

Unlawful Orders and Unaccountable Wars: Reforming Military Justice in the Shadow of Atrocity

by C. Lipton

War is among the greatest horrors known to humanity; it should never be romanticized. The means of war is force, applied in the form of organized violence. It is through the use of violence, or a credible threat of violence, that we compel our enemy to do our will. Violence is an essential element of war, and its immediate result is bloodshed, destruction, and suffering. While the magnitude of violence may vary with the object and means of war, the violent essence of war will never change. Any study of war that neglects this basic truth is misleading and incomplete.¹

Consequences of our Actions

On the morning of February 28, 2026, in the city of Minab, Iran, a place ordinarily defined by the rhythms of daily civilian life, a girls' elementary school became the site of extraordinary and irreversible devastation. Between approximately 10:23 and 10:45 a.m., as children filled classrooms and teachers attempted to maintain order amid the unfolding uncertainty of newly initiated hostilities, the Shajareh Tayyebbeh school was struck by a Tomahawk missile.² Investigations by multiple independent outlets, including major international media organizations, have concluded that the strike was likely carried out by the United States, a finding further corroborated by sources familiar with an internal U.S. military inquiry.^{3 4} The timing was not incidental: it coincided with the start of the school day, when hundreds of children, many between the ages of seven and twelve, were present inside the building. What followed was not a single errant explosion, but a sequence of strikes that methodically transformed a place of learning into a site of mass death.⁵

¹ Marine Corps Doctrinal Publications 1, *Warfighting*, 14. (Jun. 20, 1997).

² "USA/Iran: Those responsible for deadly and unlawful US strike on school that killed over 100 children must be held accountable". *Amnesty International*. 16 March 2026.

³ Barnes, Julian E.; Schmitt, Eric; Pager, Tyler; Browne, Malachy; Cooper, Helene (11 March 2026). "U.S. at Fault in Strike on School in Iran, Preliminary Inquiry Says" *The New York Times*.

⁴ Beaumont, Peter (11 March 2026). "US responsible for deadly missile strike on Iran school, preliminary inquiry says". *The Guardian*.

⁵ "Exclusive: Iranian girls killed by 'double-tap' strikes on Minab school". *Middle East Eye*.

The initial impact obliterated large portions of the structure, collapsing walls and bringing the roof down upon students and staff. Dozens were killed instantaneously; others were buried alive beneath concrete and debris.⁶ Survivors of the first strike, children, teachers, and administrators, sought refuge where they could, some gathering in designated areas such as a prayer room while awaiting evacuation by parents who, due to congestion and distance, could not reach the school in time.⁷ It was at this moment, when confusion had turned to desperate attempts at rescue and survival, that subsequent strikes hit the same location.⁸ Eyewitness accounts, corroborated by investigative analyses, describe a “double tap,” and ultimately a triple strike pattern, in which successive missiles struck those who had already endured the initial blast, including those attempting to assist the wounded or evacuate children.⁹

The human toll was catastrophic. More than 175 individuals were killed, the majority of them schoolchildren.¹⁰ Many died instantly from the force of the explosions; others succumbed slowly, trapped beneath rubble, their injuries compounded by the inability of rescuers to reach them in time.¹¹ Recovery efforts revealed the brutality of the destruction: bodies partially buried, severed limbs, blood-soaked schoolbooks retrieved from beneath collapsed classrooms.¹² The imagery of brightly painted walls, once adorned with murals of crayons and children, now blackened and fractured, underscored the stark incongruity between the innocence of the setting and the violence inflicted upon it.¹³ Parents arriving at the scene encountered not a school, but a mass casualty site, some learning only upon arrival that children they had spoken to moments earlier were now among the dead.

In the aftermath, the scale and character of the attack prompted widespread condemnation from international organizations, human rights groups, and foreign governments, many of whom characterized the strike as a grave violation of

⁶ *Id.*

⁷ Schneid, Rebecca; Saberi, Roxana (1 March 2026). "More Than 100 Reported Killed in Strike on Girls' Elementary School in Iran. Here's What We Know". *Time*.

⁸ "Exclusive: Iranian girls killed by 'double-tap' strikes on Minab school". *Middle East Eye*.

⁹ Da Silva, Chantal; Hunter, Molly; Gao, Larissa; Khodadadi, Amin; Pinson, Shira; Mulligan, Matthew; Tarrant, Tavleen (4 March 2026). "What we know about the strike on a school in Iran as the death toll rises". *NBC News*.

¹⁰ Browne, Malachy; Livni, Ephrat; Mahoozi, Sanam (1 March 2026). "Strike on Girls' School Kills at Least 175, Iranian State Media Says". *The New York Times*.

¹¹ McClure, Tess; Parent, Deepa (3 March 2026). "Minab school bombing: how the worst mass casualty event of the Iran war unfolded – a visual guide". *The Guardian*.

¹² Browne, Malachy; Livni, Ephrat; Mahoozi, Sanam (1 March 2026). "Strike on Girls' School Kills at Least 175, Iranian State Media Says". *The New York Times*.

¹³ Bosch, Shannon (1 March 2026). "Does international law still matter? The strike on the girls' school in Iran shows why we need it". *The Conversation*.

international humanitarian law.¹⁴ Central to this condemnation is the allegation, supported by mounting investigative evidence, that the United States, a state bound by both domestic military law and international legal obligations, was responsible for the strike.¹⁵ Days later, Secretary of Defense Peter Hegseth stated in a press conference the U.S. would not be following “stupid rules of engagement” and would conduct “no politically correct wars.”¹⁶ The deliberate or reckless targeting of a structure known, or that should have been known, to be a functioning civilian school, filled with children at the time of attack, raises profound legal and moral questions: will the U.S. face legal consequences? Will those who gave the order to strike the school be held accountable? Will any uniformed service members be held personally liable for the deaths of innocent civilians?

For too long the U.S. has been committed to senseless death and destruction with no accountability in international or domestic courts. The purpose of this paper is to propose legislative change to the Uniform Code of Military Justice, the military’s criminal code, in order to reflect binding international legal obligations to make those at the top of the chain of command accountable for such egregious actions. The first section explores the history of the military criminal code and introduces its shortcomings in adequately addressing a refusal not to follow unlawful orders. The next section outlines the international laws of armed conflict the U.S. has agreed to be bound to, also showing the actions Congress and the Department of Defense have taken to respond to such binding agreements. The final section are proposed solutions to this issue of accountability in the ranks of the armed forces.

¹⁴ "Deadly bombing of Iran primary school 'a grave violation of humanitarian law': UNESCO". United Nations. 1 March 2026.

¹⁵ *Id.*

¹⁶ U.S. Department of War (March 2, 2026). "Secretary of War Pete Hegseth and Chairman of the Joint Chiefs of Staff Gen. Dan Caine Hold a Press Briefing." war.gov.



[Community members responding to the scene after the strikes]¹⁷



[A child's backpack found in the rubble]¹⁸

¹⁷ Abbas Zakeri/Mehr News/WANA (West Asia News Agency) via REUTERS

¹⁸ *Id.*

The Uniform Code of Military Justice and the United States' Complicated History of Unlawful Orders

A. From the 1775 Articles of War to the U.C.M.J.: Stability Without Clarity

The United States' earliest codification of military discipline, the Articles of War of 1775, reflected a British-influenced model of command authority premised on strict obedience.¹⁹ For nearly two centuries, these articles governed military conduct with relatively minor modification, emphasizing discipline and hierarchy over individual legal judgment.²⁰ Notably absent was any robust articulation of a duty to refuse unlawful orders. The system assumed obedience and discipline first, as General Washington stated "Discipline is the soul of an Army. It makes small numbers formidable; procures success to the weak and esteem to all."²¹

This structural orientation persisted until the enactment of the Uniform Code of Military Justice (U.C.M.J.) in 1950, which sought to standardize military justice across the armed forces and incorporate lessons learned during World War II and the Nuremberg trials.²² Articles 90 and 92 of the U.C.M.J. now form the backbone of obedience doctrine. Article 90 criminalizes willful disobedience of a superior commissioned officer²³, while Article 92 penalizes the failure to obey lawful general orders or regulations. According to Article 92:

Any person subject to this chapter who-

- (1) violates or fails to obey any lawful general order or regulation;
- (2) having knowledge of any other lawful order issued by a member of the armed forces, which it is his duty to obey, fails to obey the order; or
- (3) is derelict in the performance of his duties;

shall be punished as a court-martial may direct.²⁴

The U.C.M.J. reflects three of the principles to emerge from the Nuremberg trials: (1) Commanders are legally responsible for everything they do, their units are ordered to

¹⁹ Journals of the Continental Congress 1774-1779 Vol. II Pages 111-123.

²⁰ Cox, Walter T. (1987). "The Army, the Courts, and the Constitution: The Evolution of Military Justice". *Military Law Review*. 118 (1): 1-30.

²¹ U.S. Army Center of Military History. 2016. "Washington takes command of Continental Army in 1775 | Article | The United States Army." U.S. Army.

²² Baker, James E. 2020. "Good Governance Paper No. 21: Obedience to Orders, Lawful Orders, and the Military's Constitutional Compact." Just Security.

²³ 10 U.S.C. § 890 (2011).

²⁴ 10 U.S.C. § 892 (2011).

do, or which they knew or had reason to know of and did nothing to stop; (2) “the fact that the Defendant acted pursuant to or order of his Government or of a superior shall not free him of responsibility;” and (3) national security does not excuse or permit the violation of law.²⁵ Supreme Court Justice and Chief Nuremberg Prosecutor Robert H. Jackson touched on each of these in his opening statement during the Nuremberg trials:

The Charter recognizes that one who has committed criminal acts may not take refuge in superior orders nor in the doctrine that his crimes were acts of states. These twin principles working together have heretofore resulted in immunity for practically everyone concerned in the really great crimes against peace and mankind. Those in lower ranks were protected against liability by the orders of their superiors. The superiors were protected because their orders were called acts of state. Under the Charter, no defense based on either of these doctrines can be entertained. Modern civilization puts unlimited weapons of destruction in the hands of men. It cannot tolerate so vast an area of legal irresponsibility.²⁶

Embedded within both provisions is a critical qualifier: the order must be *lawful*. Orders are presumed to be lawful unless they are contrary to the Constitution, the laws of the United States, or lawful supervisor orders or for some other reason is beyond the authority of the official issuing it.”²⁷

An unlawful order, defined as one that violates the Constitution, federal law, or applicable international law, or requires the commission of a criminal act, carries no binding force.

That qualifier, however, introduces a paradox. The U.C.M.J. demands obedience while simultaneously requiring service members to independently assess legality, often in real time, under conditions where legal clarity is least accessible under the “fog of war.”²⁸ In theory, the law rejects blind obedience. In practice, it often expects instantaneous legal analysis from individuals trained primarily for combat, not jurisprudence. The next section shows the devastating results of blind obedience to orders.

²⁵ Baker. “Good Governance Paper No. 21: Obedience to Orders, Lawful Orders, and the Military’s Constitutional Compact.”

²⁶ Robert H. Jackson, (November 21, 1945) “Opening Statement before the International Military Tribunal,” para. 173, Voices of Democracy.

²⁷ MANUAL FOR COURTS-MARTIAL, part IV, para. 18(c)(1)(c) (explaining 10 U.S.C. § 892).

²⁸ See Eugenia C. Kiesling, On War Without the Fog, M(1. R.), (Sept.–Oct. 2001), <https://www.clausewitz.com/bibl/Kiesling-OnFog.pdf> (discussing the origin of the term “fog of war” while describing it as “friction referring to physical impediments to military action, fog to the commander’s lack of clear information”).

B. The My Lai Massacre and the Limits of Obedience

In March 1968, a United States Army Platoon commanded by Lieutenant William Calley entered the village of Mai Lai, Vietnam. Calley alleged the platoon only encountered “unarmed, unresisting men, women, and children.”²⁹ The villagers, including infants held in their mother’s arms, were assembled in separate groups to collection points.³⁰ Calley and his subordinate “then opened fire on the group, until all but a few children fell. Lieutenant Calley then personally shot these children.”³¹ Accounts from survivors of Mai Lai tell the rest of the tragedy:

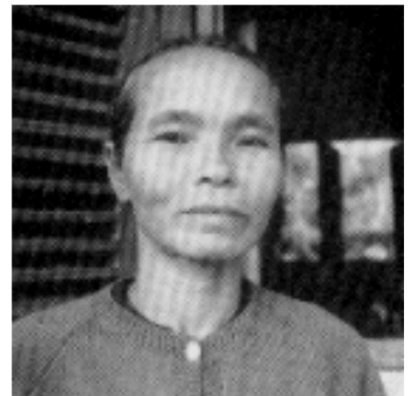
Before March 16, 1968, there were 700 residents of the hamlet of Mai Lai 4 in Quang Ngai Province. After March 16, 1968, My Lai 4 was no more. In just over four hours beginning about 7:30 A. M., over 500 villagers were killed. A number of the victims were raped before they were murdered. The thatch-roofed huts and red-brick homes of the village were burned or exploded. Livestock was killed, wells were poisoned. Only the bodies, growing putrid in the tropical sun, remained. It took over three days for survivors to bury the dead.



TRUONG THI LEE



TRUONG MOI



PHAM THI THUAM

Truong Thi Le [pictured above], aged 30, lost nine members of her immediate family including her husband, mother, three brothers, and a 17 year old daughter. When the shelling started, he mother and two of her children hid in a corner of their home. The Americans arrived and dragged them away and she became separated from them. Instead she was rounded up with her 6-year-old son, Do Ding Dung. When the shooting began she pushed him into a paddy field beside the trail and lay on top of his boy, pressing him down, urging him not to cry. She wanted to see if they could save themselves. Two corpses were on top of her and when she raised her head

²⁹ United States v. Calley, 22 C.M.A. 534, 539 (1973)

³⁰ *Id.*

³¹ *Id.*

slightly as the shooting stopped she could see soldiers still moving. They appeared to be pointing toward people on the ground. They began shooting those who were alive all over again.

Eventually they left and Mrs. Le walked along the path unable to believe her eyes---women and children were lying dead everywhere. Her three brothers were killed in a bomb crater, but most sad of all, her daughter was sitting dying, holding her grandmother, who was already dead. She said to Mrs. Le: "Mother, I think I am very badly injured, maybe I'll die, I don't think I can survive. You have survived, you had better take little brother away. Please don't stay here as the Americans will shoot you." Mrs. Le cried her heart out. Virtually her whole family was dead. She carried her son into the paddy field and lay down again to hide. The world had ended. Her husband had left for the rice fields at first light that morning and she never saw him again. Nine members of her family had died. When the troops left she carried her child home in her arms, but there was no home left. It was burned to cinders . . .

Truong Moi, an 18-year-old fisherman, was working at his nets in the river out in the paddies, seven hundred meters beyond the irrigation dike on the western side, when the Americans landed between him and the village. He had dropped his nets the previous evening and was up early at first light to check his catch and collect the fish. Soon after the shelling stopped, troops landed in waves about 500 meters away from his position. They then spread out before they entered the village, shooting as they went. He hid frightened behind a bush, worried that he might be shot but more concerned for his family, especially his mother. The helicopters continued firing around the edges of the paddies for half an hour. He could see smoke inside the village itself, coupled with explosions and a great deal of shooting. Trees were falling and homes were set on fire. In the afternoon he went back to the village and found the charred remains of his elderly mother who had been shot dead in their home. All the farm animals had been slaughtered.

He searched for the rest of his family. Along the paths and in the ditches beside the fields there were piles of bodies everywhere. Entire families had been killed. The throats of some of the children had been slit; others were disemboweled and completely naked. Moi's sense of horror and outrage was combined with a deep sense of injustice. His had been a very quiet and peaceful community, virtually untouched by the war, apart from the shelling and bombing. They saw few soldiers. The Americans had only been in the village twice---just before and just after Tet, less than two months previously. The troops asked the people for water and in exchange gave candy to the kids and cigarettes to the grown-ups. Sick people were given medicines. "How is it," he asked himself, "that they could come and do this to us,

when we have done nothing to them?" After much searching Moi finally found the remaining members of his family at the foot of the watchtower, in the southern half of the village just off the main trail. His brother, his sister, and her two young children were all dead. He buried them. A total of twenty-four members of his immediate family were killed. His father, who had been working in the rice fields, escaped. Moi's younger brother had also been spared injury, hidden under several bodies which shielded him from the soldier's bullets . . .

Pham Thi Thuam, a 30-year-old widow caring for her 6-year-old daughter, lost six members of her family---father, sister, younger brother, and three nephews. She and her daughter were pushed into the ditch just before the firing started. Hiding underneath those dead on top of her, she pushed her child under her stomach. With bodies weighing her down she put her hand over her daughter's mouth and told her to keep quiet, not to cry, and to pretend to be dead. The soldiers waited to see if anyone moved and shot them again. They fired a second series of shots sometime later, and then a third. Much later, a long time after the shooting had ended, she pushed some of the corpses away to free herself. All around her were dead bodies curled up. She grabbed her daughter and ran across to a path. They were seen escaping and more shots were fired. Another woman running behind them was hit and fell down but Mrs. Thuam just hung onto her daughter and did not stop. When she eventually came to a halt she discovered that her hair and neck were saturated with blood. There were lumps of flesh and pieces of brains from the people killed all over her, stuck to her body by drying blood. Suddenly overwhelmed by fear at the sight of this gore she ran frantically to the neighboring hamlet, crying hysterically, desperate to wash the blood and flesh from her body. Villagers came to help her and gave her clean clothes to wear . . .³²

Lieutenant Calley was charged with premeditated murder.³³ During his trial, Calley asserted he was just following orders.³⁴ He testified that his superior, Captain Medina, informed the soldiers prior to their arrival into Mai Lai that "they were to kill every living thing, men, women, children, and animals, and under no circumstances were they to leave any Vietnamese behind them as they passed through the village."³⁵ Calley claimed he followed Medina's orders "because he had been taught the doctrine of obedience throughout his military career."³⁶ Because Lieutenant Calley raised the "obedience to orders," defense, the military judge provided instructions to the jury on

³² Michael Bilton and Kevin Sim. *Four Hours in My Lai* (Viking Press, 1992).

³³ Robert D. McFadden, (July 29, 2024) William L. Calley Jr., Convicted in My Lai Massacre, Is Dead at 80, *New York Times*.

³⁴ *Calley*, 22 C.M.A at 539.

³⁵ *Id.* at 538. ("Asked if women and children were to be killed, Medina said he replied in the negative")

³⁶ *Id.* at 539.

how such a defense would operate.³⁷ The judge began by highlighting that if Captain Medina in fact ordered the murder, such an order would be unlawful.³⁸ He noted “a determination that an order is illegal does not, of itself, assign criminal responsibility to the person following the order for acts done in compliance with it.”³⁹ Rather, he instructed, “[t]he acts of a subordinate done in compliance with an unlawful order given him by his superior are excused and impose no criminal liability upon him unless the superior’s order is one which a man of ordinary sense and understanding would, under the circumstances, know to be unlawful, or if the order in question is actually known to the accused to be unlawful.”⁴⁰ Calley was convicted for the murder of twenty-two Vietnamese citizens and was sentenced to life imprisonment.⁴¹ He would end up only serving three years under house arrest upon a pardon by President Nixon after public backlash of the verdict.⁴²

These instructions clarified the superior orders defense. This formula amounts to a three-part analysis to assess whether a military member was acting in conformance with a lawful order: (1) a finding of law as to whether the order was lawful. If the finding of law is that the order was lawful, the military member would be justified in committing the predicate acts performed in executing the order; (2) if the finding of law was that the order was unlawful, the military member would be excused from criminal liability, unless (3) there was a finding of fact made that the military member had actual knowledge that the order was unlawful but still followed it, or, if he lacked actual knowledge, a person of ordinary sense and understanding would, under the circumstances, know the order to be unlawful.⁴³

Both the President and Congress have formalized Calley’s three-part analysis. First, the President included the “obedience to orders” defense in the Manual for Courts-Martial (“MCM”).⁴⁴ The MCM is an executive order that serves to augment the U.C.M.J.⁴⁵ It provides that “[i]t is a defense to any offense that the accused acting pursuant to orders unless the accused knew the orders to be unlawful or a person of ordinary sense and understanding would have known the orders to be unlawful.”⁴⁶ The MCM also notes

³⁷ *Id.* at 541–42.

³⁸ *Id.* at 542.

³⁹ *Id.* at 541.

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² Charlton, Linda. “Calley Sentence Is Cut To 10 Years By Head of Army”. The New York Times. pp. 1, 7. (April 17, 1974)

⁴³ R.C.M. 916(d) (2024).

⁴⁴ *Id.*

⁴⁵ John Ford, (July 24, 2017), When Can a Soldier Disobey an Order?, WAR ON THE ROCKS.

⁴⁶ R.C.M. 916(d) (2024).

that “[o]rdinarily the lawfulness of an order is finally decided by the military judge.”⁴⁷ Similarly, Congress has codified the three-part framework through the U.C.M.J. As mentioned, under Article 92 of the U.C.M.J., it is a criminal act to disobey a lawful order.⁴⁸ These punitive provisions not only require the government to prove that the accused received a lawful order, but also instruct that “[t]he lawfulness of an order is a question of law to be determined by the military judge.”⁴⁹ It addresses the lawfulness of an order by noting that “[a] general order or regulation is lawful unless it is contrary to the Constitution, the laws of the United States, or lawful supervisor orders or for some other reason is beyond the authority of the official issuing it.”⁵⁰ Military courts have also found that the U.C.M.J., as implemented through the MCM, establishes an inference of lawfulness, providing that “[a]n order requiring the performance of a military duty or act may be inferred to be lawful and it is disobeyed at the peril of the subordinate.”⁵¹ The inference is only rebutted when the order is a “patently illegal order, such as one that directs the commission of a crime.”⁵²

Ultimately, through this confluence of case law, executive orders, and congressional action, military members have their legal framework in receiving their orders. First, they must follow orders and disobey unlawful orders. Second, determining whether an order is lawful is a matter of law, ultimately to be decided by a military judge. Third, if the order is deemed lawful, and all orders carry with them a presumption of lawfulness, the military members must follow them. Fourth, if the order is deemed unlawful, the military members may still be held criminally liable for the predicate acts, but only if a person of normal common sense would understand the order to be unlawful. But what if our domestic laws fall short?

II. The Incorporation of International Humanitarian Law into U.S. Military Practice

It can be easy for some Americans to forget the U.S. is part of a larger international community. Many states in that international community have consented to be bound by international laws to promote global peace, stability, and order.⁵³ While the U.S. has ratified a handful of binding international treaties on the laws of armed conflict that will be discussed at length, the international court that would prosecute such armed conflict violations has been expressly threatened by the United States Government.

⁴⁷ R.C.M. 801(e) (2024).

⁴⁸ 10 U.S.C. § 892 (2011).

⁴⁹ MANUAL FOR COURT-MARTIAL, part IV, para. 16(c)(2)(a)(ii) (2024).

⁵⁰ MANUAL FOR COURT-MARTIAL, part IV, para. 18(c)(1)(c) (2024).

⁵¹ *United States v. Washington*, 57 M.J. 394, 398 (C.A.A.F. 2002); see also *United States v. Kisala*, 64 M.J. 50, 51–52 (C.A.A.F. 2006) (“[A]n order is presumed to be lawful and a subordinate disobeys an order at his own peril.”); *United States v. Nieves*, 44 M.J. 96, 98 (C.A.A.F. 1996) (“A superior’s order is presumed to be lawful.”).

⁵² MANUAL FOR COURT-MARTIAL, part IV, para. 16(c)(2)(a)(i) (2024).

⁵³ Art. I Charter of the United Nations (1945).

Under the 2002 American Service-Members Protection Act, the U.S. will use all means “necessary and appropriate” including military force for U.S. military personnel detained by the International Criminal Court.⁵⁴ If International bodies will not prosecute U.S. state actors for their illegal conduct, it’s up to U.S. domestic courts to prosecute violations of international law. This section will first examine the four Geneva Conventions which bind the United States in the law of armed conflict. Second, the War Crimes Act of 1996 will show how the U.S. ratified the Geneva Conventions into domestic law. Next, the Department of Defense Law of War Manual will explain how the United States military has interpreted its international binding obligations. Finally, this section explores the law of war violations since the publication of the Law of War Manual

A. The Geneva Conventions: Codifying the Law of Armed Conflict

The four Geneva Conventions of 1949 represent the cornerstone of modern International Humanitarian Law (hereafter IHL)⁵⁵, each addressing a distinct category of protected persons and circumstances in armed conflict. Under the U.S. Constitution, a treaty must receive the advice and consent of the Senate before U.S. ratification or accession. The United States ratified all four conventions in 1955, thereby accepting their provisions as binding treaty obligations.⁵⁶ Under international law, every treaty in force is binding upon the Parties to it and must be performed in good faith.⁵⁷

The First Geneva Convention governs the treatment of wounded and sick members of armed forces on land.⁵⁸ It requires that such individuals be respected and protected in all circumstances, regardless of their affiliation, and mandates that medical personnel and facilities be shielded from attack.⁵⁹

⁵⁴ American Servicemembers’ Protection Act of 2002, Pub. L. No. 107–206, § 2001, 116 Stat. 820, 899 (2002).

⁵⁵ Otherwise known as the law of armed conflict. IHL is “a set of rules which seek, for humanitarian reasons, to *limit the effects of armed conflict*. It protects persons who are not or are no longer participating in the hostilities and restricts the means and methods of warfare. See International Committee of the Red Cross, “What is International Humanitarian Law.” <https://share.google/0EH35b3r6EIqbV4FJ>

⁵⁶ Final Record of the Diplomatic Conference of Geneva of 1949, Vol. I, Federal Political Department, Berne, p. 346.

⁵⁷ Vienna Convention on the Law of Treaties, Article 26. “Every treaty in force is binding upon the parties to it and must be performed by them in good faith.”

⁵⁸ Pictet, Jean (1958). Geneva Conventions of 12 August 1949: Commentary. International Committee of the Red Cross. Retrieved 20 November 2009.

⁵⁹ *Id.*

The Second Geneva Convention extends these protections to wounded, sick, and shipwrecked members of armed forces at sea, reflecting the unique vulnerabilities inherent in naval warfare.⁶⁰

The Third Geneva Convention addresses the treatment of prisoners of war (POWs), establishing comprehensive standards for humane treatment, including prohibitions on torture, coercion, and degrading treatment.⁶¹ It also guarantees procedural protections, such as the right to a fair trial⁶², and regulates conditions of detention.⁶³

The Fourth Geneva Convention, perhaps the most expansive, protects civilian populations in times of war, including those in occupied territories⁶⁴. It prohibits violence against civilians, collective punishment⁶⁵, and the targeting of civilian infrastructure absent military necessity.⁶⁶

In 1977, the international community adopted two Additional Protocols designed to expand and modernize the Geneva framework. Additional Protocol I addresses international armed conflicts, refining targeting rules and strengthening protections for civilians, while Additional Protocol II extends humanitarian protections to non-international armed conflicts, such as civil wars. The United States, however, has not ratified either Protocol I or Protocol II.

B. The War Crimes Act (1996)

Before the International Criminal Court was established, Congress passed the War Crimes Act to prosecute “grave breaches” of the Geneva Convention. The law applies if either the victim or the perpetrator is a U.S. national or member of the U.S. armed forces, with the penalty for such grave breaches of the Geneva Conventions being life imprisonment or death.⁶⁷ The law was first designed to prosecute war criminals such as those who imprisoned and tortured U.S. military members during the Vietnam war, but was expanded to prosecute U.S. service members as to “set a high standard for others to

⁶⁰ International Committee of the Red Cross. "Convention (II) for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea. Geneva, 12 August 1949."

⁶¹ Geneva Convention (III) Relative to the Treatment of Prisoners of War, Aug. 12, 1949. Art. 4.

⁶² Geneva Convention (III) relative to the Treatment of Prisoners of War. Geneva, 12 August 1949. Art. 103.

⁶³ *Id.*, Art. 22.

⁶⁴ Geneva Convention (IV) relative to the Protection of Civilian Persons in Time of War. Aug. 12, 1949.

⁶⁵ *Id.*, Art. 33

⁶⁶ *Id.*, Art. 59.

⁶⁷ War Crimes Act of 1996, Pub. L. No. 104-192, 110 Stat. 2104 (1996).

follow”⁶⁸ and passed with overwhelming approval from both houses of Congress.⁶⁹ As of April 2026, no member of the U.S. armed forces has been prosecuted under the War Crimes Act.

C. The Department of Defense Law of War Manual (2015)

Complementing federal law is the Department of Defense Law of War Manual, first issued in 2015. While not a statute or treaty, the Manual carries substantial legal and operational significance. It represents the Department of Defense’s authoritative interpretation of the law of war, synthesizing treaty obligations, customary international law, and U.S. policy into a comprehensive doctrinal guide.⁷⁰ However it does not “create any right or benefit, substantive or procedural, enforceable at law or in equity against the United States, its departments, agencies, or other entities, its officers or employees, or any other person.”⁷¹ With that stated, the Manual interprets the international treaties and customs that are legally binding on the United States.⁷² The Manual lays out five purposes of the law of war: (1) protecting combatants, noncombatants, and civilians from unnecessary suffering;⁷³ (2) providing certain fundamental protections for persons who fall into the hands of the enemy, particularly prisoners of war, civilians, and military wounded, sick, and shipwrecked;⁷⁴ (3) facilitating the restoration of peace;⁷⁵ (4) assisting military commanders in ensuring the disciplined and efficient use of military force;⁷⁶ and (5) preserving the professionalism and humanity of combatants.⁷⁷ The Manual reiterates the United States has ratified the Geneva Conventions and is bound by international and domestic law to follow its

⁶⁸ Smith, R. Jeffrey (July 28, 2006). "Detainee Abuse Charges Feared". *Washington Post*. p. A1. Retrieved October 4, 2006.

⁶⁹ *Id.*

⁷⁰ Department of Defense “Law of War Manual” 1.1.1.

⁷¹ *Id.*

⁷² *Id.* 1.1.2.

⁷³ *Id.* § 2.3.

⁷⁴ *Id.* § 7.5, § 8.2, § 9.5, § 10.5.

⁷⁵ *Id.* § 2.

⁷⁶ *Id.* § 18.2.1.

⁷⁷ *Id.* § 2.6.

provisions.⁷⁸ Even when the United States is not in a state of war, according to policy, the Department of Defense still acts consistent with the laws of war. According to the Manual:

*DoD practice has often been to act consistently with a particular law of war treaty rule, even if that rule might not apply as a matter of treaty law. Moreover, DoD practice has sometimes been to adhere to the standards in the law of war, even in situations that do not constitute “war” or “armed conflict,” because these standards in the law of war reflect legal standards that must be adhered to in all circumstances (i.e., whether there is a state of armed conflict or not).*⁷⁹

The Manual serves multiple functions. It provides guidance to commanders and legal advisors, informs training and operational planning, and articulates the United States’ official legal positions on contested issues within IHL. In this sense, it operates as both a descriptive and normative document: it explains what the law is, while also signaling how the United States intends to apply it. According to the Manual, as a matter of policy, DoD personnel may be required to adhere to law of war rules, even where the rules do not technically apply as a matter of law. (Department of Defense Law of War Manual 1.10, page 36)

D. Law of War Violations Since the Ratification of the War Crimes Act and Law of War Manual

In September 2025, the United States initiated a series of maritime strikes in the Caribbean Sea that would later be publicly framed as part of Operation Southern Spear, an effort by the administration of President Donald Trump to disrupt narcotics trafficking routes from Latin America to the United States.⁸⁰ The operational expansion was swift. By October, strikes extended into the Eastern Pacific, and by April 2026, at least 178 individuals had been killed across a minimum of 46 strikes on 47 vessels, with

⁷⁸ *Id.*, 19.2.1; See also Edward R. Cummings, Acting Assistant Legal Adviser for Politico-Military Affairs, Remarks at Symposium at Brooklyn Law School, Sept. 25, 1982, III CUMULATIVE DIGEST OF UNITED STATES PRACTICE IN INTERNATIONAL LAW 1981-88 3421, 3422 (“The Conventions referred to today, such as the Hague and Geneva Conventions, are important ones and are strongly supported by the United States. They have helped reduce the suffering caused by wars. But one should not ask the impossible of these agreements. They were not intended to make war ‘humane’ or to ban war, or to make wars more difficult to fight. They were modestly intended to reduce the inhumanity and barbarity of war when militarily possible. Anyone who has read the negotiating records of these old agreements will note that they were largely negotiated by the military. In fact, the first agreement of this kind, the St. Petersburg Declaration, was agreed to by a military commission. Unrealistic provisions which just would not be accepted or respected in battle were not favored.”).

⁷⁹ *Id.*, 3.1.1

⁸⁰ Gordon, Michael R.; Bergengruen, Vera; Wise, Lindsay (17 September 2025). “Trump Invokes Post-9/11 Playbook in Attacks on Drug Cartels”. The Wall Street Journal.

at least one strike occurring on land within Venezuela.⁸¹ The administration consistently asserted, without publicly disclosed evidence, that the targeted vessels were operated by groups it designated as “narcoterrorists,” including the Venezuelan organization Tren de Aragua and Colombia’s National Liberation Army.⁸²

The operation’s first publicly acknowledged strike occurred on or about September 1, 2025, when a U.S. Navy strike targeted a Venezuelan vessel, killing all eleven individuals aboard.⁸³ Video footage released by the administration depicted the strike, while subsequent reporting by major media outlets indicated that the vessel appeared to be turning back at the time it was engaged.⁸⁴ This factual detail is not incidental. A vessel disengaging or reversing course directly implicates the principles of necessity and distinction, raising immediate questions about whether it constituted a lawful military objective at the moment force was used.

More troubling, however, are allegations surrounding the conduct of follow-on strikes. According to multiple anonymous national security sources cited across major reporting outlets, senior defense leadership may have issued directives emphasizing the lethality of the operation in absolute terms.⁸⁵ Some accounts suggest that Secretary of Defense Pete Hegseth ordered that no individuals aboard targeted vessels survive, while others indicate that although a lethal strike was ordered, no explicit guidance was provided regarding survivors.⁸⁶ These accounts are contested by Department of Defense officials, who have publicly denied that any “no survivors” directive was issued.⁸⁷ Nevertheless, reporting consistently indicates that in at least one instance, individuals who survived an initial strike were subsequently killed in a second strike, a so-called “double tap.”⁸⁸

Even accepting the most charitable interpretation of the administration’s position, that the vessels were initially lawful targets due to suspected involvement in narcotics trafficking, the status of individuals aboard those vessels is not static. Under IHL, once

⁸¹ Gamio, Lazaro; Rosenberg, Carol; Savage, Charlie (25 March 2026) [29 October 2025]. “Tracking U.S. Military Killings in Boat Attacks”. *The New York Times*.

⁸² Garcia Cano, Regina (7 November 2025). “What a reporter found when she investigated US military strikes on Venezuelan drug boats”. AP News.

⁸³ Winkie, Davis; Meyer, Josh (2 September 2025). “US military strikes alleged ‘drug vessel’ from Venezuela in Caribbean Sea, 11 killed”. *USA Today*.

⁸⁴ Watson, Eleanor; Yilek, Caitlin (11 September 2025). “Alleged drug-smuggling boat from Venezuela was turning back when hit, sources say”. CBS News.

⁸⁵ Horton, Alex; Nakashima, Ellen (28 November 2025). “Hegseth order on first Caribbean boat strike, officials say: Kill them all”. *The Washington Post*.

⁸⁶ *Id.*

⁸⁷ *Id.*

⁸⁸ Bertrand, Natasha (28 November 2025). “US military carried out second strike killing survivors on a suspected drug boat that had already been attacked, sources say”. CNN.

individuals are rendered hors de combat (out of combat), whether by injury, incapacitation, or the destruction of their vessel, they are entitled to protection.⁸⁹ They are no longer lawful targets. This principle is not novel, nor is it obscure. It is explicitly codified in the Department of Defense's own Law of War Manual. Section 18.3.2.1 of the Manual, entitled "*Clearly Illegal Order to Commit Law of War Violations*," provides unambiguous guidance: "*The requirement to refuse to comply with orders to commit law of war violations applies to orders to perform conduct that is clearly illegal or orders that the subordinate knows, in fact, are illegal. For example, orders to fire upon the shipwrecked would be clearly illegal.*"⁹⁰ It reflects a core and universally recognized rule: individuals who are defenseless at sea may not be lawfully attacked. This fundamental principle of international humanitarian law, reflected in treaty law and international custom, was blatantly disregarded by the U.S. military at the highest levels. At this time there have been no criminal repercussions against anyone involved in the illegal operation. The prohibition is categorical. It does not depend on the prior status of the individuals, the nature of the suspected activity, or the strategic objectives of the operation. Once hors de combat, the legal analysis changes entirely, and the continued use of lethal force becomes unlawful.



[Secretary Hegseth posted images on his X account showing strikes on four vessels]⁹¹

⁸⁹ See International Committee of the Red Cross. "Convention (II) for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea. Geneva, 12 August 1949"

⁹⁰ Department of Defense "Law of War Manual" § 18.3.2.1

⁹¹ Defense Secretary Pete Hegseth, X, October 28, 2025.

III. Article 92 needs an update to reflect the DoD’s legal interpretation of the laws of armed conflict

Currently, Article 92 only addresses domestic law, however, the U.S. has voluntarily contracted itself with international agreements on the law of armed conflict. Subsequently, lawful orders should not only address domestic law, but the international conventions and customs that bind the United States. The following table shows the proposed legislation alongside the current lawful order article:

Current Article 92:	Proposed Article 92:
“Any person subject to this chapter who- (1) violates or fails to obey any lawful general order or regulation (2) having knowledge of any other lawful order issued by a member of the armed forces, which it is his duty to obey, fails to obey the order; or (3) is derelict in the performance of his duties; shall be punished as a court-martial may direct.	Any person subject to this chapter who- (1) violates or fails to obey any lawful general order or regulation, including those implementing or requiring compliance with the law of war or law of armed conflict; (2) having knowledge of any lawful order issued by a member of the armed forces which it is his or her duty to obey, willfully fails to obey the order; or who knowingly issues, transmits, or enforces an order that violates the law of war, the law of armed conflict, or other applicable law; or (3) is derelict in the performance of his or her duties, including by failing to prevent, report, or take appropriate action regarding violations of lawful orders, regulations, or the law of war when such action is within that person’s authority and responsibility; shall be punished as a court-martial may direct.

If such a change is too radical for Congress, another option is updating the MCM. The MCM states a “general order or regulation is lawful unless it is contrary to the Constitution, the laws of the United States, or lawful [superior orders].”⁹² In light of the recent IHL violations in the Caribbean and Iran, the explanation of what constitutes ‘lawful’ should explicitly state “binding international humanitarian law” as it serves as a not so

⁹² MANUAL FOR COURT-MARTIAL, part IV, para.18(c)(1)(c) (2024).

subtle reminder that orders from any level of the chain of command contradictory to the Geneva Conventions are inherently unlawful.

Why Congress should update the statute

While it may seem obvious to those with a fully developed anterior insular cortex the U.S. should adhere to international humanitarian law to mitigate civilian casualties, this is not a convincing argument for our elected officials. To persuade Congress to take action, one must speak their language. Congress should amend Article 92 of the U.C.M.J. to expressly criminalize dereliction of the law of armed conflict because compliance produces measurable national security benefits, not merely normative ones.

In Afghanistan, the 2009 ISAF Tactical Directive tightened standards for air-to-ground fires and prioritized civilian protection, which in turn altered force employment in populated areas and contributed to a documented reduction in civilian casualties from airpower. That outcome reflects operational logic: civilian harm generates tactical blowback, degrades intelligence access,⁹³ and strengthens the recruiting of U.S. adversaries⁹⁴. Empirical research reinforces this dynamic. A widely cited study by the Cato Institute finds that U.S. military interventions are associated with significant increases in terrorist activity, estimating that invasion correlates with roughly 143 additional attacks per year, while drone or airstrikes correlate with approximately 395 additional attacks annually.⁹⁵ Codifying LOAC compliance within Article 92 would therefore not only clarify servicemembers' legal obligations but also directly mitigate conditions that fuel anti-American violence.

Additionally, in the aftermath of the strikes during Operation Southern Spear, several countries have decided to halt intelligence sharing with the U.S., fearing their intelligence could be used in unlawful or inappropriate ways by the U.S.⁹⁶ Countries who have halted or limited their intelligence sharing with the U.S. include Columbia, the Netherlands, and most importantly, the U.K., America's closest ally.⁹⁷ If the U.S.

⁹³ Bertrand, Natasha. 2025. "Exclusive: UK suspends some intelligence sharing with US over boat strike concerns in major break." CNN.

⁹⁴ The growth of the jihadist terrorist enterprise since 2001 has been stunning. When the War on Terror began, there were roughly 32,200 fighters comprising 13 Islamist-inspired terror organizations. By 2015, as Table 1 shows, the estimate had ballooned to more than 100,000 fighters spread across 44 Islamist-inspired terror groups. Thrall, A. T. 2017. "Step Back: Lessons for U.S. Foreign Policy from the Failed War on Terror." *CATO Institute Policy Analysis* No. 814 (June).

⁹⁵ *Id.*

⁹⁶ Sutherland, Callum. "Which Countries Have Stopped Sharing Intelligence with U.S.?" Time, November 12, 2025.

⁹⁷ *Id.*

continues to alienate key partners, it may soon struggle to sustain and resource mutually beneficial intelligence programs, keep pace with rapid technological change, and defend against adversaries.⁹⁸

An Easier Solution?

The War Crimes Act of 1996 is already federal law. Federal prosecutors have a duty to hold those complicit for grave violations of the Geneva Conventions accountable. The first stated value of the Department of Justice is independence and impartiality.⁹⁹ The DOJ claims on its website “we work each day to earn the public’s trust by following the facts and the law wherever they may lead, without prejudice or improper influence.”¹⁰⁰ There are state actors who are undermining U.S. national security by issuing unlawful orders to their subordinates in South America and Iran that violate the Geneva Convention. Federal prosecutors (who care about justice) charging these state actors have the potential to save an untold amount of innocent lives and seeing that those responsible finally face consequences for their actions.

Conclusion

There is an accountability crisis within the Department of Defense. High level decision makers within the DoD are unlawfully ordering their subordinates to commit acts that violate the Geneva Convention such as targeting shipwrecked sailors and bombing an elementary school. These lower enlisted may fear they are being ordered to commit illegal actions and could potentially face legal consequences for taking such actions. That is one of the reasons Congress should revise Article 92 of the U.C.M.J. to reflect such ambiguities. Additionally Congress should revise Article 92 for its benefits to national security. Finally, the DoJ must protect U.S. national security by prosecuting those issuing the orders that constitute grave breaches of the Geneva Conventions. Only then will the U.S. begin to be held accountable for its actions.

⁹⁸ Guenov, Tressa. “By Alienating Its Intelligence Partners, the US Risks Losing More than Trust.” Atlantic Council, March 31, 2026.

⁹⁹ <https://www.justice.gov/about>

¹⁰⁰ *Id.*