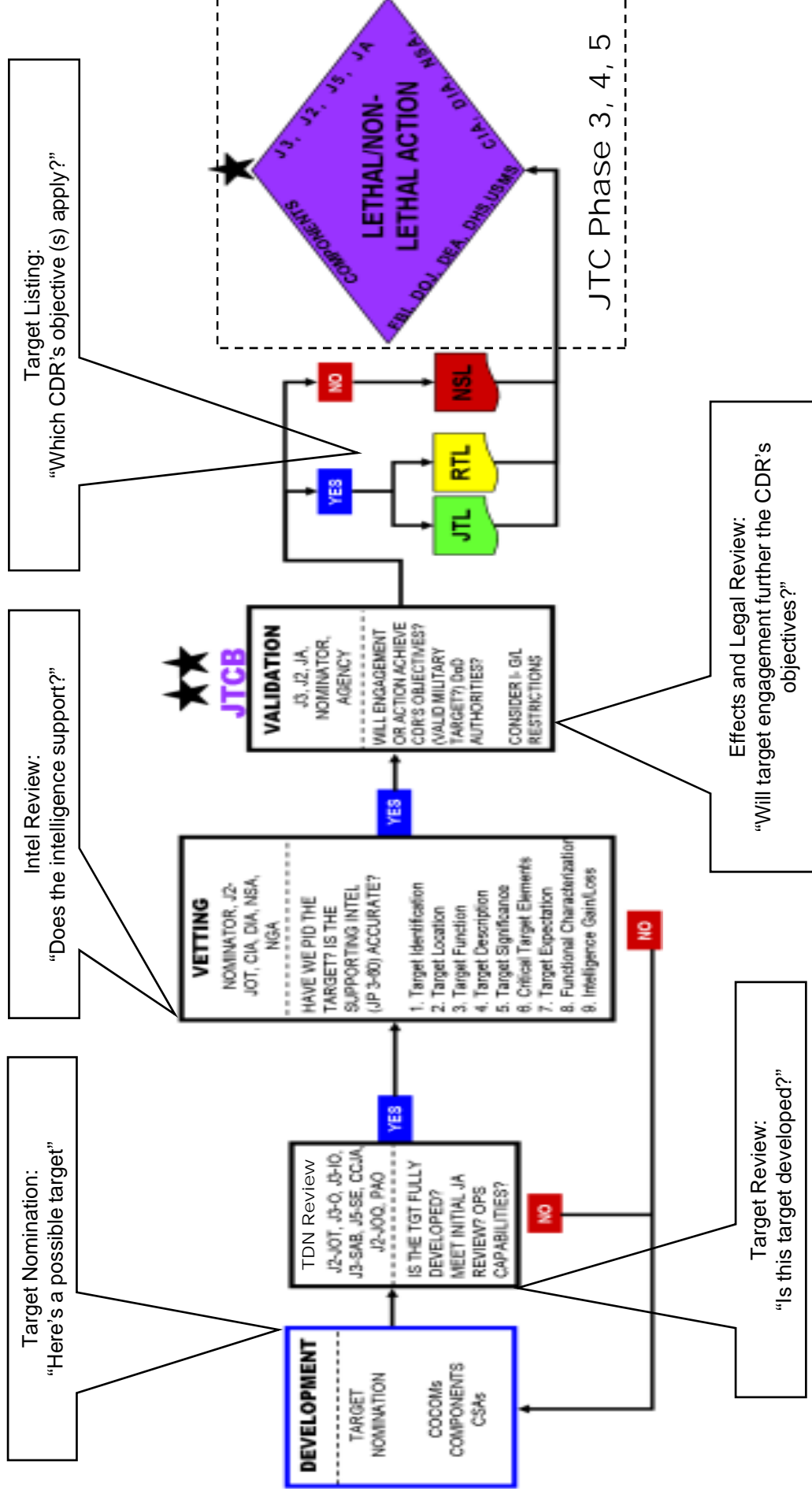


- Target Vetting
 - Collective effort of the Intelligence Community
 - Examines
 - Target Identification, location, function, description, significance, critical elements, target expectation, functional characterization/collateral objects of concern, intel gain/loss
 - IC votes and provides advice on each target
- Target Validation
 - Compliance with commander's objectives
 - Law Of War (LOW)/Law Of Armed Conflict (LOAC) and Rules of Engagement (ROE)
 - Target's relevancy within the target set

What targets must we engage to achieve our goal ?

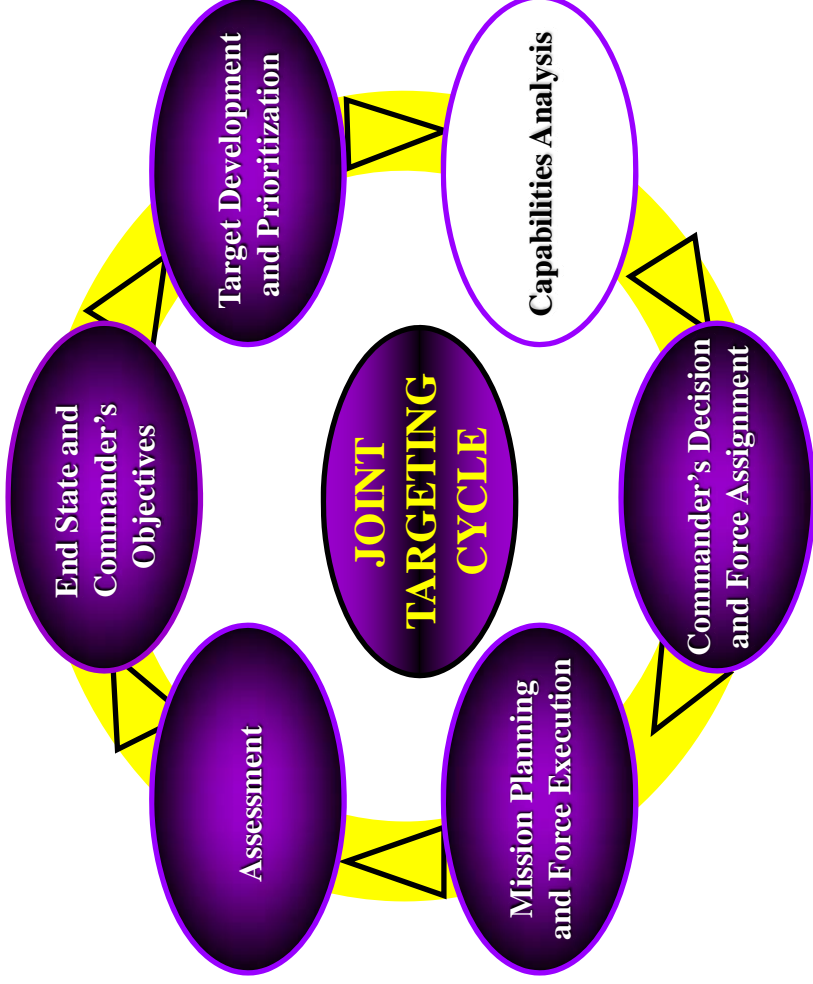


Joint Targeting Coordination Board (JTCB)





Capabilities Analysis

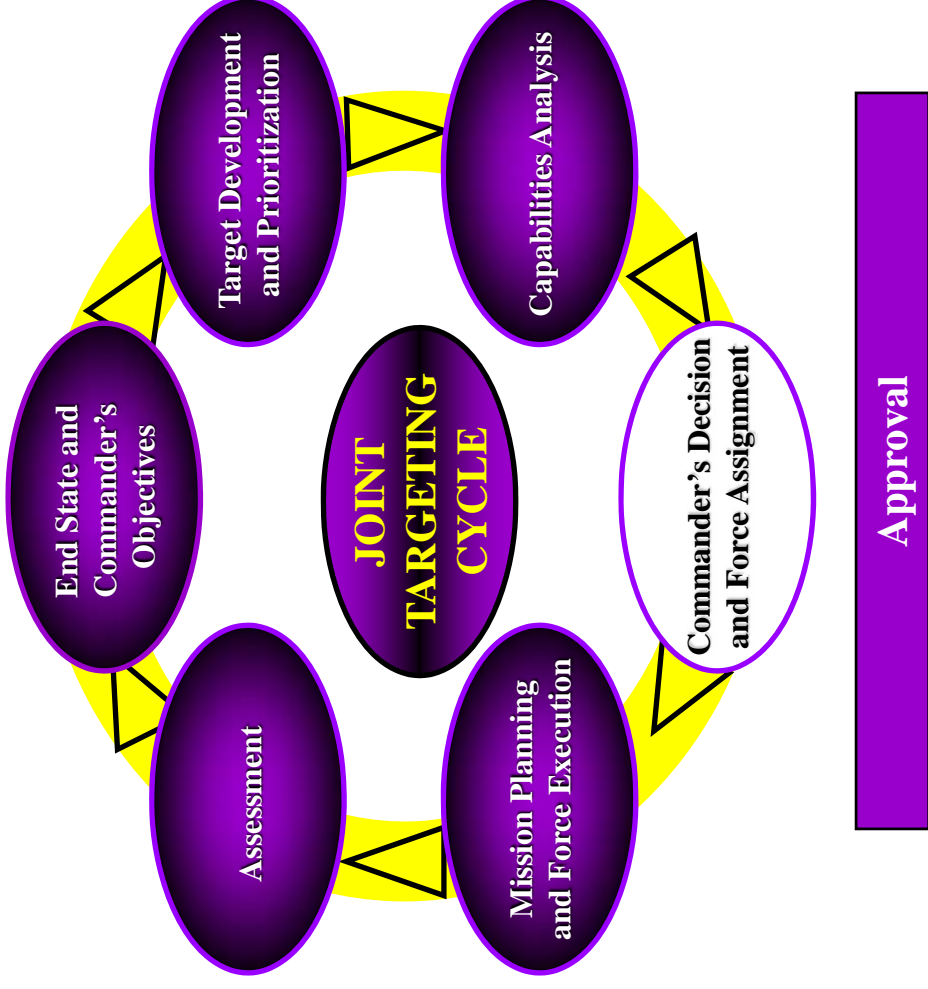


Best means to engage the target

- Evaluate available capabilities vs. desired effects to determine options
 - Effectiveness & efficiency of forces
 - Estimate the effects of attacks (kinetic & non-kinetic)
 - Weighs available forces w/ COAs
 - Inline with JFC's Objectives
- Weaponneering:
 - Weapon/system to achieve effect
 - Efficient & effective use of resources
 - Objectives and desired effects
- Collateral Damage Estimation:
 - Unintended or incidental damage to persons or objects not the intended target and are not lawful targets



Cdr's Decision and Force Assignment

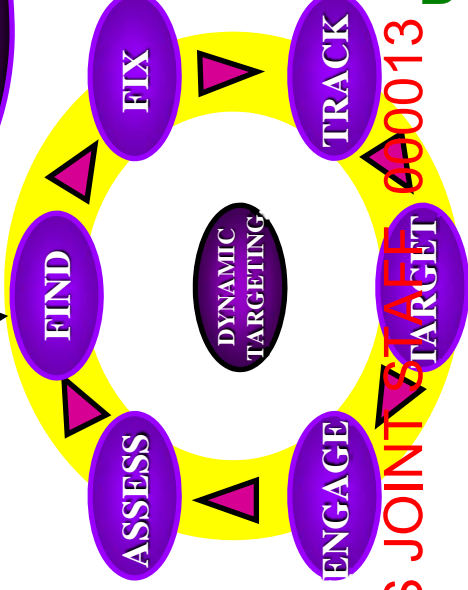
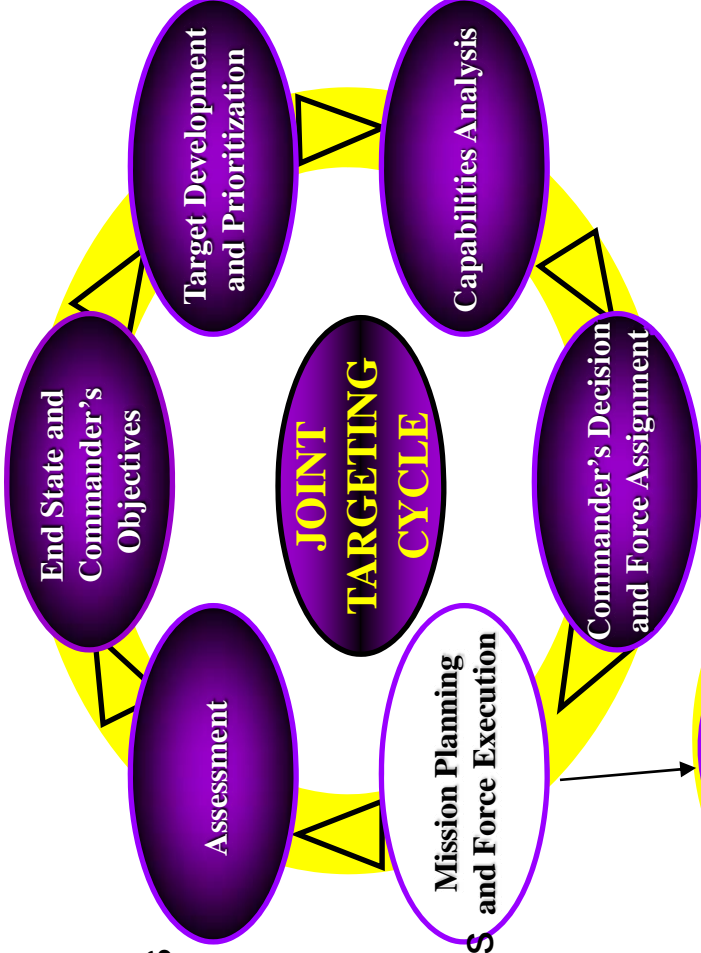


- Critical step in transitioning plans to execution
- Review previous steps for execution
- Validate target list changes
- Consolidate target development and capabilities analysis results
- Collateral damage decisions and Strike Approvals
 - Verify authorities—seek higher approval
- Assign responsibilities for engagement



Mission Planning and Force Execution

- Detailed planning conducted by tactical level forces
 - Based on commander's guidance/orders
 - Facilitated by open access to planners at the operational & strategic level
- Execution is continually monitored for
 - How the adversary responds/changes
 - Achievement of effects & Cdr's objectives
 - Performance of forces
 - Changes in the operational environment

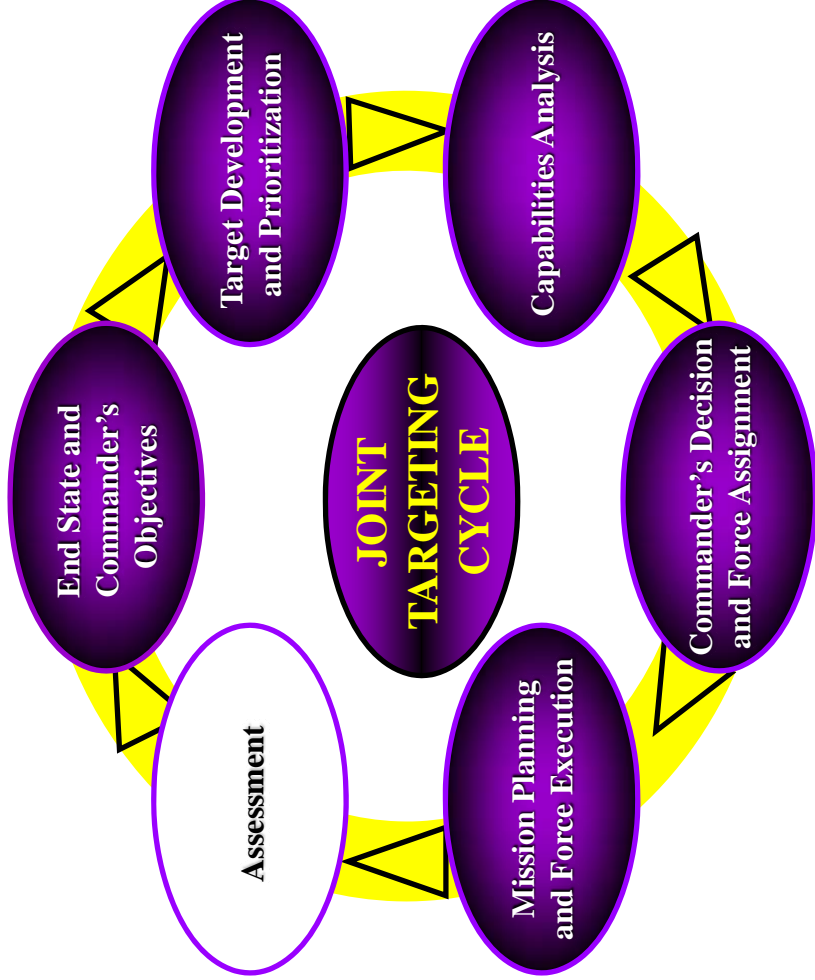


Component targeting and engagements

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Combat Assessment



Are we accomplishing our goal?

- Measures progress toward achieving the commander's objectives
 - MOP / MOE
- Provides:
 - Status
 - Benchmark for validating actions
 - Munitions effects assessment
 - Collateral Damage Assessment
- Generally the level at which a specified operation, task, or action is planned and executed should be the level at which such activity is assessed.



Collateral Damage Estimation (CDE)



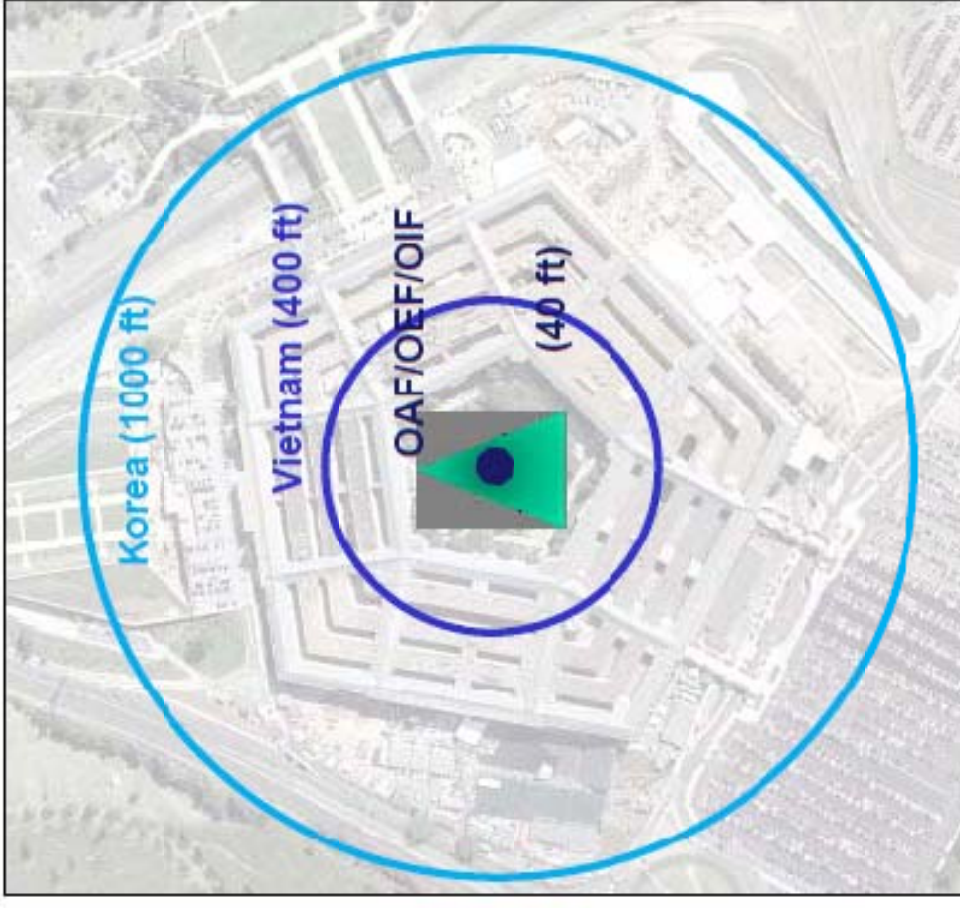
- Commanders must conduct a proper proportionality analysis to use the amount of force required to achieve a direct and concrete military advantage
- CDE Methodology provides the process to predict and mitigate collateral damage from conventional, non-nuclear kinetic strikes
 - Facilitates risk estimation and mitigation
 - Identifies target engagement's sensitivity and associated risks
 - Required on every target in accordance with Rules of Engagement
 - Target is weaponized to balance accomplishing the mission with the risks to U.S. forces and the risk for collateral damage



CDE Methodology - Technical Facts

All Munitions Technical Data is based on:

- The Joint Munitions Effectiveness Manual (JMEM) Weapon System (JWS)
- Data approved by the Joint Technical Coordinating Group/Munitions Effectiveness (JTTCG/ME)
 - Data updated every 6 months
- The CDE Methodology does not account for:
 - Weapon Malfunction
 - Operational Delivery Errors
 - Altered tactics
 - Unknown Transient Non-Combatant Personnel and/or Property



MK 84 class bomb, Med Alt

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The 5 Basic Questions of CDE

CDE methodology is five questions to be answered before engaging a target:

1. Can I PID the object I want to affect?
2. Are there protected or collateral objects, civilian or noncombatant personnel, involuntary human shields, or significant environmental concerns within the effects range of the weapon I would like to use to attack the target?
3. Can I mitigate damage to those collateral concerns by attacking the target with a different weapon or with a different method of engagement, yet still accomplish the mission?
4. If not, how many civilians and noncombatants do I think will be injured or killed by the attack?
5. Are the collateral effects of my attack excessive in relation to the expected military advantage gained and do I need to elevate this decision to the next level of command to attack the target based on the ROE in effect?



Risk Management

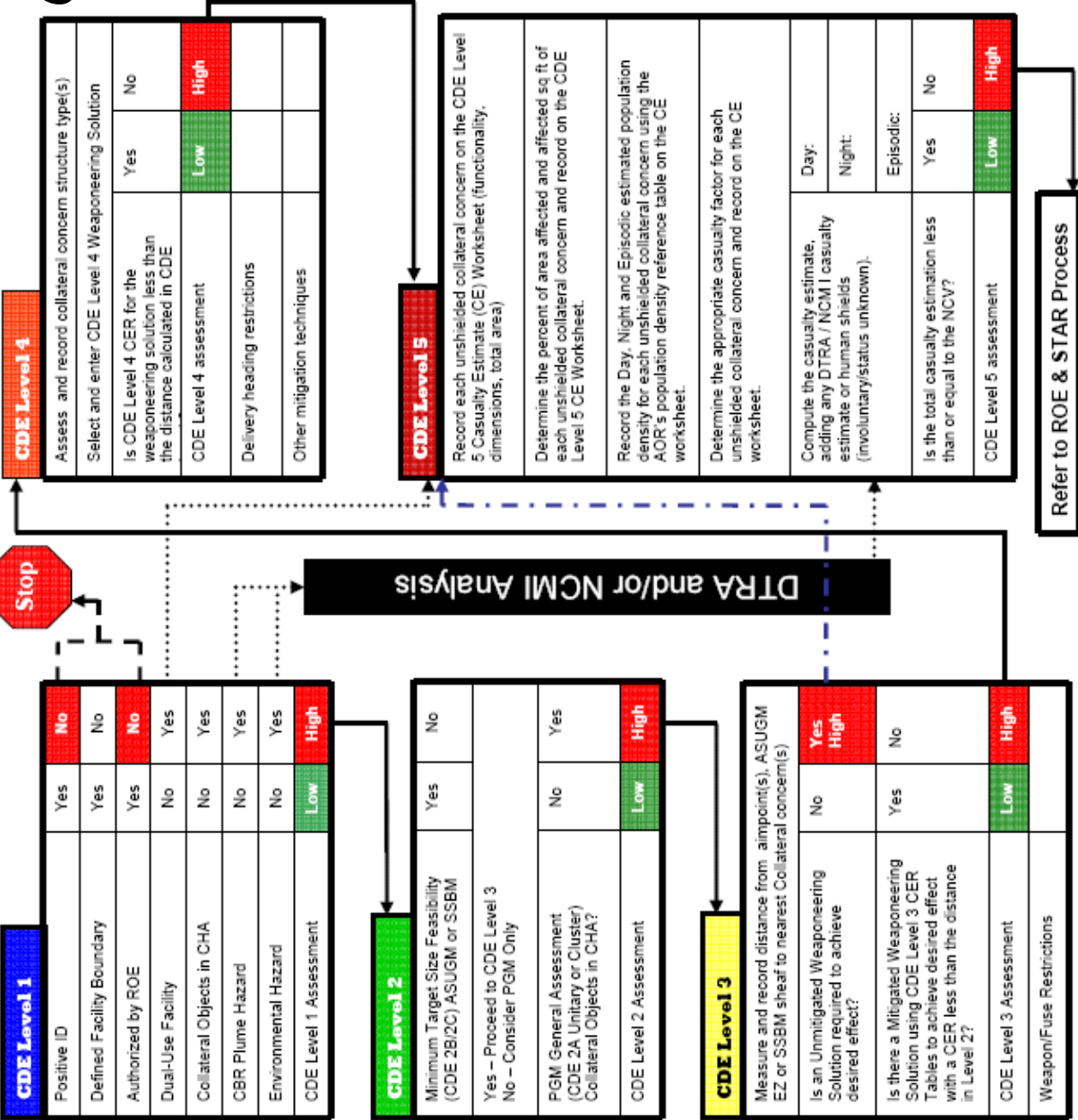


- Commanders are responsible to evaluate and balance mission requirements and threat to friendly forces while taking all *reasonable* steps to mitigate the potential for Collateral Damage.
- The CDE Methodology codifies and standardizes the collateral damage estimate process supporting the Commander's *Evaluation of Risk* in the Military Decision Making Process (MDMP).





CDM Process Guide



Final CDE Assessment

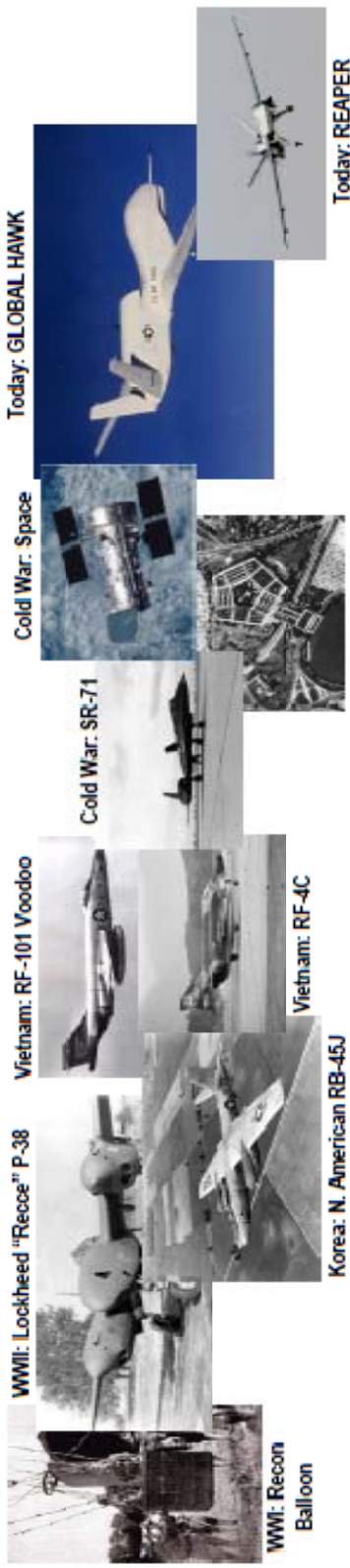
CDE Level	Low/High	Weapon Class (PGM/ASUGM/SSBM)	Weaponneering Solution	Heading	Casualty Estimate
CDE					

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D: ___ N: ___ E: ___



Summary of CDE in Joint Targeting



- Never before has a nation taken such measures and resources to reduce the likelihood of civilian casualties
 - Our processes and procedures are rigorous
 - The methodology is derived from physics based computer modeling backed up by weapons testing data and direct combat observations
 - Estimates are applied by commanders exercising informed judgment to mitigate civilian casualties while balancing their responsibility to accomplish the mission while defending themselves and their forces



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Questions/Discussion



Back-Up (Vignette)



Target Value Analysis Definitions

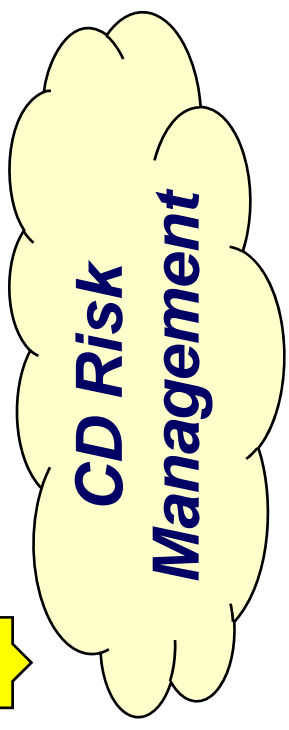
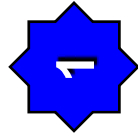
- High Value Target: A target the enemy commander requires for the successful completion of the mission. The loss of high-value targets would be expected to seriously degrade important enemy functions.
- High Payoff Target: A high value target whose loss to the enemy will significantly contribute to the success of the friendly course of action. High-payoff targets are those high-value targets that must be acquired and successfully attacked for the success of the friendly commander's mission.
- Time Sensitive Target: A joint force commander designated target requiring immediate response because it is a highly lucrative, fleeting target of opportunity or it poses (or will soon pose) a danger to friendly forces.



Risk Management & CDE



- CDE 1: Target Validation / Initial Assessment
- CDE 2: General / Target Size Assessment
- CDE 3: Weaponering Assessment
- CDE 4: Refined Assessment
- CDE 5: Casualty Assessment



MISSION RISK

CDE Level

Structural Damage	NO	NO	NO	NO	YES
Casualties	NO	NO	NO	NO	YES
Tactical Restrictions	NONE	Weapon	Weapon/Fuse	Weapon/Fuse/Delivery Heading	

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Lawful Military Objectives



- Lawful Military Objectives
 - Contribute to the enemy's warfighting/war sustaining effort and its destruction would constitute a definite military advantage
 - Four elements that allow targets to be lawful military objectives:
 - Nature
 - Location
 - Purpose
 - Use

Each target is assessed holistically
on these elements

Critical Analytical Component in CDE Methodology
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Positive Identification

“It is an inherent responsibility of all commanders, observers, air battle managers, weapons directors, attack controllers, weapons systems operators, intelligence analysts, and targeting personnel to (CJCSI 3160.01):

- Establish Positive Identification (PID) and to accurately locate targets consistent with current military objectives and mission specific Rules of Engagement.
- PID is defined as the reasonable certainty that a functionally and geospatially defined object of attack is a legitimate military target in accordance with the Law of War and applicable Rules of Engagement.
- Identify potential collateral concerns prior to munitions release and target engagement (provide function and geospatial delimitations if able)
- Apply the Collateral Damage Methodology (CDM) with due diligence to mission objectives, force protection, and collateral damage.”



Dual-Use



- Targets characterized as having both a military and civilian purpose/function are considered dual-use.
- In most cases, dual-use Targets consist of facilities/structures associated with providing support to the civilian population and the military effort (eg. senior governmental level command and control, media centers, public utilities)
- Commanders are responsible to determine the predominant functionality of LOW Protected Structures, based on current intelligence, and decide if the target is dual-use or not.
- ROE provides the authorizations and prohibitions regarding targeting Dual-Use Facilities.
- Regardless of the ROE in effect, civilian personnel working within the boundary of dual-use targets must be considered as noncombatant casualties for the purposes of casualty estimation



No-Strike Policy



- Combatant Commanders identify, develop, maintain, and distribute to subordinate and supporting commands a list of No-Strike Objects for each Country within Area of Responsibility (AOR) and each OPLAN/OPORD Areas of Operation (AO)
- The National Intelligence Community will support and assist the COCOMs with No-Strike Object research, development, and production; validate additions to COCOM generated No-Strike Lists (NSL)
- A NSL is a list of all identified objects within a specified geographic area (Country or AO) functionally characterized as non-combatant / civilian in nature.

Updated and disseminated daily

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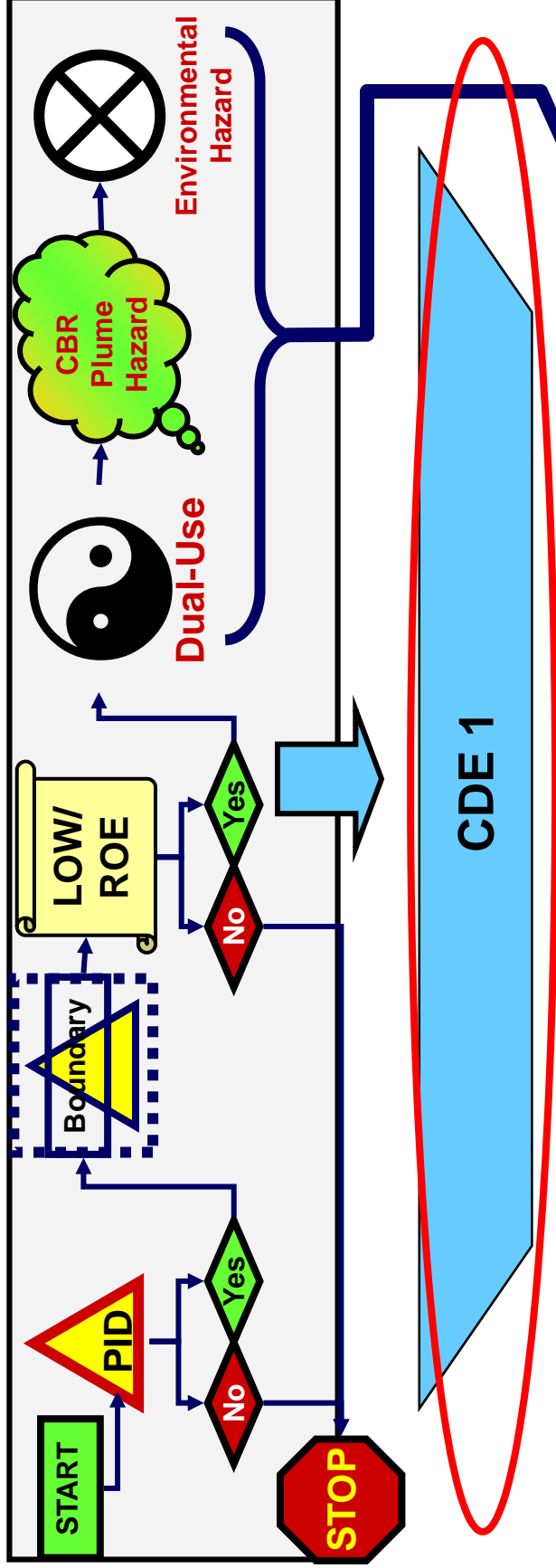


Categories of Collateral (No Strike) Objects

- Category 1:
 - Diplomatic Facilities
 - Religious/Cultural/ Historical
 - Non-Governmental Orgs.
 - Medical Facilities
 - Public Education Facilities
 - Civilian Refugee Camps
 - Prisoner of War (POW) Camps
 - Facilities with Environmental Concerns
 - Dams and dikes
- Category 2:
 - Non-Military Billeting (Housing, Hotels/Motels)
 - Civilian Meeting Places (Arenas, Theaters, Parks, Stadiums, Markets, Convention Centers)
 - Public Utilities (Power, Water, Electric, Gas, Fire & Police Stations, Banks, etc.)
 - Agricultural Storage or Processing Facilities
 - Facilities whose functionality is unknown



Initial Collateral Damage Estimate (CDE)



Validates targets
 Nature
 Location
 Purpose
 Use

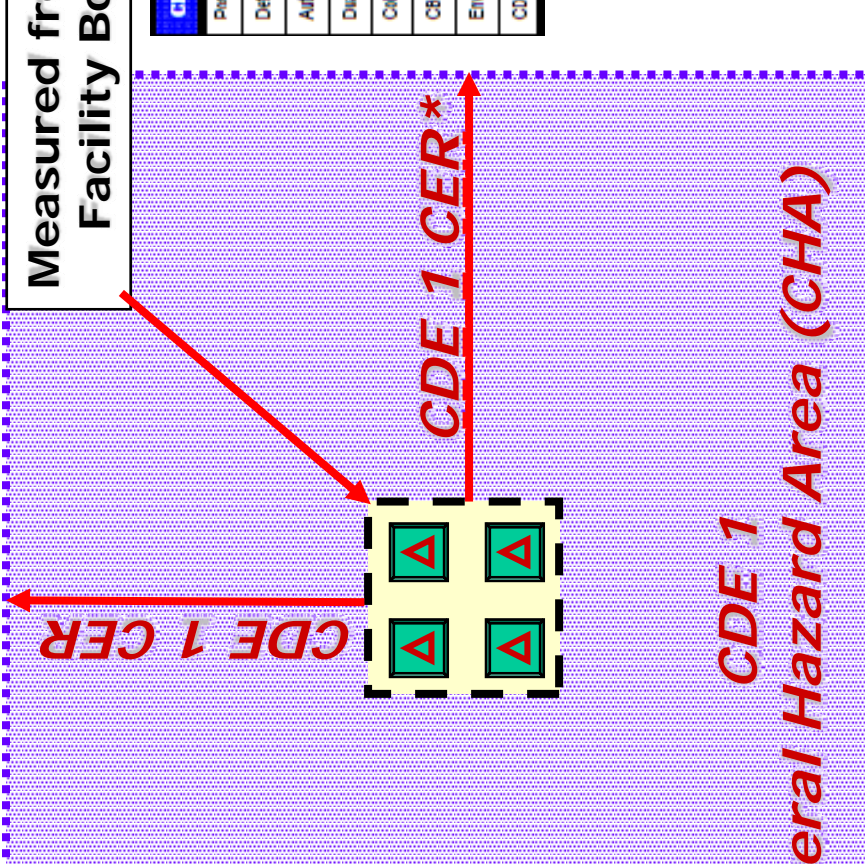
Casualty Estimation

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CDE Level 1

If Collateral Concern is Out of the CHA, CDE = Low



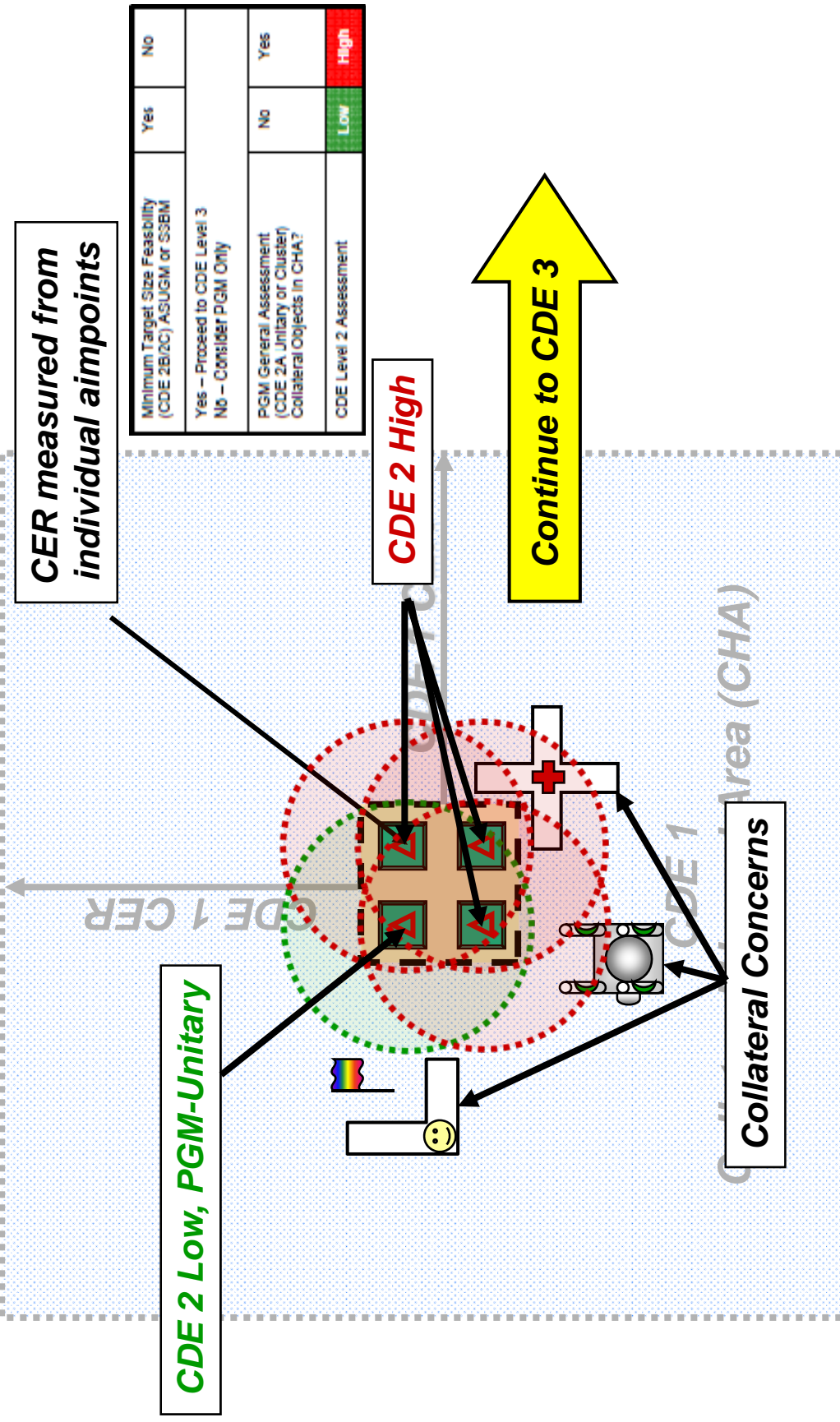
CDE Level 1		
Positive ID	Yes	No
Defined Facility Boundary	Yes	No
Authorized by RCE	Yes	No
Dual-Use Facility	No	Yes
Collateral Objects in CHA	No	Yes
CBR Plume Hazard	No	Yes
Environmental Hazard	No	Yes
CDE Level 1 Assessment	Low	High

Dominant Hazard = Fragmentation to Standing Personnel

*CER = Collateral Effects Radius
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CDE Level 2



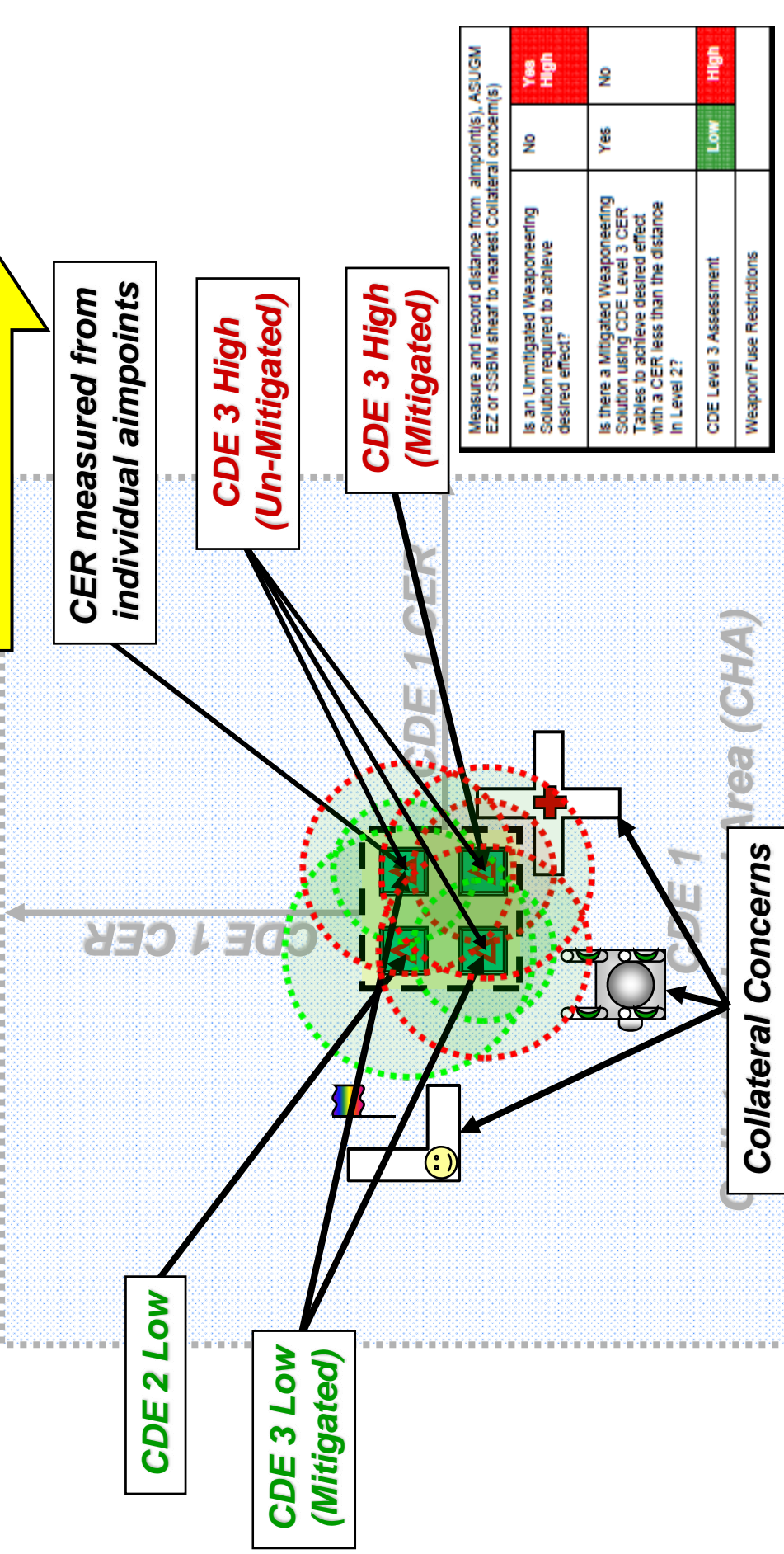
Dominant Hazard = Fragmentation to Standing Personnel

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CDE Level 3



Measure and record distance from aimpoint(s), ASUGM EZ or SSBM shear to nearest Collateral concern(s)	No	Yes	High
Is an Unmitigated Weaponneering Solution required to achieve desired effect?	Yes	No	
Is there a Mitigated Weaponneering Solution using CDE Level 3 CER Tables to achieve desired effect with a CER less than the distance in Level 2?	Low	High	
CDE Level 3 Assessment			
Weapon/Fuse Restrictions			

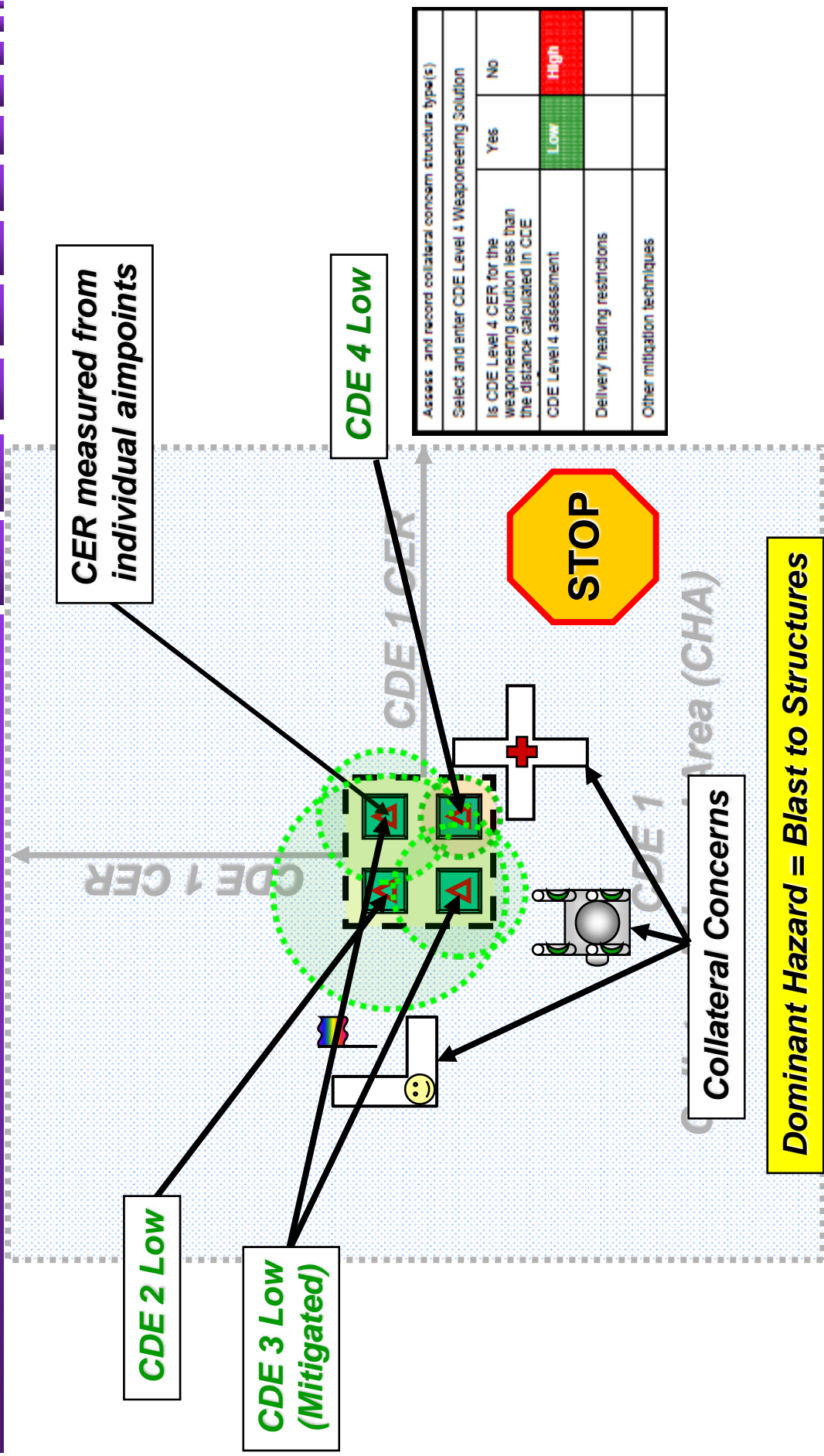
**Dominant Hazard = Fragmentation to Standing Personnel (Unmitigated)
Ejecta to Standing Personnel (Mitigated)**

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CDE Level 4



Assess and record collateral concern structure type(s)	
Select and enter CDE Level 4 Weaponizing Solution	
Is CDE Level 4 CER for the weaponizing solution less than the distance calculated in CDE	Yes No
CDE Level 4 assessment	Low High
Delivery heading restrictions	
Other mitigation techniques	

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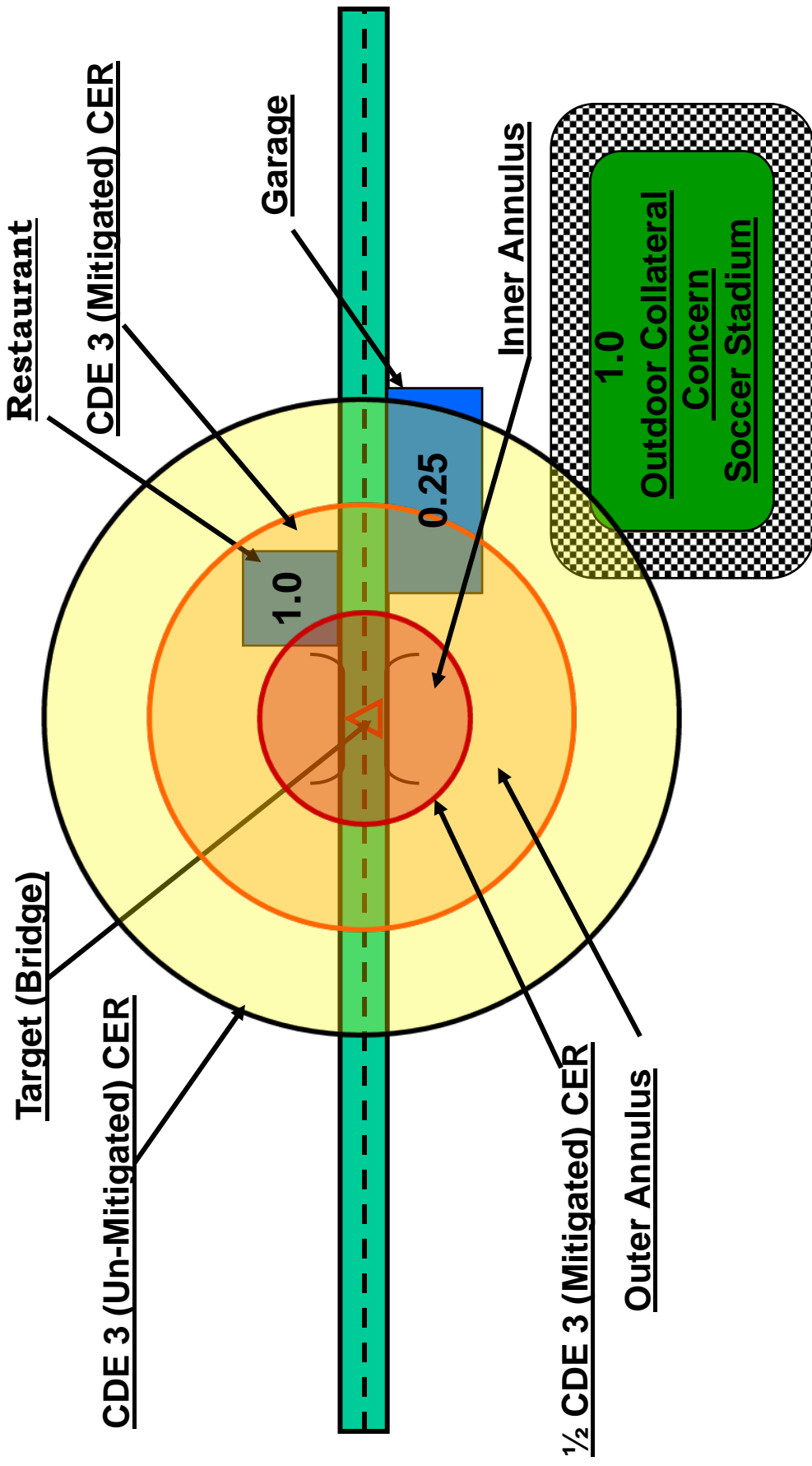
CDE Level 5



- Casualty Estimation is not an exact science—pattern of life assists
- There are no precise means to predict non-combatant demographics
- Combatant Commanders are responsible to develop estimated non-combatant demographic factors
 - Factors for Day and Night are based on socialized cultural norms for the applicable AOR/Country
- Casualty Estimates are computed based on three key factors
 - Affected Area of collateral concerns
 - Estimated Population Density of the effected collateral concerns
 - Casualty Factor (Multiplier)



CDE Level 5 (cont'd)





Population Density Tables

Valid for: (AOR/Country)

CDE Level 5 Population Density Reference Table

Collateral Structure Functionality	Estimated Population Density	
	Day	Night
Residential Structures		Episodic Events
Single Family Urban or Small Town, Upper and Middle Class		
Single Family Urban or Small Town, Lower Class and Slum		
Single Family Village or Rural Scattered, Lower Class		
Multi-Family Unit (Apartment, Condominium, Dormitory)		
Institutions/Public Service		
Religious		
Museum		
Library		
School		
College/University		
Hospital		
Public Service Outlet		
Store		
Restaurant		
Hotel/Motel		
Office Building/Industrial Facility		
Light Manufacturing		
Heavy Manufacturing		
Chemical, Refining, Cement		
Heat Processing (i.e. foundry)		
Craftworks		
Transportation Facility		
Station (Air, Rail, Bus, Subway, Gas)		
Transportation Repair (Garage, Hangar)		
Warehouse		
Recreation/Entertainment		
Indoor (Theater, Gymnasium)		
Outdoor Intensive (Stadium, Facetrack)		
Outdoor Extensive (Park, Zoo)		
Auction		
Indoor		
Outdoor/Intensive (Theater, Gymnasium, Casino)		

Notes:

- The table is based on population density per 1000 square feet.
- Combatant commands are responsible for tables for their assigned AOR. Combatant commands may use multiple tables to account for the disparity in population density throughout different regions of various countries.
- Day and night refer to socialized cultural norms for daytime/nighttime functional activities. Special consideration must be given to unique cultural practices and periodic events (i.e. religious holidays) that may influence the population density during daytime/nighttime periods.

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Sensitive Target Approval and Review Process (STAR)



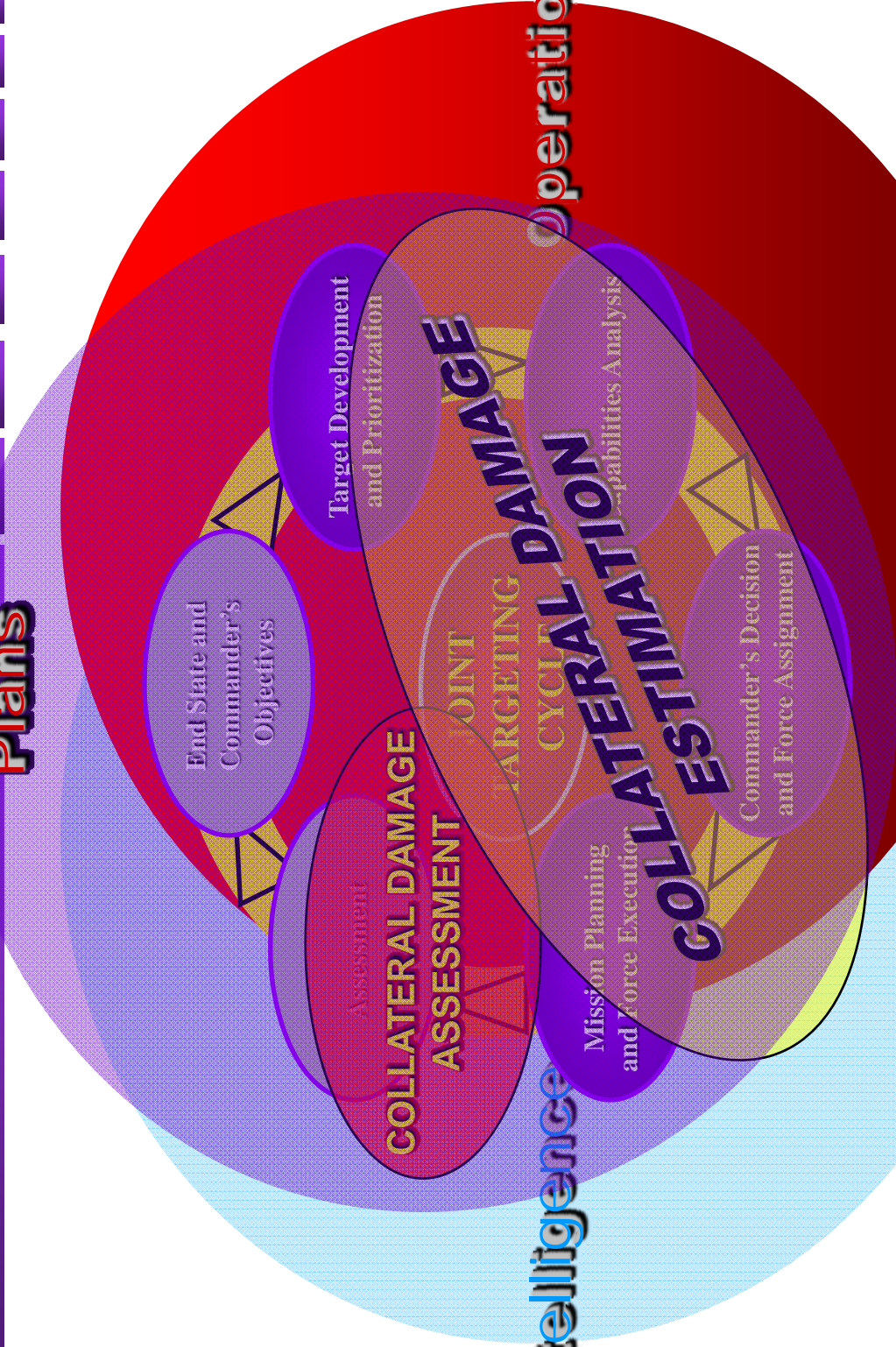
- The CDE Methodology (CDM) supports the identification of “*sensitive targets*”
- Sensitive Targets are those whose engagement present:
 - the potential for damage and/or injury to non-combatant property and persons,
 - potential political consequences,
 - or other significant effects estimated to exceed predetermined, situation-specific threshold criteria.
- Sensitive Targets are normally those assessed as CDE 5 High or those designated by the President or Secretary of Defense whose engagement present unacceptable strategic risk.
- Sensitive (STAR) Targets require approval by either President or Secretary of Defense.



CDE in the Joint Targeting Cycle



Plans



Methods to prevent civilian casualties permeates the cycle

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Mitigating Weapon Effects

Effect	Delay Fuzing	Proximity Fuzing	Shielding	Delivery Heading	Aimpoint Offset
Frag.	✓		✓	✓	✓
Blast	✓	✓	✓		✓
Debris		✓	✓		✓
Pen. & Cratering		✓			
Thermal	✓	✓	✓		
CBR		✓	✓		✓
Delivery Error		✓		✓	



Weapon Effects & Risks



CDE Level	Intended Use	Dominant Hazard	CERCHA Criteria and Weapon Restrictions
1	Initial assessment for all conventional weapons	Fragmentation versus personnel	Less than 10% probability of serious or lethal injury to standing personnel
2A	General assessment for unitary and cluster PGMs		
2B	Minimum target size assessment for ASUGM based on delivery platform	Delivery error only	Less than 10% probability of serious or lethal injury to standing personnel No low or high assessment – feasibility only
2C	Minimum target size assessment for SSBM based on weapon system		
3A	Assessment for each PGM warhead in an unmitigated case	Fragmentation versus personnel (or blast if no weapon fragments/debris exist)	Less than 10% probability of serious or lethal injury to standing personnel Fuze for surface or air detonation
3B	Assessment for each PGM warhead in a mitigated case	Crater ejecta/debris versus personnel (or blast if no ejecta/debris exist)	Less than 10% probability of serious or lethal injury to standing personnel Fuze for complete detonation below grade
	Assessment for each ASUGM based on delivery platform and warhead in an unmitigated case	Fragmentation versus personnel (or blast if no weapon fragments/debris exist)	Less than 10% probability of serious or lethal injury to standing personnel Fuze for surface or air detonation Heading restriction for multi-warhead delivery
3C	Assessment for each SSBM weapon system/shell/fuze for Observer Adjusted method		
	Assessment for each SSBM weapon system/shell/fuze for Predicted method		
4A	Refined assessment for each PGM warhead based on collateral structure type in a mitigated case	Blast versus structures leading to blunt trauma injury to personnel	Less than 1 % structural damage to collateral structure Delay fuze for complete detonation below grade or complete detonation within target structure Excludes cluster munitions Requires delivery heading restrictions
4B	Refined assessment for each ASUGM warhead and associated delivery platform based on nearest collateral structure in a mitigated case		
4C	Refined assessment for each SSBM weapon system/shell/fuze based on nearest collateral structure using Observer Adjusted method		
	Refined assessment for each SSBM weapon system/shell/fuze based on nearest collateral structure using Predicted method		

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CDE Program of Instruction

1. CDE Methodology Program of Instruction – Overview (1 hr)
2. CDE Methodology - Introduction (3 hrs)
3. Measuring and Mitigating Weapons' Effects (4 hrs)
4. CDE Level 1 – Target Validation / Initial Assessment (2 hrs)
5. CDE Level 2 – General / Target Size Assessment (2 hrs)
6. CDE Level 3 – Weaponneering Assessment (2 hrs)
7. CDE Level 4 – Refined Assessment (2 hrs)
8. CDE Level 5 – Casualty Estimation / Assessment (4 hrs)
9. CDE Automation – JADOCs CDE Wizard (4 hrs)
10. Practical Exercises (8 hrs)
11. CDE Methodology - Review (4 hrs)
12. Examination (4 hrs)



Resource Allocation – Find/Fix versus Engage



Better intelligence and proportional precision engagement allows us to better discriminate valid military objectives from civilian population

Find

20th Century

Fix



Engage

Find

21st Century

Fix

Engage





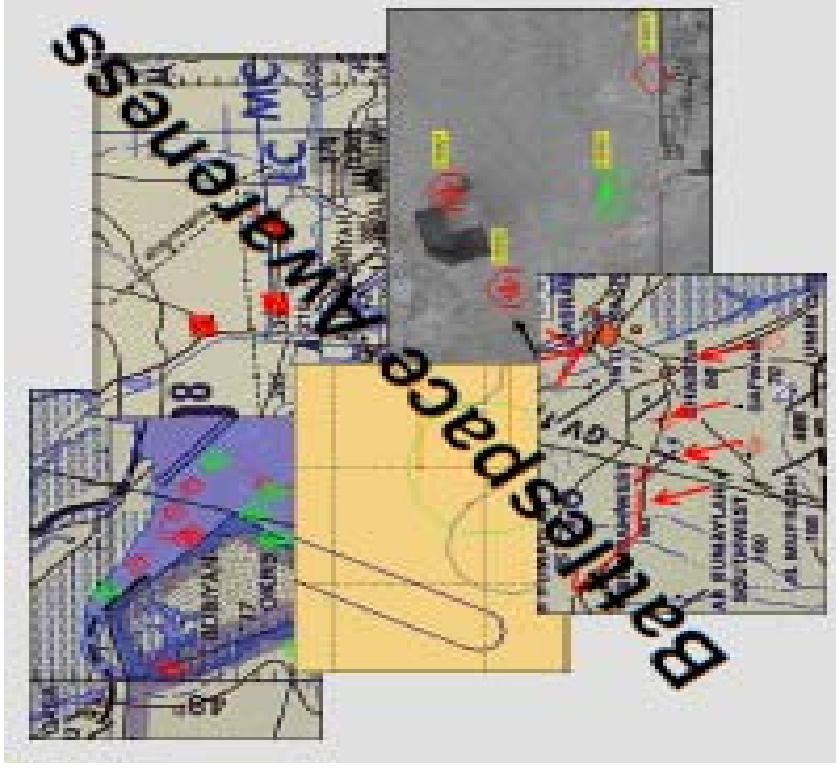
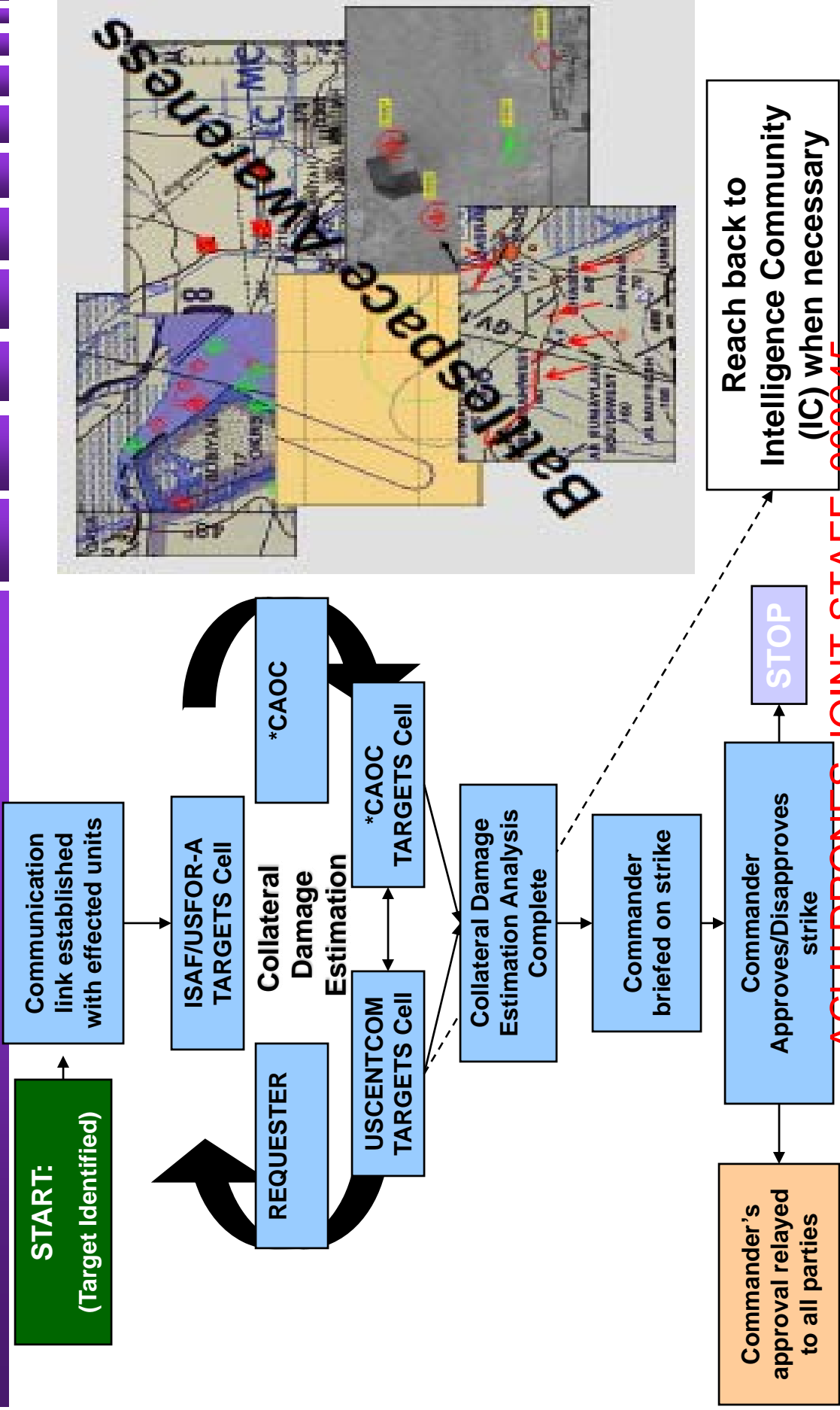
USCENTCOM Strike Approval Authorities



- Rules of Engagement give the appropriate permissions to approve strikes based on Collateral Damage Estimation (CDE) call and target type
- Approvals, Rules of Engagement, and Collateral Damage Estimation (CDE) for strikes in Afghanistan are driven by nationality of the selected strike platform:
 - United States Rules of Engagement apply to all U.S. assets when used to strike targets
 - Other Rules of Engagement apply to all non-US assets when used to strike targets



Collaborative CDE Process



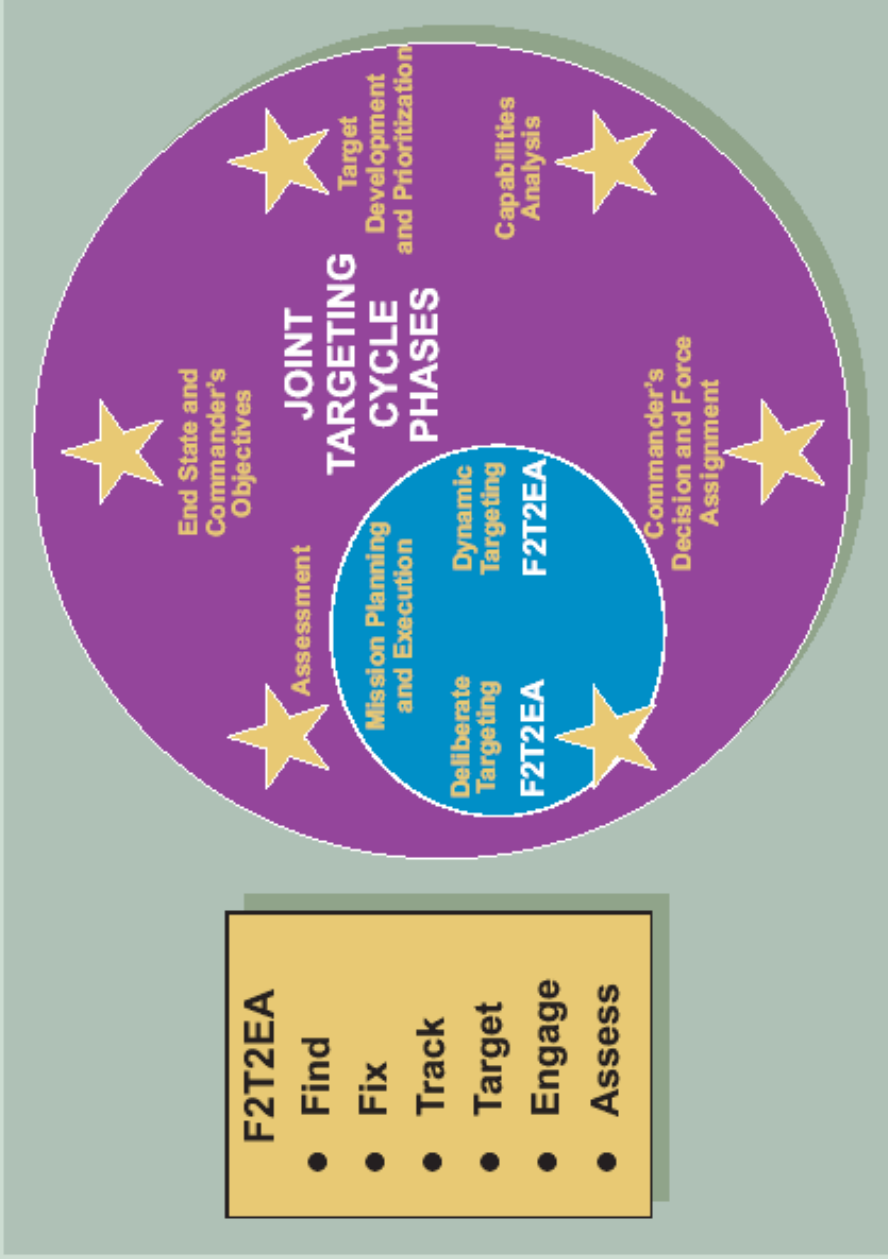
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Mission Planning and Force Execution

CORRELATION OF DELIBERATE AND DYNAMIC TARGETING DURING PHASE 5

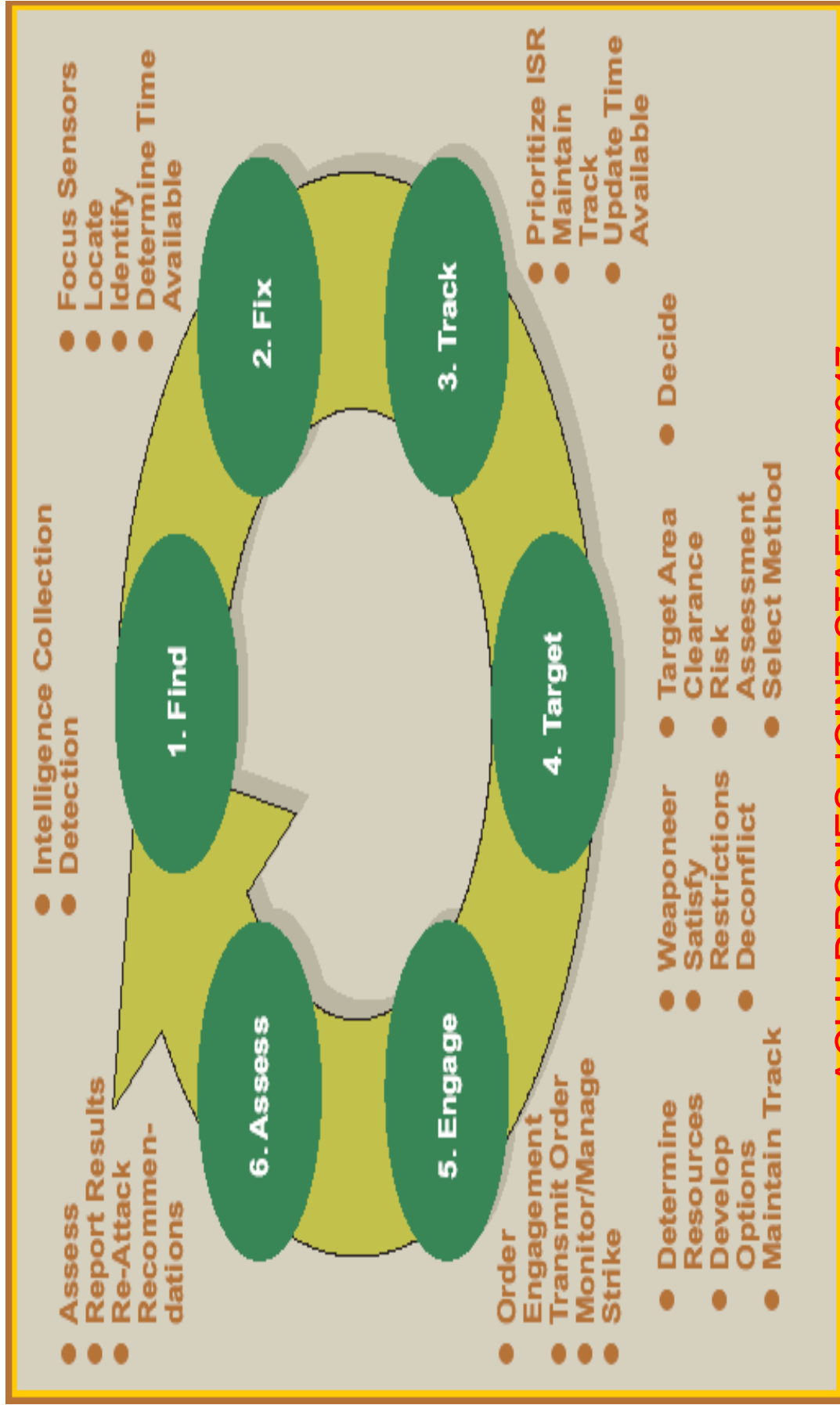
- F2T2EA**
- Find
 - Fix
 - Track
 - Target
 - Engage
 - Assess



ACLU DRONES JOINT STAFF 000046



Dynamic Targeting Cycle



ACLU DRONES JOINT STAFF 000047

Exhibit B



DEPARTMENT OF DEFENSE
OFFICE OF GENERAL COUNSEL
1600 DEFENSE PENTAGON
WASHINGTON, DC 20301-1600

OCT 01 2010

Jonathan Manes
National Security Project
American Civil Liberties Union Foundation
125 Broad Street, 18th Floor
New York, NY 10004

Dear Mr. Manes,

Please find enclosed the first release from the Department of Defense (DoD) pursuant to our agreement in the case of *ACLU v. DOJ, et al.*, No. 1:10-cv-00436-RMC (D.D.C.).

Your original request sought the release of “records relating to the use of unmanned aerial vehicles—commonly known as ‘drones’—for the purpose of targeting and killing individuals since September 11, 2001.” Through the Department of Justice, we have informed you that, generally speaking, weapons fired by drones are treated identically to weapons fired by other aircraft. DoD instead attempted to identify the unclassified information most likely to be of interest to the ACLU on this topic. DoD proposed to process one or more sets of unclassified briefing slides that describe the Joint Targeting Cycle including selection and prioritization criteria, no-strike and collateral damage estimation methodology, and the sensitive target approval and review (STAR) process. By agreement, the date of release was extended to October 4, 2010. The enclosed document contains 47 briefing slides from the Joint Staff regarding the agreed upon information.

These slides would not be responsive to your original FOIA request, because they are not specific to “drone strikes” as defined in your request. These slides are being produced solely pursuant to our negotiated production agreement.

DoD will continue to conduct the remaining searches as detailed in our agreement.

Sincerely,

A handwritten signature in black ink, appearing to read "Mark H. Herrington", written over a horizontal line.

Mark H. Herrington
Associate Deputy General Counsel
Office of Litigation Counsel

