



GENERAL COUNSEL OF THE DEPARTMENT OF DEFENSE

1600 DEFENSE PENTAGON  
WASHINGTON, DC 20301-1600

GENERAL COUNSEL

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MEMORANDUM FOR THE HEADS OF THE DOD COMPONENTS

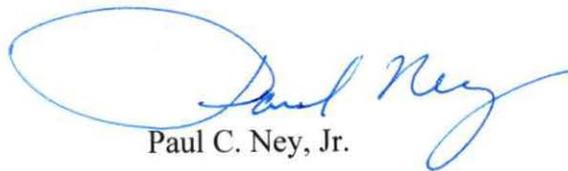
SUBJECT: Reissuance and Implementation of DoD Directive 2311.01, DoD Law of War Program

I am pleased to inform you that DoD Directive 2311.01, DoD Law of War Program, has been reissued by the Deputy Secretary of Defense and is available on the DoD Directives website (<https://www.esd.whs.mil/Directives/issuances/dodd/>). The updated DoD Directive 2311.01 reflects refinements based on lessons learned from previous conflicts and the hard work of military and civilian lawyers throughout DoD.

To assist you in your responsibilities under DoD Directive 2311.01, I have attached a brief overview of the law of war for DoD personnel. It is intended to be a concise summary accessible to all DoD personnel. This overview has been developed using the DoD Law of War Manual (June 2015, Updated Dec. 2016), and references to the Manual are given to allow the reader to find more information about specific topics.

This overview, as well as the DoD Law of War Manual itself and other materials to help DoD personnel implement the law of war, are available at the DoD OGC website (<https://ogc.osd.mil/>). These materials are intended to supplement any materials developed or used within your component, consistent with your discretion in implementing the requirements of DoD Directive 2311.01 to train personnel on the law of war commensurate with their duties.

I am proud of the work that our commanders, military lawyers, and all service members do to uphold the law of war. I know that we will continue to make the U.S. Armed Forces the most effective and just fighting force in the world.

A handwritten signature in blue ink, reading "Paul C. Ney, Jr.", is positioned above the printed name.

Paul C. Ney, Jr.

## **BRIEF OVERVIEW OF THE LAW OF WAR FOR DOD PERSONNEL**

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### **1. DoD Implementation of the Law of War**

1.1. DoD Directive 2311.01 establishes policy and assigns responsibilities for the DoD Law of War Program. As provided in DoD Directive 2311.01, the DoD Law of War Manual (abbreviated “DoD LoWM”) serves as the authoritative statement on the law of war within the DoD. It is available at the DoD OGC website (<https://ogc.osd.mil/>).

1.2. DoD Directive 2311.01 contains the longstanding DoD policy to comply with the law of war during all armed conflicts, however characterized (DoD Directive 2311.01 ¶1.2.a). In addition to being legally required, compliance with the law of war:

- reinforces military effectiveness;
- helps maintain public support and political legitimacy; and
- can encourage reciprocal adherence by the adversary or adherence by adversaries in future conflicts (DoD LoWM § 18.2).

1.3. The DoD Law of War Program includes:

- law of war dissemination and periodic training;
- qualified legal advisers advising on the law of war;
- instructions, regulations, and procedures to implement law of war standards and establish processes for ensuring compliance;
- reporting of incidents to ensure that commanders can exercise their responsibilities to implement and enforce the law of war;

- assessments, investigations, inquiries, or other reviews of incidents needed to determine appropriate responses; and
- appropriate actions to ensure accountability and to improve efforts to prevent violations of the law of war in U.S. military operations.

1.4. All servicemembers must:

- comply with the law of war in good faith;
- refuse to comply with clearly illegal orders to commit violations of the law of war (DoD LoWM § 18.3); and
- report potential violations of the law of war in accordance DoD Directive 2311.01.

1.5. Commands and orders should not be understood as implicitly authorizing violations of law of war where other interpretations are reasonably available (DoD LoWM § 18.3.2.2).

1.6. When appropriate, servicemembers should ask questions through appropriate channels and consult with the command legal adviser on issues relating to the law of war (DoD LoWM § 18.3.1.2). Servicemembers should adhere to rules of engagement, regulations, procedures, and training, as these have been reviewed for consistency with the law of war (DoD LoWM §§ 18.3.1.2, 18.6.2).

1.7. Commanders must exercise leadership to ensure that the forces under their command comply with the law of war. In particular, commanders have a duty to take appropriate measures as are within their power to control the forces under their command for the prevention of violations of the law of war (DoD LoWM § 18.4). Appropriate measures may include:

- training subordinates;
- issuing command guidance or procedures;
- investigating allegations or incidents or referring matters to investigatory authorities; and
- instituting administrative or disciplinary action.

1.8. Commanders must report alleged or suspected violations of the law of war in accordance with DoD policies, such as DoD Directive 2311.01. Under DoD Directive 2311.01, a reportable incident is defined as follows: “An incident that a unit commander or other responsible official determines, based on credible information, potentially involves: a war crime; other violations of the law of war; or conduct during military operations that would be a war crime if the military operations occurred in the context of an armed conflict. The unit commander or responsible official need not determine that a potential violation occurred, only that credible information merits further review of the incident.”

1.9. Commanders should take appropriate action with regard to alleged violations of law of war in accordance with the Uniform Code of Military Justice and the Manual for Courts-Martial. Under international law, commanders must consider whether disciplinary action is warranted in the case of serious violations of the law of war, but commanders have discretion about how to implement and enforce the law of war in accordance with U.S. domestic law and applicable DoD procedures.

1.10. When appropriate, commanders should encourage U.S. allied and partner forces to comply with the law of war. Possible violations by enemy personnel or by personnel belonging to allied or partner forces must also be reported in accordance with DoD Directive 2311.01.

## 2. Basic Law of War Concepts and Principles

2.1. The law of war is a body of international law specially adapted to war (DoD LoWM § 1.3.2.1). Although “war,” “armed conflict,” and “hostilities,” are often used interchangeably (and are used interchangeably in this document), sometimes the definition of these terms can depend on the specific legal context in which these terms are used (DoD LoWM § 1.5). As a body of international law, the law of war applicable to the United States includes treaties that the United States has accepted and customary international law (DoD LoWM § 1.3). The law of war regulates:

- the resort to armed force (DoD LoWM § 1.11);
- the conduct of hostilities (DoD LoWM, Ch. V) and the protection of war victims both in international and non-international armed conflict (DoD LoWM, Chs. VIII, IX, and X); belligerent occupation (DoD LoWM, Ch. XI); and
- the relationships between belligerent, neutral, and non-belligerent States (DoD LoWM, Ch. XV).

2.2. A distinction is often drawn between *jus ad bellum*, the law of war rules governing the resort to force, and *jus in bello*, the rules regulating the conduct of hostilities. States fighting against one another must adhere to rules relating to the conduct of hostilities (*jus in bello*), regardless of whether a State may be considered the aggressor or whether the initial resort to force was lawful under *jus ad bellum*. (DoD LoWM § 3.5).

2.3. The law of war establishes rules for international armed conflicts, which are conflicts between opposing States, such as World War II (DoD LoWM § 3.3). The law of war also provides rules applicable to non-international armed conflicts, which are other conflicts, such as civil wars or military operations against terrorist groups (DoD LoWM, Ch. XVII).

2.4. The main purposes of the law of war are:

- Protecting combatants, noncombatants, and civilians from unnecessary suffering;
- Providing certain fundamental protections for persons who fall into the hands of the enemy, particularly prisoners of war, civilians, and military wounded, sick, and shipwrecked;
- Facilitating the restoration of peace;
- Assisting the commander in ensuring the disciplined and efficient use of military force; and
- Preserving the professionalism and humanity of combatants (DoD LoWM § 1.3.4).

2.5. Three interdependent principles—military necessity, humanity, and honor—provide the foundation for other law of war principles—such as, distinction and proportionality—and most of the treaty and customary rules of the law of war.

2.6. Law of war principles work as interdependent and reinforcing parts of a coherent system (DoD LoWM § 2.1.2.3).

- Military necessity justifies certain actions necessary to defeat the enemy as quickly and efficiently as possible.
- Conversely, humanity forbids certain actions unnecessary to achieve that object.
- Proportionality requires that even when actions may be justified by military necessity, such actions cannot be unreasonable or excessive.
- Distinction underpins the parties' responsibility to comport their behavior with military necessity, humanity, and proportionality by requiring parties to a conflict to recognize and respect certain legal categories, principally, the distinction between the armed forces and the civilian population.
- Lastly, honor supports the entire system and gives parties confidence in it.

2.7. When no specific rule applies, the principles of the law of war form the general guide for conduct during war (DoD LoWM § 2.1.2.2.). Law of war principles are consistent with the ethical standards of the military profession and the military doctrines that are the basis for effective combat operations. Commanders can use law of war principles to guide them in making difficult decisions and judgments in military operations, including in applying the law of war to novel or complex situations. For example, a commander might consider:

- Is there a legitimate military purpose for a proposed course of action?
- Is the proposed course of action unreasonable or excessive?
- Are there steps that can be taken to avoid or reduce the risk of unnecessary suffering?
- Is the proposed action honorable and consistent with military ethics?

### **3. Classes of Persons**

3.1. The law of war has created a framework of classes of persons to help confine the fighting between opposing military forces and thereby to help protect the civilian population from the effects of war.

3.2. The population of an enemy State is generally divided into two classes: the armed forces and the civilian population, also sometimes called, respectively, "combatants" and "civilians." The classes of combatants and civilians have distinct rights, duties, and liabilities; no person may claim the distinct rights afforded both classes at the same time. For example, a person may not claim the combatant's right to attack enemy forces while also claiming the civilian's right not to be made the object of attack. (DoD LoWM § 4.2).

3.3. Certain categories of personnel have humanitarian duties that involve them in hostilities but also entitle them to special protections:

- military medical and religious personnel (DoD LoWM § 4.9);
- authorized staff of voluntary aid societies (DoD LoWM § 4.11);
- staff of a recognized aid society of a neutral country (DoD LoWM § 4.12);
- auxiliary medical personnel (DoD LoWM § 4.13); and
- personnel engaged in the protection of cultural property (DoD LoWM § 4.14).

3.4. Certain categories of persons are not members of the armed forces, but are nonetheless authorized to support the armed forces in the fighting:

- persons authorized to accompany the armed forces, but who are not members thereof (DoD LoWM § 4.15); and
- members of the crews of merchant marine vessels or civil aircraft of a belligerent (DoD LoWM § 4.16).

3.5. The law of war also distinguishes between “privileged” / “lawful” and “unprivileged” / “unlawful” combatants. The latter are persons who, by engaging in hostilities, have incurred one or more of the corresponding liabilities of combatant status (*e.g.*, being made the object of attack and subject to detention), but who are not entitled to any of the distinct privileges of combatant status (*e.g.*, combatant immunity and prisoner of war (POW) status). (DoD LoWM § 4.3). Unprivileged belligerents generally are subject to the liabilities of both combatant and civilian status, and include:

- persons engaging in spying, sabotage, and similar acts behind enemy lines (DoD LoWM § 4.17); and
- private persons engaging in hostilities (DoD LoWM § 4.18).

#### **4. Conduct of Hostilities**

4.1. The right of States engaged in armed conflict to adopt means and methods of warfare is not unlimited.

4.2. Parties to a conflict must conduct attacks in accordance with the principles of distinction and proportionality. In particular, the following rules must be observed:

- Combatants may make military objectives the object of attack, but may not direct attacks against civilians, civilian objects, or other protected persons and objects. In particular, the following persons and objects may not be made the object of attack unless that protection is specifically forfeited under the circumstances:
  - individual civilians;
  - the civilian population;
  - military medical and religious personnel, including military medical units, and military medical transport, facilities, and equipment;
  - combatants who have surrendered or otherwise been placed *hors de combat* (DoD LoWM § 5.9);
  - *parlementaires* and other persons protected by a flag of truce (DoD LoWM § 12.5.4);
  - cultural property (DoD LoWM § 5.18);
  - historic monuments, museums, scientific, artistic, educational and cultural institutions;
  - places of worship;
  - undefended villages, towns, or cities (DoD LoWM § 5.15);
  - persons and objects within hospital, safety, or neutralized zones (DoD LoWM § 5.14.3).

- Combatants must refrain from attacks in which the expected loss of life or injury to civilians, and damage to civilian objects incidental to the attack, would be excessive in relation to the concrete and direct military advantage expected to be gained (DoD LoWM § 5.12).
- Combatants must take feasible precautions in planning and conducting attacks to reduce the risk of harm to civilians and other persons and objects protected from being made the object of attack (DoD LoWM § 5.11).
- In conducting attacks, combatants must assess in good faith the information that is available to them (DoD LoWM § 5.4.3).
- Combatants may not kill or wound the enemy by resort to perfidy. Acts of *perfidy* are acts that invite the confidence of enemy persons to lead them to believe that they are entitled to, or are obliged to accord, protection under the law of war, with intent to betray that confidence. The key element in perfidy is the false claim to protections under the law of war in order to secure a military advantage over the opponent. (DoD LoWM § 5.22).
- Specific rules apply to the use of certain types of weapons (DoD LoWM § 6.5.1).

4.3. Outside the context of attacks, certain rules apply to the seizure and destruction of enemy property, including;

- Enemy property may not be seized or destroyed unless imperatively demanded by the necessities of war.
- Pillage is prohibited.
- Feasible precautions should be taken to mitigate the burden on civilians, but there is no obligation to compensate the owners of enemy property that is lawfully damaged. (DoD LoWM § 5.17).

4.4. Absolute good faith with the enemy must be observed as a rule of conduct. Good faith prohibits:

- killing or wounding enemy persons by resort to perfidy (DoD LoWM § 5.22);
- misusing certain signs, such as red cross (DoD LoWM § 5.24);
- fighting in the enemy's uniform (DoD LoWM § 5.23);
- feigning non-hostile relations in order to seek a military advantage (DoD LoWM § 12.2); and
- compelling nationals of a hostile party to take part in the operations of war directed against their own country (DoD LoWM § 5.27).

4.5. However, good faith permits:

- ruses of war or other lawful deceptive activities, such as camouflage; the use of enemy codes, signals, and passwords; and surprise attacks (DoD LoWM § 5.25);
- intelligence collection (DoD LoWM § 5.26.2);
- military information support operations, including propaganda (DoD LoWM § 5.26.1); and
- certain types of bribery (DoD LoWM § 5.26.3).

4.6. Commanders, at all levels, have a great responsibility to exercise the leadership necessary to reduce the risk of harm to civilians and civilian objects (DoD LoWM § 5.10.2). If warranted by their assigned duties and the operational context, commanders should, for example:

- Make judgments and decisions required by the principle of proportionality to ensure that harm to civilians resulting from military operations is not excessive compared to the expected military advantage (DoD LoWM § 5.12).
- Determine what types of precautions are feasible to take for the protection of civilians in planning and conducting attacks (*e.g.*, canceling or suspending attacks based on new information raising concerns of expected civilian casualties, directing investigations of significant civilian casualty incidents in order to identify improvements to operating procedures, determining whether it is feasible to provide warnings or to use different types of weapon systems in order to reduce the risk of civilian casualties) (DoD LoWM § 5.11).
- Determine what other types of precautions are feasible to take for the protection of civilians (*e.g.*, directing civilians to evacuate dangerous areas, establishing safe zones, refraining from positioning military operations near civilians) (DoD LoWM § 5.14).
- Arrange for the passage of humanitarian relief.

4.7. All servicemembers must adhere to the following guidance relating to the protection of civilians.

- Do not intentionally target for attack civilians and civilian objects (*e.g.*, hospitals, schools, religious buildings, historic monuments).
- When prosecuting attacks against military objectives, exercise due regard to reduce the risk of incidental harm to the civilian population and other persons and objects that may not be made the object of attack (DoD LoWM § 5.10).
- Do not abuse, degrade, or seek revenge against civilians, or take other unnecessary actions that could harm civilians.
- When necessary to detain, search, question, or exercise other measures of control over civilians, perform such measures humanely, respectfully, and professionally in accordance with U.S. military values.
- Do not steal.
- Follow accountability and reporting procedures related to civilians and civilian property (*e.g.*, command guidance on reporting the presence of civilians or civilian casualties during military operations).

## 5. Weapons

5.1. Two fundamental prohibitions apply to all weapons. It is prohibited to use:

- weapons calculated to cause superfluous injury (DoD LoWM § 6.6); and
- inherently indiscriminate weapons (*i.e.*, weapons that are incapable of being used in accordance with the principles of distinction and proportionality) (DoD LoWM § 6.7).

5.2. In addition, the use of the following types of weapons is prohibited:

- poison, poisoned weapons, poisonous gases, and other chemical weapons (DoD LoWM § 6.8);
- biological weapons (DoD LoWM § 6.9);
- certain environmental modification techniques (DoD LoWM § 6.10);
- weapons that injure by fragments that are non-detectable by X-rays (DoD LoWM § 6.11);
- certain types of mines, booby-traps, and other devices (DoD LoWM § 6.12.4); and
- blinding lasers (DoD LoWM § 6.15.1).

5.3. Certain types of weapons, however, are subject to specific rules that apply to their use by the U.S. armed forces. These rules may reflect U.S. obligations under international law or national policy. These weapons may include:

- mines, booby-traps, and other devices (except certain specific classes of prohibited mines, booby-traps, and other devices) (DoD LoWM § 6.12);
- cluster munitions (DoD LoWM § 6.13);
- incendiary weapons (DoD LoWM § 6.14);
- laser weapons (except blinding lasers) (DoD LoWM § 6.15);
- riot control agents (DoD LoWM § 6.16);
- herbicides (DoD LoWM § 6.17);
- nuclear weapons (DoD LoWM § 6.18); and
- explosive ordnance (DoD LoWM § 6.19).

5.4. As provided in DoD issuances, DoD policy for many years has required the legal review of the intended acquisition or procurement of weapons or weapon systems; this review includes ensuring that such acquisition or procurement is consistent with the law of war. These DoD policy requirements have been implemented in Military Department regulations.

5.5. A number of practices contribute to the effective implementation of law of war obligations with respect to weapons (although these practices are not necessarily required by the law of war) (DoD LoWM § 6.3):

- using weapons in accordance with their design intent and the doctrine that has been promulgated for their use;
- refraining from modifying weapons without proper authorization;
- refraining from using personal firearms during military operations; and
- refraining from using captured weapons in combat, except on a field-expedient basis.

## **6. The Wounded and Sick**

6.1. Medical care during armed conflict is an activity that is fundamentally of a neutral, humanitarian, and noncombatant character. The law of war provides for:

- protection of the wounded, sick, shipwrecked, and dead, both on the battlefield and after having fallen into the hands of the enemy;
- a special status for military medical and religious personnel;
- the protection of military medical units, facilities, and transports; and

- the protection of civilians who are wounded, sick, infirm, or maternity cases, and civilian hospitals.

6.2. All servicemembers must adhere to the following law of war rules relating to the wounded, sick, and dead, and enemy military medical and religious personnel, facilities, units, transports, and equipment:

- Do not knowingly attack, fire upon, or unnecessarily interfere with: (i) the wounded and sick; or (ii) enemy military medical or religious personnel, facilities, units, transports, and equipment.
- Do not steal.
- Do not disrespect the dead.
- Collect and care for the wounded and sick, whether friend or foe, in accordance with command guidance.

6.3. Servicemembers who are members of the medical service should understand their special duties and noncombatant status under the law of war (DoD LoWM § 4.9). They must, for example:

- Provide medical care to the wounded and sick, whether friend or foe.
- Refrain from engaging in acts harmful to the enemy.
- Continue to care for other members of the U.S. armed forces, if captured by the enemy.

6.4. Commanders must lead their units' implementation of law of war obligations related to the wounded, sick, and dead. If warranted by their assigned duties and the operational context, they should, for example:

- Determine practical steps after combat to search for, collect, and protect the wounded, sick, and dead (*e.g.*, negotiating local temporary truces to collect them) (DoD LoWM § 7.4).
- Follow accountability procedures for enemy wounded, sick, and dead (*e.g.*, recording identifying information, safekeeping of property) (DoD LoWM § 7.6).
- Ensure that medical units are not misused to commit acts harmful to the enemy (*e.g.*, not stationing combat forces in a hospital).
- Arrange for humanitarian organizations or other civilian volunteers to help collect and care for the wounded and sick.
- Ensure the appropriate display of the red cross (DoD LoWM § 7.15).

## **7. Detainees, including Prisoners of War (POWs) and Civilian Internees**

7.1. Detention is a fundamental incident of waging war or conducting other military operations. The internment of POWs is governed by the Third Geneva Convention (DoD LoWM, Ch. IX). The internment of protected persons in the home territory of a belligerent or in occupied territory is governed by the Fourth Geneva Convention (DoD LoWM, Ch. X). The law of war also establishes baseline rules that govern detention of all persons during military operations (DoD LoWM, Ch. VIII).

7.2. Detention under the law of war generally is not punitive in character. It is a measure justified by military necessity and in the case of POWs or unprivileged belligerents is intended to prevent their future participation in hostilities. Unprivileged belligerents may also be subject to criminal punishment for their actions.

7.3. Detention operations are generally conducted by personnel trained in law of war requirements as well as applicable DoD policies and procedures (*e.g.*, DoD Directive 2310.01E, *DoD Detainee Program*; DoD Directive 3115.09, *DoD Intelligence Interrogations, Detainee Debriefings, and Tactical Questioning*). All personnel who interact with detainees must adhere to the following principles:

- Treat all detainees humanely, as you would want U.S. armed forces captured by the enemy to be treated. Torture or cruel, inhuman, or degrading treatment is absolutely prohibited.
- Consider providing detainees with the same treatment given to U.S. armed forces in those circumstances (*e.g.*, providing POWs with the same quality of food and shelter provided to U.S. armed forces operating in that area).

7.4. Commanders who expect to conduct detention operations should familiarize themselves with guidance from higher headquarters that implements applicable law, DoD policies, and other regulations applicable to the treatment of POWs, retained personnel, civilian internees, unprivileged belligerents, or other detainees. Commanders should seek the advice of legal counsel if they have questions about the law applicable to the treatment of detainees, including any special requirements applicable to POWs, retained personnel, or civilian internees. During detention operations, commanders should anticipate, and where appropriate request, guidance on detainee issues from higher headquarters, especially on issues implicating U.S. legal obligations or national policy.

7.5. Servicemembers held captive by the enemy must adhere to the Code of Conduct for Members of the Armed Forces of the United States. Military medical personnel and chaplains should understand their specific duties under the Code of Conduct and the 1949 Geneva Conventions. (Executive Order 10361, as amended; DoD LoWM § 9.39; DoDI O-3002.05, Personnel Recovery (PR) Education and Training, Enclosure 4).

## **8. Military Occupation**

8.1. Military occupation is a temporary measure for administering territory under the control of invading forces, and involves a complicated, trilateral set of legal relations between the Occupying Power, the temporarily ousted sovereign authority, and the inhabitants of occupied territory (DoD LoWM § 11.1).

8.2. The law of belligerent occupation seeks to account for both military and humanitarian imperatives. The Occupying Power's primary objective in conducting military occupation is to further the purpose of the war in which the occupying forces are engaged and to ensure the maintenance and security of those forces, but the Occupying Power is also bound to provide for the interests and welfare of the civilian population of the occupied territory. The Occupying Power has obligations related to the maintenance of public order and safety, and the protection of civilians and property in occupied territory.

8.3. Commanders should be prepared to apply occupation law, including by planning for the requirements of occupation even before the entry into foreign territory. Successful stability operations may be critical to achieving the political objectives of combat operations. Many of the rules of occupation law reflect sound principles for stability operations that technically occur outside the context of occupation.

8.4. Commanders should be prepared to take the necessary actions to fulfill the additional responsibilities of an Occupying Power, in particular, the duty to restore and ensure, as far as possible, public order and safety, while respecting, unless absolutely prevented, the laws in force in the country (DoD LoWM § 11.5). For example:

- Commanders should plan and prepare to take actions to ensure that there is sufficient food and clean water and other basic services for the inhabitants of the occupied territory.
- Commanders should plan and prepare to take actions to stop looting after the government of the opposing State has been ousted.
- Commanders must not make arbitrary changes to the governance of the occupied territory.

8.5. Commanders should be prepared to take the necessary actions to exercise the additional authorities that occupation law confers with respect to the administration of occupied territory. For example, there are authorities to:

- Enforce obedience from the inhabitants of the occupied territory as may be necessary for the security of occupation forces, for the maintenance of law and order, and for the proper administration of the country (DoD LoWM § 11.7.1);
- Restrict freedom of movement and control means of transportation within occupied territory (DoD LoWM §§ 11.7.3, 11.12.1);
- Suspend, repeal, or change municipal law applicable to occupied territory (DoD LoWM § 11.9.2); and
- Control property in occupied territory or control private businesses in order to address the needs of occupied territory (DoD LoWM §§ 11.18.3, 11.23.3).

8.6. Commanders should be prepared to work and coordinate with a range of organizations and entities on occupation issues to utilize their relevant expertise and to ensure consistency with national policy and U.S. legal obligations. For example:

- Utilizing Civil Affairs forces to conduct civil-military operations in accordance with DoD policy and Joint and Military Service doctrine can help ensure that lessons learned from past occupations are incorporated into current efforts.
- Consulting the Command Staff Judge Advocate or other legal advisers may be helpful to ensure accurate application of occupation law to particular matters.
- Seeking the approval of national-level authorities for certain occupation actions may be important to ensure that occupation issues are addressed in a manner that is consistent with U.S. national security policy and U.S. legal responsibilities.
- Coordinating with the Department of State may be important for assessing the foreign policy or diplomatic consequences of occupation actions or to rely on its expertise in understanding the local culture and governance structures.

## **9. Non-Hostile Relations Between Belligerents**

9.1. Commanders must conduct non-hostile relations with the enemy in good faith. In particular, they must strictly comply with agreements made with the enemy, such as armistices, truces, and detainee exchanges. In applying such agreements, commanders must not take advantages that the adversary did not intend to give. Commanders also must ensure that their forces do not misuse the means of conducting non-hostile relations, such as flags of truce (DoD LoWM § 12.2).

9.2. The principle of good faith does not prohibit commanders from continuing military operations while negotiations are ongoing. Consistent with the principle of good faith, commanders may decline to respond to offers to negotiate, refuse offers to negotiate, or refuse specific offers from the adversary for reasons of military expediency (DoD LoWM § 12.2).

9.3. Commanders should be prepared to negotiate agreements like local temporary cease-fires to allow for the collection of dead and wounded or agreements for the surrender of enemy forces. Offers by enemy forces or governments to negotiate that may have strategic or national-level implications should be reported up the chain of command.

9.4. Under the Code of Conduct for the U.S. armed forces, a commander must never surrender the members of his or her command while they still have the means to resist. Under the Uniform Code of Military Justice, shameful surrenders are punishable. In addition, compelling or attempting to compel a commander to surrender or striking colors or flag to an enemy without proper authority is punishable (DoD LoWM § 12.8.2.1).