

The Information Resource Center

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◆ Quick Reference 020 7894 0925 (10:00 to 12:00 Monday to Friday) ◆

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Thank you for your recent inquiry. The information you requested is as follows:

Laws of Armed Conflict (LOAC) Defined

The LOAC arises from a desire among civilized nations to prevent unnecessary suffering and destruction **while not impeding the effective waging of war**. A part of public international law, LOAC regulates the conduct of armed hostilities. It also aims to protect civilians, prisoners of war, the wounded, sick, and shipwrecked. LOAC applies to international armed conflicts and in the conduct of military operations and related activities in armed conflict, however such conflicts are characterized.

DoDD 5100.77, *DoD Law of War Program*, requires each military department to design a program that ensures LOAC observance, prevents LOAC violations, ensures prompt reporting of alleged LOAC violations, appropriately trains all forces in LOAC, and completes a legal review of new weapons. Although some of the services often refer to LOAC as the law of war (LOW), within this article LOAC and LOW are the same. LOAC training is a treaty obligation of the United States under provisions of the 1949 Geneva Conventions. The training should be of a general nature; however, certain groups such as aircrews, special forces, special operations, infantry, medical personnel, and security forces, etc., receive additional, specialized training that addresses the unique issues they may encounter.

International and Domestic Law

LOAC comes from both customary international law and treaties. Customary international law, based on practice that nations have come to accept as legally required, establishes the traditional rules that govern the conduct of military operations in armed conflict. Article VI of the US Constitution states that treaty obligations of the United States are the "*supreme law of the land*," and the US Supreme Court has held that international law, to include custom, are part of US law. This means that treaties and agreements the United States enters into enjoy equal status as laws passed by Congress and signed by the President. Therefore, all persons subject to US law must observe the United States' LOAC obligations. In particular, military personnel must consider LOAC to plan and execute operations and must obey LOAC in combat. Those who violate LOAC may be held criminally liable for war crimes and court-martialed under the Uniform Code of Military Justice (UCMJ).

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Principles

Three important LOAC principles govern armed conflict—military necessity, distinction, and proportionality.

Military Necessity. Military necessity requires combat forces to engage in only those acts necessary to accomplish a legitimate military objective. Attacks shall be limited strictly to military objectives. In applying military necessity to targeting, the rule generally means the United States Military may target those facilities, equipment, and forces which, if destroyed, would lead as quickly as possible to the enemy's partial or complete submission.

As an example of compliance with the principle of military necessity during Operation Desert Storm, consider our targeting and destruction of Iraqi SCUD missile batteries and of Iraqi army and air forces. These actions quickly achieved air superiority and hastened the Iraqi military's defeat.

Military necessity also applies to weapons review. AFI 51-402, **Weapons Review**, requires the Air Force to perform a legal review of all weapons and weapons systems intended to meet a military requirement. These reviews ensure the United States complies with its international obligations, especially those relating to the LOAC, and it helps military planners ensure military personnel do not use weapons or weapons systems that violate international law. Illegal arms for combat include poison weapons and expanding hollow point bullets in armed conflict. Even lawful weapons may require some restrictions on their use in particular circumstances to increase compliance with the LOAC.

Distinction. Distinction means discriminating between lawful combatant targets who are out of combat. The central idea of distinction is to only engage valid military targets. An indiscriminate attack is one that strikes military objectives and civilians or civilian objects without distinction. Distinction requires defenders to separate military objects from civilian objects to the maximum extent feasible. Therefore, it would be inappropriate to locate a hospital or POW camp next to an ammunition factory.

Proportionality. Proportionality prohibits the use of any kind or degree of force that exceeds that needed to accomplish the military objective. Proportionality compares the military advantage gained to the harm inflicted while gaining this advantage. Proportionality requires a balancing test between the concrete and direct military advantage anticipated by attacking a legitimate military target and the expected incidental civilian injury or damage. Under this balancing test, excessive incidental losses are prohibited. Proportionality seeks to prevent an attack in situations where civilian casualties would clearly outweigh military gains. This principle encourages combat forces to minimize collateral damage—the incidental, unintended destruction that occurs as a result of a lawful attack against a legitimate military target.

The Geneva Conventions of 1949

Some of the most important LOAC rules come from the Geneva Conventions of 1949. The Geneva Conventions consist of four separate international treaties. These treaties aim to protect combatants and noncombatants from unnecessary suffering who may become wounded, sick, shipwrecked, or POWs during hostilities. They also seek to protect civilians and private property. The four treaties govern the treatment of wounded and sick forces, POWs, and civilians during war or armed conflict.

Combatants

The Geneva Conventions distinguish between lawful combatants, noncombatants, and unlawful combatants.

Lawful Combatants. A lawful combatant is an individual authorized by governmental authority or the LOAC to engage in hostilities. A lawful combatant may be a member of a regular armed force or an irregular force. In either case, the lawful combatant must be commanded by a person responsible for subordinates; have fixed distinctive emblems recognizable at a distance, such as uniforms; carry arms openly; and conduct his or her combat operations according to the LOAC. The LOAC applies to lawful combatants who engage in the hostilities of armed conflict and provides combatant immunity for their lawful warlike acts during conflict, except for LOAC violations.

Noncombatants. These individuals are not authorized by governmental authority or the LOAC to engage in hostilities. In fact, they do not engage in hostilities. This category includes civilians accompanying the Armed Forces; combatants who are out of combat, such as POWs and the wounded, and certain military personnel who are members of the Armed Forces not authorized to engage in combatant activities, such as medical personnel and chaplains. Noncombatants may not be made the object of direct attack. They may, however, suffer injury or death incident to a direct attack on a military objective without such an attack violating the LOAC, if such attack is on a lawful target by lawful means.

Unlawful Combatants. Unlawful combatants are individuals who directly participate in hostilities without being authorized by governmental authority or under international law to do so. For example, bandits who rob and plunder and civilians who attack a downed airman are unlawful combatants. Unlawful combatants who engage in hostilities violate LOAC and become lawful targets. They may be killed or wounded and, if captured, may be tried as war criminals for their LOAC violations.

Undetermined Status. Should doubt exist as to whether an individual is a lawful combatant, noncombatant, or an unlawful combatant, such person shall be extended the protections of the Geneva Prisoner of War Convention until status is determined. The capturing nation must convene a competent tribunal to determine the detained person's status.

Military Targets

The LOAC governs the conduct of aerial warfare. The principle of military necessity limits aerial attacks to lawful military targets. Military targets are those that by their own nature, location, purpose, or use make an effective contribution to an enemy's military capability and whose total or partial destruction, capture, or neutralization in the circumstances existing at the time of an attack enhance legitimate military objectives.

Targeting Personnel. The LOAC protects civilian populations. Military attacks against cities, towns, or villages not justified by military necessity are forbidden. Attacking noncombatants (generally referred to as civilians) for the sole purpose of terrorizing them is also prohibited. Although civilians may not be made the object of a direct attack, the LOAC recognizes that a military target need not be spared because its destruction may cause collateral damage that results in the unintended death or injury to civilians or damage to their property. Commanders and their planners must take into consideration the extent of unintended indirect civilian destruction and probable casualties that will result from a direct attack on a military objective and, to the extent consistent with military necessity, seek to avoid or minimize civilian casualties and destruction. Anticipated civilian losses must be proportionate to the military advantages sought. Judge advocate, intelligence, and operations personnel play a critical role in determining the propriety of a target and the choice of weapon to be used under the particular circumstances known to the commander when planning an attack.

Targeting Objects. The LOAC specifically describes objects that shall not be the targets of a direct attack. Reflecting the rule that military operations must be directed at military objectives, objects normally dedicated to peaceful purposes enjoy a general immunity from direct attack. Specific protection applies to medical units or establishments; transports of wounded and sick personnel; military and civilian hospital ships; safety zones established under the Geneva Conventions; and religious, cultural, and charitable buildings, monuments, and POW camps. However, if these objects are used for military purposes, they lose their immunity. If these protected objects are located near lawful military objectives (which LOAC prohibits), they may suffer collateral damage when the nearby military objectives are lawfully engaged.

Aircraft and Combat

Enemy Military Aircraft and Aircrew. Enemy military aircraft may be attacked and destroyed wherever found, unless in neutral airspace. An attack on enemy military aircraft must be discontinued if the aircraft is clearly disabled and has lost its means of combat. Airmen who parachute from a disabled aircraft and offer no resistance may not be attacked. Airmen who resist in descent or are downed behind their own lines and who continue to fight may be subject to attack. The rules of engagement (ROE) for a particular operation often provide additional guidance consistent with LOAC obligations for attacking enemy aircraft.

Enemy Civilian Aircraft. An enemy's public and private nonmilitary aircraft are generally not subject to attack because the LOAC protects noncombatants from direct attack. Since WWII, nations have increasingly recognized the necessity to avoid attacking civil aircraft. Under exceptional conditions, however, civil aircraft may be lawfully attacked. If the civil aircraft initiates an attack, it may be considered an immediate military threat and attacked. An immediate military threat justifying an attack may also exist when reasonable suspicion exists of a hostile intent, as when such aircraft approaches a military base at high speed or enters enemy territory without permission and disregards signals or warnings to land or

proceed to a designated place.

Enemy Military Medical Aircraft. Enemy military medical aircraft is generally not subject to attack under the LOAC. However, at least six instances may lead to a lawful attack. Enemy military medical aircraft could be lawfully attacked and destroyed if it:

- Initiates an attack.
- Is not exclusively employed as a medical aircraft.
- Does not bear a clearly marked Red Cross, Red Crescent, or other recognized symbol and is not otherwise known to be an exclusively medical aircraft.
- Does not fly at heights, at times, and on routes specifically agreed to by the parties to the conflict and is not otherwise known to be an exclusively medical aircraft.
- Flies over enemy territory or enemy-occupied territory (unless otherwise agreed upon by the parties).
- Approaches its enemy's territory or a combat zone and disregards a summons to land.

Enforcing LOAC Rules

Military members who violate the LOAC are subject to criminal prosecution and punishment. Criminal prosecutions may take place in a national or international forum. In theory, US Armed Forces could be prosecuted by courts-martial under the UCMJ or through an international military tribunal, such as those used in Nuremberg and Tokyo after WWII or in Yugoslavia and Rwanda. The defense, "I was only following orders," has generally not been accepted by national or international tribunals as a defense in war crime trials. An individual airman/soldier/sailor/marine remains responsible for his or her actions and is expected to comply with the LOAC.

Reprisal. Prosecuting a LOAC violation may not be possible or practical if the enemy who violates the LOAC remains engaged in armed conflict. However, there is no statute of limitations on a war crime. Moreover, the LOAC permits combatants to engage in acts of reprisal to enforce an enemy force's compliance with LOAC rules. Reprisals are acts in response to LOAC violations. The act of reprisal would be otherwise forbidden if it was not for the prior unlawful act of the enemy. A lawful act of reprisal cannot be the basis for a counter-reprisal. Reprisals are always prohibited if directed against POWs; wounded, sick, or shipwrecked persons at sea; civilian persons and their property; or religious or cultural property. To be lawful, a reprisal must:

- Timely respond to grave and manifestly (clearly) unlawful acts.
- Be for the purpose of compelling the adversary to observe the LOAC and not for revenge, spite, or punishment.

- Give reasonable notice that reprisals will be taken.
- Have had other reasonable means attempted to secure compliance.
- Be directed against the personnel or property of an adversary.
- Be proportional to the original violation.
- Be publicized.
- Be authorized by national authorities at the highest political level. Only the President of the United States, as Commander in Chief, may authorize US forces to take such an action.

ROE (Rules of Engagement)

Competent commanders, typically geographic combatant commanders, after JCS review and approval, issue ROE. ROE describe the circumstances and limitations under which forces will begin or continue to engage in combat. Normally, execution orders (EXORD), operations plans (OPLAN), and operations orders (OPORD) contain ROE. ROE ensure use of force in an operation occurs in accordance with national policy goals, mission requirements, and the rule of law. In general, ROE present a more detailed application of LOAC principles tailored to the political and military nature of a mission. ROE set forth the parameters of an airman's right to self-defense. All airmen have a duty and a legal obligation to understand, remember, and apply mission ROE. During military operations, LOAC and specifically tailored ROE provide guidance on the use of force. The standing rules of engagement (SROE) of the CJCS give commanders direction on the use of force in self-defense against a hostile act or hostile intent. The SROE do not limit an airman's inherent right to use all means necessary and appropriate for personal or unit self-defense. Some basic considerations based on the SROE follow:

- The use of force in self-defense must be necessary and limited to the amount needed to eliminate the threat and control the situation.
- Deadly force should only be used in response to a hostile act or a demonstration of hostile intent. Deadly force is defined as force that causes or has a substantial risk of causing death or serious bodily harm.
- Failure to comply with ROE may be punishable under the UCMJ.
- ROE questions and concerns should be promptly elevated up the chain of command for resolution.

Source: Air Force Pamphlet AFPAM36-2241V1

We hope this will be helpful.