



Department of Defense

DIRECTIVE

NUMBER 2311.01E
May 9, 2006

GC, DoD

SUBJECT: DoD Law of War Program

- References:
- (a) DoD Directive 5100.77, "DoD Law of War Program," December 9, 1998 (hereby canceled)
 - (b) DoD Directive 5101.1, "DoD Executive Agent," September 3, 2002
 - (c) Articles 1, 47, 50, Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, August 12, 1949
 - (d) Articles 1, 48, 51, Geneva Convention for the Amelioration of the Condition of the Wounded, Sick and Shipwrecked Members of the Armed Forces at Sea, August 12, 1949
 - (e) through (r), see Enclosure 1

1. REISSUANCE AND PURPOSE

This Directive:

1.1. Reissues Reference (a) to update the policies and responsibilities ensuring DoD compliance with the law of war obligations of the United States.

1.2. Clarifies the responsibilities of the Secretary of the Army as the DoD Executive Agent for Investigation and Reporting of Reportable Incidents against U.S. personnel in accordance with Reference (b).

2. APPLICABILITY AND SCOPE

This Directive applies to the Office of the Secretary of Defense, the Military Departments, the Chairman of the Joint Chiefs of 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 in the Department of Defense (hereafter referred to collectively as the "DoD Components").

3. DEFINITIONS

3.1. Law of War. That part of international law that regulates the conduct of armed hostilities. It is often called the “law of armed conflict.” The law of war encompasses all international law for the conduct of hostilities 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.

3.2. 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.

4. POLICY

It is DoD policy that:

4.1. 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.

4.2. 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.

4.3. An effective program to prevent violations of the law of war is implemented by the DoD Components.

4.4. 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.

4.5. All reportable incidents are reported through command channels for ultimate transmission to appropriate U.S. Agencies, allied governments, or other appropriate authorities. Once it has been determined that U.S. persons are not involved in a reportable incident, an additional U.S. investigation shall be continued only at the direction of the appropriate Combatant Commander. The on-scene commanders shall ensure that measures are taken to preserve evidence of reportable incidents pending transfer to U.S., allied, or other appropriate authorities.

5. RESPONSIBILITIES

5.1. The General Counsel of the Department of Defense (GC, DoD) shall:

5.1.1. Exercise primary staff responsibility for the DoD Law of War Program.

5.1.2. Provide overall legal guidance in the Department of Defense on the Law of War Program, including review of policies developed under or relating to the program, coordination of special legislative proposals and other legal matters with other Federal Departments and Agencies, and resolution of disagreements on questions of law.

5.1.3. Supervise and assign a chair for the DoD Law of War Working Group, consisting of representatives, at the election by each of the GC, DoD; the General Counsel of each Military Department; the Counsel to the Commandant of the Marine Corps; the Judge Advocate General of each Military Department; the Staff Judge Advocate to the Commandant of the Marine Corps; and the Legal Counsel to the Chairman of the Joint Chiefs of Staff. The DoD Law of War Working Group shall develop and coordinate law of war initiatives and issues, manage other law of war matters as they arise, and provide advice to the General Counsel on legal matters covered by this Directive.

5.1.4. Coordinate and monitor the Military Departments' plans and policies for training and education in the law of war.

5.2. The Under Secretary of Defense for Policy (USD(P)) shall:

5.2.1. Provide overall development, coordination, approval, and promulgation of major DoD policies and plans, including:

5.2.1.1. Final coordination of such proposed policies and plans with the DoD Components and other Federal Departments and Agencies as necessary; and

5.2.1.2. Final coordination of DoD positions on international negotiations on the law of war and U.S. signature and ratification of law of war treaties.

5.2.2. Determine the significance of International Committee of the Red Cross reports and forward those actions of significance to the Secretary of Defense immediately.

5.3. The Under Secretary of Defense for Intelligence (USD(I)) shall direct the Director, Defense Intelligence Agency, to provide information to the Secretary of the Army and to the Commanders of the Combatant Commands, consistent with their respective obligations under paragraphs 5.9. and 5.11., concerning reportable incidents perpetrated against captured or detained U.S. persons, or committed by or against U.S. allies, or committed by or against other persons during a conflict to which the United States is not a party.

5.4. The Director, Defense Intelligence Agency, under the USD(I), shall:

5.4.1. Assist the USD(I) in performing responsibilities in paragraph 5.3.

5.4.2. Provide for the central collection of intelligence data concerning reportable incidents as outlined in paragraph 5.3.

5.5. The Assistant Secretary of Defense for Legislative Affairs (ASD(LA)) shall serve as the DoD liaison between the Department of Defense and Congress on all matters related to the Law of War Program and provide legislative affairs guidance, as appropriate, to the DoD Components.

5.6. The Assistant Secretary of Defense for Public Affairs (ASD(PA)) shall monitor the public affairs aspects of the DoD Law of War Program and provide public affairs guidance, as appropriate, to the DoD Components.

5.7. The Heads of the DoD Components shall:

5.7.1. Comply with the policies contained in this Directive.

5.7.2. Institute and implement effective programs to prevent violations of the law of war, including law of war training and dissemination, as required by Articles 47 and 50, Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field of August 12, 1949 (Reference (c)); Articles 48 and 51, Geneva Convention for the Amelioration of the Condition of Wounded, Sick, and Shipwrecked Members of the Armed Forces at Sea of August 12, 1949 (Reference (d)); Articles 127 and 130, Geneva Convention Relative to the Treatment of Prisoners of War of August 12, 1949 (Reference (e)); Articles 144 and 147, Geneva Convention Relative to the Protection of Civilian Persons in Time of War of August 12, 1949 (Reference (f)); and Sections 801-940 of title 10, United States Code (U.S.C.), the Uniform Code of Military Justice (Reference (g)).

5.7.3. Make qualified legal advisers at all levels of command available to provide advice about law of war compliance during planning and execution of exercises and operations; and institute and implement programs to comply with the reporting requirements established in section 6.

5.7.4. Ensure that contract work statements for contractors comply with the policies contained in this Directive and DoD Instruction (DoDI) 3020.41 (Reference (h)), and require contractors to institute and implement effective programs to prevent violations of the law of war by their employees and subcontractors, including law of war training and dissemination, as required by References (e) and (f).

5.8. The Secretaries of the Military Departments shall develop internal policies and procedures consistent with this Directive in support of the DoD Law of War Program to:

5.8.1. Provide directives, publications, instructions, and training so the principles and rules of the law of war will be known to members of their respective Departments. Such knowledge will be commensurate with each individual's duties and responsibilities.

5.8.2. Implement programs in their respective Military Departments to prevent violations of the law of war.

5.8.3. In coordination with the Combatant Commanders, promptly report and investigate reportable incidents committed by or against members of their respective Military Departments, or persons accompanying them, in accordance with Directives issued under subparagraph 5.11.6.

5.8.4. Where appropriate, provide for disposition, under Reference (g), of cases involving alleged violations of the law of war by members of their respective Military Departments who are subject to court-martial jurisdiction.

5.8.5. Provide for the central collection of reports and investigations of reportable incidents alleged to have been committed by or against members of their respective Military Departments, or persons accompanying them.

5.8.6. Forward all reports of reportable incidents against U.S. personnel to the Secretary of the Army in his or her capacity as the DoD Executive Agent under paragraph 5.9.

5.8.7. Forward all reports of reportable incidents involving U.S. civilians, contractors or subcontractors assigned to or accompanying the Armed Forces, or their dependents, through the Secretary of the Army to the GC, DoD, for review for prosecutory action under the criminal jurisdiction of the United States, pursuant to References (i) and (j).

5.9. The Secretary of the Army is redesignated as the Executive Agent pursuant to Reference (b) for reportable incidents committed against U.S. personnel and shall:

5.9.1. Act for the Secretary of Defense in developing and coordinating plans and policies for, and in supervising the execution of, the investigation of reportable incidents committed against U.S. personnel and, subject to DoD 8910.1-M (Reference (k)), and in the collection, recording, and reporting of information concerning reportable incidents related to enemy violations of the law of war. This authority is separate from and subject to the responsibilities assigned the Combatant Commanders in paragraphs 4.5. and 5.11. and the responsibilities assigned the Secretaries of the Military Departments in paragraph 5.7.

5.9.2. Communicate directly with the Heads of the DoD Components, as necessary to carry out assigned functions, including the transmission of requests for assistance. Communications to the Military Departments shall be transmitted through the Secretaries of the Military Departments or their designees, or as otherwise provided in law or directed by the Secretary of Defense in other issuances. Communications to the Commanders of the Combatant Commands, except in unusual circumstances, shall be transmitted through the Chairman of the Joint Chiefs of Staff.

5.9.3. Perform the Executive Agent functions and responsibilities therein consistent with 10 U.S.C. 163(a)(2) (Reference (l)) and this Directive.

5.10. The Chairman of the Joint Chiefs of Staff shall:

5.10.1. Provide appropriate guidance to the Commanders of the Combatant Commands, consistent with Reference (1). This guidance will include direction on the collection and investigation of reports of enemy violations of the law of war.

5.10.2. Designate a primary point of contact in his or her organization to administer activities under this Directive.

5.10.3. Review appropriate plans, policies, directives, and rules of engagement, as necessary, ensuring their consistency with the law of war obligations of the United States.

5.10.4. Ensure that plans, policies, directives, and rules of engagement issued by the Commanders of the Combatant Commands are consistent with this Directive and the law of war.

5.11. The Commanders of the Combatant Commands shall:

5.11.1. Institute 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.

5.11.2. Implement guidance from the Chairman of the Joint Chiefs of Staff for the collection and investigation of reports of enemy violations of the law of war.

5.11.3. Provide for the central collection of reports and investigations of reportable incidents alleged to have been committed by or against members of their respective Combatant Commands, or persons accompanying them.

5.11.4. Ensure that all reports of reportable incidents are forwarded to the Secretary of the Army in his or her capacity as the DoD Executive Agent under paragraph 5.9.

5.11.5. Designate the command legal adviser to supervise the administration of those aspects of this program dealing with possible, suspected, or alleged enemy violations of the law of war.

5.11.6. 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 investigated thoroughly, and that the results of such investigations are promptly forwarded to the applicable Military Department or other appropriate authorities.

5.11.7. Determine the extent of investigation and manner in which a reportable incident not involving U.S. or enemy persons will be investigated by U.S. Forces and ensure such incidents are reported promptly to appropriate U.S. Agencies, allied governments, or other appropriate authorities.

5.11.8. 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 Directive and the law of war.

5.11.9. Ensure that law of war training and dissemination programs of subordinate commands and components are consistent with this Directive and the law of war obligations of the United States.

6. INFORMATION REQUIREMENTS

6.1. In the further implementation of this Directive, that part of the law of war relating to legal reviews of the acquisition and procurement of weapons and weapon systems for the DoD Components is addressed in DoD Directive (DoDD) 5000.1 (Reference (m)), DoDD 3000.3 (Reference (n)), and in related guidance pertaining to Special Access Programs.

6.2. In the implementation of this Directive, DoDD 2310.01E (Reference (o)) and DoDD 3115.09 (Reference (p)) address the detention and interrogation of captured or detained personnel, and the minimum standards in the treatment of such detained personnel.

6.3. Reports of Incidents. All military and U.S. civilian employees, contractor personnel, and subcontractors assigned to or accompanying a DoD Component shall report reportable incidents through their chain of command. 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. Such reports 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 shall, nonetheless, be accepted and immediately forwarded through the recipient's chain of command.

6.4. Initial Report. The commander of any unit that obtains information about a reportable incident shall immediately report the incident through the applicable operational command and Military Department. Reporting requirements are concurrent. The initial report shall be made through the most expeditious means available.

6.5. Higher authorities receiving an initial report shall:

6.5.1. Request a formal investigation by the cognizant military criminal investigative organization.

6.5.2. Submit a report of any reportable incident, by the most expeditious means available, through command channels, to the responsible Combatant Commander. Reports shall be provided to the DoD Component officials designated by the Heads of the DoD Components concerned.

6.5.3. Submit a report, in accordance with DoDI 5240.4 (Reference (q)), concerning any criminal case, regardless of the allegation, that has received, is expected to receive, or that, if disclosed, could reasonably be expected to receive significant media interest.

6.5.4. Submit a report, in accordance with DoDI 6055.7 (Reference (r)), concerning 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.

6.6. The Combatant Commander shall report, by the most expeditious means available, all reportable incidents to the Chairman of the Joint Chiefs of Staff, the Secretary of Defense, and the Secretary of the Army, in his or her role as the DoD Executive Agent under paragraph 5.9.

6.7. DoD Notifications. Notifications of a reportable incident shall be forwarded to the Chairman of the Joint Chiefs of Staff; GC, DoD; ASD(PA); USD(P); USD(I); ASD(LA); and the Inspector General of the Department of Defense, who will inform their counterparts in any Military Department concerned by the most expeditious means available.

6.8. Information Requirements. The Event/Incident Reports referred to in this Directive and further described in Reference (r) are exempt from licensing in accordance with subparagraph 5.4.2. of Reference (k).

7. EFFECTIVE DATE

This Directive is effective immediately.



Gordon England 5/9/06

Enclosures - 1

E1. References, continued

E1. ENCLOSURE 1

REFERENCES, continued

- (e) Articles 1, 127, 130, Geneva Convention Relative to the Treatment of Prisoners of War, August 12, 1949
- (f) Articles 1, 144, 147, Geneva Convention Relative to the Protection of Civilian Persons in Time of War, August 12, 1949
- (g) Sections 801-940 of title 10, United States Code
- (h) DoD Instruction 3020.41, "Contractor Personnel Authorized to Accompany the U.S. Armed Forces," October 3, 2005
- (i) Section 3261 of title 18, United States Code
- (j) Section 2441 of title 18, United States Code
- (k) DoD 8910.1-M, "Department of Defense Procedures for Management of Information Requirements," June 1998, authorized by DoD Directive 8910.1, June 11, 1993
- (l) Section 163(a)(2) of title 10, United States Code
- (m) DoD Directive 5000.1, "The Defense Acquisition System," May 12, 2003
- (n) DoD Directive 3000.3, "Policy for Non-Lethal Weapons," July 9, 1996
- (o) DoD Directive 2310.01E "The Department of Defense Detainee Program" (draft) upon publication
- (p) DoD Directive 3115.09, "DoD Intelligence Interrogations, Detainee Debriefings, and Tactical Questioning," November 3, 2005
- (q) DoD Instruction 5240.4, "Reporting of Counterintelligence and Criminal Violations," September 22, 1992
- (r) DoD Instruction 6055.7, "Accident Investigation Reporting and Record Keeping," October 3, 2000