

US Codes

Proficiency Code: A

As a military member, it is important to have at least a basic legal understanding of the foundation and structure of the U.S. Armed Forces. This is increasingly important in today's changing times, particularly with the addition of cyberspace as a fifth defendable domain in the United States' war-fighting strategy. The expansion of cyberspace operations in support of the cyberspace domain has undoubtedly required in-depth analysis and adjustment in verbiage, or at least interpretation, of our existing legal and ethical policies. So, we will cover United States Codes (USC) specific to the broad military mission.

United States Code (Titles 10, 15, 18, 32, 50)

The U.S. Constitution, through its creation of the executive, legislative, and judicial branches, is the basis for drafting and enforcing all federal laws governing the United States. These laws are documented in the form of U.S. title codes, or USC. Essentially, the USC is a compilation of general and permanent federal laws of the United States. It presently has 53 broad titles and five appendices that are organized according to subject matter. In this lesson, we address five titles having a significant impact on the U.S. Armed Forces, starting with the U.S. Code Title 10. To reference, all 53 U.S. Codes visit uscode.house.gov.

United States Code Title 10, Armed Forces

U.S. Code Title 10—or simply, Title 10—pertains entirely to the military and is the largest of all laws we will discuss. The purpose of Title 10 is simple: it authorizes the creation of the Department of Defense (DOD) as an executive component of government and establishes all subordinate agencies to include the Army, Navy, Air Force and Marine Corps. In addition, Title 10 addresses the organization and administration of the Reserve Components, defining their elements and establishing Reserve Component Commands. Finally, Title 10 provides the Secretary of Defense (SecDef), in-conjunction with the Office of the Secretary of Defense, the responsibility to organize, man, train and equip the U.S. Armed Forces.

One of the most significant sections of U.S. Code Title 10 every Airman should be familiar with is Subtitle A, Part II, Chapter 47, titled “*Uniform Code of Military Justice (UCMJ)*”. This chapter spells out general provisions and individual punitive articles of the UCMJ. It also covers the military judicial process in its entirety, from apprehension and restraint through the U.S. Court of Appeals, for the Armed Forces. As is well-known, the UCMJ serves as the basis for holding military members accountable for breaches in binding instruction and law. One such binding area is known as rules of engagement (ROE).

ROEs are directives issued by competent military authorities, which delineate the circumstances and limitations under which U.S. Armed Forces will initiate and/or continue combat engagement with other forces encountered. The key here is “*directives issued by competent military authorities.*” General officers with approval from the National Command Authority will develop

these directives. Subordinate commanders are then responsible for ensuring their units comply with these directives. Individual violations of these directives violate numerous articles of the UCMJ and depending on the degree and circumstances may be tried as “War Crimes” under U.S. Code Title 18, *Crimes and Criminal Procedure*.

United States Code Title 15, Commerce and Trade

Title 15 outlines trade rules in the United States and established the Department of Commerce. Title 15 addresses commerce and trade, securities exchanges, trademarks, and consumer credit protection. Within the last twenty years, Title 15 has grown to include cyber-related topics applicable to commerce and trade, including (but not limited to) cyber security research and development and online shopper protection.

United States Code Title 18, Crimes and Criminal Procedure

Title 18 provides the structure of the U.S. Judicial Branch and establishes the criminal and penal code of the federal government. Title 18 lists and defines federal crimes, penalties and court procedures, and establishes rules for managing federal prisons.

Two areas of Title 18 of primary interest to military members are Chapter 67 titled “*Military and Navy*” and Chapter 118 titled “*War Crimes*.” Chapter 67 makes it a crime to enter any military installation without proper authorization. Additionally it establishes the use of the military for the purpose of posse comitatus (Latin for “force of the country”) to enforce civil law when not expressly authorized by the Constitution or Act of Congress. Chapter 118 defines actions—and in some cases, lack of action—punishable as war crimes and establishes sentences for violations.

United States Code Title 32, National Guard

Title 32 governs the organization, staffing, equipping, and homeland defense responsibilities of the Army and Air National Guard as well as grants the department secretaries of the U.S. Army and Air Force with inspection authority over their respective branches. Additionally it establishes procedures and circumstances for Congress to order units into active federal duty.

United States Code Title 50, War and National Defense

Title 50 covers issues of National Security of the United States. Chapter 15 provides us with an in-depth look of intelligence community and their organization, information collection, and various other responsibilities. Other U.S. Code Title 50 chapters expand on the areas of National Emergencies, Defense against Weapons of Mass Destruction, and National Nuclear Security Administration.

Perhaps the most widely discussed area of U.S. Code Title 50 is chapter 33 titled “*War Power Resolution*.” The premise of the War Power Resolution is to clarify and expand on Constitutional Authority to enter the U.S. Armed Forces into hostilities. Article II of the U.S. Constitution appoints the president as head of the executive branch *and* as commander-in-chief of the U.S. Armed Forces. The War Powers Resolution ensures the president, except in very limited circumstance, gains Congressional resolution prior to entering forces into conflict. This was intentionally set in place to create checks and balances of power by the framers of the Constitution.

In addition to Title 50 directives, there are numerous international treaties and obligations governing military conduct. One such obligation is the United Nations (UN) Charter Paradigm. The UN Charter Paradigm addresses international conflicts and attempts to take all efforts short of military action to either resolve disagreements and/or prevent escalation. Since the drafting of the charter, the methods of adversaries have changed, especially with the increase of terrorism and the development of cyber capabilities. This has resulted in leaving much of our previous policies widely open to interpretation, requiring the US and other nations to adjust their approach when dealing with these threats. One example of this effort to apply existing policy to new threats is the Schmitt Analysis.

The Schmitt Analysis is doctrine used to classify actions as either military or diplomatic; a key element in the UN charter. It identifies seven areas in which military operations differ qualitatively from non-military ones. By assigning a degree value to each of the seven areas, the results can be used to give a principled qualitative description of the operation, classifying it as a use of force or not. This sums up our coverage of US title codes, next we will discuss rules of engagement.