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# DOD LAW OF WAR POLICIES

## Actions Needed to Ensure Proper Reporting and Retention of Alleged Violations

Accessible Version

Report to Congressional Requestors

February 2024

GAO-24-107217

United States Government Accountability Office

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# GAO Highlights

View [GAO-24-107217](#). For more information, contact Diana Maurer at (202) 512-9627 or [maurerd@gao.gov](mailto:maurerd@gao.gov).  
Highlights of [GAO-24-107217](#), a report to congressional requesters

**February 2024**

## DOD LAW OF WAR POLICIES

### Actions Needed to Ensure Proper Reporting and Retention of Alleged Violations

#### Why GAO Did This Study

Since 2012, AFRICOM and CENTCOM have conducted thousands of kinetic strikes. Such strikes must comply with the law of war. In 2021, the DOD Office of the Inspector General and media reporting identified deficiencies with DOD reporting of alleged law of war violations following kinetic strikes.

GAO was asked to evaluate DOD law of war policies, including operations involving kinetic strikes. This report (1) describes DOD's approach for ensuring AFRICOM and CENTCOM comply with the law of war when conducting kinetic strike operations, (2) evaluates the extent to which DOD has established processes to report law of war violations and to protect individuals who report violations from reprisal, and (3) evaluates information on the extent of reported alleged law of war violations in AFRICOM and CENTCOM. GAO compared law of war principles and reporting requirements with training materials and strike procedures. GAO collected reports of alleged law of war violations that occurred within AFRICOM and CENTCOM and conducted site visits and interviewed cognizant officials involved in kinetic strike operations.

#### What GAO Recommends

GAO is making two recommendations to DOD, specifically that (1) AFRICOM update its law of war reporting guidance to align with current DOD policy and (2) the Chairman of the Joint Chiefs of Staff, in coordination with the DOD General Counsel, develop a system to comprehensively retain records of alleged law of war violations. DOD concurred with the recommendations.

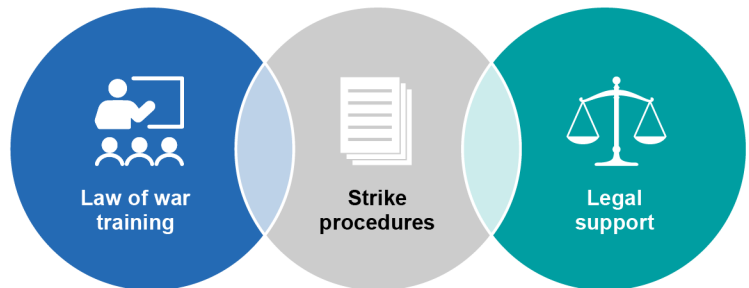
#### What GAO Found

U.S. Africa Command (AFRICOM) and U.S. Central Command (CENTCOM) must comply with the "law of war"—that part of international law that regulates the conduct of armed hostilities—when conducting kinetic strikes, which involve the use of explosive munitions. The Department of Defense (DOD) integrates law of war principles into training and exercises, strike procedures, and legal support as part of its approach for ensuring AFRICOM and CENTCOM compliance with the law of war.

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### Selected Elements of DOD's Approach for Ensuring Law of War Compliance



Source: GAO analysis of Department of Defense information. | GAO-24-107217

DOD established a process to report alleged violations of the law of war and to protect individuals who report such allegations from reprisal. AFRICOM and CENTCOM have issued policies to implement the reporting process, but AFRICOM's policy is outdated and not fully aligned with current DOD policy. For example, it uses outdated definitions for what constitutes a "reportable incident." As a result, AFRICOM may not be aware of all such allegations or be in a position to forward reporting to DOD leadership as required. The DOD Office of the Inspector General and component inspectors general, such as those for AFRICOM and CENTCOM, investigate claims of reprisal related to reports of law of war violations. In January 2013 – December 2022, there were no substantiated cases of reprisal against individuals who reported alleged law of war violations in the AFRICOM or CENTCOM area of responsibility.

DOD lacks comprehensive records of alleged law of war violations. GAO obtained records of 47 alleged law of war violations committed by U.S. personnel in January 2012 – December 2022 in the AFRICOM and CENTCOM areas of responsibility. However, not all entities responsible for reporting and retaining records of alleged violations were able to provide a complete record in accordance with DOD records management requirements. Neither CENTCOM nor one of its subordinate commands retained comprehensive records of allegations. Additionally, another DOD entity, which receives and forwards such reports to DOD leadership, did not have records of all alleged law of war violations sent by AFRICOM and CENTCOM. Without a system to retain comprehensive records of alleged law of war violations, DOD leadership may not be fully aware of all allegations and thus lacks information needed to fully implement the law of war program.

This is a public version of a classified report that GAO issued in December 2023. Information that DOD deemed classified has been omitted.

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**Abbreviations**

AFRICOM	U.S. Africa Command
CENTCOM	U.S. Central Command
CJTF-OIR	Combined Joint Task Force – Operation Inherent Resolve
DOD	Department of Defense
DODIG	Department of Defense Office of the Inspector General
IG	inspector general
NJOIC	National Joint Operations/Intelligence Center
ROE	rules of engagement
SOCOM	U.S. Special Operations Command

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February 13, 2024

The Honorable Jamie Raskin  
Ranking Member  
Committee on Oversight and Accountability  
House of Representatives

The Honorable Peter Welch  
United States Senate

The Honorable Stephen Lynch  
House of Representatives

In 2021, the Department of Defense Office of the Inspector General (DODIG) and the *New York Times* identified deficiencies with the Department of Defense’s (DOD) implementation of DOD’s law of war policies—the “law of war” being that part of international law that regulates the conduct of armed hostilities.<sup>1</sup> In particular, both DODIG and the *New York Times* identified deficiencies related to reporting alleged law of war violations following “kinetic strikes”—the use of explosive munitions for lethal effects—in the U.S. Central Command (CENTCOM) area of responsibility.<sup>2</sup> The DODIG found that CENTCOM had not reported all alleged law of war violations in accordance with DOD policy,

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<sup>1</sup>*DOD Dictionary of Military and Associated Terms* (May 2023). The *DOD Law of War Manual* fully defines the “law of war” as that part of international law that regulates the resort to armed force; the conduct of hostilities and the protection of war victims in both international and non-international armed conflict; belligerent occupation; and the relationships between belligerent, neutral, and non-belligerent states. The “law of war” is often used interchangeably with the “law of armed conflict” in DOD publications. For the purposes of this report, we use the term law of war. DOD Office of the General Counsel, *DOD Law of War Manual* (June 2015, updated July 2023). DOD Office of the Inspector General 2022-038, *Evaluation of U.S. Central Command and U.S. Special Operations Command Implementation of the Administrative Requirements Related to the Department of Defense’s Law of War Policies* (Nov. 1, 2021); Dave Philipps and Eric Schmitt, “How the U.S. Hid an Airstrike That Killed Dozens of Civilians in Syria,” *The New York Times*, Nov. 13, 2021, <https://www.nytimes.com/2021/11/13/us/us-airstrikes-civilian-deaths.html>.

<sup>2</sup>The Air Force defines kinetic as relating to actions designed to produce effects using the forces and energy of moving bodies and directed energy, including physical damage to, alteration of, or destruction of targets. Kinetic actions can have lethal or non-lethal effects. U.S. Air Force, *Air Force Glossary* (May 14, 2021); DOD Directive (DODD) 2311.01, *DOD Law of War Program* (July 2, 2020).

and the *New York Times* reported that individuals had expressed concern about potential reprisal for reporting such incidents.<sup>3</sup>

U.S. Africa Command (AFRICOM) and CENTCOM have conducted thousands of kinetic strikes, such as airstrikes and artillery strikes, since 2012.<sup>4</sup> These combatant commands continue to use kinetic strikes to counter the activities of violent extremist organizations, such as the Islamic State of Iraq and Syria and Al-Qaeda. During kinetic strike operations, the combatant commands must comply with the law of war. For example, according to the law of war, parties to a conflict must distinguish principally between the armed forces and the civilian population, and between unprotected and protected objects.<sup>5</sup>

DOD Directive 2311.01, *DOD Law of War Program*, requires organizations throughout DOD, including the military services, AFRICOM, and CENTCOM, to implement effective programs to prevent law of war violations (hereafter we will refer to DODD 2311.01 as the DOD Law of War Program).<sup>6</sup> This includes providing periodic training and qualified legal advisors. Additionally, the *DOD Law of War Program* requires

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<sup>3</sup>On February 25, 2022, the commanding general of U.S. Army Forces Command submitted a review of the strike referenced in the *New York Times* reporting to the Secretary of Defense. The review found that the ground force commander who authorized the strike acted within the bounds of the law of war and applicable rules of engagement. The review also found that administrative deficiencies in post-incident civilian casualty reporting contributed to the impression that DOD was not treating the incident seriously, being transparent, or following its own protocols. General Michael X. Garrett, Commanding General, United States Army Forces Command, *Syria Strike Review Final Report*, (Feb. 25, 2022) (SECRET//NOFORN); General Michael X. Garrett, Reviewing Officer, *Addendum to The Syria Strike Review Final Report* (Apr. 4, 2022) (SECRET//NOFORN).

<sup>4</sup>For example, Combined Joint Task Force – Operation Inherent Resolve (CJTF-OIR) within the CENTCOM area of responsibility conducted at least 35,045 strikes between August 2014 and December 2021. AFRICOM officials said they have conducted more than 200 strikes since 2017, including as recently as December 2023 in Somalia.

<sup>5</sup>*DOD Law of War Manual* § 2.5.

<sup>6</sup>DODD 2311.01 refers to “DOD components”—as applicable to: the Office of the Secretary of Defense, the military departments, the Office of the Chairman of the Joint Chiefs of Staff and the Joint Staff, the combatant commands, the Office of the Inspector General of the Department of Defense, the defense agencies, the DOD field activities, and all other organizational entities within the DOD.

service members to report through their chain of command all reportable incidents, which include war crimes or other violations of the law of war.<sup>7</sup>

You asked us to evaluate DOD law of war policies, including operations involving kinetic strikes. In this report, we (1) describe DOD's approach for ensuring that AFRICOM and CENTCOM comply with the law of war when conducting kinetic strike operations, (2) evaluate the extent to which DOD has established processes to report alleged law of war violations and protect individuals who report such violations from reprisal, and (3) evaluate information on the extent of reported alleged law of war violations in AFRICOM and CENTCOM.

This report is a public version of a classified report that we issued in December 2023.<sup>8</sup> DOD deemed some of the information in our December report to be classified, which must be protected from loss, compromise, or inadvertent disclosure. Therefore, this report omits classified information about some details relating to law of war training, procedures for conducting kinetic strikes, and legal advice provided to personnel conducting kinetic strike, as well as specific details of alleged law of war violations. Although the information provided in this report is more limited, the report addresses the same objectives as the classified report and uses the same methodology.

To address our objectives, we reviewed relevant policies, such as the *DOD Law of War Program*; *DOD Law of War Manual*; and AFRICOM, CENTCOM, and military service law of war policies.<sup>9</sup> We reviewed other documentation detailing law of war training, procedures for conducting

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<sup>7</sup>DODD 2311.01. According to the directive, a "reportable incident" is 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.

<sup>8</sup>GAO, *DOD Law of War Policies: Actions Needed to Ensure Proper Reporting and Retention of Alleged Violations*, GAO-24-106049C (Washington, D.C.: Dec. 15, 2023) (SECRET//NOFORN).

<sup>9</sup>DODD 2311.01 and the *DOD Law of War Manual*. The *DOD Law of War Manual* provides information about the law of war to DOD personnel responsible for implementing the law of war and executing military operations. Air Force Instruction 51-401, *The Law of War*, (Aug. 3, 2018); OPNAV Instruction 3300.52A, *Law of War Program*, (Jan. 21, 2015); Marine Corps Order 3300.4A, *Marine Corps Law of War Program*, (Jan. 9, 2014); United States Africa Command Instruction 5800.01, *Law of War Program*, (Dec. 31, 2013, incorporating change 1, July 9, 2014); Central Command Regulation 27-1, *Law of War Program* (Nov. 9, 2021).



kinetic strikes, and legal advisors' roles in supporting commanders and staffs during such operations.<sup>10</sup> We obtained reprisal complaints associated with reports of alleged law of war violations in the AFRICOM and CENTCOM areas of responsibility from January 2013 through December 2022.<sup>11</sup> We conducted a data reliability assessment of the reprisal complaints and determined the data were sufficiently reliable for the purpose of reporting the number of reprisal complaints associated with alleged law of war violations in the AFRICOM and CENTCOM areas of responsibility. We also obtained data on alleged law of war violations in the AFRICOM and CENTCOM areas of responsibility. We conducted a data reliability assessment and determined that the data were sufficiently reliable for reporting the minimum number of alleged law of war violations committed by U.S. personnel, but not for reporting the entire universe of alleged law of war violations, as discussed later in this report. We conducted site visits to AFRICOM and CENTCOM headquarters and subordinate command headquarters, which we selected based on their involvement in kinetic strike operations from January 2012 through December 2022. We interviewed knowledgeable officials regarding whether the law of war training was sufficient, how the law of war is integrated into targeting and kinetic strike operations, how legal advisors support such operations, and how alleged law of war violations are reported. We also interviewed knowledgeable officials from deployed units—known as strike cells—involved in kinetic strike operations in the AFRICOM and CENTCOM areas of responsibility.<sup>12</sup> A detailed discussion of our scope and methodology is in appendix I.

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<sup>10</sup>Army Regulation 350-1, *Army Training and Leader Development* (Dec. 10, 2017); Air Force Instruction 51-401; OPNAV Instruction 3300.52A; Marine Corps Order 3300.4A; U.S. Africa Command Instruction 1700.14A, *U.S. Africa Command Reporting Instructions*, (Dec. 6, 2018); U.S. Central Command, *FY 21-22 Theater Entry Guidance – MOD 1* (Dec. 29, 2021); U.S. Special Operations Command Directive 525-27, *Law of War Program*, (Mar. 9, 2023); Joint Chiefs of Staff, Joint Publication 3-60, *Joint Targeting* (Sept. 28, 2018); Joint Chiefs of Staff, Joint Publication 3-09, *Joint Fire Support* (Apr. 10, 2019); *Multi-Service Tactics, Techniques, and Procedures for Dynamic Targeting* (January 2022) (CUI); United States Africa Command Instruction 3200.21, *U.S. Africa Command Joint Targeting Instruction* (June 1, 2020); CENTCOM *Joint Targeting Process*; Joint Chiefs of Staff, Joint Publication 3-84, *Legal Support* (Aug. 2, 2016).

<sup>11</sup>We requested such records from the DODIG Hotline and the DODIG Whistleblower Reprisal Investigations directorate. The request did not include calendar year 2012. According to DOD IG officials, DOD IG migrated to a new data management system for 2013 and data prior to that year would potentially be unreliable.

<sup>12</sup>For the purposes of this report, a “strike cell” is an entity that has the means to command and control assets being used to observe and execute kinetic strike operations. See below for additional information.

The performance audit upon which this report is based was conducted from May 2022 to December 2023 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on audit objectives. We subsequently worked with DOD from December 2023 to February 2024 to prepare this unclassified version of the original classified report for public release. This public version was also prepared in accordance with these standards.

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## Background

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### Law of War Principles and Operational Considerations

According to the DOD Law of War Manual, the law of war consists of treaties and customary international law applicable to the United States.<sup>13</sup> The law of war establishes rules for international armed conflicts, which are conflicts between opposing states, and for non-international armed conflicts, including military operations against terrorist groups. For example, combatants must take feasible precautions in planning and conducting attacks to reduce the risk of harm to civilians.<sup>14</sup>

**Principles.** Underlying the rules are five principles, which form the general guide for conduct during war when no specific rule applies (see fig. 1).<sup>15</sup>

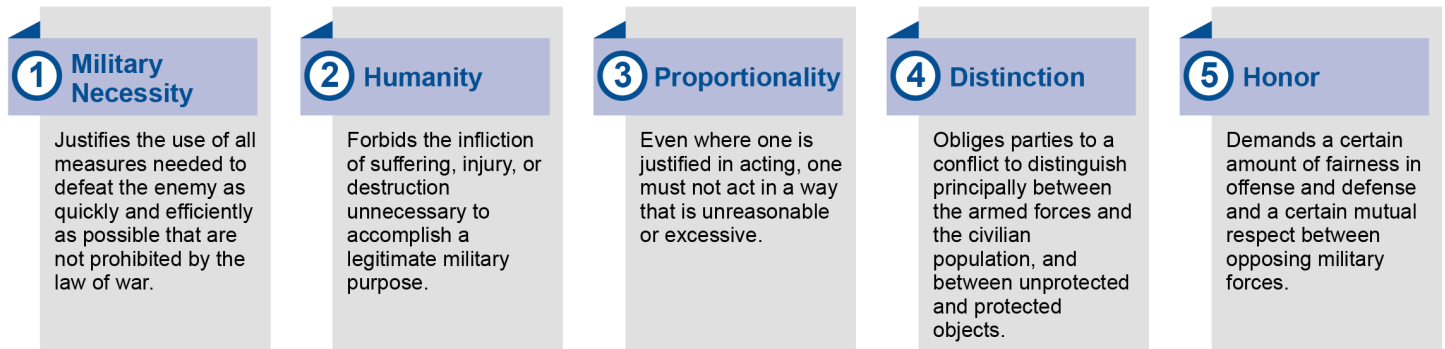
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<sup>13</sup>DOD Law of War Manual, § 1.3.

<sup>14</sup>DOD Law of War Manual, § 5.11.

<sup>15</sup>DOD Law of War Manual, § 2.1.2.

Figure 1: Law of War Principles



Source: GAO analysis of the *Department of Defense Law of War Manual*. | GAO-24-107217

**Accessible text for Figure 1: Law of War Principles**

1. **Military necessity:** Justifies the use of all measures needed to defeat the enemy as quickly and efficiently as possible that are not prohibited by the law of war.
2. **Humanity:** Forbids the infliction of suffering, injury, or destruction unnecessary to accomplish a legitimate military purpose.
3. **Proportionality:** Even where one is justified in acting, one must not act in a way that is unreasonable or excessive.
4. **Distinction:** Obliges parties to a conflict to distinguish principally between the armed forces and the civilian population, and between unprotected and protected objects.
5. **Honor:** Demands a certain amount of fairness in offense and defense and a certain mutual respect between opposing military forces.

Source: GAO analysis of the *Department of Defense Law of War Manual*. | GAO-24-107217

**Rules of engagement (ROE).** In addition to law of war considerations, service members must also adhere to ROE. ROE are directives issued by a competent military authority that delineate the circumstances and limitations under which U.S. forces will initiate and/or continue combat engagement with other forces.<sup>16</sup> *The DOD Law of War Program* requires

<sup>16</sup>The Chairman of the Joint Chiefs of Staff's *Standing Rules of Engagement/Standing Rules for the Use of Force for US Forces* provides guidance on the standing rules of engagement for DOD operations worldwide. Unit commanders may use supplemental measures to tailor ROE for mission accomplishment. Commanders at all levels are responsible for establishing ROE that comply with the ROE of senior commanders, the law of war, applicable international and domestic law, and the standing ROE. Chairman of the Joint Chiefs of Staff Instruction 3121.01B, *Standing Rules of Engagement/Standing Rules for the Use of Force for US Forces* (June 13, 2005)(SECRET); Joint Pub. 3-84.

that ROE are consistent with the law of war.<sup>17</sup> ROE reflect legal, policy, and operational considerations and U.S. military operations are routinely subject to ROE that impose more restrictions that are protective of civilians than are required by the law of war.<sup>18</sup> For example, military commanders may seek to reduce the risk of civilian casualties by taking additional precautions even when such measures are not required by the law of war. Similarly, there are cases in which an attack is not conducted, for military or policy reasons, even though the attack would be legally permissible. For cases in which a higher standard is applied as a matter of policy, violations of such standards are not necessarily violations of the law of war.

**Collateral damage.** Collateral damage is the unintentional or incidental injury or damage to persons or objects that would not be lawful military targets in the circumstances ruling at the time.<sup>19</sup> Combatants must refrain from attacks in which the expected loss of civilian life, 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.<sup>20</sup> As identified in the principle of distinction, combatants must distinguish the civilian population and protected objects.<sup>21</sup> However, according to the *DOD Law of War Manual*, in war, incidental damage to the civilian population and civilian objects is unfortunate and tragic, but inevitable.<sup>22</sup> Such consequences are considered a part of collateral

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<sup>17</sup>DODD 2311.01

<sup>18</sup>*DOD Law of War Manual*, § 5.1.2.1.

<sup>19</sup>Joint Pub. 3-60.

<sup>20</sup>*DOD Law of War Manual*, § 5.12

<sup>21</sup>*DOD Law of War Manual*, § 2.5.

<sup>22</sup>*DOD Law of War Manual*, § 2.4.1.2.

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damage. Thus, civilian casualties do not necessarily constitute a violation of the law of war.<sup>23</sup>

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## Roles and Responsibilities of Selected Officials and Offices Involved In the DOD Law of War Program

The *DOD Law of War Program* requires organizations throughout DOD to implement effective programs to prevent law of war violations, and for service members to comply with the law of war during all armed conflicts, however characterized, and to act consistent with the law of war's fundamental principles and rules in all other military operations.<sup>24</sup>

**DOD, General Counsel.** The DOD General Counsel exercises primary staff responsibility for the *DOD Law of War Program*.<sup>25</sup> Among other things, the DOD Office of the General Counsel provides overall legal guidance on the *DOD Law of War Program* and coordinates and monitors DOD components' respective plans and policies for training in the law of war. It also reviews appropriate plans, policies, directives, and rules of engagement, as necessary, ensuring their consistency with the *DOD Law of War Program* and the law of war.

**Chairman of the Joint Chiefs of Staff.** As a component head, the Chairman of the Joint Chiefs of Staff is required to, among other things, implement an effective program to prevent violations of the law of war.<sup>26</sup> The Chairman is additionally responsible for providing appropriate guidance to the combatant commanders, including direction on the

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<sup>23</sup>On August 25, 2022, the Department of Defense released the Civilian Harm Mitigation and Response Action Plan. According to the plan, the protection of civilians is a strategic priority as well as a moral imperative and it aims to, among other things, improve knowledge of the civilian environment and civilian harm mitigation capabilities and processes throughout the joint targeting process so that DOD is more effectively prepared to mitigate and respond to civilian harm in any future crisis or conflict. The document also states that nothing in the plan is intended to suggest that existing DOD policies or practices are legally deficient or that the actions to be implemented pursuant to this plan are legally required, including under the law of war. We have ongoing work, expected to be completed later in calendar year 2024, examining DOD's development and implementation of the Civilian Harm Mitigation and Response Action Plan.

<sup>24</sup>DODD 2311.01.

<sup>25</sup>DODD 2311.01.

<sup>26</sup>DODD 2311.01.

collection and investigation of reportable incidents.<sup>27</sup> Furthermore, the Chairman is responsible for requiring each combatant commander to develop and implement plans and procedures so that all information and records created or received by the combatant command are identified, safeguarded, and properly managed.<sup>28</sup>

**National Joint Operations/Intelligence Center (NJOIC).** The National Military Command Center's NJOIC is required to forward all initial incident reports of reportable incidents submitted by the combatant commands to appropriate Joint Staff and the Office of the Secretary of Defense principals.<sup>29</sup>

**Military services.** The military services are required to provide training to ensure that service members know the fundamental precepts of the law of war and that all service members have knowledge of the law commensurate with each individual's duties and responsibilities.<sup>30</sup>

**Combatant commands.** Combatant commands, including AFRICOM and CENTCOM, are also required to implement effective programs to prevent violations of the law of war.<sup>31</sup> Combatant commands make available qualified legal advisers to appropriate levels of command to advise on law of war compliance during planning and execution of exercises and operations, and to help implement programs to comply with requirements for reporting alleged violations of the law of war. This includes providing for the central collection of relevant information about

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<sup>27</sup>DODD 2311.01.

<sup>28</sup>DOD Instruction (DODI) 5015.02, *DOD Records Management Program* (Feb. 24, 2015, incorporating change 1, Aug. 17, 2017).

<sup>29</sup>The National Military Command Center located within the Pentagon provides daily support to the President, Secretary of Defense, and Chairman of the Joint Chiefs of Staff, allowing for the monitoring of nuclear forces and ongoing conventional military operations. According to DODD 2311.01, reportable incidents are to be forwarded to the General Counsel, DOD; Assistant to the Secretary of Defense for Public Affairs; Under Secretary of Defense, Policy; Under Secretary of Defense for Intelligence and Security; Assistant Secretary of Defense for Legislative Affairs; and Inspector General of the Department of Defense. Chairman of the Joint Chiefs of Staff Instruction (CJCSI) 5810.01D, *Implementation of the DOD Law of War Program* (Apr. 30, 2010).

<sup>30</sup>DODD 2311.01. While this directive assigns these responsibilities to the Secretaries of the Military Departments, the duties are typically carried out by the relevant military services. For the purposes of this report, the "military services" are the Army, Marine Corps, Navy, Air Force, and Space Force. We did not include the Coast Guard as a military service for the purpose of this review.

<sup>31</sup>DODD 2311.01.

reportable incidents involving alleged violations of the law of war committed by or against members of their respective combatant commands, or persons assigned to or accompanying them. Combatant commands must forward reportable incidents to the Secretary of Defense, the Chairman of the Joint Chiefs of Staff, the Commander of U.S. Special Operations Command (SOCOM), if applicable, and relevant secretaries of the military departments. Combatant commands must also provide the NJOIC with initial incident reports of reportable incidents.<sup>32</sup>

In its role as a combatant command, SOCOM's principal function is to prepare special operations forces to carry out assigned missions and activities under the command of the combatant commander for the geographic area where the activity or mission is to be conducted.<sup>33</sup> SOCOM is responsible for, among other things, planning global operations against violent extremist organizations and training special operations forces. For the purposes of reporting alleged law of war violations in accordance with the *DOD Law of War Program*, SOCOM directs personnel to follow the relevant policies of the combatant command exercising operational control over them or the mission, and submit a simultaneous copy of any reporting to the SOCOM commander.<sup>34</sup>

**Subordinate units and strike cells.** Subordinate units operate under the operational control of their respective combatant commands to conduct military operations.<sup>35</sup> Subordinate units include sub-unified commands operating under a combatant commander. For example, Special Operations Command – Africa and Special Operations Command – Central are sub-unified commands under SOCOM known as Theater Special Operations Commands. The Secretary of Defense typically delegates operational control over special operations forces that are deployed overseas to the geographic combatant commander. In turn, the geographic combatant commanders typically exercise their operational control through the Theater Special Operations Commands. Special Operations Command – Africa and Special Operations Command –

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<sup>32</sup>CJCSI 5810.01D.

<sup>33</sup>See 10 U.S.C. § 167(a) and (d).

<sup>34</sup>United States Special Operations Command Directive 525-27, *Law of War Program* (Mar. 9, 2023).

<sup>35</sup>For the purposes of this report, we are using the term “subordinate unit” to encompass entities operating under the command of a geographic combatant commander including task forces and subordinate commands.

Central would fall under the operational control of AFRICOM and CENTCOM, respectively.

Subordinate units also include task forces, which a combatant command may establish to accomplish a defined mission. For example, within the AFRICOM area of responsibility, Joint Special Operations Task Force – Somalia exercises command and control of U.S. military operations in Somalia, mitigates any risk to missions, and protects U.S. and allied interests. Similarly, CENTCOM established Combined Joint Task Force – Operation Inherent Resolve (CJTF-OIR) to direct efforts to support partner forces in countering the Islamic State of Iraq and Syria’s operations.

A “strike cell” is an entity that has the means to command and control assets being used to observe and execute kinetic strike operations.<sup>36</sup> A strike cell includes, among other members, a target engagement authority—an individual with the authority and responsibility to engage targets.<sup>37</sup> Subordinate units and strikes cells must comply with the law of war, the DOD Law of War Program, and the law of war policies of the combatant commands to which they are assigned.

**Service members.** All service members are required to report through their chain of command all reportable incidents, which include war crimes or other violations of the law of war.<sup>38</sup> A “reportable incident” is 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

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<sup>36</sup>Strike cell is a non-doctrinal term and may be defined differently by various DOD organizations. For example, CJTF-OIR defines strike cell as an entity at a supported headquarters consisting of, at a minimum, a target engagement authority, joint terminal attack controller, strike director, collateral damage estimation analyst, operational law representative, intelligence representative, and the means to command and control the assets being utilized to observe and execute kinetic operations.

<sup>37</sup>Target engagement authority is the term for both the individual with the target engagement authority and the authority itself to approve strikes on targets. Target engagement authority rests with the joint force commander—the individual authorized to exercise command authority or operational control over a joint force—and may be delegated to subordinate commanders. See Joint Pub. 3-09.

<sup>38</sup>DODD 2311.01.



further review of the incident. War crimes are serious violations of the law of war that generally have been committed intentionally, such as murder, torture, rape, pillage, extensive and wanton destruction of property without justification, and intentionally directing attacks against the civilian population or civilians protected as such.

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## DOD Integrates the Law of War into Training, Strike Procedures, and Legal Advisor Support

DOD integrates law of war principles into training throughout service members' careers including during initial training, prior to deployment, and when deployed. During kinetic strike operations, AFRICOM and CENTCOM follow procedures that incorporate law of war principles. Finally, legal advisors are available to personnel conducting kinetic strikes to provide advice on the law of war.

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### Law of War Integration in Service Member Training and Strike Cell Exercises

DOD integrates law of war principles and *DOD Law of War Program* requirements into training throughout service members' careers. This begins with initial entry training and continues through follow-on training, pre-deployment training, and in-theater training provided when deployed in the AFRICOM and CENTCOM areas of responsibility. Furthermore, AFRICOM and CENTCOM units conduct exercises that include simulated kinetic strikes in support of law of war compliance.

**Initial entry and follow-on training.** Each of the military services requires law of war training throughout a service member's career, beginning with initial entry training that is to cover the five law of war principles and the *DOD Law of War Program* requirement to report any law of war violations through the chain of command.<sup>39</sup>

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<sup>39</sup>Army Regulation 350-1; Air Force Instruction 51-401, *The Law of War*, (Aug. 3, 2018); Department of the Navy, Office of the Chief of Naval Operations, OPNAV Instruction 3300.52A, *Law of War Program*, (Jan. 21, 2015); Department of the Navy, Office of the Commandant of the Marine Corps, Marine Corps Order 3300.4A, *Marine Corps Law of War Program*, (Jan. 9, 2014). Air Force officials confirmed that Air Force Instruction 51-401 applies to members of the Space Force.

In addition to the military service-required initial entry training, law of war principles are integrated into follow-on training for service members.<sup>40</sup> Military service and combatant command officials identified additional training that service members may attend throughout their careers that covers law of war topics, such as training for specific billets, at joint schools, or during unit training. For example, officials with the Air Forces Central Command Combat Plans Division said that certain billets require personnel to graduate from the Air Force Weapons School, which includes a week of training on law of war and ROE.<sup>41</sup> Additionally, multiple DOD component officials said that personnel involved in the kinetic strike process attend courses at the Joint Targeting School, which includes a segment on the law of war.<sup>42</sup> Finally, we observed a unit conducting training in preparation for conducting kinetic strike operations. During this training, personnel conducted simulated strikes while confirming ROE and the authority to strike, and checking for collateral damage concerns.

**Pre-deployment training.** The military services each have law of war training prior to deployment. The Marine Corps requires law of war training prior to deployment as do the Air Force and Space Force as part of their Expeditionary Readiness Program.<sup>43</sup> The Army requires pre-deployment training when directed by a deployment order or appropriate authority and Army officials said that such law of war training would be required before any deployment.<sup>44</sup> The Navy's law of war program includes training that Navy officials said is targeted for service members with combat deployments.<sup>45</sup> Navy officials said that operational commands are responsible for ensuring personnel meet pre-deployment law of war training requirements.

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<sup>40</sup>DOD officials identified multiple venues that may include law of war training. This section provides illustrative examples of the types of training service members may receive but is not inclusive of all possible law of war training provided to service members.

<sup>41</sup>As described above, ROE incorporate legal (including the law of war), policy, and military considerations. Officials said that they train to and operate within the applicable ROE, which, as a result, means they are training and operating within the law of war.

<sup>42</sup>The Joint Targeting School provides doctrinally based joint targeting education and training in order to prepare service, interagency, and allied personnel for operational level targeting duties.

<sup>43</sup>Marine Corps Order 3300.4A; Air Force Instruction 51-401.

<sup>44</sup>Army Regulation 350-1.

<sup>45</sup>OPNAV Instruction 3300.52A.

Pre-deployment training is meant, among other things, to reinforce the five law of war principles and requirements for reporting law of war violations. Examples we reviewed of such training for each of the services included this content. For example, an Army training package covered the five basic principles and reinforced the program requirement to report violations to the chain of command or other channels, such as military police. Similarly, Navy training packages covered the principles and the duty to report, as well as Navy-specific concepts, such as the law of the sea.

AFRICOM and CENTCOM both require service members to take the service-provided law of war training prior to deploying to their respective areas of responsibility.<sup>46</sup> SOCOM also requires assigned personnel to comply with military service law of war training requirements.<sup>47</sup> Additionally, SOCOM requires deploying personnel to complete law of war training that includes, among other things, definitions of the five law of war principles, the *DOD Law of War Program* reporting procedures, and mission-specific rules of engagement. According to SOCOM officials, the military service-provided training may cover such requirements. However, as such training would not likely cover the mission-specific topics, additional training provided by local legal advisors would be required, according to the officials.<sup>48</sup>

**In-theater training and exercises.** Within AFRICOM and CENTCOM, subordinate units provide training that covers law of war principles and *DOD Law of War Program* requirements. For example:

- Joint Special Operations Task Force – Somalia, in the AFRICOM area of responsibility, includes training covering law of war principles as well as ROE and reporting processes.
- The Combined Air Operations Center in the CENTCOM area of responsibility holds a legal briefing that covers law of war principles and ROE.

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<sup>46</sup>U.S. Africa Command Instruction 1700.14A, *U.S. Africa Command Reporting Instructions* (Dec. 6, 2018); Central Command Regulation 27-1; USCENTCOM FY 21-22 Theater Entry Guidance – MOD 1 (Dec. 29, 2021).

<sup>47</sup>U.S. Special Operations Command Directive 525-27.

<sup>48</sup>As of March 2023, SOCOM requires component commanders to ensure that target engagement authorities and their supporting staff receive, among other things, mission-specific training on the *DOD Law of War Program*. U.S. Special Operations Command Directive 525-27.

In addition to law of war-specific training, AFRICOM and CENTCOM strike cells conduct in-theater kinetic strike exercises that integrate law of war principles. According to strike cell officials, these exercises provide the opportunity for relevant personnel to practice complying with, among other things, the law of war, ROE, and minimization of civilian casualties.<sup>49</sup>

- Officials with two AFRICOM strike cells said that they conduct weekly tabletop exercises to cover processes and procedures, including post-strike reporting.
- Special Operations Command – Central officials said that they run bi-weekly exercises for a strike cell in the CENTCOM area of responsibility using a virtual program for conducting simulated strikes. AFRICOM strike cell officials said that they use a similar program on a weekly basis.
- Officials with a CENTCOM strike cell said they create scenarios to practice kinetic strike procedures and address potential collateral damage concerns. For example, if a civilian walks into the target area after a missile is fired, they rehearse moving the missile away from the area, according to the officials.

When interviewing combatant command and strike cell officials regarding the sufficiency of the law of war training, they generally said the training adequately prepared them to recognize law of war issues and report potential violations. AFRICOM officials credited law of war training for decisions to hold off on conducting some strikes and officials with Special Operations Command – Africa said that everyone knows they need to report a suspected law of war violation. Within the CENTCOM area of responsibility, officials with the Combined Air Operations Center said that service members deployed to the center are qualified and certified in law of war principles as appropriate for their position. One CJTF-OIR official said that the training provided prior to deployment was not the best—one part was a pre-recorded briefing as a lawyer was not available to deliver it in-person—but it covered all of the necessary points. Overall, CJTF-OIR officials said that all deployed personnel would know how to identify and report a law of war violation.

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<sup>49</sup>We interviewed officials, including assigned legal advisors, from four active strike cells, two in the AFRICOM area of responsibility and two in the CENTCOM area of responsibility.

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## AFRICOM and CENTCOM Integration of Law of War Considerations into Kinetic Strike Procedures

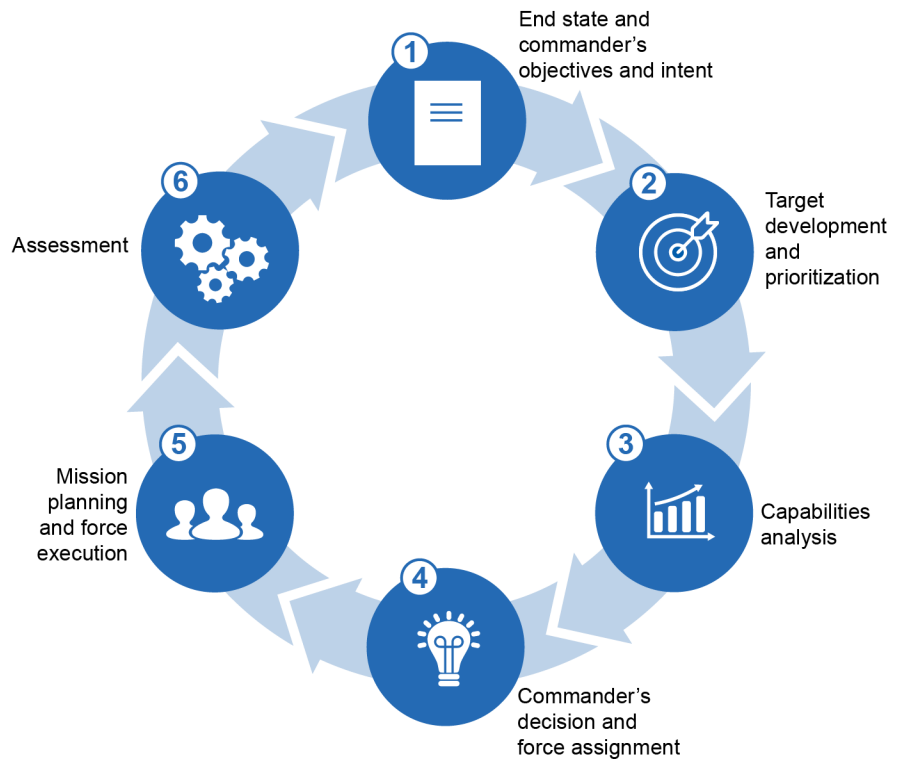
AFRICOM and CENTCOM integrate law of war principles and program requirements into guidance and established procedures for targeting and conducting kinetic strikes.<sup>50</sup> Joint Publication 3-60, Joint Targeting, establishes joint doctrine for planning and executing kinetic strikes within the joint targeting cycle (see fig. 2).<sup>51</sup>

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<sup>50</sup>Procedures identified in this section are not inclusive of all policies, procedures, or steps personnel may use to comply with the law of war. We identified the procedures described here based on review of documentation and interviews with officials involved in kinetic strike operations. In some cases, officials said that the procedures used go above and beyond what would be required by the law of war.

<sup>51</sup>The joint targeting cycle is an iterative process that provides an essential framework to conduct joint targeting effectively. The cycle is neither time constrained nor rigidly sequential because some steps in various phases may occur concurrently. Joint Pub. 3-60.

**Figure 2: Joint Targeting Cycle**



Source: GAO analysis of Department of Defense information. | GAO-24-107217

**Accessible text for Figure 2: Joint Targeting Cycle**

1. End state and commander's objectives and intent.
2. Target development and prioritization.
3. Capabilities analysis.
4. Commander's decision and force assignment.
5. Mission planning and force execution.
6. Assessment

Source: GAO analysis of DOD information. | GAO-24-107217

Note: The joint targeting cycle is an iterative process that provides an essential framework to conduct joint targeting effectively. The cycle is neither time constrained nor rigidly sequential because some steps in various phases may occur concurrently.

AFRICOM and CENTCOM both use the joint targeting cycle when conducting deliberate targeting for kinetic strike operations, and procedures within the phases of that cycle integrate law of war principles.

For example, AFRICOM and CENTCOM both conduct target validation during the second phase of the cycle, which is focused on target development. Target validation can include ensuring if targets are accurately located and will contribute to objectives.<sup>52</sup> According to Joint Pub. 3-60, target validation aids in ensuring compliance with the law of war and ROE.<sup>53</sup> This phase also includes the development of no-strike lists, which are lists maintained by AFRICOM and CENTCOM containing entities that are characterized as collateral objects or civilian or noncombatant in nature, and are protected from being the object of attack under the law of war and/or ROE.<sup>54</sup>

During the third phase of the cycle—focused on capabilities analysis—AFRICOM and CENTCOM personnel conduct a collateral damage estimation prior to a strike. This estimation informs commanders of potential incidental damage to civilians or civilian objects within a defined radius around a target. According to the Chairman of the Joint Chiefs of Staff Instruction 3160.01D, *No-Strike and Collateral Damage Estimation Methodology*, this procedure assists commanders in weighing risk against military necessity and in evaluating proportionality—two principles of the law of war.<sup>55</sup>

During the fourth phase of the cycle—Commander’s Decision and Force Assignment—strike cell personnel evaluate forces available to the commander and match them with the planned targets. Subject matter experts on weapons systems make assessments of the most appropriate capabilities to create the effects required to meet the commander’s objectives. The fourth phase includes the consolidation of targeting information and validation, to include collateral damage estimates. Both

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<sup>52</sup>Target validation authority designates a particular individual to validate targets, approve changes to target lists, and approve target restrictions on behalf of the joint force commander. The specific target validation authority for each target depends on the target itself. Chairman of the Joint Chiefs of Staff Instruction 3370.01D, *Target Development Standards*, (Apr. 8, 2022) (CONFIDENTIAL//REL TO USA, KOR, FVEY, NATO).

<sup>53</sup>Joint Pub. 3-60.

<sup>54</sup>Collateral objects include civilian and noncombatant buildings, structures, vehicles, material, or virtual entities that do not support the activities and/or functions of the adversary capability. An entity may be removed from a no-strike list if it has lost its protected status, such as if used for a military purpose or forces are taking hostile fire from the entity. CJCSI 3160.01D, *No-Strike and the Collateral Damage Estimation Methodology* (May 21, 2021).

<sup>55</sup>CJCSI 3160.01D, *No-Strike and the Collateral Damage Estimation Methodology* (May 21, 2021).

AFRICOM and CENTCOM units use a Joint Targeting Coordination Board—as recommended in joint doctrine—to accomplish these measures.<sup>56</sup> The updated collateral damage estimates, when presented to the commander along with weaponeering results and other relevant information, enable the commander to satisfy the law of war principle of proportionality.<sup>57</sup>

In addition to Joint Pub. 3-60 and other guidance described above, officials with AFRICOM and CENTCOM said that orders governing specific operations may contain guidance on targeting and kinetic strikes. For example, AFRICOM officials said that orders to subordinate commands include who is authorized to conduct certain actions and how those actions should be carried out. Similarly, CENTCOM officials said that the order governing an operation would identify the target engagement authority for strikes. We reviewed relevant orders for both AFRICOM and CENTCOM and found that, for both, the orders contained such guidance, including authorities for conducting targeting and strikes and ensuring that strikes complied with the law of war and ROE.

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### Legal Advisor Support to AFRICOM and CENTCOM Personnel during the Kinetic Strike Process

Legal advisors are available to AFRICOM and CENTCOM officials, target engagement authorities, and other staff, such as intelligence and operations personnel, to consult on law of war issues during kinetic strike operations. DOD, AFRICOM, and CENTCOM all require legal advisors to be available during planning and execution of military operations, including kinetic strikes, to assist with law of war compliance.<sup>58</sup> AFRICOM and CENTCOM officials said that there are legal advisors available to provide advice during kinetic strike operations and that legal advisors regularly brief service members on law of war issues and ROE during operations. For example, AFRICOM officials said that every target

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<sup>56</sup>Joint Pub. 3-60.

<sup>57</sup>“Weaponeering” is the process of determining the specific means required to create a desired effect on a given target. Additional specifics regarding the joint targeting cycle and a subset of strikes known as “dynamic strikes” were deemed classified by DOD and do not appear in this report. Joint Pub. 3-60.

<sup>58</sup>DOD Directive 2311.01; Joint Pub. 3-84; Joint Pub. 3-09; Joint Pub. 3-60; United States Africa Command Instruction 5800.01, *Law of War Program*, (Dec.31, 2013, incorporating change 1, July 9, 2014); Central Command Regulation 27-1, *Law of War Program*, (Nov. 9 2021).



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engagement authority has a legal advisor available to provide support. Officials with CJTF-OIR said that all target engagement authorities will have a lawyer available and that there is a lawyer assigned to the strike cell.

According to officials, legal advisors provide input on law of war issues throughout the kinetic strike process within AFRICOM and CENTCOM.<sup>59</sup> Both AFRICOM and CENTCOM include legal reviews as part of the target validation process. For example, AFRICOM Office of Legal Counsel officials said that they review potential targets, including how the law of war applies to the target. The officials said that they may also discuss the types of weapons that can be used and how they comply with the law of war. Legal advisors may also provide input after a strike is approved but before it is executed. For example, documentation of a CENTCOM-approved target included a legal advisor's notes that there were no proportionality concerns and a recommendation to scan for potential collateral damage concerns as a feasible precaution.

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## AFRICOM's Reporting Processes Do Not Align with Requirements

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### Processes Established to Report Law of War Violations, but AFRICOM's Policy Is Outdated and Does Not Align Fully with DOD Requirements

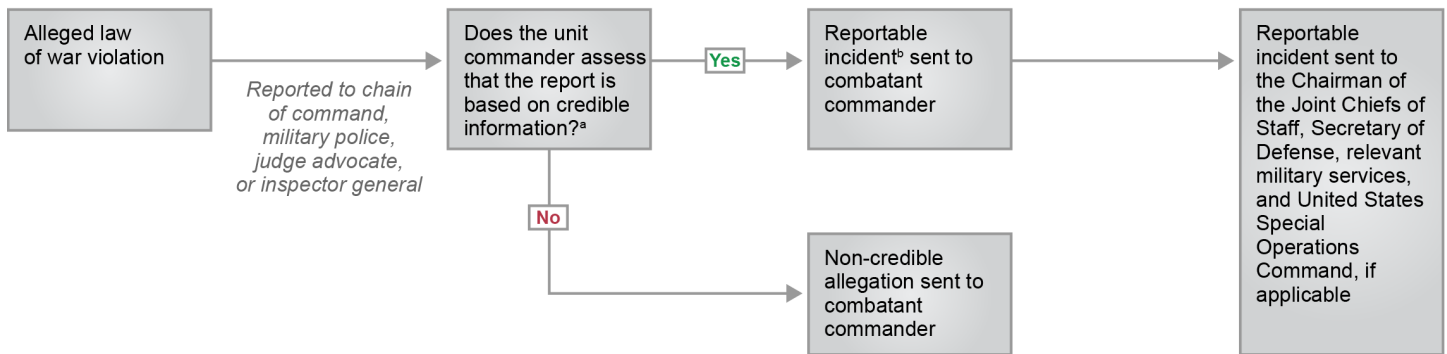
DOD, AFRICOM, and CENTCOM established processes to report alleged law of war violations; however, AFRICOM's policy does not fully align with DOD requirements. The *DOD Law of War Program* requires commanders of any unit that obtains information about an alleged violation of the law of war to assess whether the allegation is based on credible information and

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<sup>59</sup>This section provides illustrative examples of the type of input legal advisors may provide during the kinetic strike process but may not be inclusive of all possible input a legal advisor may provide.

thus constitutes a reportable incident.<sup>60</sup> The unit commander must immediately report reportable incidents through the chain of command to the combatant commander (see fig. 3).

**Figure 3: DOD’s Process for Reporting Alleged Law of War Violations**



Source: GAO analysis of Department of Defense information. | GAO-24-107217

**Accessible text for Figure 3: DOD’s Process for Reporting Alleged Law of War Violations**

- 1) Alleged law or war violation
- 2) Reported to chain of command, military police, judge advocate, or inspector general
- 3) Does the unit commander assess that the report is based on credible information? /a/
  - a) Yes
    - i) Reportable incident /b/ sent to combatant commander

<sup>60</sup>Credible information is defined as information that a reasonable military commander would believe to be sufficiently accurate to warrant further review of the alleged violation. The totality of the circumstances is to be considered, including the reliability of the source (e.g., the source’s record in providing accurate information in the past and how the source obtained the information), and whether there is contradictory or corroborating information. A reportable incident is defined as 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.

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- ii) Reportable incident sent to the Chairman of the Joint Chiefs of Staff, Secretary of Defense, relevant military services, and United States Special Operations Command, if applicable
  - b) No
    - i) Non-credible allegation sent to combatant commander

Source: GAO analysis of Department of Defense information. | GAO-24-107217

<sup>a</sup>Credible information” is defined as information that a reasonable military commander would believe to be sufficiently accurate to warrant further review of the alleged violation. The totality of the circumstances is to be considered, including the reliability of the source (e.g., the source’s record in providing accurate information in the past and how the source obtained the information), and whether there is contradictory or corroborating information.

<sup>b</sup>A “reportable incident” is defined as 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.

If the unit commander or a superior commander determines that the allegation is not supported by credible information, the allegation must still be forwarded to the combatant commander with this determination.

AFRICOM and CENTCOM developed policies to implement the DOD Law of War Program and report alleged law of war violations.<sup>61</sup> In November 2021, a DODIG report found that CENTCOM’s regulation on the law of war was not consistent with the *DOD Law of War Program*, including that it lacked elements of more recent definitions of reportable incidents and credible information. Prior to the completion of the DODIG report, CENTCOM self-initiated a review of its law of war policy and issued an updated version in November 2021. We found that the updated CENTCOM regulation aligns with the current *DOD Law of War Program* reporting requirements.

AFRICOM also established policy to implement the *DOD Law of War Program* and to provide for the reporting of allegations of law of war violations. The AFRICOM Instruction 5800.01 includes provisions for, among other things, reporting and investigating alleged violations. It also states that AFRICOM will report all possible, suspected, or alleged law of war violations to the Joint Staff.

However, we found that in AFRICOM Instruction 5800.01, the reporting process does not fully align with the *DOD Law of War Program*

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<sup>61</sup>AFRICOM Instruction 5800.01; Central Command Regulation 27-1.

requirements in three areas. First, AFRICOM Instruction 5800.01 does not direct unit commanders to send allegations unsupported by credible information to the combatant commander with that determination as required by the *DOD Law of War Program*. According to the AFRICOM joint operations center law of war violation reporting process, if officials determine that an allegation is not supported by credible information, no notification is sent to the combatant commander. AFRICOM officials said that this is accurate, but said that they satisfy the requirement to notify the combatant commander through the notification to the AFRICOM joint operations center, which, among other things, coordinates post-strike reporting. However, AFRICOM Instruction 5800.01 does not state this nor does it include any requirement for the specific determination that the allegation was not supported by credible information to be included in a notification to the combatant commander.

Second, AFRICOM Instruction 5800.01 does not include a definition for credible information, which is the basis for determining whether an allegation is considered a reportable incident. AFRICOM Instruction 5800.01 also does not include a complete definition of reportable incident. The *DOD Law of War Program* defines credible information as information that a reasonable military commander would believe to be sufficiently accurate to warrant further review of the alleged violation. Additionally, the *DOD Law of War Program* includes in its definition of reportable incident that a unit commander need not determine that a potential violation occurred, only that credible information merits further review of the incident. AFRICOM's Instruction does not include these specifics.

Finally, according to AFRICOM officials, a determination of credibility is not conducted until after a formal investigation is completed. Thus, AFRICOM's practice is not aligned with the current *DOD Law of War Program* as the need for a formal investigation would indicate that an allegation is credible enough to warrant such an investigation, making the case for a reportable incident and requiring notification of the combatant commander. By waiting for formal investigations to conclude before determining whether an allegation is supported by credible information, AFRICOM risks failing to report reportable incidents in a timely manner.

The *DOD Law of War Program* requires combatant commanders to implement reporting requirements included in the guidance. However, AFRICOM Instruction 5800.01 was last updated in July 2014 and does not align with the *DOD Law of War Program*, which was updated in July 2020. AFRICOM officials said that AFRICOM Instruction 5800.01 is

outdated, but said other priorities took precedence over updating the policy. AFRICOM officials said that though the AFRICOM guidance is outdated, it still conforms to the DOD policy. However, as described above, AFRICOM's instruction does not incorporate all current reporting procedures or current definitions of credible information and reportable incident. Without a current policy aligned to DOD requirements, AFRICOM officials may not be reporting all alleged law of war violations as required. As a result, AFRICOM leadership may not be fully aware of all such allegations within their command or be in a position to forward reportable incidents to senior DOD leadership as required.

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### DOD Established Processes to Protect Individuals from Reprisal and No Substantiated Cases Were Reported

DOD established processes to protect individuals who report violations of the law of war from reprisal, and from January 2013 through December 2022 there were no substantiated incidents of reprisal in such cases. Whistleblowers are protected from reprisal as a result of making a protected communication through various statutes, regulations, and presidential policy covering different DOD personnel groups.<sup>62</sup> A "protected communication" includes any communication in which a service member communicates evidence of, among other things, a violation of law or regulation, and includes communications to the chain of command, law enforcement, a court-martial proceeding, and/or an inspector general. A whistleblower reprisal complaint involves a service member or civilian who makes, prepares to make, or is perceived as making or preparing to make a protected communication, and who has experienced either (1) the taking of or threatening to take an unfavorable personnel action, or (2) the withholding of or threatening to withhold a favorable personnel action.<sup>63</sup> According to DOD officials, service

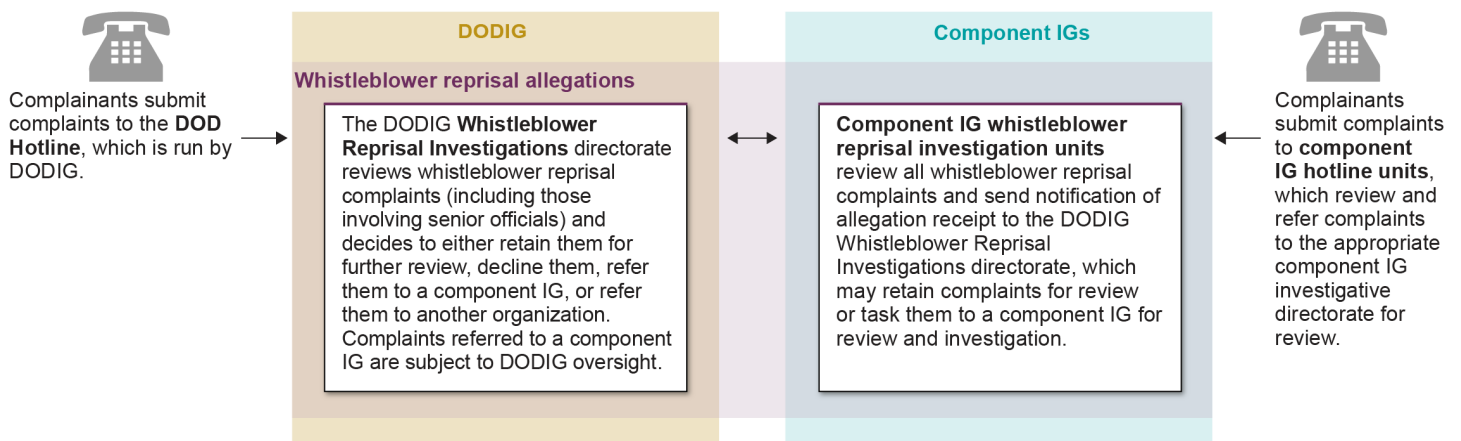
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<sup>62</sup>For example, service members are protected from reprisal for making certain protected disclosures under section 1034 of title 10, U.S. Code.

<sup>63</sup>GAO has issued several reports assessing DOD's whistleblower protections. See GAO, *Whistleblower Protection: Actions Needed to Improve DOD's Military Whistleblower Reprisal Program*, [GAO-12-362](#) (Washington, D.C.: Feb. 22, 2012); *Whistleblower Protection: DOD Needs to Enhance Oversight of Military Whistleblower Reprisal Investigations*, [GAO-15-477](#) (Washington, D.C.: May 7, 2015); *Whistleblower Protection: Opportunities Exist for DOD to Improve the Timeliness and Quality of Civilian and Contractor Reprisal Investigations*, [GAO-17-506](#) (Washington, D.C.: Sept. 29, 2017); *Whistleblower Protection: Analysis of DOD's Actions to Improve Case Timeliness and Safeguard Confidentiality*, [GAO-19-198](#) (Washington, D.C.: Mar. 7, 2019); and *Military Inspectors General, Opportunities Exist to Strengthen Processes for Administrative Investigations and Training*, [GAO-22-105316](#) (Washington, D.C.: Sept. 28, 2022).

members who report potential law of war violations related to kinetic strikes are protected from reprisal. A service member may make an allegation of reprisal to the DODIG or component inspector general, such as the AFRICOM or CENTCOM inspector general (see fig. 4).

**Figure 4: DOD Reporting Process for Allegations of Whistleblower Reprisal**



Source: GAO analysis of Department of Defense Office of Inspector General (DODIG) and component office of Inspector General (IG) information. | GAO-24-107217

**Accessible text for Figure 4: DOD Reporting Process for Allegations of Whistleblower Reprisal**

1. Complainants submit complaints to the DOD Hotline, which is run by DODIG.
2. DODIG, Whistleblower reprisal allegations: The DODIG Whistleblower Reprisal Investigations directorate reviews whistleblower reprisal complaints (including those involving senior officials) and decides to either retain them for further review, decline them, refer them to a component IG, or refer them to another organization. Complaints referred to a component IG are subject to DODIG oversight.
3. Component IGs: Component IG whistleblower reprisal investigation units review all whistleblower reprisal complaints and send notification of allegation receipt to the DODIG Whistleblower Reprisal Investigations directorate, which may retain complaints for review or task them to a component IG for review and investigation.
4. Complainants submit complaints to component IG hotline units, which review and refer complaints to the appropriate component IG investigative directorate for review.

Source: GAO analysis of Department of Defense Office of Inspector General (DODIG) and component office of Inspector General (IG) information. | GAO-24-107217

DODIG is responsible for investigating and overseeing component inspector general investigations of reprisal allegations. AFRICOM and CENTCOM both issued guidance for their respective offices of the inspector general to investigate reprisal complaints and report such complaints to the DODIG.<sup>64</sup> DODIG, AFRICOM inspector general, and CENTCOM inspector general officials said they would investigate allegations of reprisal associated with law of war complaints as required.

In our review of DODIG information, we found that there were no substantiated cases of reprisal against individuals who reported alleged law of war violations in the AFRICOM or CENTCOM areas of responsibility from January 2013 through December 2022. During that time period, DODIG reported one case in which allegations of reprisals were made related to reporting alleged law of war violations. In that case, three anonymous reports alleged potential violations of the law of war associated with a unit in the CENTCOM area of responsibility. Each of the three reports included an allegation of reprisal. An investigation found that both the alleged reprisal and overarching alleged law of war violation were not substantiated.

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## DOD Does Not Have Comprehensive Records of Law of War Violation Allegations for AFRICOM or CENTCOM

DOD does not have comprehensive records of alleged law of war violations committed by U.S. personnel in the AFRICOM and CENTCOM areas of responsibility for January 2012 through December 2022. We obtained 47 alleged law of war violations, one in the AFRICOM area of

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<sup>64</sup>Central Command Regulation 20-1, *Activities and Procedures, Mission, Functions, and Responsibilities of the United States Central Command Inspector General* (Apr. 27, 2020); United States Africa Command Instruction 5900.01B, *Inspector General Program* (Aug. 15, 2022).

responsibility and 46 in the CENTCOM area of responsibility.<sup>65</sup> Of the reports obtained, AFRICOM provided a complete record of alleged law of war violations, but other entities responsible for reporting and retaining reports—CENTCOM, CJTF-OIR, and NJOIC—were not able to provide complete records.

**AFRICOM.** AFRICOM provided one record of an alleged law of war violation committed by U.S. personnel from August 2017. AFRICOM officials said that there is no separate and distinct database for records of alleged law of war violations and that it could be difficult to get reports prior to 2019 due to the how the records are stored. However, after searching their records, officials said that they compiled records going back to 2012 and were not aware of any additional reports of alleged law of war violations.

**CENTCOM.** CENTCOM retained records of alleged law of war violations for 2012 through 2016 and 2018 through 2022, but did not have all records for 2017. CENTCOM officials did not know why a document tracking potential alleged law of war violations for 2017 was unavailable.

Additionally, CENTCOM did not have records for all of the alleged law of war violations we obtained that occurred within its area of responsibility. Specifically, nine reports of alleged law of war violations that occurred within the CENTCOM area of responsibility (including one reported in 2017) were not among the records CENTCOM officials provided to us. DODIG reported five of the alleged incidents, all of which were reported to CENTCOM. CENTCOM inspector general officials said that such reports would not be sent to the CENTCOM joint operations center, which would explain their absence from records provided by the joint operations center. However, that would not explain why records of the alleged incidents were not retained by other CENTCOM entities from whom we

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<sup>65</sup>We requested allegations of law of war violations and reviewed the documents provided; however, we did not investigate individual cases. As a result, such reports are only allegations and we did not determine or seek to determine whether these allegations were, in fact, violations of the law of war. Due to data limitations related to potential incompleteness and inconsistencies across incident reporting systems, we found that the alleged law of war violations obtained may not represent the entire universe of alleged violations, but we are not able to determine what that universe is. However, our review indicated that there were no duplicates in the 47 alleged violations in the data. Thus, the alleged law of war violations we obtained represent the minimum of number of alleged law of war violations committed by U.S. personnel in the AFRICOM and CENTCOM areas of responsibility from January 2012 through December 2022. The specific details of these allegations are classified and not included in this report. See appendix I for additional information on our scope and methodology.



received records of allegations, such as the CENTCOM Office of the Staff Judge Advocate. The NJOIC provided two additional records of alleged law of war violations, neither of which were included among the records provided by CENTCOM. A CENTCOM official did not know why these records would not have been included in CENTCOM's records. Finally, two additional records of alleged law of war violations were provided by a SOCOM component.

**CJTF-OIR.** CJTF-OIR did not have records for all of the alleged law of war violations that occurred within its area of responsibility, Iraq and Syria. Specifically, of the 17 alleged law of war violations that we obtained through other DOD components that were reported in its area of responsibility, CJTF-OIR only provided two records of alleged violations. For example, CJTF-OIR officials said they could not locate records of alleged law of war violations for 2015.<sup>66</sup> Officials said that they did not know why the records were unavailable, but said that CJTF-OIR did not have a significant ground presence until 2016, which could make that the first year in which they would be able to track potential violations. However, DODIG reported an alleged violation that occurred within the CJTF-OIR area of responsibility in 2015.

Moreover, CJTF-OIR provided summary-level information for allegations of law of war violations, but could not locate individual records for two allegations included in the summaries. For one allegation in 2019 and one allegation in 2020, CJTF-OIR officials said that they could not locate records and their current existence and locations are unknown. As a result, we could not determine the circumstances of the two allegations or if they were committed by U.S. personnel.

**NJOIC.** The NJOIC did not have records for some alleged law of war violations sent from AFRICOM and CENTCOM. AFRICOM provided the record for one alleged law of war violation within its area of responsibility, which officials said was sent to the NJOIC. We also obtained records of three alleged incidents within the CENTCOM area of responsibility with emails showing that they were sent to the NJOIC. NJOIC officials could not find any record of these reports and thus said they did not send the required notification to senior leadership in the Joint Staff and Office of the Secretary of Defense. The officials said that even if a notification to leadership was not sent, the original, initial report should still be archived

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<sup>66</sup>As DOD formally established CJTF-OIR in October 2014, we requested records of alleged law of war violations back to that time.

at the NJOIC. Officials said that human error could have resulted in the failure to save the initial reporting.

According to DODI 5015.02, DOD Records Management Program, effective and efficient management of records provides the informational foundation for decision making at all levels.<sup>67</sup> Furthermore, CJCSM 5760.01A, *Joint Staff and Combatant Command Records Management Manual: Volumes I and II* state that records must be properly managed to ensure that valuable information is available to support both current operations and historical research, with reports on violations of the law of war designated as permanent records.<sup>68</sup> Finally, the *DOD Law of War Program*, for which DOD Office of the General Counsel exercises primary staff responsibility, requires combatant commands to maintain a central collection of information on reportable incidents and the Chairman of the Joint Chiefs of Staff to provide appropriate guidance to the combatant commanders on collection and investigation of such incidents.<sup>69</sup>

However, to date, several components have not fully implemented the requirement to retain permanent records of reports of law of war violations because DOD does not have a system to retain these records. Further, no single entity above the combatant commands retains a comprehensive set of records for either reportable incidents or those found to be unsupported by credible information. Until DOD develops a system for retaining all records of alleged law of war violations, DOD risks continuing to inconsistently retain relevant records. As a result, DOD leadership may not have a complete understanding of all alleged law of war violations and thus be unable to fully implement and enforce the law of war.

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## Conclusions

DOD integrates law of war principles into service member training, targeting and kinetic strike procedures, and legal advisor support as part

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<sup>67</sup>Department of Defense Instruction 5015.02, *DOD Records Management Program* (Feb. 24, 2015, incorporating Change 1, Aug. 17, 2017).

<sup>68</sup>Chairman of the Joint Chiefs of Staff Manual 5760.01A Vol I, *Joint Staff and Combatant Command Records Management Manual: Volume I-Procedures* (Feb. 7, 2008, Change 2, July 13, 2009); Chairman of the Joint Chiefs of Staff Manual 5760.01A Vol II, *Joint Staff and Combatant Command Records Management Manual: Volume II-Disposition Schedule* (July 13, 2012).

<sup>69</sup>DODD 2311.01.

of its approach to ensuring that AFRICOM and CENTCOM comply with the law of war when conducting kinetic strike operations. DOD also established processes to report allegations of law of war violations and protect individuals who make such reports from reprisal. Both AFRICOM and CENTCOM issued policies for reporting alleged law of war violations; however, AFRICOM's policy has not been updated to align with DOD requirements. As a result, it does not include all provisions for reporting alleged law of war violations. Without a policy fully incorporating current requirements for reporting alleged law of war violations, AFRICOM risks failing to fully comply with DOD policy, including on the notification of senior DOD leadership.

DOD lacks comprehensive records of alleged law of war violations. Several components have not retained reports of alleged law of war violations as required by DOD guidance because there is no system to comprehensively retain such reports. And no single entity above the combatant commands retains a comprehensive set of records for either reportable incidents or those found to be unsupported by credible information. Without a system to comprehensively retain records of allegations of law of war violations, DOD leadership may not be well positioned to fully implement the law of war.

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## Recommendations for Executive Action

We are making two recommendations to DOD.

The Secretary of Defense should ensure that the Commander, U.S. Africa Command, update its guidance for reporting allegations of law of war violations to align with DOD Directive 2311.01 (July 2, 2020) (Recommendation 1).

The Secretary of Defense should ensure that the Chairman, Joint Chiefs of Staff, in coordination with the General Counsel, Department of Defense, develops a system to comprehensively retain records of alleged law of war violations (Recommendation 2).

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## Agency Comments and Our Evaluation

We provided a draft of the classified report to DOD for review and comment. DOD concurred with both of our recommendations. DOD's comments on the classified report are reprinted in their entirety in

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appendix II. DOD also provided technical comments, which we have incorporated as appropriate.

We are sending copies of this report to the appropriate congressional requesters; the Secretary of Defense; the Chairman of the Joint Chiefs of Staff; the Department of Defense Office of the General Counsel; the Commander, U.S. Africa Command; the Commander, U.S. Central Command; the Commander, U.S. Special Operations Command; and the Secretaries of the Air Force, Army, and Navy, and the Commandant of the Marine Corps. In addition, the report is also available at no charge on the GAO website at <https://www.gao.gov>.

If you or your staff have any questions about this report, please contact me at (202) 512-9627 or [maurerd@gao.gov](mailto:maurerd@gao.gov). Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this report. GAO staff who made key contributions to this report are listed in appendix III.

A handwritten signature in black ink that reads "Diana Maurer". The signature is written in a cursive, flowing style.

Diana Maurer  
Director, Defense Capabilities and Management

## Appendix I: Scope and Methodology

To conduct the work for our reporting objectives we reviewed Department of Defense (DOD), military service, and combatant command guidance that governs how DOD incorporates the law of war into kinetic strike operations and reports alleged violations of the law of war.<sup>1</sup> We selected U.S. Africa Command (AFRICOM) and U.S. Central Command (CENTCOM) for review as, according to DOD officials, these are the two geographic combatant commands in which kinetic strike operations occurred from January 2012 through December 2022. We also reviewed U.S. Special Operations Command (SOCOM) guidance on the law of war. SOCOM is the force provider for special operations forces and is responsible for, among other things, planning global operations against violent extremist organizations and training special operations forces.

To address our first objective, we reviewed current DOD, military service, and combatant command guidance for law of war training, procedures for targeting and conducting kinetic strike operations, and the way legal advisors support kinetic strike operations.<sup>2</sup> We selected these elements to review based on their explicit mention in the *DOD Law of War Program* and because current versions would provide insight into application to current and near-term future operations. However, these elements do not include all possible approaches that DOD may use to ensure compliance with the law of war. For example, we did not assess how DOD conducts

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<sup>1</sup>DOD Office of the General Counsel, *DOD Law of War Manual* (June 2015, updated July 2023); DOD Directive (DODD) 2311.01, *DOD Law of War Program* (July 2, 2020); Air Force Instruction 51-401, *The Law of War*, (Aug. 3, 2018); OPNAV Instruction 3300.52A, *Law of War Program*, (Jan. 21, 2015); Department of the Navy, Marine Corps Order 3300.4A, *Marine Corps Law of War Program*, (Jan. 9, 2014); United States Africa Command Instruction 5800.01, *Law of War Program*, (Dec. 31, 2013, incorporating change 1, July 9, 2014); Central Command Regulation 27-1, *Law of War Program* (Nov. 9, 2021). We did not include the Coast Guard as a military service for the purpose of this review.

<sup>2</sup>DODD 2311.01; Army Regulation 350-1, *Army Training and Leader Development* (Dec. 10, 2017); Air Force Instruction 51-401; OPNAV Instruction 3300.52A; Marine Corps Order 3300.4A); Joint Chiefs of Staff, Joint Publication 3-60, *Joint Targeting* (Sept. 28, 2018); Joint Chiefs of Staff, Joint Publication 3-09, *Joint Fire Support* (Apr. 10, 2019); *Multi-Service Tactics, Techniques, and Procedures for Dynamic Targeting* (January 2022) (CUI); United States Africa Command Instruction 3200.21, *U.S. Africa Command Joint Targeting Instruction* (June 1, 2020); CENTCOM *Joint Targeting Process*; Joint Chiefs of Staff, Joint Publication 3-84, *Legal Support* (Aug. 2, 2016).

legal reviews of weapons before acquisition, which is an element of the *DOD Law of War Program*, as this would take place before training and operations, which is the scope of our review.

To examine how the law of war is integrated into service member training, we compared law of war principles as defined in the *DOD Law of War Manual*, and *DOD Law of War Program* reporting requirements with military service law of war training guidance, including requirements for training and content.<sup>3</sup> One analyst identified and coded the relevant content within the documents. A second analyst reviewed the work of the first analyst and any disagreements were resolved through discussion. We did not assess of law of war training completion rates. We reviewed examples of law of war training materials for the military services—selected because such training would be provided to service members who could deploy—in order to determine if law of war principles and *DOD Law of War Program* reporting requirements were included. This included pre-deployment law of war training for the Army, Navy, Marine Corps, Air Force, and Space Force. We compared law of war principles and *DOD Law of War Program* reporting requirements with training materials for multiple units within AFRICOM and CENTCOM, selected based on their involvement in kinetic strike operations. We also reviewed training materials that SOCOM subordinate commands submitted to SOCOM headquarters for review and examined emails from a SOCOM official providing feedback on the training. We visited Joint Special Operations Command headquarters and interviewed knowledgeable officials. We observed training at the Joint Fires Rehearsal Center for a unit preparing to conduct kinetic strike operations. Finally, we interviewed knowledgeable officials as to the sufficiency of law of war training provided to service members.

To examine how law of war principles are integrated into targeting and kinetic strike operations, we spoke with DOD and combatant command officials to identify relevant guidance, processes, and procedures. We reviewed joint doctrine, AFRICOM, CENTCOM, and subordinate unit guidance for conducting kinetic strikes and identified the inclusion of law

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<sup>3</sup>*DOD Law of War Manual*, DODD 2311.01, Army Regulation 350-1; Air Force Instruction 51-401; OPNAV Instruction 3300.52A; Marine Corps Order 3300.4A.

of war principles based on specific identification in the documents.<sup>4</sup> We also interviewed knowledgeable officials about how targeting and kinetic strike procedures integrate law of war principles.

To examine how legal support is provided to assist with law of war compliance during kinetic strike operations we reviewed DOD guidance, joint doctrine, and AFRICOM and CENTCOM guidance on the provision of legal advisors.<sup>5</sup> We spoke with DOD, military service, and combatant command officials about how legal advisors support personnel conducting kinetic strike operations. We reviewed kinetic strike procedures to examine how legal advisors are integrated into the process during kinetic strike operations. Finally, we interviewed strike cell personnel and legal advisors about the type of advice provided during kinetic strike operations.

To address our second objective, we reviewed DOD and combatant command policies on reporting alleged law of war violations and protecting individuals who report violations from retaliation.<sup>6</sup> We compared the *DOD Law of War Program*, which includes required procedures for reporting alleged violations of the law of war, with AFRICOM and CENTCOM guidance for reporting alleged violations of the law of war in order to determine whether combatant command guidance aligned with DOD policy. Two analysts identified and coded the relevant content within the documents. A third analyst reviewed the two analysts' work and any disagreements were resolved through discussion. We interviewed AFRICOM and CENTCOM officials, as well as officials from subordinate units, about how they implement procedures for reporting alleged violations of the law of war.

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<sup>4</sup>Joint Pub. 3-60; United States Africa Command Instruction 3200.21, *U.S. Africa Command Joint Targeting Instruction* (June 1, 2020); CENTCOM, *Joint Targeting Process*; Special Operations Command Africa, Memorandum for Commander, Joint Special Operations Task Force – Somalia and Directors Special Operations Command Africa, *Target Validation Authority and Target Engagement Authority in Support of OPERATION OCTAVE SHIELD* (Dec. 29, 2020) (SECRET//NOFORN); Department of Defense, Combined Joint Task Force – Operation Inherent Resolve, *MOD 1 to CJTF-OIR Target Engagement Authority CJOA Orientation* (April 2018) (SECRET//REL TO USA, FVEY).

<sup>5</sup>DODD 2311.01; Joint Pub. 3-84; Joint Pub. 3-09; Joint Pub. 3-60; United States Africa Command Instruction 5800.01; Central Command Regulation 27-1.

<sup>6</sup>DODD 2311.01; DOD Directive 7050.06, *Military Whistleblower Protection* (April 17, 2015, incorporating change 1, Oct. 12, 2021); United States Africa Command Instruction 5800.01; Central Command Regulation 27-1.

To examine how DOD established processes for protecting individuals who report alleged law of war violations from reprisals we reviewed U.S. statute and DOD, AFRICOM, and CENTCOM guidance on whistleblower protections.<sup>7</sup> We spoke with officials from Offices of Inspectors General at DOD, AFRICOM, CENTCOM, and SOCOM, and with military legal advisors regarding their experience with whistleblower retaliation issues.

Additionally, we requested data on the number of complaints of reprisals related to law of war allegations from January 2013 through December 2022.<sup>8</sup> We submitted data requests to two directorates within the DOD Office of the Inspector General (DODIG): the DODIG Hotline and the Whistleblower Reprisals Investigations directorate.<sup>9</sup> We identified those entities as the two relevant organizations based on reviews of documentation and interviews with DODIG officials. For the allegations of reprisal we obtained, we reviewed each for whether it was in the scope of our review, to include whether the alleged incident took place within the AFRICOM or CENTCOM area of responsibility, whether it was made against U.S. personnel, what the nature of the allegation was, and what the dates of the alleged incident and report were. One analyst reviewed and coded the relevant content within the documents. A second analyst reviewed the work of first analyst and any disagreements were resolved through discussion.

We conducted data reliability assessments to determine the completeness and accuracy of the data obtained. We obtained responses from knowledgeable officials to questions regarding the reliability of the data and interviewed officials regarding the requested data. We also compared the information received from the DODIG Hotline with the information from the Whistleblower Reprisals Investigations directorate to ensure that we received a complete record of potential reprisal

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<sup>7</sup>10 U.S.C. §1034, Protected communications; prohibition of retaliatory personnel actions; DOD Directive 7050.06; Central Command Regulation 20-1, *Activities and Procedures, Mission, Functions, and Responsibilities of the United States Central Command Inspector General*, (Apr. 27, 2020); United States Africa Command Instruction 5900.01B, *Inspector General Program*, (Aug. 15, 2022).

<sup>8</sup>The request did not include calendar year 2012. According to DOD IG officials, DOD IG migrated to a new data management system for 2013 and data prior to that year would potentially be unreliable.

<sup>9</sup>The DODIG Hotline provides a confidential, reliable means to report violations of law, rule, or regulation; fraud, waste, and abuse; mismanagement; trafficking in persons; serious security incidents; or other criminal or administrative misconduct that involve DOD personnel and operations, without fear of reprisal.



allegations. Based on the information and data we collected and analyzed, we determined that the data were sufficiently reliable for the purposes of reporting the number of reprisal complaints associated with alleged law of war violations reported from January 2013 through December 2022 within the AFRICOM and CENTCOM areas of responsibilities.

To address our third objective we obtained and reviewed notifications of alleged law of war violations that occurred within the AFRICOM and CENTCOM areas of responsibility in order to determine whether these allegations were reported and retained in accordance with applicable guidance.<sup>10</sup> We requested notifications from the following entities based on their role in the reporting process and current operations: AFRICOM, CENTCOM, SOCOM, Combined Joint Task Force – Operation Inherent Resolve, the National Joint Operations/Intelligence Center, Joint Special Operations Command, DODIG, and DOD Office of the General Counsel. For all entities, we requested alleged law of war violations occurring from January 2012 through December 2022.<sup>11</sup> For the allegations we obtained, we reviewed each for whether it was in the scope of our review, to include whether the alleged incident took place within the AFRICOM and CENTCOM areas of responsibility, whether it was made against U.S. personnel, what the nature of the allegation was, and what the dates of the alleged incident and report were. One analyst reviewed and coded the relevant content within the documents. A second analyst reviewed the work of first analyst and any disagreements were resolved through discussion.

We conducted data reliability assessments to determine the completeness and accuracy of the data obtained. We obtained responses from knowledgeable officials to questions regarding the reliability of the data and interviewed officials regarding the requested data. Where possible, we compared the information received for the same incidents

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<sup>10</sup>DODD 2311.01; Department of Defense Instruction 5015.02, *DOD Records Management Program* (Feb. 24, 2015, incorporating Change 1, Aug. 17, 2017); Chairman of the Joint Chiefs of Staff Manual 5760.01A Vol I, *Joint Staff and Combatant Command Records Management Manual: Volume I-Procedures* (July 13, 2009); Chairman of the Joint Chiefs of Staff Manual 5760.01A Vol II, *Joint Staff and Combatant Command Records Management Manual: Volume II-Disposition Schedule* (July 13, 2012).

<sup>11</sup>As DOD formally established Combined Joint Task Force-Operation Inherent Resolve in October 2014, we requested records of alleged law of war violations back to that time. For the DODIG Hotline, the request did not include calendar year 2012. According to DODIG officials, DODIG migrated to a new data management system for 2013 and data prior to that year would potentially be unreliable.

across entities to determine if reported alleged law of war violations contained similar information to ensure the accuracy of the reported information and to ensure that reports covering the same alleged incident were not double counted. Based on the information and data we collected and analyzed, we determined that the data were sufficiently reliable for the purposes of reporting the minimum number of alleged law of war violations committed by U.S. personnel reported for AFRICOM and CENTCOM from January 2012 through December 2022. Due to data limitations related to potential incompleteness and inconsistencies across incident reporting systems, we found that the alleged law of war violations obtained may not represent the entire universe of alleged violations, but we were not able to determine what that universe is. However, our review indicated that there were no duplicates in the 47 alleged violations in the data. Thus, the alleged law of war violations we obtained represent the minimum of number of alleged law of war violations committed by U.S. personnel in the AFRICOM and CENTCOM areas of responsibility from January 2012 through December 2022.

To address all of our objectives, we interviewed officials and, where appropriate, obtained documentation. We also conducted site visits and held secure video-teleconferences with selected entities in the AFRICOM and CENTCOM areas of responsibility. We selected sites based on (1) the presence of entities involved in ordering, conducting, or supporting kinetic strike operations, to include the presence of strike cells; (2) the ability to meet with more than one relevant entity at a single location; (3) the ability to visit a generally equal number of entities for each combatant command included in this report; and (4) the ability to visit sites in an efficient manner. We interviewed officials from the following offices:

- Department of Defense
  - Office of the General Counsel
  - Office of the Inspector General
- Department of the Army
  - Office of the Judge Advocate General
  - Center for Law and Military Operations
  - Lieber Institute for Law and Warfare
- Department of the Navy
  - Office of the Judge Advocate General
  - Marine Corps Judge Advocate Division

- Department of the Air Force
  - Office of the Judge Advocate General
- Joint Staff
  - National Military Command Center – National Joint Operations/Intelligence Center
  - Office of Legal Counsel
- U.S. Africa Command
  - J-2 – Intelligence
  - J-3 – Operations
  - J-5 – Strategy, Engagement and Programs
  - Office of the Legal Counsel
  - Office of the Inspector General
- U.S. Central Command
  - CCJ2 – Intelligence
  - CCJ3 – Operations
  - CCJ5 – Strategy, Plans, and Policy
  - CCJ7 – Exercises and Training
  - CCJA – Office of the Staff Judge Advocate
  - Office of the Inspector General
  - Air Forces Central – Combat Plans Division
  - Combined Joint Task Force – Operation Inherent Resolve
  - Combined Special Operations Joint Task Force – Levant
- U.S. Special Operations Command
  - Joint Special Operations Command
  - Special Operations Command – Africa
  - Special Operations Command – Central
  - U.S. Army Special Operations Command – Special Operations Mission Training Center

In addition to the entities above, we spoke with officials from strike cells located in the AFRICOM and CENTCOM areas of responsibility. Specifically, we spoke with representatives from two strike cells within the

AFRICOM area of responsibility and from two strike cells within the CENTCOM area of responsibility.

The performance audit upon which this report is based was conducted from May 2022 to December 2023 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on audit objectives. We subsequently worked with DOD from December 2023 to February 2024 to prepare this unclassified version of the original classified report for public release. This public version was also prepared in accordance with these standards.

## Appendix II: Comments from the Department of Defense



DEPARTMENT OF DEFENSE  
OFFICE OF GENERAL COUNSEL  
1600 DEFENSE PENTAGON  
WASHINGTON, DC 20301-1600

Mr. Cary Russell  
Director, Defense Capabilities and Management  
U. S. Government Accountability Office  
441 G Street, NW  
Washington DC 20548

Dear Mr. Russell:

This is the Department of Defense (DoD) response to the GAO Draft Report, GAO-24-106049C, *Law of War Policies: Actions Needed to Ensure Proper Reporting and Retention of Alleged Violations*, dated September 12, 2023 (GAO Code 105849).

We appreciate the analysis conducted by the GAO that supports our continued efforts to improve the DoD Law of War Program.

DoD concurs with GAO's recommendations (Tab A). Additionally, DoD is recommending edits to the Draft Report for technical accuracy (Tab B).

My point of contact is Mr. Jacob Wolf who can be reached at (703) 695-2604 or by email at [jacob.g.wolf2.civ@mail.mil](mailto:jacob.g.wolf2.civ@mail.mil).

  
Digitally signed by  
D'ANNUNZIO/MICHAELADOLPH  
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Date: 2023.11.16 20:53:53 -0500

Michael d'Annunzio  
Deputy General Counsel  
(International Affairs)

GAO DRAFT REPORT DATED SEPTEMBER 12, 2023  
GAO-24-106049C (GAO CODE 106049)

**DoD Law of War Policies: Actions Needed to Ensure Proper Reporting and Retention of  
Alleged Violations**

**DEPARTMENT OF DEFENSE COMMENTS  
TO THE GAO RECOMMENDATIONS**

**RECOMMENDATION 1:** The Secretary of Defense should ensure that the Commander, U.S. Africa Command, update its guidance for reporting of allegations of law of war violations to align with the DOD Directive 2311.01 (July 2, 2020).

**DoD RESPONSE:** Concur. The Department agrees that updating the U.S. Africa Command's guidance for reporting allegations of law of war violations is warranted.

**RECOMMENDATION 2:** The Secretary of Defense should ensure that the Chairman, Joint Chiefs of Staff, in coordination with the General Counsel, Department of Defense, develops a system to comprehensively retain records of alleged law of war violations.

**DoD RESPONSE:** Concur. The Department agrees that comprehensive records management for records of alleged law of war violations, in accordance with records management regulations, is warranted.

## Accessible text of Appendix II: Comments from the Department of Defense

Mr. Cary Russell

Director, Defense Capabilities and Management

U.S. Government Accountability Office 441 G Street, NW

Washington DC 20548 Dear Mr. Russell:

This is the Department of Defense (DoD) response to the GAO Draft Report, GAO-24-106049C, Law of War Policies: Actions Needed to Ensure Proper Reporting and Retention of Alleged Violations, dated September 12, 2023 (GAO Code I 05849).

We appreciate the analysis conducted by the GAO that supports our continued efforts to improve the DoD Law of War Program.

DoD concurs with GAO's recommendations (Tab A). Additionally, DoD is recommending edits to the Draft Report for technical accuracy (Tab B).

My point of contact is Mr. Jacob Wolf who can be reached at (703) 695-2604 or by email at [jacob.g.wolf2.civ@mail.mil](mailto:jacob.g.wolf2.civ@mail.mil).

Digitally signed by

Michael d'Annunzio Deputy General Counsel (International Affairs)

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GAO DRAFT REPORT DATED SEPTEMBER 12, 2023 GAO-24-106049C (GAO CODE 106049) DoD Law of War Policies: Actions

Needed to Ensure Proper Reporting and Retention of Alleged  
Violations

DEPARTMENT OF DEFENSE COMMENTS TO THE GAO  
RECOMMENDATIONS

**RECOMMENDATION 1:** The Secretary of Defense should ensure that the Commander, U.S. Africa Command, update its guidance for reporting of allegations of law of war violations to align with the DOD Directive 23I 1.0 I (July 2, 2020).

**DoD RESPONSE:** Concur. The Department agrees that updating the U.S. Africa Command's guidance for reporting allegations of law of war violations is warranted.

**RECOMMENDATION 2:** The Secretary of Defense should ensure that the Chairman, Joint Chiefs of Staff, in coordination with the General Counsel, Department of Defense, develops a system to comprehensively retain records of alleged law of war violations.

**DoD RESPONSE:** Concur. The Department agrees that comprehensive records management for records of alleged law of war violations, in accordance with records management regulations, is warranted.



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## Appendix III: GAO Contact and Staff Acknowledgments

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### GAO Contact

Diana Maurer, (202) 512-9627 or [maurerd@gao.gov](mailto:maurerd@gao.gov)

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### Staff Acknowledgments

In addition to the contact name above, Cary B. Russell (Director, retired), Jodie Sandel (Assistant Director), Naina Azimov, Tracy Barnes, Tracy Burney, Ji Byun, Alfonso Garcia (Analyst-in-Charge, retired), Pamela Davidson, Michael Dworman (Analyst-in-Charge), Mae Jones, Amie Lesser, and Demetrios Marinides made key contributions to this report.

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A. Nicole Clowers, Managing Director, [ClowersA@gao.gov](mailto:ClowersA@gao.gov), (202) 512-4400, U.S. Government Accountability Office, 441 G Street NW, Room 7125, Washington, DC 20548

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## Public Affairs

Chuck Young, Managing Director, [youngc1@gao.gov](mailto:youngc1@gao.gov), (202) 512-4800  
U.S. Government Accountability Office, 441 G Street NW, Room 7149  
Washington, DC 20548

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## Strategic Planning and External Liaison

Stephen J. Sanford, Managing Director, [spel@gao.gov](mailto:spel@gao.gov), (202) 512-4707  
U.S. Government Accountability Office, 441 G Street NW, Room 7814,  
Washington, DC 20548



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