

Department of Defense

DIRECTIVE

NUMBER 5100.77

December 9, 1998

GC, DoD

SUBJECT: DoD Law of War Program

References: (a) DoD Directive 5100.77, "DoD Law of War Program," July 10, 1979 (hereby canceled)

(b) DoD Directive 2310.1, "DoD Program for Enemy Prisoners of War (EPOW) and other Detainees (Short Title: DoD Enemy POW Detainee Program)," August 18, 1994

(c) DoD Directive 5000.1, "Defense Acquisition," March 15, 1996

(d) Hague Convention No. IV, "Respecting the Laws and Customs of War on Land," October 18, 1907

(e) through (l), see enclosure 1

1. REISSUANCE AND PURPOSE

This Directive:

1.1. Reissues reference (a) to update policy and responsibilities in the Department of Defense for a program to ensure DoD compliance with the law of war obligations of the United States.

1.2. Expands the responsibilities of the Secretary of the Army as the DoD Executive Agent for the investigation and reporting of reportable incidents.

1.3. Establishes the DoD Law of War Working Group.

2. APPLICABILITY AND SCOPE

2.1. 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 Defense Agencies, and the DoD Field Activities (hereafter referred to collectively as "the DoD Components").

2.2. In implementation of this Directive, reference (b) addresses the DoD program for care and treatment of enemy prisoners of war (EPW), retained persons, and detainees. A reportable incident (as defined in subsection 3.2., below) involving possible, suspected, or alleged violations of the protections afforded EPWs, retained persons, or detainees is included in the scope of this Directive.

2.3. In further implementation of this Directive, that part of the law of war relating to legal reviews of the development, acquisition, and procurement of weapons and weapon systems for the DoD Components is addressed in DoD Directive 5000.1 (reference (c)) and in related guidance pertaining to Special Access Programs.

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.

4. POLICY

It is DoD policy to ensure that:

4.1. The law of war obligations of the United States are observed and enforced by the DoD Components.

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

4.3. All reportable incidents committed by or against U.S. or enemy persons are promptly reported, thoroughly investigated, and, where appropriate, remedied by corrective action.

4.4. All reportable incidents committed by or against allied persons, or by or against other persons during a conflict to which the U.S. is not a party, 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.

On-scene commanders shall ensure that measures are taken to preserve evidence of reportable incidents pending turnover to U.S., allied, or other appropriate authorities.

5. RESPONSIBILITIES

5.1. The General Counsel of the Department of Defense shall:

5.1.1. Provide overall legal guidance in the Department of Defense on the Law of War Program, to include 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.

5.1.2. Establish a DoD Law of War Working Group consisting of representatives from the General Counsel of the Department of Defense (GC, DoD), the Legal Counsel to the Chairman of the Joint Chiefs of Staff, the International and Operational Law Division of the Office of the Judge Advocate General of each Military Department, and the Operational Law Branch of the Office of the Staff Judge Advocate to the Commandant of the Marine Corps. 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.

5.1.3. 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 shall:

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

5.2.2. Ensure that the Assistant Secretary of Defense (International Security Affairs) shall provide overall development, coordination, approval, and promulgation of major DoD policies and plans, including final coordination of such proposed policies and plans with DoD Components and other Federal Departments and Agencies as necessary, and final coordination of DoD positions on international negotiations on the law of war and U.S. signature or ratification of law of war treaties.

5.3. The Heads of the DoD Components shall:

5.3.1. Ensure that the members of their Components comply with the law of war during all armed conflicts, however such conflicts are characterized, and with the principles and spirit of the law of war during all other operations.

5.3.2. Institute and implement effective programs to prevent violations of the law of war, including law of war training and dissemination, as required by references (d) through (h).

5.3.3. Ensure that qualified legal advisers are immediately available at all levels of command 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., below.

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

5.5. 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:

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

5.5.2. Ensure that programs are implemented in their respective Military Departments to prevent violations of the law of war, emphasizing any types of violations that have been reported under this Directive.

5.5.3. Provide for the prompt reporting and investigation of reportable incidents committed by or against members of their respective Military Departments, or persons accompanying them, in accordance with directives issued under paragraph 5.8.4., below.

5.5.4. Where appropriate, provide for disposition, under the Uniform Code of Military Justice (reference (i)), of cases involving alleged violations of the law of war by members of their respective Military Departments who are subject to court-martial jurisdiction.

5.5.5. 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.

5.5.6. 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 subsection 5.6., below.

5.6. The Secretary of the Army, as the Executive Agent for the Secretary of Defense for reportable incidents, shall 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 and, subject to DoD 8910.1-M (reference (j)), the collection, recording, and reporting of information concerning reportable incidents. This authority is separate from and subject to the responsibilities assigned the Combatant Commanders in subsections 4.4., above, and 5.8., below, and the responsibilities assigned the Secretaries of the Military Departments in subsection 5.5., above.

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

5.7.1. Provide appropriate guidance to the Commanders of the Combatant Commands, consistent with 10 U.S.C. 163 (a)(2) (reference (k)), conforming with the policies and procedures in this Directive. This guidance will include direction on the collection and investigation of reports of enemy violations of the law of war.

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

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

5.7.4. 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.

5.8. The Commanders of the Combatant Commands shall:

5.8.1. Institute 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.

5.8.2. 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.

5.8.3. 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.

5.8.4. Issue directives to ensure that reportable incidents involving U.S. or enemy persons 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.

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

5.8.6. 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.

5.8.7. 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.

5.9. The Assistant Secretary of Defense for Command, Control, Communications and Intelligence shall ensure that the Director, Defense Intelligence Agency, shall provide information from the intelligence community to the Secretary of the Army and to the Commanders of the Combatant Commands, consistent with their respective obligations under subsections 5.6. and 5.8., above, 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.

6. INFORMATION REQUIREMENTS

6.1. Reports of Incidents. All military and civilian personnel assigned to or accompanying a DoD Component shall report reportable incidents through their chain of command. Such reports also may also be made through other channels, such as the military police, a judge advocate, or an Inspector General. Reports that are made to officials other than those specified in this subsection shall, nonetheless, be accepted and immediately forwarded through the recipient's chain of command.

6.2. Initial Report. The commander of any unit that obtains information about a reportable incident shall immediately report the incident through command channels to higher authority. The initial report shall be made through the most expeditious means available.

6.3. Higher authorities receiving an initial report shall:

6.3.1. Request a formal investigation by the cognizant military investigation authority.

6.3.2. Submit a report of any reportable incident, by the most expeditious means available, through command channels, to the responsible Combatant Commander. Normally, an OPREP-3 report, established in Joint Pub 1-03.6, Joint Reporting System, Event/Incident Reports (E/IR), will be required. Copies of the E/IR shall be provided to the DoD Component officials designated by the Heads of the DoD Components concerned.

6.3.3. Submit a report, in accordance with DoD Instruction 5240.4 (reference (1)), concerning any criminal case, regardless of the allegation, that has received, is expected to receive, or which, if disclosed, could reasonably be expected to receive, significant media interest.

6.4. 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 role as the Executive Agent under subsection 5.6., above.

6.5. DoD Notifications. Notifications of a reportable incident shall be forwarded to the Chairman of the Joint Chiefs of Staff; the GC, DoD; the Assistant Secretary of Defense for Public Affairs; and the Inspector General of the Department of Defense, who will inform their counterparts in any Military Service or Department concerned.

6.6. Information Requirements. The Event/Incident Reports referred to in this Directive and further described in reference (1) are exempt from licensing in accordance with paragraph 5.4.2. of DoD 8910.1-M (reference (j)).

7. EFFECTIVE DATE AND IMPLEMENTATION

This Directive is effective immediately. Forward two copies of implementing documents to the General Counsel of the Department of Defense and the Under Secretary of Defense for Policy within 120 days.

Enclosures - 1

E1. References, continued

E1. ENCLOSURE 1

REFERENCES, continued

(e) Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, August 12, 1949

(f) Geneva Convention for Amelioration of the Condition of the Wounded, Sick and Shipwrecked Members of the Armed Forces at Sea, August 12, 1949

(g) Geneva Convention Relative to the Treatment of Prisoners of War, August 12, 1949

(h) Geneva Convention Relative to the Protection of Civilian Persons in Time of War, August 12, 1949

(i) Sections 801-940 of title 10, United States Code, "Uniform Code of Military Justice"

(j) DoD 8910.1-M, "DoD Procedures for Management of Information Requirements," June 1998, authorized by DoD Directive 8910.1, June 11, 1993

(k) Section 163(a)(2) of title 10, United States Code

(l) DoD Instruction 5240.4, "Reporting of Counterintelligence and Criminal Violations," September 22, 1992