



CHAIRMAN OF THE JOINT CHIEFS OF STAFF INSTRUCTION

J-3

DISTRIBUTION: A, B, C, J, S

CJCSI 5810.01B

25 March 2002

IMPLEMENTATION OF THE DOD LAW OF WAR PROGRAM

References:

- a. DOD Directive 5100.77, 9 December 1998, "DoD Law of War Program"
- b. DOD Directive 5100.1, 25 September 1987, "Functions of the Department of Defense and its Major Components"
- c. CJCS Manual 3150.03, 19 June 1998, "Joint Reporting Structure Event and Incident Reports"

1. Purpose. Pursuant to the authorities delegated in references a and b, this instruction establishes joint policy, assigns responsibilities, and provides guidance regarding the law of war obligations of the United States. Reference a provides policy guidance and assigns responsibility within the Department of Defense for a program to ensure compliance with the law of war. Reference b assigns the Chairman of the Joint Chiefs of Staff the responsibility to develop and establish military doctrine and guidance for all aspects of joint employment and activities of the Armed Forces. This instruction implements the requirements of reference a to provide common policy for coordinated actions by the Military Services and combatant commands.

2. Cancellation. CJCSI 5810.01A, 27 August 1999, is canceled.

3. Applicability. This instruction applies to all personnel of the Armed Forces, including civilians, regardless of assignment or attachment.

4. Policy

a. The Armed Forces of the United States will comply with the law of war during all armed conflicts, however such conflicts are characterized, and, unless otherwise directed by competent authorities, the US Armed Forces will comply with the principles and spirit of the law of war during

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all other operations. Specifically, reference a provides that it is the policy of the Department of Defense to ensure that:

(1) The law of war obligations of the US Government are observed and enforced by the US Armed Forces.

(2) An effective program designed to prevent violations of the law of war is implemented by the US Armed Forces.

(3) All reportable incidents committed by or against members of (or persons serving with or accompanying) the US Armed Forces are promptly reported, thoroughly investigated and, where appropriate, remedied by corrective action.

(4) All known reportable incidents committed by or against allied military or civilian personnel, or by or against other persons during a conflict to which the United States is not a party, are reported through appropriate command channels for ultimate transmission to appropriate US agencies, allied governments, or other appropriate authorities. See subparagraph 3f(4) of Enclosure A. A preliminary inquiry will be conducted to confirm that no US personnel are involved in the reportable incident.

b. At all appropriate levels of command and during all stages of operational planning and execution of joint and combined operations, legal advisers will provide advice concerning law of war compliance. Advice on law of war compliance will address not only legal constraints on operations but also legal rights to employ force.

5. Definitions

a. Law of War. International law that regulates the conduct of armed hostilities; often called the law of armed conflict. The law of war encompasses all international law for the conduct of hostilities, which is binding on the United States or its individual citizens. It includes treaties and international agreements to which the United States is a party, as well as applicable customary international law.

b. Reportable Incident. A possible, suspected, or alleged violation of the law of war.

6. Responsibilities. See Enclosure A.

7. Reporting Requirements

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a. Reports of Incidents. Commanders of combatant commands will issue directives to ensure that all military and civilian personnel assigned to or accompanying US Armed Forces will convey all reportable incidents through their chain of command. The directives will indicate that such reports may also be made through other channels, such as the military police, a judge advocate, or an Inspector General. The directives will require that reports made to officials other than those specified in this paragraph will be accepted and immediately forwarded through the recipient's chain of command.

b. Initial Report. Law of war implementing directives issued by combatant commanders will require the commander of any unit that obtains information about a reportable incident to immediately report the incident through command channels to a higher authority. The report will be made through the most expeditious means available.

c. Investigation. Commanders of combatant commands will establish procedures for receiving initial reports of reportable incidents, and will ensure that their subordinate commanders:

(1) Submit a report, by the most expeditious means available, through command channels to the responsible combatant commander. Normally, an OPREP-3 report will be required in accordance with reference c.

(2) Initiate an investigation by an appropriate military investigative authority in accordance with subparagraphs 3f(2) and 3f(4) of Enclosure A.

d. The responsible combatant commander will submit a message report, as expeditiously as possible, for all reportable incidents to the Joint Staff (JOINT STAFF WASHINGTON DC//DJS/J-1/J-2/J-3/J-5/LC/PA//), The Office of the Secretary of Defense (SECDEF WASHINGTON DC//USDP/ISA/GC/IG/PA//), and the Secretary of the Army (DA WASHINGTON DC//SAGC/SAIG/DAMO-ZA/DAJA//), in the Secretary's capacity as Executive Agent under paragraph 5.6 of reference a.

8. Summary of Changes. This instruction revises CJCSI 5810.01A and provides updated guidance in accordance with reference a.

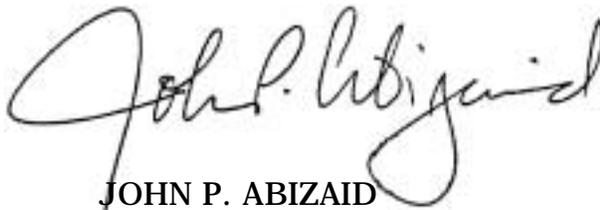
9. Releasability. This instruction is approved for public release; distribution is unlimited. DOD components (to include the combatant commands), other federal agencies, and the public may obtain copies of this instruction through the Internet from the CJCS Directives Home

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Page -- <http://www.dtic.mil/doctrine>. Copies are also available through the Government Printing Office or the Joint Electronic Library CD-ROM.

10. Effective Date. This instruction is effective immediately. Forward copies of implementing directives or supplements and revisions to the Joint Staff J-5 United Nations and Multilateral Affairs Division, Room 2E1001, Pentagon, Washington, D.C. 20318-5154, within 120 days of receipt of this instruction. The Chief, J-5 United Nations and Multilateral Affairs Division, will forward copies of such documents to the Office of the Secretary of Defense in accordance with reference a.

For the Chairman of the Joint Chiefs of Staff:

A handwritten signature in black ink, reading "John P. Abizaid". The signature is written in a cursive, flowing style.

JOHN P. ABIZAID
Lieutenant General, USA
Director, Joint Staff

Enclosure:

A--Responsibilities

DISTRIBUTION

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ENCLOSURE A

RESPONSIBILITIES

1. The Director, Joint Staff (DJS), will:

a. Ensure the Joint Staff acts on policy, politico-military, and other issues involved in the execution of the DOD Law of War Program and provides necessary liaison with the Office of the Secretary of Defense, Department of State, Services, and combatant commands.

b. Ensure Joint Staff directorates provide policy and operational guidance within their respective functional areas as noted below:

(1) The Director for Manpower and Personnel (J-1) will ensure that a copy of all investigations of reportable incidents submitted by the combatant commanders, in accordance with subparagraphs 3f(2) through 3f(4), is forwarded to appropriate Joint Staff principals (DJS/J-2/J-3/J-5/LC/PA).

(2) 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 US persons, committed by or against US allies, or committed by or against other persons during a conflict to which the United States is not a party. The PIR will be listed as part of Appendix 1 to Annex B (Intelligence) to all operation plans.

(3) The Director for Operations (J-3) will, in coordination with the Legal Counsel to the Chairman:

(a) 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.

(b) Review all requests from the combatant commanders for deployment orders and rules of engagement to ensure conformity with this instruction and the DOD Law of War Program, as well as domestic and international law.

(4) The Director for Strategic Plans and Policy (J-5) will:

(a) Serve as the Joint Staff principal point of contact for the DOD Law of War Program and, in coordination with the Legal Counsel to the Chairman, provide necessary liaison for developing policy within the context of the DOD Law of War Program.

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(b) Ensure the Joint Strategic Capabilities Plan includes appropriate guidance to ensure compliance with the law of war.

(5) The Director for Operational Plans and Joint Force Development (J-7) will, in coordination with the Legal Counsel to the Chairman:

(a) Review operation plans and strategic concepts issued by commanders of combatant commands to ensure conformance with domestic and international law, this instruction, and the DOD Law of War Program.

(b) Ensure that operational exercises include law of war scenarios to improve evaluation, response, and reporting procedures.

(6) The Legal Counsel (LC) to the Chairman will:

(a) Provide overall legal guidance to the Chairman of the Joint Chiefs of Staff on the DOD Law of War Program.

(b) Review all plans, policies, directives, deployment orders, execute orders, and rules of engagement issued by the Joint Staff and/or submitted by combatant commanders to ensure their conformance with domestic and international law, this instruction, and the law of war.

(c) Provide a representative to the DOD Law of War working group established by the DOD General Counsel pursuant to reference a.

2. The combat support agencies will establish and periodically review agency-unique policies, directives, and training programs consistent with this instruction and the DOD Law of War Program to ensure the requirements of the law of war are disseminated throughout their respective organizations.

3. The commanders of combatant commands are responsible for the overall execution of the DOD Law of War Program within their respective commands. Specific responsibilities include ensuring:

a. An effective program is instituted within the command to prevent law of war violations.

b. All plans, policies, directives, and training programs are periodically reviewed for compliance with the law of war, particularly in light of any violations reported.

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c. Specific law of war scenarios are included in exercises to improve evaluation, response, and reporting procedures.

d. Command legal advisers attend planning and operations-related conferences for military operations and exercises, as appropriate, to enable them to provide advice concerning law of war compliance during joint and combined operations.

e. All operation plans (including preplanned and adaptively planned strategic targets), concept plans, rules of engagement, execute orders, deployment orders, policies, and directives are reviewed by the command legal adviser to ensure compliance with domestic and international law, this instruction, and the DOD Law of War Program.

f. All appropriate policies, directives, and operation and concept plans incorporate the reporting and investigation requirements established by reference a and this instruction, and by the Secretary of the Army, who is designated by reference a as the DOD Executive Agent for the administration of the DOD Law of War Program with respect to investigating and reporting reportable incidents. Specifically, commanders of combatant commands will:

(1) Designate the command legal adviser to supervise the administration of the command's program for dealing with reportable incidents.

(2) Ensure, via appropriate command directives, that all reportable incidents committed by or against members of (or persons serving with or accompanying) US Armed Forces are reported promptly to appropriate authorities, are thoroughly investigated, and the results of such investigations are promptly forwarded to the applicable Military Department or other appropriate authorities. Applicable directives will include specific guidance on the collection and preservation of evidence of reportable incidents committed by enemy forces against US personnel since such evidence may serve as the basis for a possible future trial of accused war criminals. See subparagraph 3f(4) below for guidance when collecting and preserving evidence of reportable incidents in which it is determined that US personnel are not involved.

(3) Provide the Joint Staff J-1 with copies of all incident reports and reports of investigation of reportable incidents committed by or against members of (or persons accompanying or serving with) US Armed Forces or against their property. J-1 will ensure such reports are provided to appropriate Joint Staff principals (DJS/J-2/J-3/J-5/LC/PA).

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(4) Determine, with respect to known reportable incidents committed by or against allied military or civilian personnel or by or against other persons during a conflict of which the United States is not a party, the extent and manner in which such incidents will be investigated by US forces. Specifically, combatant commanders will develop appropriate plans, policies, and directives for:

(a) Conducting appropriate preliminary inquiry to determine US personnel involvement. Upon determination that US personnel are not involved in a reportable incident, further US investigation will be conducted only at the direction of the appropriate combatant commander.

(b) Cooperating with appropriate allied authorities.

(c) Reporting through appropriate command channels to appropriate US agencies, allied governments, or other appropriate authorities.

(d) Preserving evidence of reportable incidents pending turnover to other US agencies, allied governments, or other appropriate authorities.

g. Mobilization planning includes sufficient numbers of legal advisers and investigative personnel to support each commander's mission.

h. The law of war training and dissemination programs within their commands, as well as the law of war training and dissemination programs of their subordinate commands and components, are consistent with reference a, this instruction, and the law of war obligations of the United States.