



DoD DIRECTIVE 2311.01

DoD LAW OF WAR PROGRAM

Originating Component: Office of the General Counsel of the Department of Defense

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Approved by: David L. Norquist, Deputy Secretary of Defense

Purpose: This issuance:

- Establishes policy and assigns responsibilities for the DoD Law of War Program.
- Establishes the DoD Law of War Working Group to advise the General Counsel of the Department of Defense (GC DoD) on law of war matters to develop and coordinate on law of war initiatives and issues.

TABLE OF CONTENTS

SECTION 1: GENERAL ISSUANCE INFORMATION	3
1.1. Applicability.	3
1.2. Policy.	3
1.3. Information Collections.	4
1.4. Issuances That Support DoD Compliance with the Law of War.	4
a. Review of the Legality of Weapons.	4
b. Detention and Interrogation Policies.	4
c. Dissemination of Information About the Law of War.	4
d. Identification Cards Required by the Geneva Conventions.	5
SECTION 2: RESPONSIBILITIES	6
2.1. GC DoD.	6
2.2. Under Secretary of Defense for Policy.	6
2.3. Director, Defense Intelligence Agency.	6
2.4. Assistant Secretary of Defense for Legislative Affairs.	7
2.5. Assistant to the Secretary of Defense for Public Affairs.	7
2.6. DoD Component Heads.	7
2.7. Secretaries of the Military Departments.	8
2.8. Chairman of the Joint Chiefs of Staff.	9
2.9. Combatant Commanders.	9
SECTION 3: DOD LAW OF WAR WORKING GROUP	11
3.1. General.	11
3.2. Membership.	11
SECTION 4: REPORTING AND INVESTIGATION REQUIREMENTS	12
4.1. Reports of Incidents.	12
4.2. Unit Commanders.	12
4.3. Combatant Commander Reporting.	13
GLOSSARY	15
G.1. Acronyms.	15
G.2. Definitions.	15
REFERENCES	17

SECTION 1: GENERAL ISSUANCE INFORMATION

1.1. APPLICABILITY.

This issuance applies to the Office of the Secretary of Defense, the Military Departments, the Office of the Chairman of the Joint Chiefs of Staff and the Joint Staff, the Combatant Commands, the Office of the Inspector General of the Department of Defense, the Defense Agencies, the DoD Field Activities, and all other organizational entities within the DoD (referred to collectively in this issuance as the “DoD Components”).

1.2. POLICY.

It is DoD policy that:

a. Members of the DoD Components comply with the law of war during all armed conflicts, however characterized. In all other military operations, members of the DoD Components will continue to act consistent with the law of war’s fundamental principles and rules, which include those in Common Article 3 of the 1949 Geneva Conventions and the principles of military necessity, humanity, distinction, proportionality, and honor.

b. The law of war obligations of the United States are observed and enforced by the DoD Components and contractors or subcontractors assigned to or accompanying U.S. Armed Forces.

c. The DoD Components implement effective programs to prevent violations of the law of war, including:

(1) Law of war dissemination and periodic training.

(2) Qualified legal advisers advising on the law of war.

(3) Instructions, regulations, and procedures to implement law of war standards and establish processes for ensuring compliance.

(4) Reporting of incidents to ensure that commanders can exercise their responsibilities to implement and enforce the law of war. All reportable incidents, as defined in this issuance, are reported promptly through the chain of command in accordance with the requirements of Section 4.

(5) Assessments, investigations, inquiries, or other reviews of incidents needed to determine appropriate responses, which may include:

(a) Additional review or investigation, such as referral to a responsible Defense Criminal Investigative Organization or inspector general’s office of competent jurisdiction.

(b) Transmission to relevant U.S. departments and agencies, partner governments, or other authorities with responsibilities with respect to the reportable incident.

(c) Accountability or improvement actions.

(6) Appropriate actions to ensure accountability and to improve efforts to prevent violations of the law of war in U.S. military operations. Such actions may include:

(a) Providing additional training.

(b) Taking adverse or corrective administrative action, including non-judicial punishment.

(c) Instituting criminal proceedings.

(d) Revising or issuing policies, regulations, instructions, procedures, training documents, or other guidance to incorporate lessons learned.

d. The intended acquisition, procurement, or modification of weapons or weapon systems is reviewed for consistency with the law of war.

1.3. INFORMATION COLLECTIONS.

The reports of reportable incidents referred to throughout this issuance do not require licensing with a report control symbol in accordance with Paragraphs 1.b.(4) and 1.b.(8) of Enclosure 3 of Volume 1 of DoD Manual 8910.01.

1.4. ISSUANCES THAT SUPPORT DOD COMPLIANCE WITH THE LAW OF WAR.

The following DoD issuances also provide requirements that support DoD compliance with the law of war.

a. Review of the Legality of Weapons.

DoD Directives (DoDDs) 5000.01, 3000.03E, and 3000.09 impose requirements to review weapons to ensure DoD activities will be consistent with the law of war.

b. Detention and Interrogation Policies.

DoDDs 2310.01E and 3115.09 provide policies and responsibilities to ensure compliance with law of war requirements with respect to the treatment of detainees.

c. Dissemination of Information About the Law of War.

The DoD Law of War Manual provides information about the law of war to DoD personnel responsible for implementing the law of war and executing military operations.

d. Identification Cards Required by the Geneva Conventions.

DoD Instruction (DoDI) 1000.01 provides procedures for DoD identification cards issued to meet certain requirements of the Geneva Conventions.

SECTION 2: RESPONSIBILITIES

2.1. GC DOD.

The GC DoD:

- a. Exercises primary staff responsibility for the DoD Law of War Program.
- b. Provides the DoD Components with overall legal guidance on the DoD Law of War Program, including:
 - (1) Review of policies developed under or relating to the program and resolution of disagreements on questions of law.
 - (2) Coordination with other U.S. departments and agencies on special legislative proposals and other matters relating to the law of war.
- c. Promulgates updates to the DoD Law of War Manual developed through the DoD Law of War Working Group.
- d. Supervises and assigns a chair for the DoD Law of War Working Group.
- e. Coordinates and monitors DoD Components', including Military Departments', respective plans and policies for training and education in the law of war.
- f. Reviews appropriate plans, policies, directives, and rules of engagement, as necessary, ensuring their consistency with this issuance and the law of war.
- g. Leads DoD strategic efforts to engage with external actors on the legality of DoD military operations and on the clarification and potential development of the law of war.

2.2. UNDER SECRETARY OF DEFENSE FOR POLICY.

The Under Secretary of Defense for Policy:

- a. Advises the Secretary of Defense on the policy implications for major DoD policies and plans of potential U.S. decisions to ratify new law of war treaties.
- b. Advises the Secretary of Defense on policy issues relating to confidential communications from the International Committee of the Red Cross.

2.3. DIRECTOR, DEFENSE INTELLIGENCE AGENCY.

Under the authority, direction, and control of the Under Secretary of Defense for Intelligence and Security, and in addition to the responsibilities in Paragraph 2.6., the Director, Defense Intelligence Agency:

a. Provides information to the Combatant Commanders, consistent with their respective responsibilities in Paragraph 2.9., concerning reportable incidents:

(1) Involving alleged violations of the law of war committed by persons outside of U.S. control, such as reportable incidents perpetrated against U.S. persons captured or detained by hostile groups.

(2) Committed by or against U.S. coalition partners.

(3) Perpetrated by other actors in theaters of U.S. military operations.

b. Provides a repository for the central collection of defense intelligence data concerning reportable incidents.

c. Assists the DoD Components in declassifying or sanitizing information for transmission, in accordance with Paragraph 1.2.c.(5)(b), to relevant U.S. departments and agencies, partner governments, or other authorities with responsibilities with respect to the reportable incident.

2.4. ASSISTANT SECRETARY OF DEFENSE FOR LEGISLATIVE AFFAIRS.

The Assistant Secretary of Defense for Legislative Affairs serves as the DoD liaison between the DoD and Congress on all matters related to the DoD Law of War Program and provides legislative affairs guidance, as appropriate, to the DoD Components.

2.5. ASSISTANT TO THE SECRETARY OF DEFENSE FOR PUBLIC AFFAIRS.

The Assistant to the Secretary of Defense for Public Affairs monitors the public affairs aspects of the DoD Law of War Program and provides public affairs guidance, as appropriate, to the DoD Components, in accordance with DoDD 5122.05.

2.6. DOD COMPONENT HEADS.

The DoD Component heads:

a. Comply with the policies contained in this issuance.

b. Implement effective programs to prevent violations of the law of war by members of their component, including programs for law of war dissemination and periodic training commensurate with each individual's duties and responsibilities.

c. Make available qualified legal advisers to appropriate levels of command to advise on law of war compliance during planning and execution of exercises and operations; and to help implement programs to comply with the reporting requirements established in Section 4.

d. Ensure that contract work statements for contractors and their subcontractors comply with the policies contained in this issuance and DoDI 3020.41, and require contractors that engage in

activities governed by the law of war to implement effective programs to prevent violations of the law of war by their employees and subcontractors, including programs for law of war dissemination and periodic training commensurate with each individual's duties and responsibilities.

e. Ensure that the intended acquisition, procurement, or modification of weapons or weapon systems by the component is reviewed for consistency with the law of war.

2.7. SECRETARIES OF THE MILITARY DEPARTMENTS.

In addition to the responsibilities in Paragraph 2.6., the Secretaries of the Military Departments develop internal policies and procedures consistent with this issuance in support of the DoD Law of War Program to:

a. Implement effective programs within their respective Military Departments to prevent violations of the law of war.

b. Provide directives, publications, instructions, and periodic training so the principles and rules of the law of war will be known to members of their respective Military Department. Such training will ensure that:

(1) All military members of their respective Military Department know the fundamental precepts of the law of war and that all members have knowledge of the law commensurate with each individual's duties and responsibilities. This includes relevant standards applicable in international armed conflict and belligerent occupation.

(2) Information about the law of war in such directives, publications, instructions, and training is consistent with information in the DoD Law of War Manual.

c. Where appropriate, provide for disposition, pursuant to Sections 801-946 of Title 10, United States Code (U.S.C.), also known as the "Uniform Code of Military Justice," of cases involving alleged violations of the law of war committed by persons who are subject to court-martial jurisdiction and who are under the responsibility of their respective Military Department.

d. Forward relevant information to the Combatant Commander or DoD Component heads concerned regarding:

(1) The results of assessments, inquiries, investigations, or other reviews of reportable incidents conducted by their respective Military Department.

(2) Disposition actions taken by their respective Military Department concerning reportable incidents.

e. Forward reports of reportable incidents involving allegations of war crimes committed by U.S. civilians, contractors, or subcontractors assigned to or accompanying military forces of their respective Military Department, or their dependents, to the GC DoD, for review for potential

prosecutorial action under the criminal jurisdiction of the United States, pursuant to Sections 2441, 2442, or 3261 of Title 18, U.S.C., or other provisions of U.S. law.

2.8. CHAIRMAN OF THE JOINT CHIEFS OF STAFF.

In addition to the responsibilities in Paragraph 2.6., the Chairman of the Joint Chiefs of Staff:

- a. Provides appropriate guidance to the Combatant Commanders, consistent with Section 163 of Title 10, U.S.C. This guidance will include direction on the collection and investigation of reportable incidents.
- b. Designates a primary point of contact in his or her organization to ensure the implementation of the Chairman's responsibilities under this issuance.
- c. Reviews appropriate plans, policies, directives, joint doctrine, and rules of engagement, as necessary, ensuring their consistency with this issuance and the law of war.
- d. Helps ensure that plans, policies, directives, and rules of engagement issued by the Combatant Commanders are consistent with this issuance and the law of war.

2.9. COMBATANT COMMANDERS.

In addition to the responsibilities in Paragraph 2.6., the Combatant Commanders:

- a. Implement effective programs within their respective commands to prevent violations of the law of war and ensure that their commands' plans, policies, directives, and rules of engagement are subject to periodic review and evaluation, particularly in light of any violations reported.

- b. Implement the requirements of Section 4 and guidance from the Chairman of the Joint Chiefs of Staff on the reporting, investigation or review, and collection of reportable incidents. This includes:

- (1) In accordance with Paragraph 4.2.b., determining whether, how, and to what extent a reportable incident not involving U.S. persons will be investigated or reviewed by U.S. forces. The Combatant Commander is to ensure that information regarding such reportable incidents is prepared for appropriate transmission to foreign governments with responsibilities with respect to the reportable incident. Depending on the circumstances, appropriate transmission may include direct, military-to-military communication or coordination with or transmission by the Department of State or other U.S. Government departments or agencies with relationships with relevant authorities in the foreign government.

- (2) In accordance with Paragraph 4.3.b., providing for the central collection of relevant information about reportable incidents involving alleged violations of the law of war committed by or against members of their respective Combatant Commands, or persons assigned to or accompanying them, or reported in accordance with Paragraph 4.2.b.

(3) Forwarding reports to the Secretary of Defense, the Chairman of the Joint Chiefs of Staff, the Commander of U.S. Special Operations Command, if applicable, and relevant Secretaries of the Military Departments in accordance with Paragraph 4.3.

c. Direct the command staff judge advocate to advise on the implementation of this program, including advising command staff responsible for investigations or operational reporting on the implementation of those aspects of this program dealing with reportable incidents.

d. Ensure all plans, policies, directives, and rules of engagement issued by the command and its subordinate commands and components are reviewed by legal advisers to ensure their consistency with this issuance and the law of war.

e. Ensure that law of war dissemination and periodic training programs of subordinate commands and components are consistent with this issuance and the law of war.

f. Report to the GC DoD any assistance, in accordance with DoDI 5525.11, to the Department of Justice on specific cases occurring within the Commander of the Combatant Command's area of responsibility that may lead to arrest or criminal prosecution pursuant to Section 3261 of Title 18, U.S.C., also known as the "Military Extraterritorial Jurisdiction Act," involving alleged violations of the law of war.

SECTION 3: DOD LAW OF WAR WORKING GROUP

3.1. GENERAL.

The DoD Law of War Working Group will:

- a. Develop and coordinate law of war initiatives and issues, such as analysis regarding the legality of new means or methods of warfare under consideration by DoD components.
- b. Support the research, preparation, review, and updating of the DoD Law of War Manual. To ensure consistency in legal interpretation, the DoD Law of War Manual serves as the authoritative statement on the law of war within the DoD.
- c. Manage other law of war matters as they arise.
- d. Advise the GC DoD on legal matters covered by this issuance.

3.2. MEMBERSHIP.

In addition to representatives of the GC DoD, the DoD Law of War Working Group will consist of representatives, at the election by each, of the:

- a. General Counsel of each Military Department.
- b. Counsel for the Commandant of the Marine Corps.
- c. Judge Advocate General of each Military Department.
- d. Staff Judge Advocate to the Commandant of the Marine Corps.
- e. Legal Counsel to the Chairman of the Joint Chiefs of Staff.

SECTION 4: REPORTING AND INVESTIGATION REQUIREMENTS

4.1. REPORTS OF INCIDENTS.

a. All military and U.S. civilian employees, contractor personnel, and subcontractors assigned to or accompanying a DoD Component must report through their chain of command all reportable incidents, including those involving allegations of non-DoD personnel having violated the law of war.

b. Contracts must 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 appropriate Combatant Commander.

c. Reports of incidents may be made through other channels, such as the military police, a judge advocate, or an inspector general. Reports made to officials other than those specified in this paragraph will, nonetheless, be accepted and immediately forwarded through the recipient's chain of command. Reports will also be forwarded to the chain of command of the subject of the allegation, where appropriate.

4.2. UNIT COMMANDERS.

The commander of any unit that obtains information about an alleged violation of the law of war must assess whether the allegation is based on credible information and thus constitutes a reportable incident. The unit commander must immediately report reportable incidents, by operational incident reporting procedures or other expeditious means, through the chain of command to the Combatant Commander.

a. The unit commander or higher authorities receiving information about a reportable incident will, when warranted, take any of the following actions:

(1) Subject to operational constraints, take appropriate measures to preserve on-scene evidence of reportable incidents pending a decision by higher authorities on whether to conduct an assessment, investigation, inquiry, or other review.

(2) Direct an assessment, investigation, inquiry, or other review in accordance with applicable procedures, including Paragraph 4.2.b. An assessment, investigation, inquiry, or other review under this paragraph will be properly scoped to de-conflict with any investigation initiated by a responsible defense criminal investigative organization.

(3) In accordance with DoDI 5505.03 and other applicable procedures, refer information about alleged war crimes to, or request an investigation by, a responsible Defense Criminal Investigative Organization.

(4) In addition to the report required by this issuance, comply with other applicable reporting requirements and procedures, which potentially could include:

(a) Requirements in DoDI 6055.07 concerning all reportable incidents that constitute a “friendly fire” incident or other mishap addressed by DoDI 6055.07.

(b) Requirements in DoDD 3115.09 to report “any suspected or alleged violation of DoD policy, procedures, or applicable law relating to intelligence interrogations, detainee debriefings, or tactical questioning for which there is credible information.”

(c) Requirements in DoDD 5148.13 concerning all reportable incidents that constitute a “questionable intelligence activity” or “significant or highly sensitive matter” reported, in accordance with DoDD 5148.13.

(d) Policies and procedures relating to the reporting and assessment of civilian casualties.

(e) Military Department, Military Service, or Combatant Command incident reporting requirements.

b. If the unit commander or a superior commander determines that U.S. persons are not involved in a reportable incident, a U.S. investigation or review will be continued only at the direction of the appropriate Combatant Commander. However, such incidents must be reported in accordance with this issuance. In particular, incidents that involve allegations of partner forces violating the law of war will be reported with a view to ensuring compliance with the requirements of Section 362 of Title 10, U.S.C., and associated DoD policies.

c. If the unit commander or a superior commander determines that an allegation is not supported by credible information, the allegation will nonetheless be forwarded through the chain of command to the appropriate Combatant Commander with this determination. The Combatant Commander may provide additional guidance on making and forwarding such determinations, including regarding the timing and manner of doing so.

4.3. COMBATANT COMMANDER REPORTING.

The Combatant Commander must report, by operational incident reporting procedures or other expeditious means, all reportable incidents to the Chairman of the Joint Chiefs of Staff, the Secretary of Defense, the Commander of United States Special Operations Command, if applicable, and relevant Secretaries of the Military Departments.

a. The Chairman of the Joint Chiefs of Staff will forward reports of reportable incidents to the GC DoD; Assistant to the Secretary of Defense for Public Affairs; Under Secretary of Defense Policy; Under Secretary of Defense for Intelligence and Security; Assistant Secretary of Defense for Legislative Affairs; and Inspector General of the Department of Defense.

b. The Combatant Commander must ensure that, no less often than every 6 months, the central collection of information on reportable incidents that the Combatant Commander has reported pursuant to this issuance is updated and accessible by the Secretary of Defense. The central collection must include:

- (1) The reportable incidents reported to the Secretary of Defense in the previous 6 months.
- (2) The disposition, if any, of each reportable incident within the Combatant Command.
- (3) The results of any review or investigation of reportable incidents completed within the Combatant Command in the previous 6 months and any such information forwarded by the Military Departments.
- (4) Information on any significant corrective actions taken within the Combatant Command and any such information forwarded by the Military Departments.
- (5) Any additional information the Combatant Commander deems relevant and appropriate to include, such as determinations submitted in accordance with Paragraph 4.2.c.

GLOSSARY

G.1. ACRONYMS.

ACRONYM	MEANING
DoDD	DoD directive
DoDI	DoD Instruction
GC DoD	General Counsel of the Department of Defense
U.S.C.	United States Code

G.2. DEFINITIONS.

These terms and their definitions are for the purpose of this issuance.

TERM	DEFINITION
credible information	Information that a reasonable military commander would believe to be sufficiently accurate to warrant further review of the alleged violation. The totality of the circumstances is to be considered, including the reliability of the source (e.g., the source’s record in providing accurate information in the past and how the source obtained the information), and whether there is contradictory or corroborating information.
law of war	The treaties and customary international law binding on the United States that regulate: the resort to armed force; the conduct of hostilities and the protection of war victims in international and non-international armed conflict; belligerent occupation; and the relationships between belligerent, neutral, and non-belligerent States. Sometimes also called the “law of armed conflict” or “international humanitarian law,” the law of war is specifically intended to address the circumstances of armed conflict. Consult the DoD Law of War Manual for an authoritative statement on the law of war.
reportable incident	An incident that a unit commander or other responsible official determines, based on credible information, potentially involves: a war crime; other violations of the law of war; or conduct during military operations that would be a war crime if the military operations occurred in the context of an armed conflict. The unit commander or responsible official need not determine that a potential violation occurred, only that credible information merits further review of the incident.

TERM

DEFINITION

war crime

Serious violations of the law of war that generally have been committed intentionally, such as murder, torture, rape, pillage, extensive and wanton destruction of property without justification, and intentionally directing attacks against the civilian population or civilians protected as such. “War crimes” may be defined differently in other contexts for other legal purposes.

REFERENCES

- DoD Directive 2310.01E, “DoD Detainee Program,” August 19, 2014, as amended
- DoD Directive 3000.03E, “DoD Executive Agent for Non-Lethal Weapons (NLW), and NLW Policy,” April 25, 2013, as amended
- DoD Directive 3000.09, “Autonomy in Weapons Systems,” November 12, 2012, as amended
- DoD Directive 3115.09, “DoD Intelligence Interrogations, Detainee Debriefings, and Tactical Questioning,” October 11, 2012, as amended
- DoD Directive 5000.01, “The Defense Acquisition System,” May 12, 2003, as amended
- DoD Directive 5122.05, “Assistant to the Secretary of Defense for Public Affairs (ATSD(PA)),” August 7, 2017
- DoD Directive 5148.13, “Intelligence Oversight,” April 26, 2017
- DoD Instruction 1000.01, “Identification (ID) Cards Required by the Geneva Conventions,” April 16, 2012, as amended
- DoD Instruction 3020.41, “Operational Contract Support (OCS),” December 20, 2011, as amended
- DoD Instruction 5505.03, “Initiation of Investigations by Defense Criminal Investigative Organizations,” March 24, 2011, as amended
- DoD Instruction 5525.11, “Criminal Jurisdiction Over Civilians Employed By or Accompanying the Armed Forces Outside the United States, Certain Service Members, and Former Service Members,” March 3, 2005
- DoD Instruction 6055.07, “Mishap Notification, Investigation, Reporting, and Record Keeping,” June 6, 2011, as amended
- DoD Manual 8910.01, Volume 1, “DoD Information Collections Manual: Procedures for DoD Internal Information Collections,” June 30, 2014, as amended
- Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field of August 12, 1949
- Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea of August 12, 1949
- Geneva Convention Relative to the Treatment of Prisoners of War of August 12, 1949
- Geneva Convention Relative to the Protection of Civilian Persons in Time of War of August 12, 1949
- Office of the General Counsel of the Department of Defense, “DoD Law of War Manual,” June 2015, as amended
- United States Code, Title 10
- United States Code, Title 18