



CHAIRMAN OF THE JOINT CHIEFS OF STAFF INSTRUCTION

LC
DISTRIBUTION: A, B, C, JS-LAN, S

CJCSI 5810.01D
30 April 2010

IMPLEMENTATION OF THE DOD LAW OF WAR PROGRAM

Reference(s):

- a. DOD Directive 2311.01E, 9 May 2006, "DoD Law of War Program"
- b. DOD Directive 7730.47, 15 October 1996, "Defense Incident-Based Reporting System (DIBRS)"
- c. DOD Instruction 6055.07, 3 October 2000, "Accident Investigation, Reporting, and Record Keeping"

1. Purpose. This instruction implements the requirements provided in reference (a) that are assigned to the Chairman of the Joint Chiefs of Staff.
2. Cancellation. CJCSI 5810.01C, 31 January 2007 is canceled.
3. Applicability. This instruction applies to all personnel assigned or attached to the Joint Staff, and to the combatant commands (including its assigned or attached subordinate units), including civilians, contractors, and subcontractors assigned to or accompanying the force.
4. Policy. It is DOD policy that:
 - a. Members of the DOD Components comply with the law of war during all armed conflicts, however such conflicts are characterized, and in all other military operations.
 - b. The law of war obligations of the United States are observed and enforced by the DOD components and DOD contractors assigned to or accompanying deployed armed forces.
 - c. An effective program to prevent violations of the law of war is implemented by DOD components.

DRONES / JS / 000048

d. All reportable incidents committed by or against U.S. personnel, enemy persons, or any other individual are reported promptly, investigated thoroughly, and, where appropriate, remedied by corrective action.

e. All reportable incidents are reported through command channels for ultimate transmission to appropriate U.S. departments and agencies, allied governments, or other appropriate authorities. Once it has been determined that U.S. persons are not involved in a reportable incident, further U.S. investigation shall be continued only at the direction of the appropriate combatant commander. The on-scene commander shall ensure that measures are taken to preserve evidence of a reportable incident pending transfer to U.S., allied, or other appropriate authorities.

5. Definitions.

a. Law of War. That part of international law that regulates the conduct of armed hostilities. It is often called the “law of armed conflict.”¹ The law of war encompasses all international law for the conduct of hostilities, which is binding on the United States or its individual citizens, including treaties and international agreements to which the United States is a party, and applicable customary international law.

b. Reportable Incident. A possible, suspected, or alleged violation of the law of war for which there is credible information, or conduct during military operations other than war that would constitute a violation of the law of war if it occurred during an armed conflict.

6. Responsibilities.

a. The Director for Intelligence (J-2) will establish priority intelligence requirements (PIR) for all law of war violations alleged to have been committed against captured or detained U.S. persons, committed by or against U.S. allies during a conflict to which the United States is a party, or committed by or against other persons during a conflict to which the United States is not a party but is involved (such as peacekeeping operations). The PIR will be listed as part of Appendix 1 to Annex B (Intelligence) to all operation plans.

b. The Director for Operations (J-3) will:

(1) Ensure that the Battle Captain, National Joint Operations/Intelligence Center (NJOIC), forwards all initial incident reports of reportable incidents submitted by the combatant commands to appropriate Joint Staff and Office of the Secretary of Defense principals.

¹ DOD does not use the term “international humanitarian law.”

(2) Ensure the Joint Operations Planning and Execution System includes appropriate guidance to ensure review of plans and rules of engagement for compliance with the law of war.

(3) Review all requests from combatant commanders for deployment orders and rules of engagement to ensure compliance with domestic and international law, including the law of war, and this instruction.

c. The Director for Strategic Plans and Policy (J-5) will ensure the Joint Strategic Capabilities Plan includes appropriate guidance to ensure compliance with the law of war, and this instruction.

d. The Director for Operational Plans and Joint Force Development (J-7) will:

(1) Ensure the Joint Planning and Execution Community, in accordance with CJCSI 3141.01 (series), is provided Campaign and Joint Strategic Capabilities Plan-tasks to review for compliance with domestic and international law, including the law of war, and this instruction.

(2) Ensure the appropriate exercises in the Chairman's Exercise Program include law of war scenarios to improve evaluation, response, and reporting procedures, and that combatant commanders are directed to include these scenarios in appropriate Joint Exercise Program events.

e. The Legal Counsel (LC) to the Chairman of the Joint Chiefs of Staff (CJCS) will:

(1) Serve as the Joint Staff primary point of contact for the DOD Law of War Program.

(2) Review all plans, policies, directives, orders, and rules of engagement prior to being issued by the Joint Staff and/or after being submitted by combatant commanders to ensure compliance with domestic and international law, including the law of war, and this instruction.

(3) Provide a representative to the DOD Law of War Working Group supervised by the DOD General Counsel pursuant to reference (a).

f. Combatant commanders will:

(1) Institute a comprehensive program within the command to prevent law of war violations.

(a) Ensure that law of war training and dissemination programs of the command (including its assigned or attached subordinate units) are

consistent with domestic and international law, including the law of war, and this instruction.

(b) Include specific law of war scenarios in exercises to improve lawful implementation, and in cases of violations, proper reporting procedures.

(c) Ensure mobilization planning includes a sufficient number of legal advisers and investigative personnel to support the commander's mission.

(2) Integrate legal advisers into planning sessions and conferences for military operations and exercises to enable them to provide advice concerning domestic and international law, including the law of war, compliance.

(3) Ensure that the command's (including its assigned or attached subordinate units) plans, policies, directives, orders, training programs, and rules of engagement are subject to periodic review, including by its legal advisers, particularly in light of any violations reported, for compliance with domestic and international law, including the law of war, and this instruction.

(4) In coordination with the Military Departments, issue directives to ensure that reportable incidents involving U.S. or enemy persons are reported promptly to appropriate authorities and are appropriately investigated, and that the results of such investigations are promptly forwarded to the applicable Military Department or other appropriate authorities.

(a) Ensure that all personnel assigned or attached to the combatant command (including its assigned or attached subordinate units), including civilians, contractors, and subcontractors assigned to or accompanying the force, report reportable incidents through their chain of command. The directives will indicate that contracts shall require contractor employees to report reportable incidents to the commander of the unit they are accompanying or the installation to which they are assigned, or to the combatant commander. The directives will indicate that such reports may be made through other channels, such as the military police, a judge advocate, or an inspector general, but that reports made to officials other than those in the chain of command shall be forwarded to the chain of command.

(b) Direct the commander of any unit that obtains information about a reportable incident to report the incident immediately through the applicable combatant command and Military Department chains of command. Reporting requirements are concurrent. The initial report will be made through the most expeditious means available.

(c) Provide the Joint Staff/NJOIC with initial incident reports of reportable incidents committed by or against members of (or persons accompanying or serving with) U.S. Armed Forces or against their property.

(d) Provide the appropriate Military Department Secretary(ies), or their designated representative(s), a copy of the completed report of investigation of reportable incidents committed by or against members of (or persons accompanying or serving with) U.S. Armed Forces or against their property.

(e) With respect to reportable incidents alleged to have been committed by command personnel (including its assigned or attached subordinate units), including civilians, contractors, and subcontractors assigned to or accompanying the force, provide for the central collection of reports and investigations of such incidents.

1. Upon obtaining information about a reportable incident alleged to have been committed by its command personnel, the commander of the unit shall conduct a preliminary inquiry.

2. If it is determined that U.S. personnel may be involved in or responsible for a reportable incident, the commander shall initiate a formal investigation by command investigation in accordance with Service regulations, and shall at the same time notify the cognizant military criminal investigative organization (MCIO). The MCIO will be responsible for subsequent criminal incident reporting, as appropriate, under the provisions of reference (b) and service directives.

3. If warranted, the commander of the unit or superior commanders, as appropriate, shall take action in response to the results of the investigation(s), or refer the matter to a commander who can take action.

4. The requirements of reference (c) must also be met for all incidents falling or suspected to fall within the definition of “friendly fire” that may overlap with a possible or suspected law of war violation.

(f) With respect to reportable incidents alleged to have been committed by enemy personnel against U.S. personnel, provide for the central collection of reports and investigations of such incidents.

1. Designate the command legal adviser to supervise the administration of those aspects of the Law of War Program dealing with possible, suspected, or alleged enemy violations of the law of war.

2. Provide specific guidance on the collection and preservation of evidence of reportable incidents since such evidence may serve as the basis for a possible future trial of accused war criminals.

30 April 2010

3. Provide the Secretary of Army, in his or her capacity as a DOD Executive Agent under reference (a), a copy of the completed report of investigation of a reportable incident committed against U.S. personnel.

(g) With respect to a reportable incident not involving U.S. or enemy persons, develop appropriate plans, policies, and directives to:

1. Conduct a preliminary inquiry to determine U.S. personnel involvement. Upon determination that U.S. personnel are not involved in a reportable incident, further U.S. investigation will be conducted at the discretion of the combatant commander.

2. Cooperate with appropriate allied authorities.

3. Report through appropriate command channels to appropriate U.S. departments and agencies, allied governments, or other appropriate authorities.

4. Preserve evidence of reportable incidents pending turnover to other U.S. departments and agencies, allied governments, or other appropriate authorities.

7. Summary of Changes. This revision requires combatant commands to provide the NJOIC with initial incident reports of reportable incidents of law of war violations and to provide a copy of the completed investigations to the Services, assigns the LC to the CJCS to serve as the Joint Staff primary point of contact for the DOD Law of War Program, and makes other updates.

8. Releasability. This instruction is approved for public release; distribution is unlimited. DOD components, other Federal agencies, and the public may obtain copies of this instruction through the Internet from the CJCS Directives Home Page -- http://www.dtic.mil/cjcs_directives.

9. Effective Date. This instruction is effective upon receipt.

For the Chairman of the Joint Chiefs of Staff:



LLOYD J. AUSTIN III
Lieutenant General, USA
Director, Joint Staff

DISTRIBUTION

Distribution A, B, and C, JS-LAN, S, plus the following:

| | <u>Copies</u> |
|---|---------------|
| Secretary of State..... | 2 |
| Secretary of Defense..... | 2 |
| The Attorney General | 2 |
| Secretary of Homeland Security | 2 |
| Director of National Intelligence | 2 |
| Director of Central Intelligence | 2 |
| Air Education and Training Command..... | 1 |
| Armed Forces Staff College..... | 1 |
| Army Command and General Staff College..... | 1 |
| Army War College..... | 1 |
| National Defense Intelligence College..... | 1 |
| Marine Corps Development and Education Command..... | 1 |
| National Defense University..... | 1 |
| Naval Post Graduate School..... | 1 |
| Naval War College..... | 1 |

(INTENTIONALLY BLANK)