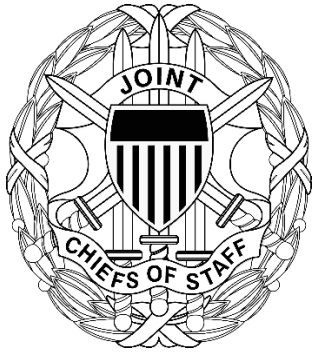


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CHAIRMAN OF THE JOINT CHIEFS OF STAFF INSTRUCTION

OCJCS/LC
DISTRIBUTION: A, B, C, S

CJCSI 5810.01E
9 August 2023

IMPLEMENTATION OF THE DEPARTMENT OF DEFENSE LAW OF WAR PROGRAM

Reference(s): See Enclosure B

1. Purpose. This instruction implements the requirements assigned to the Chairman of the Joint Chiefs of Staff (CJCS) in reference a.
2. Cancellation. CJCS Instruction (CJCSI) 5810.01D, 30 April 2010 is superseded.
3. Applicability. This instruction applies to all personnel assigned or attached to the Joint Staff and Combatant Commands (CCMDs) and their assigned or attached subordinate units, including civilians, contractors, and subcontractors assigned to or accompanying the force.
4. Policy. See reference a.
5. Responsibilities. See Enclosure A.
6. Summary of Changes. This revision articulates new requirements for reporting and investigating reportable incidents; implements CJCS responsibilities for forwarding reports of reportable incidents to several offices, pursuant to reference a; and redefines what constitutes a reportable incident.
7. Releasability. UNRESTRICTED. This directive is approved for public release; distribution is unlimited on (Non-classified Internet Protocol Router Network) NIPRNET. Department of Defense (DoD) Components (to include the CCMDs), other Federal agencies, and the public may obtain copies of this directive through the Internet from the CJCS Directives Electronic Library at <<http://www.jcs.mil/library>>. Joint Staff activities may also access directives via the SECRET Internet Protocol Router Network (SIPRNET) Electronic Library website.

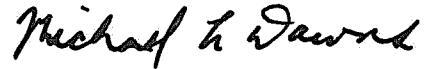
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8. Effective Date. This instruction is effective upon signature.

For the Chairman of the Joint Chiefs of Staff:



MICHAEL L. DOWNS, Maj Gen, USAF
Vice Director, Joint Staff

Enclosures:

- A - Responsibilities
- B - References
- GL - Glossary

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DISTRIBUTION

Distribution A, B, and C, S, plus the following*:

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*The office of primary responsibility has chosen electronic distribution to the above organization via e-mail. The Joint Staff Information Management Division has responsibility for publishing the subject directive to the SIPRNET and NIPRNET Joint Electronic Library websites.

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ENCLOSURE A

RESPONSIBILITIES

1. Joint Staff

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 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 reports of reportable incidents submitted by the CCMDs to appropriate Joint Staff organizations (e.g. J-Directorates, the Joint Staff Inspector General, the Office of the Chairman of the Joint Chiefs of Staff (OCJCS) for Public Affairs, OCJCS Legal Counsel (OCJCS/LC), and OCJCS Legislative Affairs) and Office of the Secretary of Defense principals, including the DoD General Counsel; the Assistant to the Secretary of Defense for Public Affairs; the Under Secretary of Defense for Policy; the Under Secretary of Defense for Intelligence and Security; the Assistant Secretary of Defense for Legislative Affairs; and the DoD Inspector General. The NJOIC will:

(a) Create and disseminate the appropriate report in accordance with (IAW) the most current Chairman's Critical Information Requirements (CCIR) Matrix; and

(b) Use established CCIR categories for incidents: "OPS-1, Collateral Damage to Include Civilian Casualties (CIVCAS)" or "OPS-2, LOAC violations by U.S."

(2) Ensure plans, policies, directives, joint doctrine, and rules of engagement within the Joint Operations Planning and Execution System are consistent with the law of war.

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

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c. The Director for Strategy, Plans, and Policy, J-5 will:

(1) Ensure the Joint Strategic Capabilities Plan, international agreements, or other appropriate plans and policies include appropriate guidance to ensure compliance with the law of war, reference a, and this instruction.

(2) Establish friendly force information requirements in coordination with the J-3 for all law of war violations alleged to have been committed by U.S. persons.

d. The Director for Joint Force Development, J-7 will:

(1) Ensure the Joint Planning and Execution Community, IAW CJCSI 3141.01 series, is provided Campaign and Joint Strategic Capabilities Plan-tasks plans to review for compliance with domestic and international law (including the law of war), reference a, 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 CCMDs are directed to include these scenarios in appropriate Joint Exercise Program events.

e. OCJCS/LC 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 before they are issued by the Joint Staff and/or after they are submitted by CCMDs to ensure compliance with domestic and international law (including the law of war), reference a, 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. The Joint Staff Comptroller will:

(1) Within the Joint Staff, ensure that contract work statements for contractors and their subcontractors executed by Fleet Logistics Center-Navy (FLC) and any future organization that assumes FLC contracting duties for the Joint Staff comply with the policies contained in this issuance, reference a, and reference b.

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(2) Require contractors engaged 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 individuals' duties and responsibilities.

(3) Ensure relevant contracts require contractor employees to report reportable incidents to their supervisor, or to the appropriate directorate.

2. Combatant Commanders. Combatant Commanders (CCDRs) will execute their responsibilities as DoD Component Heads and CCDRs as required in reference a, to include the reporting and investigation requirements in Section 4 of reference a, and:

a. Ensure all personnel assigned or attached to their CCMD and its assigned or attached subordinate units, including civilians, contractors, and subcontractors assigned to or accompanying the force, immediately report reportable incidents, to include allegations of non-DoD personnel having violated the law of war, through their chain of command.

b. Ensure that contract work statements for contractors and their subcontractors comply with the policies contained in reference a, and 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 CCDR.

c. Ensure any allegations or reports of incidents that may be made through non-commander channels, such as the military police, a judge advocate, or an inspector general, are reported to the CCMD chain of command for assessment and reporting IAW reference a and this issuance. Reports will also be forwarded to the chain of command of the subject of the allegation, where appropriate.

d. Ensure all reportable incidents, to include allegations of non-DoD personnel having violated the law of war, are expeditiously forwarded to the Joint Staff/NJOIC, Commander, U.S. Special Operations Command (CDRUSSOCOM), and, if applicable, relevant Secretaries of the Military Departments via operational reporting. Reports of reportable incidents received from subordinate commands shall be forwarded to the Joint Staff-NJOIC.

e. Provide and maintain a central collection point for information on reportable incidents within the CCMD or reported to the CCMD, to include subordinate commands.

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f. Develop appropriate plans, policies, and directives to ensure that, no less often than every six months, the central collection of information on reportable incidents that the CCMD has reported pursuant to reference a or this issuance is updated and made accessible by the Office of the Secretary of Defense. The central collection must include:

(1) The reportable incidents forwarded to the Battle Captain of the NJOIC, CDRUSSOCOM, and, if applicable, relevant Secretaries of the Military Departments in the previous six months.

(2) The disposition, if any, of each reportable incident within the CCMD.

(3) The results of any assessment, investigation, inquiry, or review of reportable incidents completed within the CCMD in the previous six months and any such information forwarded by the Military Departments.

(4) Information on any significant corrective actions taken within the CCMD and any such information forwarded by the Military Departments.

(5) Such plans, policies, and directives related to central collection of reports must account for reportable incidents that have been or may be reported through multiple CCMD channels. If CCMDs cannot resolve ownership of a reportable incident, the CDR with the geographic area of responsibility over the location of the reportable incident will manage reporting and central collection responsibilities.

g. With respect to incidents where a unit commander or a superior commander determines that an allegation is not supported by credible information, develop appropriate plans, policies, and directives to:

(1) Ensure that the allegation will nonetheless be forwarded through the chain of command to the appropriate CDR with this determination.

(2) Provide additional guidance on making and forwarding such determinations in an expeditious fashion, including guidance regarding the timing and manner of doing so.

(3) Ensure appropriate assessment, investigation, inquiry, or review for all allegations and reportable incidents.

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(4) Provide guidance on determining whether, how, and to what extent reportable incidents not involving U.S. persons are assessed, investigated, inquired, or reviewed by U.S. forces.

(5) Ensure that information regarding reportable incidents is prepared for appropriate transmission to foreign governments with responsibilities related to the reportable incident, IAW reference a. This 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.

(6) Provide any additional guidance on making and forwarding such determinations, including the timing and manner of doing so.

h. Make rank appropriate and qualified legal advisers available to advise commands on law of war compliance during planning and execution of exercises and operations; and to help implement programs to comply with reporting and investigation requirements, and:

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

(2) Ensure all plans, policies, and directives related to reporting and investigation are reviewed by legal advisers to ensure their consistency with this issuance, reference a, and the law of war, and do not conflict with investigations by responsible defense criminal investigative organizations.

i. Report to the DoD General Counsel any assistance, IAW reference g or otherwise, provided to the Department of Justice on specific cases occurring within the CCMD's area of responsibility that may lead to arrest or criminal prosecution pursuant to Section 3261 of Title 18, U.S. Code, also known as the "Military Extraterritorial Jurisdiction Act," involving alleged violations of the law of war. CCMDs will also provide courtesy notice of such cases to the NJOIC Battle Captain and OCJCS/LC.

j. Ensure that assessment, investigation, and reports of reportable incidents under this issuance and reference a are distinguished from any reports required under other guidance, to include the DoD Civilian Harm Mitigation and Response efforts.

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k. In addition to the reporting required by this issuance, comply with other applicable reporting requirements and procedures, which potentially include those found in reference d, reference e, reference f, policies and procedures relating to the reporting and assessment of civilian casualties (such as the forthcoming DoD Instruction on Civilian Harm Mitigation and Response (CHMR), or Military Department, Military Service, or CCMD incident reporting requirements.

1. CCMDs should consider synchronizing reporting procedures for reportable incidents under reference a with other programs for efficiency and to ensure compliance with all reporting and investigation requirements. However, potential law of war violations must not be conflated with other reporting, to include civilian harm reportable under forthcoming CHMR guidance that may or may not include allegations or incidents reportable under reference a. Seek the advice of the staff judge advocate when it is unclear whether a report of civilian harm is a potential law of war violation.

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ENCLOSURE B

REFERENCES

- a. DoD Directive 2311.01, "DoD Law of War Program," 2 July 2020
- b. DoD Instruction 3020.41, "Operational Contract Support (OCS)," December 20, 2011, as amended
- c. DoD Instruction 5505.03, "Initiation of Investigations by Defense Criminal Investigative Organizations," March 24, 2011, as amended
- d. DoD Instruction 6055.07, "Mishap Notification, Investigation, Reporting, and Record Keeping," June 6, 2011, as amended
- e. DoD Directive 3115.09, "DoD Intelligence Interrogations, Detainee Debriefings, and Tactical Questioning," October 11, 2012, as amended
- f. DoD Directive 5148.13, "Intelligence Oversight," April 26, 2017
- g. 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

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GLOSSARY

DEFINITIONS

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.

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.

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