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HEADQUARTERS UNITED STATES MARINE CORPS  
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MCO 3300.4

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MARINE CORPS ORDER 3300.4

From: Commandant of the Marine Corps  
To: Distribution List

Subj: MARINE CORPS LAW OF WAR PROGRAM

Ref: (a) DOD Directive 5100.77 of 9 Dec 98  
(b) CJCSI 5810.01B  
(c) SECNAVINST 3300.1A  
(d) Geneva Conventions of 1949 for the Protection of War Victims  
(e) Hague Convention No. IV of 1907 Respecting the Law and Customs of War on Land  
(f) MCO 1510.89A  
(g) MCO 1510.90  
(h) MCO 1510.97

Encl: (1) Definitions  
(2) Entry-Level Training Objectives  
(3) Follow-On Training Objectives  
(4) Specialized Training Objectives  
(5) Detailed Training Objectives  
(6) Report, Investigation, and Disposition of Alleged Law of War Violations ("Reportable Incidents")

1. Situation

a. Reference (a) directs the Armed Forces of the United States to comply with the law of war during the conduct of military operations, provides policy and guidance, and institutes and assigns responsibilities for implementing the Department of Defense (DOD) Law of War Program. Specifically, reference (a) requires that the Commandant of the Marine Corps (CMC):

(1) ensures that Marines comply with the law of war during all armed conflicts, however characterized, and with the principles and spirit of the law of war during all other operations;

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(2) implements effective programs to prevent violations of the law of war, including law of war training and dissemination;

(3) ensures 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

(4) implements programs to report and investigate alleged law of war violations.

b. Reference (b) implements the DOD Law of War Program (reference (a)), establishing joint policy, assigning responsibilities, and providing guidance regarding United States law of war obligations, (enabling the military services and combatant commands to effect common policy for coordinated actions.

c. Reference (c) implements the DOD Law of War Program (reference (a)), within the Department of the Navy (DON). In addition to the requirements established in reference (a), reference (c) requires that the CMC:

(1) implements programs providing accession (hereinafter referred to as entry level) and specialized law of war training for Marines, as required by their duties and responsibilities;

(2) identifies billets requiring special knowledge of aspects of the law of war, and assigns appropriately trained personnel to those billets;

(3) establishes policies, procedures, and directives to ensure compliance with the law of war; and

(4) implements internal policies and procedures for the prompt reporting of alleged violations of the law of war committed by or against members of the naval establishment.

## 2. Mission

a. To establish the Marine Corps Law of War Program which complies with DOD requirements, implements doctrine, and establishes appropriate training requirements to

ensure Marines and civilian members of Marine Corps activities conduct military operations in accordance with applicable laws, regulations, and policies.

b. This Order implements the requirements established in the references within the Marine Corps.

c. Enclosure (1) contains definitions applicable to this order.

3. Execution

a. Commander's Intent and Concept of Operations

(1) Commander's Intent

(a) Marines and all personnel accompanying Marine Corps forces will conduct all military operations in accordance with applicable laws, regulations, and policies. In particular, they will comply with the law of war during all armed conflicts and with the principles and spirit of the law of war during all other military operations.

(b) All plans, policies, directives, publications, and training programs will be consistent with applicable law, regulation, and policy.

(2) Concept of Operations

(a) All Marines will receive law of war or operational law training as outlined below. The training program established in this Order is derived from references (d) and (e), other international treaties and agreements to which the United States is a party, customary international law, United States domestic law, regulation, and policy; and various service and joint directives, publications, and instructions.

(1) Formal Law of War Training. In accordance with references (a) and (c), Marines will receive the following law of war training:

(a) Entry-Level Training. All entry-level Marines will receive law of war training as set forth in enclosure (2).

(b) Follow-On Training. Marines attending Marine Corps formal or unit-run schools (not including entry-level formal schools), operational units prior to deployment, and Marines identified by billet in enclosure (3) will receive follow-on law of war training as set forth in enclosure (3).

(c) Specialized Training. Additional law of war training depends upon a Marine's billet or assigned duties and responsibilities. In particular, all personnel responsible for *directing or planning* combat operations will receive law of war training sufficient to enable them to comply with applicable law, regulation, and policy in all situations reasonably contemplated. Marines serving in functions specified by enclosure (4) will receive "specialized" law of war training as set forth in enclosure (4).

(d) Detailed Training. All Marine Corps judge advocates will receive "detailed" operational law training as set forth in enclosure (5).

(2) Follow-on Training Applications. Follow-on level law of war training will be incorporated into realistic training exercises at all operational levels through use of realistic mission-oriented scenarios derived from the training objectives outlined in enclosure (3).

b. Report, Investigation, and Disposition of Alleged Law of War Violations. All suspected law of war violations committed by or against Marines or personnel accompanying Marine Corps forces will be promptly reported and thoroughly investigated. If appropriate, disciplinary or administrative action will be taken. See enclosure (6) for specific guidance.

c. Evaluation. The effectiveness of the Marine Corps Law of War Program will be evaluated through the following:

- (1) the Marine Corps Common Skills (MCCS);
- (2) the Marine Air-Ground Task Force (MAGTF) Staff Training Program (MSTP);
- (3) the Marine Expeditionary Unit Special Operations Capable (MEU (SOC)) Certification process, although this

training is not a prerequisite for a MEU to receive SOC certification; and

(4) the Naval Inspector General (Deputy Inspector General for Marine Corps Matters) (IGMC) inspections.

4. Subordinate Element Tasks

a. Deputy Commandant for Plans, Policies, and Operations (DC PP&O) will:

(1) act as primary staff sponsor of the Marine Corps Law of War Program;

(2) ensure that all plans, orders, policies, directives, publications, and other documents concerning Marine Corps operational matters under his/her cognizance are reviewed by the Staff Judge Advocate to the Commandant of the Marine Corps (SJA to CMC) for consistency with applicable laws, regulations, and policies, including the law of war; and

(3) coordinate with the SJA to CMC to provide overall coordination, approval, and promulgation of major Marine Corps policies, plans, and training involving the Marine Corps Law of War Program.

b. Commanding General, Marine Corps Combat Development Command (CG MCCDC) will:

(1) In coordination with SJA to CMC, ensure that formal law of war and operational law training required by this Order are incorporated into existing training programs under the cognizance of CG MCCDC, to include:

(a) entry-level law of war training to be provided in accordance with enclosure (2);

(b) follow-on law of war training to be provided in accordance with enclosure (3) at formal schools (other than entry-level formal schools), including The Basic School, Expeditionary Warfare School, Command and Control Systems School, MAGTF Intelligence Officers Course, Command and Staff College, Marine Corps War College, and the staff noncommissioned officer academies (including the sergeants courses); and

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(c) "detailed" operational law training that meets the training objectives contained in enclosure (5) to be provided to newly accessing Marine Corps judge advocates in conjunction with the Basic Lawyer Course, Naval Justice School, Naval Education & Training Command, Newport, Rhode Island.

(2) In coordination with SJA to CMC, employ qualified legal instructors, if available, to conduct law of war training during all existing training programs under the cognizance of CG MCCDC, as required in this Order.

(3) In coordination with SJA to CMC, establish law of war evaluation standards to be incorporated into MCCS.

c. Marine Forces (MARFOR) Commanders, including Commander, Marine Forces Reserve (COMMARFORRES) will:

(1) as Service component commanders of unified commands, ensure that all plans, policies, directives, orders, letters of instruction, rules of engagement, and similar documents concerning operational matters, prepared by or subject to review by them, are reviewed by their judge advocates for consistency with applicable laws, regulations, and policies, including the law of war;

(2) include law of war issues in unit training and evaluation, including MSTP and MEU(SOC) Certification (this Order is not intended to add another requirement to attaining SOC certification);

(3) make available/provide qualified legal instructors for, and conduct:

(a) follow-on law of war training, in accordance with paragraphs 3a(2)(a)(1)(b) and 3a(2)(a)(2) of this Order;

(b) "specialized" law of war training in accordance with paragraph 3a(2)(a)(1)(c) of this Order;

(4) ensure qualified legal advisors are immediately available to operational commanders at all levels of command, in coordination with Deputy Commandant for Manpower & Reserve Affairs (DC M&RA) and SJA to CMC, to provide advice concerning law of war compliance; and

(5) ensure that judge advocates assigned as staff judge advocates, deputy staff judge advocates, or legal advisors to operational commands are granted appropriate clearances and access to classified information and command spaces necessary to carry out their responsibilities under this Order.

d. SJA to CMC will:

(1) provide overall legal guidance for the Marine Corps Law of War Program, including:

(a) development, oversight, and review of all plans, policies, directives, orders, letters of instruction, and similar documents involving or related to operational matters; and

(b) coordination of operational law matters with other Federal departments and agencies, including the DOD General Counsel and the DOD Law of War Working Group;

(2) conduct periodic reviews of the Marine Corps Law of War Program;

(3) oversee, approve, coordinate, and monitor Marine Corps plans and policies, curriculum, and instruction for training and education in the law of war and operational law for the "specialized" and "detailed" training levels;

(4) assist DC PP&O in developing and coordinating Marine Corps plans and policies involving operational law issues, and in reviewing international agreements, treaties, and other matters involving these issues;

(5) review Headquarters Marine Corps staff agency policies, procedures, plans, directives, publications, and similar documents pertaining to operational matters for conformity with applicable laws, regulations, and policies;

(6) In coordination with CG MCCDC, create and conduct detailed operational law training required for judge advocates, in accordance with enclosure (5);

(7) Support CG MCCDC:

(a) assist in the development and implementation of Marine Corps law of war and operational law training programs, to include providing qualified legal instructors, when available, to conduct Marine Corps follow-on law of war training during all existing training programs under the cognizance of CG MCCDC;

(b) monitor and review all entry-level and follow-on instruction and instructional materials related to law of war and operational law to ensure the instruction is relevant and consistent with current international and domestic laws, regulations, and policies; and

(c) assist in the development and implementation of evaluation standards to be incorporated into MCCS;

(8) Support MARFOR Commanders:

(a) assist, approve, develop, and implement law of war training and evaluation programs, including those incorporated into the MSTP and MEU(SOC) Certification process (this Order is not intended to add another requirement to attaining SOC certification);

(b) review and approve all instruction and instructional materials related to law of war and operational law; and

(9) assist the Naval Inspector General (Deputy Inspector General for Marine Corps Matters) in developing and implementing inspection procedures to evaluate the Marine Corps Law of War Program.

e. The Naval Inspector General (Deputy Inspector General for Marine Corps Matters) will:

(1) ensure that the inspection program monitors the adequacy of law of war training and the review of Marine Corps plans for conformity with reference (c), and that Marine operations are executed consistent with reference (c);

(2) ensure that reportable incidents involving alleged violations of the law of war committed by or against Marines are investigated; and

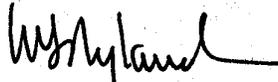
(3) provide a copy of all such investigations to the SJA to CMC.

5. Administration and Logistics. Violations of the law of war and failure to report and investigate possible law of war violations as required by this Order are punishable under the Uniform Code of Military Justice.

6. Command and Signal

a. Signal. This order is effective the date signed.

b. Command. This Order is applicable to the Marine Corps Total Force.



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## DEFINITIONS

1. Law of War. The "law of war" is that part of international law that regulates the conduct of armed hostilities. Frequently, it is referred to as 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.

2. Operational Law. "Operational law" is that body of international, foreign (host nation), and United States domestic laws, regulations, and policies that directly affect United States military operations across the operational spectrum--from peacetime activities to combat operations. Many relevant laws, including domestic laws, regulations, and policies, fall outside the "law of war."

a. International Law. The law of war is but one part of international law binding on the United States that may directly affect military operations. Other treaties, international agreements, and customary law norms governing air, sea, and space use, arms control, status of forces agreements (SOFAs), basing rights, human rights, communications, sovereign and diplomatic relations, criminal jurisdiction, treaty law, and international organizations also comprise critical aspects of "operational law." Some international agreements, like arms control and human rights agreements, may produce legal obligations that overlap with or require interpretation under the "law of war," while other agreements are entirely distinct from it. Certain international law obligations between states may change once those states are involved in armed conflict against each other.

b. Foreign Law. Except as modified by a SOFA or other multilateral or bilateral agreement with the state concerned, United States peacetime military operations are also subject to the domestic law of nations in which United States forces are deployed. Armed conflict between two or more states will generally modify the legal obligations between those states, but not as between those states and friendly and neutral nations.

c. Domestic Law, Regulation, and Policy. Transcending traditional legal disciplines, operational law also incorporates

ENCLOSURE (1)

relevant aspects of diverse bodies of United States domestic law; as well as executive orders, administrative regulations, and Department of Defense, Joint, and Service directives and policies that directly affect military operations. Although domestic laws, regulations, and policies affecting United States military activities, including combat operations, may be related to the "law of war," they are technically distinct from it.

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

4. Law of War Program. The title "Law of War Program" is used in this Order because the United States is bound under international law, as implemented in DOD Directive 5100.77 of 9 Dec 98 and SECNAVINST 3300.1A or their current editions and this Order, to educate its military forces in the "law of war," and to provide legal advisors at all levels to advise commanders concerning "law of war" compliance. All Marines must, therefore, receive formal "law of war" training. Marines also require training in certain other aspects of international law and domestic laws, regulations, and policies directly affecting military activities, including combat operations, which fall outside the "law of war." Accordingly, any reference to "law of war" training in this Order implies an approach incorporating critical relevant aspects of these rules, commensurate with a Marine's duties and responsibilities.

a. The term "operational law" is used in this Order in connection with the training and mission-support activities of Marine judge advocates. These officers will receive detailed training in the myriad laws, regulations, and policies comprising the wider discipline of "operational law." Any reference to "operational law" training or duties in this Order inherently includes the "law of war."

b. Despite association of its title with armed conflict, the DOD Law of War Program implemented by this Order establishes requirements, doctrine, and training that apply to all Marines, at all times, across the spectrum of Marine Corps activities, during peacetime and during any combat operations.

5. Qualified Legal Instructor. For purposes of this Order, "qualified legal instructors" in the law of war and operational law are persons who, by their training, education, or

ENCLOSURE (1)

experience, have acquired special expertise in the law of war and operational law sufficient to fully and completely address the objectives identified for the program(s); they are expected to teach.

ENCLOSURE (1)

ENTRY-LEVEL TRAINING OBJECTIVES1. Background

a. Teaching the basic principles of the law of war at the entry level is an essential element in the establishment of good order and discipline within the Marine Corps, especially as it relates discipline to the use of force in combat. Consequently, all newly accessing Marines must receive entry-level law of war training that meets the training objectives as outlined in paragraph 3 of this enclosure.

b. Entry-level training must be clear and direct, positive in substance, and dynamic in approach. It will express in simple, succinct form, those restrictions on conduct in combat that are absolute. This training will be designed to ensure that all Marines are aware of, can understand, remember, and meet their responsibilities under the law of war.

c. training will emphasize the compatibility of the law of war with the principles of war, tactical considerations, and good leadership. It will stress the overall effective philosophy of the law of war and the United States dedication to adherence to the law of war during the conduct of military operations.

2. Training Requirements

a. Entry-level law of war training will be provided at the entry-level school deemed appropriate by CG MCCDC, but must be provided to every newly accessing Marine, whether officer or enlisted.

b. Students will be tested on their understanding of their entry-level training to reinforce that instruction and determine its effectiveness.

c. Under no circumstances will law of war instruction be merged with any block or area of instruction that will have the effect of minimizing the importance of the law of war or placing in doubt the absoluteness of its principles.

ENCLOSURE (2)

3. Entry-Level Training Objectives. Entry-level training will teach the following.

a. Basic Principles of the Law of War

- (1) Marines fight only enemy combatants.
- (2) Marines do not harm enemy soldiers who surrender. Marines disarm them and turn them over to their superiors.
- (3) Marines do not torture or kill enemy prisoners of war or detainees.
- (4) Marines collect and care for the wounded, whether friend or foe.
- (5) Marines do not attack medical personnel, facilities, equipment, or chaplains.
- (6) Marines destroy no more than the mission requires.
- (7) Marines treat all civilians humanely.
- (8) Marines do not steal; they respect private property and possessions.
- (9) Marines do their best to prevent violations of the law of war, and report all violations to their superiors.

b. Summary. Marines are disciplined in combat. Violating the law of war dishonors our Nation, our Marine Corps, and ourselves. Far from weakening our enemy's will to fight, disobeying the law of war strengthens it. Disobeying the law of war is also a crime punishable under the Uniform Code of Military Justice.

**FOLLOW-ON TRAINING OBJECTIVES**1. Follow-On Training

a. Follow-on training builds upon the basic concepts imparted during entry-level training, exploring them in more depth and detail, and employing traditional law of war terminology. In addition to fundamental concepts of the law of war, follow-on training teaches Marines central aspects of other laws, regulations, and policies directly affecting military operations.

b. Follow-on training establishes a baseline for Marines whose military assignment may involve exposure to combat or direct confrontation with a hostile force, or whose military assignment plans for such operations. Marines must possess sufficient comprehension of these rules to enable them to comply with them in the performance of their duties.

c. Follow-on training must be tailored to the depth and detail commensurate with the Marine's billets, duties, and responsibilities.

d. Follow-on training will stress the foundational principles upon which the law of war is built; to include, "military necessity" or "military objective," "humanity" or the "avoidance of unnecessary suffering," "proportionality," and "distinction" or "discrimination." These principles are expressed in treaties, principally the Geneva Conventions of 1949 for the protections of war victims, which established humanitarian protections for the victims of war; Hague Convention No. IV of 1907 respecting the law and customs of war on land and its annexed regulations, which regulate the means and methods of conducting warfare; and, in customary international law. Other treaties, such as the Geneva Gas Protocol of 1925 protocol for the prohibition of poisonous gases and bacteriological methods of warfare, the Biological Weapons of 10 Apr 72 Convention, the Chemical Weapons Convention, and the United Nations Convention on Certain Conventional Weapons and its Protocols, also restrict specific aspects of warfare; and important principles of these treaties are included in the training objectives in paragraph 3 of this enclosure. Follow-on training will incorporate central tenets of some or all of the above, as well as relevant domestic laws, regulations, and

ENCLOSURE (3)

policies, as appropriate for the audience as outlined in the training objectives in paragraph 3 of this enclosure.

2. Training Requirements

a. Follow-on law of war training will:

(1) be taught at all Marine Corps formal schools beyond the entry level, including The Basic School, Expeditionary Warfare School, Command and Control Systems School, MAGTF Intelligence Officers Course, Command & Staff College, staff noncommissioned officers academies and at locally conducted schools such as sergeants and corporals courses, and during operational pre-deployment unit training;

(2) be incorporated into tactical exercises at all operational levels through use of realistic mission-oriented scenarios derived from the training objectives outlined in paragraph 3 of this enclosure

(3) meet the training objectives set forth in paragraph 3 of this enclosure; and

(4) employ instructional materials approved by CG MCCDC, in coordination with the SJA to CMC.

b. Follow-on law of war training is especially appropriate and highly recommended for Marines serving in the following billets:

(1) company/battery commanders and executive officers and platoon commanders serving with the operating forces;

(2) Marine special agents assigned to the Naval Criminal Investigative Service (NCIS) as investigators, and military police investigators in the operating forces;

(3) civilian NCIS special agents/investigators under the operational control of USMC units; and

(4) members of interrogator-translator and counterintelligence teams.

ENLCOSURE (3)

3. Follow-On Training Objectives. Follow-on training will address, at a level of depth and detail as appropriate, the following.

a. Definition, discussion, and illustration of the four major Principles of the law of war in the context of lawful targeting. The four major principles are:

- (1) Principle of Military Necessity;
- (2) Principle of Distinction or Discrimination;
- (3) Principle of Unnecessary Suffering or Humanity; and,
- (4) Principle of Proportionality.

b. Discuss and illustrate the specific protections accorded the following category of persons under the law of war:

- (1) civilians;
- (2) prisoners of war;
- (3) wounded and sick in the field and at sea; and,
- (4) medical personnel, medical units and establishments, and chaplains.

c. Define, discuss, and illustrate the following tactics, stratagems, and concepts:

- (1) ruses;
- (2) use of enemy property, to include:
  - (a) enemy uniforms;
  - (b) colors; and
  - (c) equipment;
- (3) treachery and perfidy, to include:
  - (a) feigning incapacitation;

ENCLOSURE (3)

- (b) feigning surrender;
- (c) feigning civilian or other noncombatant status;
- (d) feigning protected status;
- (e) misuse of Red Cross, Red Crescent, or cultural property; and,
- (f) certain uses of "booby traps;"

(4) assassination;

(5) espionage; and,

(6) reprisals.

d. Discussion the law, regulation, and policy governing the use of certain weapons and munitions, to include the following:

(1) certain small arms projectiles, including hollow point ammunition, sniper rifles, .50 caliber machine guns, and shotguns;

(2) fragmentation weapons;

(3) landmines and booby traps;

(4) incendiaries;

(5) lasers;

(6) chemical and biological weapons;

(7) riot control agents; and,

(8) non-lethal weapons.

e. Discussion reasons and obligations to comply with the law of war (even if the enemy does not), the duty to report violations, and the consequences for failing to comply.

f. Definition, discussion, and illustration rules of engagement and particularly the concept of self-defense, as articulated in CJCSI 3121.01A, or its current edition.

ENCLOSURE (3)

SPECIALIZED TRAINING OBJECTIVES1. "Specialized" Law of War Training

a. "Specialized" law of war training is intended to impart that detailed level of knowledge required of more senior Marine commanders, executive officers, intelligence officers, operations officers, future plans officers, and others whose billet or duties and responsibilities may require the command of troops in combat, planning for combat operations, direction of prisoner of war handling or investigation of alleged war crimes, and direction of civil affairs operations in foreign civilian populaces.

b. The intent of "specialized" training is to increase each individual's knowledge as required by that Marine's expected duties and responsibilities, rather than to provide a checklist of required topics or specify a required number of hours of instruction. An outline of relevant "specialized" training topics is included in paragraph 3 of this enclosure. Officers may desire or require briefing on some or all of these topics, or other relevant laws, regulations, or policies not within the outline, and should so indicate to their staff judge advocate when scheduling their briefing.

c. Staff judge advocates will ensure "specialized" training is conducted for Marines identified below by special briefing on an "as necessary" basis.

2. Billet Specific Training Requirements. Marines assigned to the functions specified in paragraph 3 of this enclosure should obtain "specialized" training, as necessary, prior to or as soon after assuming their duties as is practicable and consistent with mission requirements.

a. Commanders (including deputy commanders and executive officers) of Marine Corps Forces (MARFORs), MAGTFs, and elements of the Operating Forces, down to and including the battalion/squadron level and equivalent combat service support element (CSSE);

ENCLOSURE (4)

b. Operations officers (G/S-3s) and fire support coordinators of MARFORs, MAGTFs, and elements of the Operating Forces down to and including the battalion/squadron level and equivalent CSSE.

c. Intelligence officers (G/S-2s) of MARFORs, MAGTFs, and elements of the Operating Forces, down to and including the battalion/squadron level and equivalent CSSE.

d. Plans officers (G/S-5s) of MARFORs, MAGTFs, and elements of the Operating Forces, down to and including the battalion/squadron level and equivalent CSSE.

e. Officers serving in Headquarters, United States Marine Corps and joint or combined staff billets, when their duties require a specialized knowledge of the law of war (such as J-2, J-3, and J-5 billets).

f. Commanding officers, executive officers, and officers-in-charge of civil affairs groups and detachments.

g. Commanding officers, executive officers, and officers-in-charge of military police units and detachments.

h. Officers-in-charge and/or staff noncommissioned officers-in-charge of interrogator-translator and counterintelligence teams.

### 3. Specialized Training Topics

a. A discussion of the basic principles of the law of war in the context of lawful targeting, as described in enclosure (3).

b. A discussion of the nature of individual responsibility as it relates to the law of war, including measures for the reporting of suspected or alleged war crimes committed by or against United States or allied personnel.

c. A discussion of when the law of war applies, the nature of obligations on nations to observe legal requirements, and methods of internal enforcement within the United States and international methods of enforcement of the laws of war.

ENCLOSURE (4)

d. A discussion of the major requirements of the Geneva Conventions of 1949 for the protection of war victims and Hague Convention No. IV of 1907 respecting the law and customs of war on land, as reflected in enclosure (3).

e. A discussion of the United States policy toward and key provisions of the 1977 Protocols Additional to the Geneva Conventions (GP I & II).

f. A discussion of the key provisions of the 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict.

g. A discussion of the United States policy contained in DOD Directive 5100.77 of 9 Dec 98, or its current edition, to comply with the law of war during all armed conflicts, however characterized, and with the principles and spirit of the law of war during all other operations.

h. A discussion of how detainees should be handled before, during, and after the completion of military operations.

i. A discussion of relevant laws, regulations, and policies concerning, at a minimum, the weapons referred to in paragraph 3d of enclosure (3), as well as an in-depth review of the following:

(1) key provisions of the Biological Weapons Convention (BWC), Chemical Weapons Convention (CWC), and the 1980 United Nation's Convention on Prohibitions or Restrictions of the Use of Certain Conventional Weapons Which May be Deemed to be Excessively Injurious or to Have Indiscriminate Effects (UNCCW), and all four of its protocols; and,

(2) use of riot control agents (RCAs) and the relationship of the CWC, Executive Order 11850, and CJCSI 3110.07B, or its current edition.

j. A discussion of rules of engagement (ROE), including:

(1) CJCSI 3121.01A, "Standing Rules of Engagement for U.S. Forces" (SROE), or its current edition, to include: SROE applicability; the fundamentally permissive nature of the SROE, and its distinction between "self-defense" and "mission

ENCLOSURE (4)

accomplishment;" the use of force in self-defense, including the elements of and permissible actions in self-defense, and in particular, the commander's inherent authority and obligation to defend the unit and other United States forces in the vicinity, and the meanings of "necessity," "proportionality," "hostile act," "hostile intent," "all necessary means available," and "all appropriate actions in self-defense;" the distinctions between national, unit, individual, and collective self-defense and the authorities to exercise these rights; the purposes of SROE "supplemental measures," how they are modified, and how they differ from and interact with the right of self-defense; and the authority to, and implications of, declaring forces "hostile;"

(2) applicable theater-specific ROE and how they interact with the SROE;

(3) key aspects of MC 362 (the NATO ROE document);

(4) how RCAs and non-lethal weapons are treated in the SROE;

(5) how land mines are treated in the SROE;

(6) United States law and policy relevant to information operations and how they are treated in the SROE;

(7) measures imposing limitations on fires, including prohibitions upon "unobserved indirect fires," or requirements for "eyes on target," or that "targets must be clearly identified," and restrictive fire areas (RFAs); and,

(8) requirement that ROE must be consistent with international and United States law.

k. A discussion of rules for the use of force (RUF) in domestic military operations, including:

(1) how RUF differ from ROE;

(2) key aspects of DOD Directive 5210.56 of 1 Nov 01, "Use of Deadly Force and the Carrying of Firearms by DoD Personnel Engaged in Law Enforcement and Security Duties," or its current edition;

ENCLOSURE (4)

(3) the DOD policy for providing military support to civilian authorities;

(4) the RUF reflected in the "Garden Plot" plan for response to civil disturbances;

(5) key aspects of CJCSI 3121.02, "Rules on the Use of Force by DOD Personnel Providing Support to Law Enforcement Agencies Conducting Counterdrug Operations in the United States," or its current edition; and,

(6) key aspects of DOD policy regarding the military response to the release of chemical, biological, nuclear, radiological, or high explosive weapons inside the United States.

1. A discussion of basic legal principles relevant to intelligence operations, including:

(1) the basic constitutional and statutory authorities that govern intelligence operations;

(2) the United States policy regarding intelligence operations set out in Executive Order 12333; and,

(3) the DOD and Naval Services policies established in DOD Dir 5240.1 of 25 Apr 88, "DOD Intelligence Activities;" DOD Dir 5240.1-R of 19 Dec 82, "Procedures Governing the Activities of DOD Intelligence Components that Affect United States Persons;" DOD Dir 5240.2 of 22 May 97, "DOD Counter-intelligence;" SECNAVINST 3820.3D, "Oversight of Intelligence Activities within the Department of the Navy;" and MCO 3800.2A, "Conduct and Oversight of Intelligence Activities," or their current editions.

m. A discussion of the legal authorities for the use of force under international and domestic law, including:

(1) how the United Nation's (UN) Charter addresses the use of force, including its prohibition on aggressive use of force; the authority of the UN Security Council to mandate measures, including the use of force, to address threats to international peace and security; the right of self-defense; how the United States interprets the UN Charter in light of

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customary international law, including the United States views that the "inherent right of self-defense" includes the right of a nation to protect its nationals abroad, and to act in "anticipatory self-defense;"

(2) the principle of collective self-defense and key collective defense treaties to which the United States is a party, to include the North Atlantic Treaty Organization (NATO) treaty;

(3) the division of authority to wage war in the United States Constitution, including the President's constitutional authority to direct the use of force and Congress' constitutional authority to declare war and appropriate funds;

(4) the War Powers Resolution, 50 U.S.C. §§ 1541-1548; and

(5) a discussion of the legal authorities for the use of force in response to terrorism.

n. A discussion of the requirements of International Human Rights law and its impact on military operations, including:

(1) key concepts of the Universal Declaration of Human Rights; and,

(2) the United States position concerning various international declarations and conventions on human rights, particularly as they might impact on military operations.

o. A discussion of SOFAs and International Agreements impacting MAGTF deployments, including:

(1) the basic rules that mandate or override the application of host nation law to foreign forces in war and military operations other than war;

(2) the United States policy and procedures that establish the authority for negotiating international agreements, and the recommended content of such agreements;

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(3) how to find existing international agreements that might impact on military operations; and,

(4) key aspects of major SOFAs impacting on MAGTF operations.

p. A discussion of the international law and United States policy concerning diplomatic relations and how they may impact MAGTF operations, particularly during the conduct of noncombatant evacuation operations.

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**DETAILED TRAINING OBJECTIVES**1. "Detailed" Operational Law Training

a. United States Armed Forces must obey the law of war and United States military commanders must ensure its enforcement. Service members must understand the law of war if they are expected to follow or enforce it. Accordingly, they must be instructed in its content.

b. The United States is party to certain treaties or considers itself legally bound under customary international law to provide law of war legal advisors to commanders, and to instruct its Armed Forces in the law of war. (See Article 1, Hague Convention No. IV of 1907 respecting the law and customs of war on land; and, Article 127, Geneva Convention Relative to the Treatment of Prisoners of War (GPW).) Department of Defense, Joint, and service directives implement these legal obligations. (See DOD Directive 5100.77 of 9 Dec 98, CJCSI 5810.01B, and SECNAVINST 3300.1A or their current editions.) Judge advocates perform these tasks within the United States military.

c. In order to fulfill their duties as law of war advisors and instructors, judge advocates must possess a solid foundation in the treaties and customary law comprising the fundamental core of the law of war.

d. Additionally, various joint directives establish implicit requirements for judge advocate proficiency in myriad legal, regulatory, and policy matters impacting military operations. These diverse subjects comprise the wider discipline of operational law. Judge advocates must also, therefore, possess a working knowledge of operational law to be effective legal advisors during military operations, exercises, and training.

e. The necessity for legal advisors within the military operational realm is greater today than ever. Military commanders require the assistance of legal advisors in teaching, interpreting, and construing the relevant rules impacting military operations in order to ensure their effective implementation. Operational legal advisors today are routinely

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called upon to provide advice that directly impacts operational planning, decision-making, and the actual conduct of combat operations.

f. These treaties, customary international laws and regulatory requirements clearly establish the discipline of operational law as a core competency of every judge advocate's military legal practice.

## 2. Policy

a. Judge advocates will be prepared to advise commanders and their staffs independently and expeditiously on myriad legal and regulatory subject matter impacting military operations during peacetime activities and across the spectrum of conflict.

b. Judge advocates will also be prepared to provide instruction to Marines in the law of war and other operational law subjects as set out in the main body and other enclosures to this Order.

c. The "detailed" operational law training implemented in this enclosure is intended to prepare judge advocates to fulfill their legal and regulatory obligations as law of war and operational law advisors and instructors for the Operating Forces.

d. Prior to or as soon as is practicable after reporting, officers assigned as staff judge advocates, deputy staff judge advocates, or operational law advisors for the Operating Forces must prepare themselves to perform the duties assigned in this Order. These officers should undertake personal study and seek additional formal operational law instruction, as necessary, to refresh and update their knowledge in this area.

## 3. Training Requirements

a. Newly accessing Marine Corps judge advocates will be provided "detailed" operational law training, consistent with the training objectives set out below, in conjunction with the Basic Lawyer Course, Naval Justice School, Naval Education & Training Command, Newport, Rhode Island.

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b. The "detailed" operational law instruction will, at a minimum, meet the training objectives established in paragraph 4 of this enclosure.

4. "Detailed" Training Objectives. Judge advocates will be prepared to provide operational law advice and to instruct MAGTF commanders, their staffs, and units in the law of war and operational law in accordance with this Order and DOD Directive 5100.77 of 9 Dec 98, CJCSI 5810.01B, and SECNAVINST 3300.1A, or their current editions. Judge advocates will be prepared to provide advice and/or instruction, at a minimum, consistent with the training objectives in this paragraph.

a. Provide advice and/or instruction on key aspects of law of war treaties, customary international law, and relevant United States policy directly affecting military operations as outlined below:

(1) Hague Convention No. IV of 1907, "Respecting the Laws and Customs of War on Land;"

(2) basic customary law principles of the law of war in the context of lawful targeting as described in enclosure (2);

(3) Hague Convention No. IX of 1907, "Concerning Bombardment by Naval Forces in Time of War;"

(4) Geneva Convention Relative to the Treatment of Prisoners of War (GPW);

(5) Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field (GWS), 75 U.N.T.S. 31 (1950).

(6) Geneva Convention for the Amelioration of the Condition of the Wounded, Sick and Shipwrecked Members of the Armed Forces at Sea (GWS Sea);

(7) Geneva Convention Relative to the Protection of Civilian Persons in Time of War (GC);

(8) those provisions of the 1977 Protocols Additional to the Geneva Conventions (GP I & II) that the United States considers binding as reflective of customary international law;

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(9) 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict; and,

(10) United States policy of applying the spirit and principles of the law of war to all military operations, as expressed in DOD Directive 5100.77 of 9 Dec 98, CJCSI 5810.01B, and SECNAVINST 3300.1A, or their current editions and this Order.

b. Provide advice and/or instruction on key provisions of arms control treaties, executive orders, joint instructions, and relevant United States policies as follows:

(1) Protocol for the Prohibition of the use in War of Asphyxiating, Poisonous, or Other Gases, and of Bacteriological Methods of Warfare (1925 Geneva Gas Protocol);

(2) Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction (1993 CWC);

(3) Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on their Destruction (1972 BWC);

(4) Convention on Prohibitions or Restrictions of the Use of Certain Conventional Weapons Which May be Deemed to be Excessively Injurious or to Have Indiscriminate Effects (1980 UNCCW), to include:

(a) United States policy regarding incendiary weapons;

(b) United States policy regarding landmines and booby traps; and

(c) United States policy regarding the use of lasers;

(5) United States policy regarding the use of riot control agents (RCAs), and in particular, their treatment in CJCSI 3110.07B, "Chemical Warfare; Nuclear, Biological, and Chemical Defense; Riot Control Agents; and Herbicides," or its current edition; Executive Order 11850, Recertification of

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Certain Uses in War of Chemical Herbicides and Riot Control Agents; and the 1993 CWC; and

(6) DOD policy on non-lethal weapons.

c. Provide advice and/or instruction concerning reporting, investigation, and adjudication of violations of the law of war in accordance with DOD Directive 5100.77 of 9 Dec 98, CJCSI 5810.01B, and SECNAVINST 3300.1A or their current editions, and enclosure (6) of this Order.

d. Provide advice and/or instruction concerning the concept of command responsibility for the conduct of military operations, including compliance with the law of war.

e. Provide legal advice and/or instruction, including mission-specific advice or instruction, regarding rules of engagement (ROE), to include the following:

(1) CJCSI 3121.01A, "Standing Rules of Engagement for U.S. Forces" (SROE), or its current edition, including:

(a) SROE purposes, development, modification, and promulgation, and in particular, the SROE "supplemental measures" process;

(b) key SROE concepts, including: SROE applicability; the fundamentally permissive nature of the SROE, and its distinction between "self-defense" and "mission accomplishment;" the use of force in self-defense, including the elements of and permissible actions in self-defense, and in particular, the commander's inherent authority and obligation to defend the unit and other United States forces in the vicinity, and the meanings of "necessity," "proportionality," "hostile act," "hostile intent," "all necessary means available," and "all appropriate actions in self-defense," the distinctions between national, unit, individual, and collective self-defense and the authorities to exercise these rights; the purposes of SROE "supplemental measures" and how they differ from and interact with the right of self-defense; and the authority to and implications of declaring forces "hostile,"

(c) theater-specific ROE and their interaction with the SROE;

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- (d) SROE policy regarding RCAs;
- (e) SROE policy regarding non-lethal weapons;
- (f) SROE policy regarding land mines; and,
- (g) SROE policy regarding information operations;

(2) key aspects of MC 362 (NATO ROE document), or its current edition;

(3) measures imposing limitations on fires, including prohibitions upon "unobserved indirect fires" or requirements for "eyes on target," and restrictive fire areas (RFAs); and,

(4) requirement that ROE be consistent with international law and United States law and policy.

f. provide code of conduct instruction in accordance with Executive Order 10631 of 17 Aug 55 (as amended by Executive Order 12017 of 3 Nov 77), "Code of Conduct for Members of the Armed Forces of the United States;" and DOD Directive 1300.7 of 8 Dec 00, "Training and Education to Support the Code of Conduct;" DOD Instruction 1300.21 of 8 Jan 01, "Code of Conduct (CoC) Training and Education;" SECNAVINST 1000.9, "Training and Education necessary to support the Code of Conduct for Members of the Armed Forces of the United States;" and MCO 3460.1A, "Code of Conduct for Members of the Armed Forces of the United States," or their current editions.

g. Provide legal advice regarding rules for the use of force (RUF) in domestic military operations, to include:

(1) how RUF differ from ROE;

(2) DOD policy for use of deadly force and carrying of firearms, as articulated in DOD Directive 5210.56 of 1 Nov 01, "Use of Deadly Force and the Carrying of Firearms by DOD Personnel Engaged in Law Enforcement and Security Duties," or its current version;

(3) DOD policy for providing military support to civilian authorities;

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(4) "Garden Plot" plan for response to civil disturbances;

(5) CJCSI 3121.02, "Rules on the Use of Force by DoD Personnel Providing Support to Law Enforcement Agencies Conducting Counterdrug Operations in the United States," or its current edition; and,

(6) RUF aspects of DOD policy regarding response to the release of chemical, biological, nuclear, radiological, or high explosive weapons inside the United States.

h. Provide legal advice and/or instruction regarding intelligence operations, to include the following:

(1) constitutional and statutory authorities that govern intelligence operations;

(2) United States policy regarding intelligence operations as set out in Executive Order 12333; and,

(3) DOD and Naval Services policies established in DOD Directive 5240.1 of 25 Apr 88, "DOD Intelligence Activities;" DOD Directive 5240.1-R of 7 Dec 82, "Procedures Governing the Activities of DOD Intelligence Components that Affect United States Persons;" DOD Directive 5240.2 of 22 May 97, "DOD Counterintelligence;" SECNAVINST 3820.3D, "Oversight of Intelligence Activities within the Department of the Navy;" and MCO 3800.2A, "Conduct and Oversight of Intelligence Activities," or their current editions.

i. Provide advice and/or instruction regarding the international and domestic law authorities for the use of force, including:

(1) how customary international law and the UN Charter address the use of force, including its prohibition on aggressive use of force; and the authority of the United Nations Security Council to mandate measures, including the use of force, to address threats to international peace and security, and the right of self-defense;

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(2) the United States policy of interpreting the UN Charter in light of customary international law, including the United States view that the "inherent right of self-defense" includes the right of a nation to protect its nationals abroad and to act in "anticipatory self-defense;"

(3) the principle of collective self-defense and key collective defense treaties to which the United States is a party, including the North Atlantic Treaty Organization (NATO) treaty;

(4) the division of authority to wage war in the United States Constitution, including the President's constitutional authority to direct the use of force and Congress' constitutional authority to declare war and appropriate funds;

(5) summary of the War Powers Resolution, 50 U.S.C. §§ 1541-1548 of 7 Nov 73; and,

(6) the legal authorities for the use of force in response to terrorism.

j. Provide advice and/or instruction regarding the requirements of International Human Rights law and its impact on military operations, to include the following:

(1) key concepts of the Universal Declaration of Human Rights; and,

(2) the United States position concerning various international declarations and conventions on human rights, particularly as they might impact on military operations.

k. Provide advice and/or instruction regarding the legal ramifications of information operations, to include the following:

(1) implications of information operations as to the law of war and other international agreements; and,

(2) implications of the Electronic Communications Privacy Act of 1986, Pub. L. 99-508 (October 21, 1986), 100

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Stat. 1848 (1986), and the USA Patriot Act of 2001, Pub. L. 107-56 (October 26, 2001).

l. Provide advice and/or instruction regarding fiscal law and its impact on military operations, to include the following:

(1) fundamental fiscal rules and authorities applicable in United States military operations; and,

(2) typical fiscal law issues that frequently arise in pre-deployment, or during exercises and training.

m. Provide advice and/or instruction regarding the investigation, adjudication, and settlement of claims for damage, loss, or injury arising from military operations, consistent with the following:

(1) DOD Directive 5515.8 of 9 Jun 90, "Single Service Assignment of Responsibility for Processing of Claims," or its current version;

(2) applicable SOFAs; and,

(3) Federal Tort Claims Act (28 U.S.C. §§ 2671-2680) May 2000, Personnel Claims Act of 1964 (31 U.S.C. § 3721), the Military Claims Act (10 U.S.C. § 2733), the Foreign Claims Act (10 U.S.C. § 2734), and the Manual of the Judge Advocate General of the U.S. Navy (JAGMAN).

n. Provide advice and/or instruction regarding SOFAs and international agreements impacting MAGTF deployments, to include the following:

(1) key aspects of major SOFAs impacting MAGTF operations;

(2) basic rules that mandate or override the application of host nation law to foreign forces in war and military operations other than war;

(3) United States policy and procedures that establish the authority for negotiating international agreements and the recommended content of such agreements; and,

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(4) sources of existing international agreements that might impact on military operations.

o. Provide advice and/or instruction regarding international law, to include the Vienna Convention on Diplomatic Relations, and United States policy concerning diplomatic relations and how they may impact MAGTF operations, and in particular, during the conduct of noncombatant evacuation operations.

p. Provide advice regarding the judge advocate's advisory role and responsibilities within the Marine Corps Planning Process, during Deliberate Planning Process, and the Rapid Response Planning Process, to include participation in ROE and targeting cells, and during all phases of mission planning and execution.

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REPORT, INVESTIGATION, AND DISPOSITION OF ALLEGED LAW OF WAR VIOLATIONS ("REPORTABLE INCIDENTS")

1. Background. A "reportable incident" is a possible, suspected, or alleged violation of the law of war. Per dod Directive 5100.77 of 9 Dec 98, CJCSI 5810.01B and SECNAVINST 3300.1A; or their current editions, it is DOD, Joint, and DON policy that:

a. the law of war obligations of the United States are observed and enforced by DOD components;

b. all "reportable incidents" committed by or against members of, or persons serving with or accompanying the United States Armed Forces, must be promptly reported, thoroughly investigated, and, where appropriate, remedied by corrective action;

c. all "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, will be reported through appropriate command channels for ultimate transmission to appropriate United States agencies, allied governments, or other appropriate authorities. Once it has been determined that United States persons are not involved in a reportable incident, an additional United States investigation shall be continued only at the discretion of the appropriate combatant commander. On-scene commanders shall ensure that measures are taken to preserve evidence of reportable incidents pending turnover to United States, allied, or other appropriate authorities.

2. Report of Violations. Consistent with DOD Directive 5100.77 of 9 Dec 98 and SECNAVINST 3300.1A, or their current editions, all Marines, United States Navy, and civilian personnel serving with or accompanying the Marine Corps who have knowledge of, or receive a report of an apparent "reportable incident," will comply with the requirements set out below.

a. As soon as practical:

(1) inform the immediate commander of the matter;

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(2) make the matter known to an officer (normally in the chain of command) senior to the immediate commander if the member has an honest and reasonable belief that the immediate commander is, or may be, involved in violating or concealing a violation of the law of war; or,

(3) in circumstances making other means of reporting impractical, report the matter to a chaplain, judge advocate, or military police investigator who shall then report the matter as directed in this Order.

b. Initial Report. The commander of any unit that obtains information about a reportable incident will:

(1) take immediate action to mitigate or correct the harm;

(2) report the matter promptly through command channels to higher authority;

(3) as soon as practical, report the matter to the nearest military police investigator; and,

(4) if practical, secure the scene of the possible law of war violation so that evidence may be preserved and collected.

c. Higher authorities receiving an initial report will:

(1) report the incident by the most expeditious means to the responsible Combatant Commander. Absent other applicable directives, commanders will normally report "reportable incidents" by means of an OPREP-3 report (MCO 5740.2 Report Control Symbol Exempt applies). CMC (DC PP&O (PO/PS), IGMC, and SJA to CMC (JAO)) will be designated as information addressees on all reports of "reportable incidents"; and,

(2) request a formal investigation by the cognizant military investigation authority.

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