

UCMJ (Uniform Code of Military Justice) Article 90

Found in the Manual for Courts-Martial, available online at:

<https://jsc.defense.gov/Military-Law/Current-Publications-and-Updates/>

Any person subject to this chapter who willfully disobeys a lawful command of that person's superior commissioned officer shall be punished— (1) if the offense is committed in time of war, by death or such other punishment as a court-martial may direct; and (2) if the offense is committed at any other time, by such punishment, other than death, as a courtmartial may direct.

RCM (Rule for Courts-Martial) 916 (d), found in the Manual for Courts-Martial, available online at: <https://jsc.defense.gov/Military-Law/Current-Publications-and-Updates/>

Obedience to orders. It is a defense to any offense that the accused was 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.

Discussion - Ordinarily, the lawfulness of an order is decided by the military judge. See R.C.M. 801(e). An exception might exist when the sole issue is whether the person who gave the order in fact occupied a certain position at the time. An act performed pursuant to a lawful order is justified. See R.C.M. 916(c). An act performed pursuant to an unlawful order is excused unless the accused knew it to be unlawful or a person of ordinary sense and understanding would have known it to be unlawful.

An excerpt from the commentary on UCMJ Article 90 (found in the Manual for Courts-Martial, page IV-24, available online at: <https://jsc.defense.gov/Military-Law/Current-Publications-and-Updates/>)

. . . (i) Inference of lawfulness. An 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. This inference does not apply to a patently illegal order, such as one that directs the commission of a crime.

(ii) Determination of lawfulness. The lawfulness of an order is a question of law to be determined by the military judge.

(iii) Authority of issuing officer. The commissioned officer issuing the order must have authority to give such an order. Authorization may be based on law, regulation, custom of the Service, or applicable order to direct, coordinate, or control the duties, activities, health, welfare, morale, or discipline of the accused.

An excerpt from the commentary on UCMJ Article 90 (found in the Manual for Courts-Martial, page IV-24, available online at: <https://jsc.defense.gov/Military-Law/Current-Publications-and-Updates/>)

(iv) Relationship to military duty. The order must relate to military duty, which includes all activities reasonably necessary to accomplish a military mission, or safeguard or promote the morale, discipline, and usefulness of members of a command and directly connected with the maintenance of good order in the Service. The order may not, without such a valid military purpose, interfere with private rights or personal affairs. However, the dictates of a person's conscience, religion, or personal philosophy cannot justify or excuse the disobedience of an otherwise lawful order. Disobedience of an order which has for its sole object the attainment of some private end, or which is given for the sole purpose of increasing the penalty for an offense which it is expected the accused may commit, is not punishable under this article.

(v) Relationship to statutory or constitutional rights. The order must not conflict with the statutory or constitutional rights of the person receiving the order.

Some Resources for US Military Servicemembers with Concerns over Illegal Orders

Military Law Task Force of the NLG www.NLGMLTF.org

The Orders Project of the NIMJ OrdersProject.com

GI Rights Hotline GIRightsHotline.org

About Face Veterans Against War AboutFaceVeterans.org

Center on Conscience and War Centeronconscience.org

Veterans for Peace VeteransForPeace.org