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**Law**

**GERMAN LAW ON SELF-DEFENSE  
(NOTWEHR) APPLICABLE TO OFFICIAL USE  
OF ARMS BY CIVILIAN PERSONNEL**

**COMPLIANCE WITH THIS PUBLICATION IS MANDATORY**

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This instruction implements Air Force Policy directive 51-7, *International Law*. It applies to all USAFE, US Air Force Reserve and Air National Guard units within the USAFE area of responsibility.

**SUMMARY OF REVISIONS**

This revision reflects revised text of Article 12, Paragraph 4, Sentence 2, Supplementary Agreement.

**1. Purpose:**

1.1. To direct compliance with Article 12 of the Supplementary Agreement (**Attachment 2**), by members of the civilian component and local and third-country personnel employed in the services of the US forces authorized to possess and carry firearms in the performance of their duties for safeguarding of cash or property or where they are particularly endangered by the special nature of their official position or activities.

1.2. To provide persons authorized to possess and carry arms under Article 12 of the Supplementary Agreement (**Attachment 2**), the German interpretation of the German Law on self-defense (Notwehr).

**2. German Law on Self-Defense .** The German Law on Self-Defense (Notwehr) is contained in an agreed minute regarding Article 12 at **Attachment 3**.

**3. Responsibility.** All persons authorized to possess and carry arms under Article 12 of the Supplementary Agreement ([Attachment 2](#)) will be instructed in and responsible for knowledge and compliance with the German interpretation of the German Law on Self-Defense, [Attachment 3](#).

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Staff Judge Advocate

**Attachment 1**

**GLOSSARY OF REFERENCES AND SUPPORTING INFORMATION**

***References***

*Agreement between the Parties to the North Atlantic Treaty Regarding the Status of Their Forces*, signed 19 June 1951 (NATO Status of Forces Agreement)

*Revised Agreement of 18 March 1993 (effective 29 March 1998) to Amend the Agreement of 3 August 1959, as amended by agreements of 21 October 1971 and 18 May 1981 to Supplement the Agreement Between the Parties to the North Atlantic Treaty Regarding the Status of Their Forces With Respect to Foreign Forces Stationed in the Federal Republic of Germany* (Supplementary Agreement)

*Protocol of Signature to the Supplementary Agreement*, signed 3 August 1959

**Attachment 2****ARTICLE 12, SUPPLEMENTARY AGREEMENT****A2.1.** Text of Article 12:

1. The authorities of a force may authorize members of the civilian component and other persons employed in the service of the force to possess and carry arms insofar as persons are responsible for the safeguarding of cash or property or are particularly endangered by the special nature of their official position or activities.
2. The authorities of the forces shall issue regulations, which shall conform to the German law on self-defense (**Notwehr**), on the issue of arms by the persons authorized in accordance with Paragraph I of this Article.
3. Persons authorized in accordance with Paragraph 1 of this Article may bear firearms only if in possession of a firearms' certificate issued by the authorities of the force. A suitably endorsed duty identity card shall also be considered a firearms' certificate.
4. The authorities of the force shall issue firearms certificates only to persons as to whose reliability there is no reasonable doubt. They shall withdraw a firearms certificate at the request of the German authorities or on their own decision if it is established that the holder has misused his firearm or if reasonable doubt exists as to his reliability.

**Attachment 3****AGREED MINUTE REGARDING ARTICLE 12**

**A3.1.** Text of section regarding Article 12 of the Supplementary Agreement:

1. The expression "German law on self-defense (Notwehr)" in paragraph 2 of Article 12 should be construed in accordance with the following German interpretation of Section 53 of the German Criminal Code:

a. Section 53 of the German Criminal Code reads as follows:

"No act is punishable if demanded in self-defense. (See Note #1).

Self-defense is such defense as is necessary to avert an imminent unlawful attack upon oneself or another.

An act in excess of necessary self-defense is not punishable if the perpetrator exceeded the bounds of defense in consternation, fear, or alarm."

b. In construing Section 5.3, German Criminal Code, legal practice has long followed some well-established principles summarized as follows:

(1) Attack means any act which is aimed at violating the legally protected rights or interests of another person.

(2) The nature of the protected rights or interests that are threatened by the attack is not material. The objects of an attack include not only life and limb but all legally protected interests (e.g. liberty, morality, honor, property, possession, or hunting rights).

(3) The protected interest to be defended need not belong to the person defending it; it may belong to some other person. In the latter case, self-defense is termed defense in aid of a third person (Nothilfe).

(4) An attack that the attacked person is under no obligation to suffer shall be deemed to be an unlawful attack. Thus self-defense is permissible not only against a person guilty of an unlawful act but also against an incompetent, an insane person, a child, or one acting in unavoidable error (See Note #2).

(5) An attack shall be deemed an 'imminent' attack if it is immediately impending, is in progress, or is continuing; an attack threatened in the future or that has been completed is not considered an imminent attack. Whether or not an attack is imminent is determined by the objective facts and not by the subjective belief of the person acting in self-defense.

(6) An attack shall be deemed to be continuing and, therefore, imminent until the danger arising from it to the threatened legally protected interest either has completely passed or, conversely, until the attack has resulted in the irretrievable loss of such interest. For instance, if a thief escapes with a stolen article or a poacher with a head of game, self-defense is permissible during hot pursuit and so long as the object in question, insofar as the perpetrator is concerned, has not reached a place of safety.

(7) The act of self-defense must be necessary to avert an attack. The necessity shall be ascertained from case-to-case by applying objective standards. In principle, the extent of permissible defense is determined by the severity and persistence of the attack and by the means that are available to the person attacked for his (or her) defense.

(8) A legally protected interest of the attacked shall be deemed to have been infringed upon unnecessarily if the person threatened by the attack is able to evade the attack without abandoning his own interests.

(9) As a rule, it is not necessary that the value of the legally protected interests of the attacked person should be balanced against the loss that the attacker might sustain (principle of proportionality). But this principle is subject to limitations. The killing of a thief is not a required (necessary) act of defense if the articles that the attacked person risks losing are only of minor value (this principle is controversial). (See Note #2.)

(10) It suffices that the act of self-defense is required in order to avert an attack against oneself or any other person. It is not necessary that the attack is aimed at a relative within the meaning of paragraph 2, section 52, German Criminal Code.

(11) Only insofar as directed against the attacker shall an act of defense be deemed to be an act of self-defense to ward off an unlawful attack. Acts that violate legally protected interests of innocent bystanders cannot be justified on grounds of self-defense. Under certain circumstances, the perpetrators of such acts may go unpunished on the grounds that the acts were justified by necessity (Notstand).

**NOTE #1:** Paragraph 2, section 52, and section 53, German Criminal Code, referred to in section Re Article 12 of the Protocol of Signature are now designated No 1, section I 1 (1), and section 32, German Criminal Code, respectively. However, the first sentence of the former section 53, quoted above, is now replaced by the first sentence of section 32, Criminal Code reading as follows: "Whoever commits an act that is necessary for his self-defense does not act unlawfully."

**NOTE #2:** In respect of the third sentence of subparagraph (b) (9) in conjunction with subparagraph (b) (4) of the section Re Article 12, SA in the Protocol of Signature, the current widely-held majority opinion reads as follows: To inflict death upon a thief is not a necessary act of defense if the articles which the attacked person risks losing are only of minor value. In the individual case it can be expected in fairness that defense be relinquished against children, the mentally ill or otherwise against individuals acting without culpability.