



U.S. Department of Defense Law of War Manual (June 2015)

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The law of war is part of who we are. George Washington, as Commander in Chief of the Continental Army, agreed with his British adversary that the Revolutionary War would be “carried on agreeable to the rules which humanity formed” and “to prevent or punish every breach of the rules of war within the sphere of our respective commands.” During the Civil War, President Lincoln approved a set of “Instructions for the Government of the Armies of the United States in the Field,” which inspired other countries to adopt similar codes for their armed forces, and which served as a template for international codifications of the law of war.

After World War II, U.S. military lawyers, trying thousands of defendants before military commissions did, in the words of Justice Robert Jackson, “stay the hand of vengeance and voluntarily submit their captive enemies to the judgment of law” in “one of the most significant tributes that Power has ever paid to Reason.” Reflecting on this distinctive history, one Chairman of the Joint Chiefs of Staff observed that “[t]he laws of war have a peculiarly American cast.” And it is also true that the laws of war have shaped the U.S. Armed Forces as much as they have shaped any other armed force in the world.

The law of war is a part of our military heritage, and obeying it is the right thing to do. But we also know that the law of war poses no obstacle to fighting well and prevailing. Nations have developed the law of war to be fundamentally consistent with the military doctrines that are the basis for effective combat operations. For example, the self-control needed to refrain from violations of the law of war under the stresses of combat is the same good order and discipline necessary to operate cohesively and victoriously in battle. Similarly, the law of war’s prohibitions on torture and unnecessary destruction are consistent with the practical insight that such actions ultimately frustrate rather than accomplish the mission.

This manual reflects many years of labor and expertise, on the part of civilian and military lawyers from every Military Service. It reflects the experience of this Department in applying the law of war in actual military operations, and it will help us remember the hard-learned lessons from the past. Understanding our duties imposed by the law of war and our rights under it is essential to our service in the nation’s defense.

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1.5 “WAR” AS A LEGAL CONCEPT

“War” is sometimes used as a legal concept, i.e., the application or operation of a legal rule may depend on the existence of a “war,” “armed conflict,” or “hostilities.” As a legal concept, “war” has traditionally been viewed as a condition in which a State is prosecuting its rights by military force, usually against another State. However, the precise definition of “war” often depends on the specific legal context in which it is used.

1.5.1 Traditional Conception of War Under International Law. As international law began to regulate “war,” “hostilities,” and “armed conflict,” it became necessary to determine what “war” is for the purpose of triggering those legal obligations.

As a legal concept, war has usually been described as a condition or state that applies more broadly than only the mere employment of force or the mere commission of acts of violence.

When treated as a legal concept, “war” has been associated with a State’s use of force to vindicate its rights (principally, its inherent right of self-defense) under international law.

Traditionally, war has often been described as a legal condition between two or more States. However, certain law of war rules apply to non-international armed conflicts (such as intrastate conflicts or conflicts between a State and a non-State armed group).

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4.24 JOURNALISTS

In general, journalists are civilians. However, journalists may be members of the armed forces, persons authorized to accompany the armed forces, or unprivileged belligerents.

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