



DEPARTMENT OF THE NAVY

OFFICE OF THE SECRETARY
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WASHINGTON, DC 20350-1000

SECNAVINST 3300.1B
OJAG (Code 10)
27 Dec 2005

SECNAV INSTRUCTION 3300.1B

From: Secretary of the Navy

Subj: LAW OF ARMED CONFLICT (LAW OF WAR) PROGRAM TO ENSURE
COMPLIANCE BY THE NAVAL ESTABLISHMENT

Ref: (a) DoD Directive 5100.77 of 9 December 1998
(b) SECNAVINST 3461.3
(c) SECNAVINST 5000.2C
(d) NWP 1-14M, Commanders Handbook on the Law of Naval
Operations
(e) FM 27-10, The Law of Land Warfare
(f) Geneva Conventions of 1949 for the Protection of
War Victims
(g) Hague Convention No. IV of 1907 Respecting the Law
and Custom of War on Land
(h) OPNAVINST 3100.6G
(i) OPNAVINST 3461.6
(j) MCO 5740.2F
(k) MCO 3461.1
(l) MCO 3300.4
(m) Uniform Code of Military Justice
(n) War Crimes Act of 1997, 18 USC Section 2441

Encl: (1) Examples of violations of the law of armed conflict

1. Purpose. To promulgate regulation and guidance to insure compliance by all personnel of the naval establishment with the international law of armed conflict, thereby implementing reference (a) within the Department of the Navy (DON).

2. Cancellation. SECNAVINST 3300.1A.

3. Background

Enclosure (1)

27 Dec 2005

a. Reference (a) directs the Armed Forces of the United States to comply with the law of armed conflict when engaged in hostilities, provides policy and guidance, and assigns responsibilities for implementing the DOD Law of War Program.

b. The law of armed conflict (traditionally known as the law of war) encompasses all international law regulating the conduct of nations and individuals engaged in armed conflict, which is binding on the United States or its citizens, either in international treaties and agreements to which the United States is a party, or as customary international law.

c. That part of the law of armed conflict relating to the handling of prisoners of war, although implicitly covered by reference (a), is governed by reference (b) and this instruction.

d. Excluded from the scope of reference (a) and this instruction is that part of the law of armed conflict relating to the acquisition and procurement of weapons for the naval service, which is the subject of reference (c).

4. Policy

a. The DON will comply with the law of armed conflict in the conduct of military operations and related activities in armed conflicts.

b. To insure full continuing compliance with the law of armed conflict, (1) all persons in the DON (to include active duty and reserve military personnel, civilians and contractor personnel), commensurate with their duties and responsibilities, should receive, through appropriate publication, instructions or training programs, adequate training and education in the law of armed conflict; and (2) suspected violations of the law of armed conflict by or against members of, or persons accompanying or serving with, the Armed Forces of the United States or its allies shall be promptly reported and thoroughly investigated, and disciplinary or administrative action should be taken as considered appropriate.

c. All law of armed conflict training for persons in the DON will be conducted by qualified instructors; be standardized in content, to the extent possible; emphasize the general principles, the specific rules of law, and their

27 Dec 2005

practical application; incorporate realistic scenarios that are tailored to the warfare community of the particular audience; leverage information technology for the widest possible dissemination and access; be periodically reviewed for accuracy; be periodically updated to incorporate lessons learned from recent operations; be certified for deploying units prior to their participation in operations; and be documented for individual service members

d. All plans, policies, directives, publications, and training programs of the naval establishment should be in consonance with the law of armed conflict.

e. Further information on the applicable law and policy is contained in references (d) and (e).

5. Responsibilities

a. The Chief of Naval Operations (CNO) and the Commandant of Marine Corps (CMC) are responsible for:

(1) Implementing programs providing accession and specialized training in the law of armed conflict to all persons in the DON as required by their duties and responsibilities;

(2) Identifying billets requiring special knowledge of aspects of the law of armed conflict and assigning appropriately trained personnel to those billets;

(3) Establishing policies and procedures, and directives to insure the activities of the Navy and Marine Corps conform to the law of armed conflict; and

(4) Implementing internal policies and procedures for the prompt reporting, investigation, and disposition of alleged violations of the law of armed conflict committed by or against members of the naval establishment.

b. The Judge Advocate General (JAG), as the DON sponsor for the Law of Armed Conflict Program, is responsible for:

(1) Maintaining a central depository for reports and investigations of violations of the law of armed conflict alleged to have been committed by or against Navy or Marine

27 Dec 2005

Corps personnel or civilians serving with or accompanying Navy or Marine Corps forces;

(2) Conducting periodic reviews of the Law of Armed Conflict Program within the naval establishment, particularly in light of any violations reported;

(3) Formulating broad objectives for training programs and identifying necessary resource materials for curricula development;

(4) Ensuring the training in the law of armed conflict of Navy Judge Advocates assigned to billets requiring detailed knowledge of the law of armed conflict; and

(5) Reviewing for the CNO, and upon request for the CMC, plans, policies, directives, publications, training materials, and rules of engagement for conformity with United States domestic and international law, including the law of armed conflict. In urgent situations and upon request, maritime rules of engagement shall also be reviewed in support of the Secretary of Defense or the Chairman, Joint Chiefs of Staff.

6. Training

a. The training program is derived from references (f) and (g), other international treaties and agreements to which the United States is a party, and customary international law.

b. Training will emphasize:

(1) The rights and obligation of the Navy and Marine Corps personnel regarding detainees (to include lawful enemy combatants; unlawful enemy combatants; sick, wounded or shipwrecked; noncombatants; and civilians);

(2) The handling of detainee property;

(3) Probable results of acts of violence against, and inhumane treatment of personnel;

(4) Unlawful orders;

27 Dec 2005

(5) Rules governing the conduct of hostilities, including rules of engagement; and

(6) Procedures for reporting alleged violations to the law of armed conflict.

c. The following individual training objectives are established:

(1) All members of the naval service shall obtain during accession training sufficient understanding of the law of armed conflict to minimize the intentional commission of serious offenses in combat.

(2) The extent of additional knowledge required of various individuals will depend upon their assigned duties and responsibilities. In particular, it is expected that all personnel responsible for planning for, directing or participating in armed conflict will receive sufficient training to comply with the law of armed conflict in all situations reasonably contemplated by their assigned duties.

(3) Judges Advocates responsible for advising operational commanders will have sufficient understanding of the law of armed conflict to advise and assist those commanders independently and expeditiously.

d. Unit and combined unit training programs will contain realistic problems involving the law of armed conflict that are incorporated in field and fleet exercises as appropriate.

7. Reporting and Disposition of Violations

a. Violations of the law of armed conflict suspected of having been committed by or against members of, or persons accompanying or serving with, the Armed Forces of the United States, or their property, will be reported, as directed in paragraph 8 below, immediately upon receipt of notification of such allegations, and will be followed, as appropriate, by amplifying reports of investigation and ultimate disposition.

b. Violations of the law of armed conflict suspected to have been committed by or against allied military or civilian property will be reported, as directed in paragraph 8 below, immediately upon notification of such allegations, for

27 Dec 2005

ultimate transmission by competent authority to appropriate agencies of the allied government concerned.

c. Some examples of violations to be reported are listed in enclosure (1).

8. Action

a. The CNO, CMC, and JAG shall carry out the responsibilities assigned in paragraph 5 above.

b. Copies of all implementing instructions shall be forwarded to the Judge Advocate General (Code 10).

c. Each person in the DON who has knowledge of or receives a report of an apparent violation of the law of armed conflict shall, as soon thereafter as practicable:

(1) Make the incident known to his immediate commander or commanding officer, or

(2) If such person has an honest and reasonable belief that his immediate commander or commanding officer is or may be involved in the violation, make the incident known to an officer, normally in his chain of command, senior to the commander or commanding officer.

d. Commanders and commanding officers receiving reports of noncompliance with or breaches of the law of armed conflict shall report the facts promptly up their operational chain of command and up their Service chain of command to the CNO or CMC, as appropriate in accordance with the applicable provisions of references (h), (i), (j), (k), or (l), and, as appropriate, submit amplifying reports of investigation and ultimate disposition.

9. Punitive Application. Violations of reporting requirements of paragraph 8 of this instruction are punishable in accordance with reference (m). In addition, violations of the law of armed conflict are punishable under references (m) and (n).

Dionel M. Aviles
Under Secretary of the Navy

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27 Dec 2005

Examples of Violations of the Law of Armed Conflict

SECNAVINST 3300.1B requires that each person in the DON (to include active duty and reserve military personnel, civilian employees and contractor personnel) who has knowledge of or receives information about an apparent violation of the law of armed conflict to make that incident known to his or her immediate commander, commanding officer, or to a superior officer as soon as practicable, and requires commanders and commanding officers receiving reports of noncompliance with or breaches of the law of armed conflict to report the facts promptly up their operational chain of command and up their Service chain of command to the CNO or CMC, as appropriate. The four Geneva Conventions of 1949 and customary international law proscribe certain acts, which are commonly accepted as violations of the law of armed conflict. While there is not an exhaustive list of war crimes, they consist of serious and intentional violations of the law of armed conflict which are generally recognized as war crimes, and which are committed during periods of international armed conflict. Lawful combatants, unlawful combatants, noncombatants, civilian employees, or contractors may commit Acts constituting war crimes. States have the obligation under international law to punish their own nationals, whether members of the armed forces or civilians, who commit war crimes. International law also provides that States have the right to punish enemy armed forces personnel and enemy civilians who fall under their control for such offenses. The commission of war crimes is not limited to international armed conflict and may be committed during non-international armed conflict.

Grave breaches of the Geneva Conventions are a special type of war crime. Defined in the Geneva Conventions, they place additional duties on States to search for persons alleged to have committed grave breaches, bring them to trial, and punish them if found guilty. This duty exists regardless of the nationality of the offender and includes the right to punish enemy armed forces personnel and enemy

27 Dec 2005

civilians. For violations of the Conventions that do not rise to the level of a grave breach, States are obligated to take measures necessary to suppress them. The Geneva Conventions define grave breaches as "acts committed against persons or property protected by the Conventions; willful killing, torture or inhuman treatment, including biological experiments, willfully causing great suffering or serious injury to body or health, and extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly."

The following acts, if committed intentionally, are examples of war crimes that could be considered grave breaches, which must be reported:

1. Offenses against prisoners of war, including killing without just cause; torture or inhumane treatment (to include biological, medical or scientific experiments, physical mutilation, removal of tissues or organs for transplantation, or any medical procedure not indicated by the health of the person and which is not consistent with generally accepted medical standards); willfully causing great suffering or serious injury to body or health or seriously endangering the physical or mental health; subjection to public insult or curiosity; unhealthy, dangerous, or otherwise prohibited labor; compelling service in the armed forces of the enemy or participation in military operations, taking of hostages, and denial of fair trial for offenses;
2. Offenses against civilian inhabitants of occupied territory, including killing without just cause, torture or inhumane treatment (to include biological, medical or scientific experiments, physical mutilation, removal of tissues or organs for transplantation, or any medical procedure not indicated by the health of the person and which is not consistent with generally accepted medical standards), forced labor, unlawful deportation, unlawful confinement, compelling service in the armed forces of the enemy or participation in military operations, and denial of fair trial for offenses;
3. Offenses against the sick and wounded (to include the killing, wounding, or mistreating enemy forces disabled by sickness or wounds;

4. Denial of quarter (i.e., killing or wounding an enemy unable to fight due to sickness or wounds or one who is making a genuine offer of surrender) and offenses against combatants who have laid down their arms and surrendered; attacking parachuting persons during their descent over land from an aircraft in distress; and failing to provide for the safety of survivors after an engagement as military circumstances permit;

5. Offenses against the survivors of ships and aircraft lost at sea (to include killing, wounding, mistreating, or attacking shipwrecked survivors or the attacking of persons parachuting over the sea from an aircraft in distress); and failing to provide for the safety of survivors as military circumstances permit;

6. Wanton destruction of cities, towns, and villages or devastation of objects that would release forces dangerous into the civilian population that are not justified by the requirements of military necessity (such as dams and dikes); bombardment of civilian population areas for the sole purpose of terrorizing the civilian population; indiscriminate attacks against the civilian population or against civilian property where the anticipated loss of life or injury to civilians and/or damage to civilian property will be excessive or disproportionate to the concrete and direct military advantage anticipated; and

7. Deliberate attack upon medical facilities, hospital ships, coastal rescue craft (to include lifeboats or small survivor craft), medical aircraft, medical vehicles, or medical personnel.

The following acts, if committed intentionally, are examples of acts that could be considered war crimes, but would not be considered grave breaches of the Conventions:

1. Plunder and pillage of public or private property;
2. Improper use of privileged buildings or localities for military purposes;
2. Mutilation or other mistreatment of the dead;

27 Dec 2005

3. Employing forbidden arms or ammunition (such as the use of poison, chemical weapons, biological weapons, or other weapon systems forbidden by international law);

4. Misuse, abuse, or firing on flags of truce or on distinctive emblems (such as the Red Cross, the Red Crescent, or other similar protective emblems, signs, or signals recognized under international law); and

5. Committing perfidy (perfidious acts include but are not limited to: feigning intent to negotiate under a flag of truce in order to gain a military advantage by attacking exposed military forces who come forward to negotiate; a treacherous request for quarter or surrender in order to gain a military advantage by attacking exposed military forces who come forward to accept the surrender; the violation of the terms of an armistice in order to gain a military advantage by attacking unsuspecting military forces; feigning incapacitation by wounds or sickness in order to gain a military advantage by attacking those military personnel who expose themselves to render medical aid and treatment; feigning civilian noncombatant status in order to gain a military advantage by attacking unsuspecting military forces; feigning protected status by use of signs or emblems in order to gain a military advantage by attacking unsuspecting military forces; and the wearing of uniforms of the United Nations or of a neutral state in order to gain a military advantage by attacking unsuspecting military forces.)