

status, members of the armed forces do not acquire auxiliary medical status simply by performing medical duties.²⁶¹ For example, a combatant who treats fellow combatants on the battlefield does not automatically acquire auxiliary medical status. Similarly, persons do not acquire auxiliary medical status only because they happen to have medical training.

In order to acquire auxiliary medical status, a person must receive appropriate training and be designated as such by his or her armed forces.²⁶² Those armed forces must provide proper identification to such persons, including an armband and a special identity document.²⁶³

4.13.3 Auxiliary Medical Personnel – Conduct of Hostilities. Auxiliary medical personnel may not be made the object of attack when carrying out their medical duties.²⁶⁴ Auxiliary medical personnel shall wear, but only while carrying out medical duties, a white armband bearing in its center the distinctive sign in miniature; the armband shall be issued and stamped by the military authority.²⁶⁵ In addition, auxiliary medical personnel must abstain from acts harmful to the enemy while carrying out their medical duties.²⁶⁶

When the above conditions are not present, auxiliary medical personnel may be made the object of attack on the same basis as other combatants.

4.13.4 Auxiliary Medical Personnel – Detention. Auxiliary medical personnel are POWs when detained by the enemy during international armed conflict, but may be required to perform their medical duties, as needed.²⁶⁷ Auxiliary medical personnel are not subject to the repatriation provisions that apply specifically to retained personnel.²⁶⁸

4.14 PERSONNEL ENGAGED IN DUTIES RELATED TO THE PROTECTION OF CULTURAL PROPERTY

During armed conflict, different classes of persons may be engaged in duties related to

²⁶¹ Refer to § 4.9.2 (Requirements for Military Medical and Religious Status).

²⁶² GWS COMMENTARY 222 (“To be accorded immunity, auxiliary personnel must, as we have said, have received special medical training beforehand, the nature and duration of which are wisely not defined. If it is necessary to make good a deficiency in permanent personnel, such training may even take place in wartime; but personnel filling this temporary role must in any case have had a real training.”).

²⁶³ GWS COMMENTARY 223-24 (“To have immunity even on the battlefield, military personnel caring for the wounded had to form a distinct category—that of medical personnel—and enjoy a separate status, recognizable by a distinctive emblem and an identity card. If recourse was had to such safeguards, it was because military considerations demanded them. Otherwise the risk of abuse would have been too great. It is not straining the imagination to picture combatants approaching an enemy position, ostensibly to assist the wounded, and then opening fire in order to seize it: similarly, a fighting unit might suddenly transform itself into a medical unit, in order to avoid enemy fire.”).

²⁶⁴ Refer to § 7.8.1 (Categories of Persons Who Are Entitled to Respect and Protection as Medical and Religious Personnel on the Battlefield).

²⁶⁵ Refer to § 7.8.4.2 (Wearing of Armband With Miniature Distinctive Emblem).

²⁶⁶ Refer to § 7.8.3 (Loss of Protection for Medical and Religious Personnel From Being Made the Object of Attack).

²⁶⁷ See GWS art. 29 (“Members of the personnel designated in Article 25 who have fallen into the hands of the enemy, shall be prisoners of war, but shall be employed on their medical duties in so far as the need arises.”).

²⁶⁸ Refer to § 4.10.2 (Military Medical and Religious Personnel - Detention).

the protection of cultural property. These classes of persons may include: specialist personnel in the armed forces, armed custodians specially empowered to guard cultural property, as well as persons who are engaged in duties of control in accordance with the Regulations for the Execution of the 1954 Hague Cultural Property Convention. So far as consistent with the interests of security, such personnel should be respected and permitted to carry out their duties for the protection of cultural property.

4.14.1 Personnel Engaged in the Protection of Cultural Property. As far as is consistent with the interests of security, personnel engaged in the protection of cultural property shall, in the interests of such property, be respected and, if they fall into the hands of the opposing party, shall be allowed to continue to carry out duties whenever the cultural property for which they are responsible has also fallen into the hands of the opposing party.²⁶⁹ Such personnel are analogous to military medical and religious personnel who also shall continue to carry out their medical and spiritual duties when they have fallen into the hands of the enemy.²⁷⁰

No special agreement may be concluded that would diminish the protection afforded by the 1954 Hague Cultural Property Convention to the personnel engaged in the protection of cultural property.²⁷¹

4.14.1.1 Specialist Personnel in the Armed Forces. States, especially Parties to the 1954 Hague Cultural Property Convention, may have within their armed forces, services or specialist personnel whose purpose is to secure respect for cultural property and to cooperate with the civilian authorities responsible for safeguarding it.²⁷² The United States has long had such personnel in its armed forces.²⁷³

For example, during World War II, Allied forces dedicated a specific group of personnel who were tasked to save as much of the culture of Europe as they could during combat.²⁷⁴ These

²⁶⁹ 1954 HAGUE CULTURAL PROPERTY CONVENTION art. 15 (“As far as is consistent with the interests of security, personnel engaged in the protection of cultural property shall, in the interests of such property, be respected and, if they fall into the hands of the opposing Party, shall be allowed to continue to carry out duties whenever the cultural property for which they are responsible has also fallen into the hands of the opposing Party.”); ROERICH PACT art. 1 (requiring respect and protection for personnel of “[t]he historic monuments, museums, scientific, artistic, educational and cultural institutions”).

²⁷⁰ Refer to § 7.9.3 (Duties of Retained Personnel).

²⁷¹ 1954 HAGUE CULTURAL PROPERTY CONVENTION art. 24(2) (“No special agreement may be concluded which would diminish the protection afforded by the present Convention to cultural property and to the personnel engaged in its protection.”).

²⁷² 1954 HAGUE CULTURAL PROPERTY CONVENTION art. 7(2) (“The High Contracting Parties undertake to plan or establish in peacetime, within their armed forces, services or specialist personnel whose purpose will be to secure respect for cultural property and to co-operate with the civilian authorities responsible for safeguarding it.”).

²⁷³ *Section-by-Section Analysis of Provisions*, 4, Tab 1 to Strobe Talbot, *Letter of Submittal*, May 12, 1998, MESSAGE FROM THE PRESIDENT TRANSMITTING THE 1954 HAGUE CULTURAL PROPERTY CONVENTION 5 (“It is longstanding U.S. Army practice to maintain such personnel in their civil affairs reserve force. Marine Corps reserve civil affairs personnel receive training to perform similar functions if necessary.”).

²⁷⁴ R. M. EDSSEL, *THE MONUMENTS MEN* 2 (2009) (“The Monuments Men were a group of men and women from thirteen nations, most of whom volunteered for service in the newly created Monuments, Fine Arts, and Archives section [of the Western Allied military effort], or MFAA. Most of the early volunteers had expertise as museum

personnel worked to mitigate combat damage to churches and museums and to locate moveable works of art that were stolen or missing.²⁷⁵

4.14.1.2 *Armed Custodians Specially Empowered to Protect Cultural Property.*

States may use armed custodians who are specially empowered to protect cultural property. The guarding of cultural property under special protection by armed custodians specially empowered to do so, however, shall not be deemed to be a use for military purposes that would deprive cultural property of special protection.²⁷⁶

4.14.2 Persons Responsible for the Duties of Control in Accordance With the Regulations for the Execution of the 1954 Hague Cultural Property Convention. A number of persons are responsible for the duties of control in accordance with the Regulations for the Execution of the 1954 Hague Cultural Property Convention. These individuals may include: (1) the Director-General of the United Nations Educational, Scientific and Cultural Organization (UNESCO); (2) a State-appointed representative for cultural property; (3) delegates of the Protecting Powers; (4) a Commissioner-General for Cultural Property; and (5) inspectors and experts proposed by the Commissioner-General for Cultural Property.

The Commissioners-General for Cultural Property, delegates of the Protecting Powers, inspectors, and experts shall in no case exceed their mandates. In particular, they shall take account of the security needs of the Party to the 1954 Hague Cultural Property Convention to which they are accredited and shall in all circumstances act in accordance with the requirements of the military situation as communicated to them by that State.²⁷⁷

4.14.2.1 *Director-General of UNESCO.* Under the 1954 Hague Cultural Property Convention, the Director-General of the United Nations Educational, Scientific, and Cultural Organization (UNESCO) plays an important role. For example, among other duties, the Director-General compiles and periodically revises an international list consisting of all persons nominated by participating States as qualified to carry out the functions of Commissioner-

directors, curators, art scholars and educators, artists, architects, and archivists. Their job was simple: to save as much of the culture of Europe as they could during combat. The creation of the MFAA section was a remarkable experiment. It marked the first time an army fought a war while comprehensively attempting to mitigate cultural damage, and was performed without adequate transportation, supplies, personnel, or historical precedent. The men tasked with this mission were, on the surface, the most unlikely of heroes.”).

²⁷⁵ R. M. EDSEL, *THE MONUMENTS MEN* xiv (2009) (“Their initial responsibility was to mitigate combat damage, primarily to structures – churches, museums, and other important monuments. As the war progressed and the German border was breached, their focus shifted to locating moveable works of art and other cultural items stolen or otherwise missing.”).

²⁷⁶ Refer to § 5.18.8.2 (Conditions for the Granting of Special Protection – No Use for Military Purposes).

²⁷⁷ REGULATIONS FOR THE EXECUTION OF THE 1954 HAGUE CULTURAL PROPERTY CONVENTION art. 8 (“The Commissioners-General for Cultural Property, delegates of the Protecting Powers, inspectors and experts shall in no case exceed their mandates. In particular, they shall take account of the security needs of the High Contracting Party to which they are accredited and shall in all circumstances act in accordance with the requirements of the military situation as communicated to them by that High Contracting Party.”).

General for Cultural Property.²⁷⁸

4.14.2.2 *State-Appointed Representative for Cultural Property.* As soon as any Party to the 1954 Hague Cultural Property Convention is engaged in an international armed conflict, that Party shall appoint a representative for cultural property situated in its territory; if that Party is in occupation of another territory, it shall appoint a special representative for cultural property situated in that territory.²⁷⁹

4.14.2.3 *Delegates of the Protecting Powers.* A Protecting Power shall appoint delegates to perform certain functions in the protection of cultural property.²⁸⁰ The delegates of the Protecting Powers shall take note of violations of the 1954 Hague Cultural Property Convention, investigate, with the approval of the Party to which they are accredited, the circumstances in which they have occurred, make representations locally to secure their cessation, and, if necessary, notify the Commissioner-General of such violations. They shall keep the Commissioner-General informed of their activities.²⁸¹

4.14.2.4 *Commissioner-General for Cultural Property.* The Regulations for the Execution of the 1954 Hague Cultural Property Convention provide for the appointment of a Commissioner-General for cultural property, but always with the approval of the Party to which he or she will be accredited.²⁸²

²⁷⁸ REGULATIONS FOR THE EXECUTION OF THE 1954 HAGUE CULTURAL PROPERTY CONVENTION art. 1 (“On the entry into force of the Convention, the Director-General of the United Nations Educational, Scientific and Cultural Organization shall compile an international list consisting of all persons nominated by the High Contracting Parties as qualified to carry out the functions of Commissioner-General for Cultural Property. On the initiative of the Director-General of the United Nations Educational, Scientific and Cultural Organization, this list shall be periodically revised on the basis of requests formulated by the High Contracting Parties.”).

²⁷⁹ REGULATIONS FOR THE EXECUTION OF THE 1954 HAGUE CULTURAL PROPERTY CONVENTION art. 2 (“As soon as any High Contracting Party is engaged in an armed conflict to which Article 18 of the Convention applies: (a) It shall appoint a representative for cultural property situated in its territory; if it is in occupation of another territory, it shall appoint a special representative for cultural property situated in that territory;”).

²⁸⁰ REGULATIONS FOR THE EXECUTION OF THE 1954 HAGUE CULTURAL PROPERTY CONVENTION art. 2 (“As soon as any High Contracting Party is engaged in an armed conflict to which Article 18 of the Convention applies: (b) The Protecting Power acting for each of the Parties in conflict with such High Contracting Party shall appoint delegates accredited to the latter in conformity with Article 3 below;”); REGULATIONS FOR THE EXECUTION OF THE 1954 HAGUE CULTURAL PROPERTY CONVENTION art. 3 (“The Protecting Power shall appoint its delegates from among the members of its diplomatic or consular staff or, with the approval of the Party to which they will be accredited, from among other persons.”).

²⁸¹ REGULATIONS FOR THE EXECUTION OF THE 1954 HAGUE CULTURAL PROPERTY CONVENTION art. 5 (“The delegates of the Protecting Powers shall take note of violations of the Convention, investigate, with the approval of the Party to which they are accredited, the circumstances in which they have occurred, make representations locally to secure their cessation and, if necessary, notify the Commissioner-General of such violations. They shall keep him informed of their activities.”).

²⁸² REGULATIONS FOR THE EXECUTION OF THE 1954 HAGUE CULTURAL PROPERTY CONVENTION art. 4 (“1. The Commissioner-General for Cultural Property shall be chosen from the international list of persons by joint agreement between the Party to which he will be accredited and the Protecting Powers acting on behalf of the opposing Parties. 2. Should the Parties fail to reach agreement within three weeks from the beginning of their discussions on this point, they shall request the President of the International Court of Justice to appoint the

The Commissioner-General exercises a number of functions, including proposing the appointment of inspectors and experts, ordering an investigation with the agreement of the Party to which he or she is accredited, and drawing up reports on the application of the Convention.²⁸³

4.14.2.5 *Inspectors and Experts Proposed by the Commissioner-General for Cultural Property.* The Commissioner-General for Cultural Property may propose, for the approval of the Party to which the Commissioner-General is accredited, inspectors of cultural property to be charged with specific missions.²⁸⁴ The Commissioner-General, delegates, and inspectors may have recourse to the services of experts, who will also be proposed for the approval of the Party to which the Commissioner-General is accredited.²⁸⁵

In some cases, inspectors may be entrusted with the functions of delegates of the Protecting Powers.²⁸⁶

4.14.3 *Identifying Personnel Engaged in Duties for the Protection of Cultural Property.* Persons responsible for duties of control in accordance with the Regulations for the Execution of the 1954 Hague Cultural Property Convention, and persons engaged in duties for the protection of cultural property, are to carry a special identity card bearing the distinctive emblem.²⁸⁷ In

Commissioner-General, who shall not take up his duties until the Party to which he is accredited has approved his appointment.”).

²⁸³ REGULATIONS FOR THE EXECUTION OF THE 1954 HAGUE CULTURAL PROPERTY CONVENTION art. 6 (“1. The Commissioner-General for Cultural Property shall deal with all matters referred to him in connexion with the application of the Convention, in conjunction with the representative of the Party to which he is accredited and with the delegates concerned. 2. He shall have powers of decision and appointment in the cases specified in the present Regulations. 3. With the agreement of the Party to which he is accredited, he shall have the right to order an investigation or to, conduct it himself. 4. He shall make any representations to the Parties to the conflict or to their Protecting Powers which he deems useful for the application of the Convention. 5. He shall draw up such reports as may be necessary on the application of the Convention and communicate them to the Parties concerned and to their Protecting Powers. He shall send copies to the Director-General of the United Nations Educational, Scientific and Cultural Organization, who may make use only of their technical contents. 6. If there is no Protecting Power, the Commissioner-General shall exercise the functions of the Protecting Power as laid down in Articles 21 and 22 of the Convention.”).

²⁸⁴ REGULATIONS FOR THE EXECUTION OF THE 1954 HAGUE CULTURAL PROPERTY CONVENTION art. 7(1) (“Whenever the Commissioner-General for Cultural Property considers it necessary, either at the request of the delegates concerned or after consultation with them, he shall propose, for the approval of the Party to which he is accredited, an inspector of cultural property to be charged with a specific mission. An inspector shall be responsible only to the Commissioner-General.”).

²⁸⁵ REGULATIONS FOR THE EXECUTION OF THE 1954 HAGUE CULTURAL PROPERTY CONVENTION art. 7(2) (“The Commissioner-General, delegates and inspectors may have recourse to the services of experts, who will also be proposed for the approval of the Party mentioned in the preceding paragraph.”).

²⁸⁶ REGULATIONS FOR THE EXECUTION OF THE 1954 HAGUE CULTURAL PROPERTY CONVENTION art. 9 (“If a Party to the conflict does not benefit or ceases to benefit from the activities of a Protecting Power, a neutral State may be asked to undertake those functions of a Protecting Power which concern the appointment of a Commissioner-General for Cultural Property in accordance with the procedure laid down in Article 4 above. The Commissioner-General thus appointed shall, if need be, entrust to inspectors the functions of delegates of Protecting Powers as specified in the present Regulations.”).

²⁸⁷ REGULATIONS FOR THE EXECUTION OF THE 1954 HAGUE CULTURAL PROPERTY CONVENTION art. 21(2) (“[The persons mentioned in Article 17, paragraph 2 (b) and (c) of the Convention] shall carry a special identity card bearing the distinctive emblem. This card shall mention at least the surname and first names, the date of birth, the

addition, such persons may wear an armband bearing the distinctive emblem issued and stamped by the competent authorities.²⁸⁸

Such persons may not, without legitimate reason, be deprived of their identity card or of the right to wear the armband.²⁸⁹ The distinctive emblem displayed on an armband or special identity card is to be displayed once (as opposed to repeated three times).²⁹⁰

4.15 PERSONS AUTHORIZED TO ACCOMPANY THE ARMED FORCES

Under the law of war, persons who are not members of the armed forces, but are authorized to accompany them, fall into a special category. Although they are often referred to as “civilians” because they are not military personnel, they differ materially from the civilian population because these persons are authorized – and in some cases, are ordered – to accompany military forces into a theater of operations to support the force.²⁹¹

DoD policies have often addressed the use of non-military personnel to support military operations.²⁹²

title or rank, and the function of the holder. The card shall bear the photograph of the holder as well as his signature or his fingerprints, or both. It shall bear the embossed stamp of the competent authorities.”).

²⁸⁸ REGULATIONS FOR THE EXECUTION OF THE 1954 HAGUE CULTURAL PROPERTY CONVENTION art. 21(1) (“The persons mentioned in Article 17, paragraph 2 (b) and (c) of the Convention may wear an armband bearing the distinctive emblem, issued and stamped by the competent authorities.”).

²⁸⁹ REGULATIONS FOR THE EXECUTION OF THE 1954 HAGUE CULTURAL PROPERTY CONVENTION art. 21(4) (“The said persons may not, without legitimate reason, be deprived of their identity card or of the right to wear the armband.”).

²⁹⁰ Refer to § 5.18.7.2 (Display of the Distinctive Emblem for Cultural Property – Once Versus Three Times).

²⁹¹ Christian Damson (United States) v. Germany, 7 REPORTS OF THE INTERNATIONAL ARBITRAL AWARDS 184, 198 (1925) (concluding that a non-military employee of the U.S. Government whose activities were “directly in furtherance of a military operation” was not a “civilian” for the purposes of the Treaty of Berlin and thus was not entitled to assert a claim under the provisions of the Treaty of Berlin that provided for Germany to compensate for damages to the civilian population that it caused during World War I); Arthur Elt Hungerford (United States) v. Germany, 7 REPORTS OF THE INTERNATIONAL ARBITRAL AWARDS 368, 371 (1926) (“From the foregoing it is apparent that the members of the Y.M.C.A. who served on the western front were, in the language of the Commander-in-Chief of the A.E.F., ‘militarized and *** under the control and supervision of the American military authorities’. Or, to use the language of their own spokesman, they were ‘a part of the military machine’. They rendered military service of a high order. The mere fact that they were not formally inducted into the Army or were not in the pay of the Government of the United States is immaterial so far as concerns the question here presented. They had voluntarily segregated themselves from ‘the civilian population’ as that term is used in the Treaty of Berlin. They had deliberately exposed themselves and their personal belongings to the risks of war which began at the port of embarkation. The provisions of the Treaty of Berlin obligating Germany to make compensation for damages to ‘civilians’ or to ‘civilian victims’ or to the ‘civilian population’ were manifestly intended to apply to the passive victims of warfare, not to those who entered the war zone, subjected themselves to risks to which members of the civilian population generally were immune, and participated in military activities, whether as combatants or noncombatants.”).

²⁹² For example, DoD INSTRUCTION 3020.41, *Operational Contract Support (OCS)* (Dec. 20, 2011); DoD INSTRUCTION 1100.22, *Policies and Procedures for Determining Workforce Mix* (Apr. 12, 2010); DoD DIRECTIVE 1404.10, *DoD Civilian Expeditionary Workforce* (Jan. 23, 2009); DoD INSTRUCTION 1400.32, *DoD Civilian Work Force Contingency and Emergency Planning Guidelines and Procedures* (Apr. 24, 1995); DoD DIRECTIVE 1404.10,

close of hostilities to compensate the owners, there may be evidence to assist the assessors.⁵⁶⁰

As a matter of practice, during counter-insurgency operations, U.S. forces have often made payments to, or taken other actions on behalf of, civilians suffering loss.⁵⁶¹

5.18 PROTECTION OF CULTURAL PROPERTY DURING HOSTILITIES

Certain types of property receive additional protection as cultural property. Cultural property, the areas immediately surrounding it, and appliances in use for its protection should be safeguarded and respected.

Some obligations with respect to cultural property apply during non-international armed conflict.⁵⁶² There are also obligations with respect to cultural property during occupation⁵⁶³ and peacetime.⁵⁶⁴ Certain treaty obligations with respect to cultural property may only apply on the territory of Parties to the 1954 Hague Cultural Property Convention,⁵⁶⁵ but the United States has previously identified some of these obligations as customary international law.⁵⁶⁶ DoD personnel, therefore, in the absence of contrary guidance by competent authority, should act as if they were legally bound by the rules for the protection of cultural property in the 1954 Hague Cultural Property Convention during hostilities even when conducting operations in the territory of a State that is not a Party to the 1954 Hague Cultural Property Convention.⁵⁶⁷

5.18.1 Definition of Cultural Property. For the purpose of the 1954 Hague Cultural Property Convention and this manual, cultural property includes, irrespective of origin or ownership:⁵⁶⁸

⁵⁶⁰ 1958 UK MANUAL ¶593 (“If time allows, however, a note of the use or damage should be kept, or given to the owner, so that in the event of funds being provided by either belligerent at the close of hostilities to compensate the inhabitants, there may be evidence to assist the assessors.”).

⁵⁶¹ For example, DEPARTMENT OF THE ARMY FIELD MANUAL 3-24.2, *Tactics in Counterinsurgency*, ¶7-89 (Apr. 2009) (“Recent experiences have shown the effectiveness of using money to win popular support and further the interests and goals of units conducting counterinsurgency operations. ... A counterinsurgency force can use money to ... • Repair damage resulting from combined and coalition operations. • Provide condolence payments to civilians for casualties from combined and coalition operations.”).

⁵⁶² Refer to § 17.11 (Protection of Cultural Property in NIAC).

⁵⁶³ Refer to § 11.19 (Protection of Cultural Property During Occupation).

⁵⁶⁴ Refer to § 5.18.2.1 (Peacetime Obligations to Prepare for the Safeguarding of Cultural Property).

⁵⁶⁵ See, e.g., 1954 HAGUE CULTURAL PROPERTY CONVENTION art. 4(1) (“The High Contracting Parties undertake to respect cultural property situated within their own territory as well as within the territory of other High Contracting Parties.”).

⁵⁶⁶ Refer to § 5.18.8 (Special Protection for Certain Cultural Property).

⁵⁶⁷ Refer to § 3.1.1 (DoD Practice of Applying Law of War Rules Even When Not Technically Applicable).

⁵⁶⁸ 1954 HAGUE CULTURAL PROPERTY CONVENTION art. 1 (“For the purposes of the present Convention, the term ‘cultural property’ shall cover, irrespective of origin or ownership: (a) movable or immovable property of great importance to the cultural heritage of every people, such as monuments of architecture, art or history, whether religious or secular; archaeological sites; groups of buildings which, as a whole, are of historical or artistic interest; works of art; manuscripts, books and other objects of artistic, historical or archaeological interest; as well as

- movable or immovable property of great importance to the cultural heritage of every people;⁵⁶⁹
- buildings intended to shelter cultural property;⁵⁷⁰ and
- centers containing monuments.⁵⁷¹

5.18.1.1 *Definition of Cultural Property – Notes on Terminology.* “Cultural property” is a term of art that is defined in the 1954 Hague Cultural Property Convention. The definition in the 1954 Hague Cultural Property Convention may be more limited than cultural property described and protected by other instruments.

For example, the Lieber Code contemplates protection for property belonging to “establishments of an exclusively charitable character, to establishments of education, or foundations for the promotion of knowledge, whether public schools, universities, academies of learning or observatories, museums of the fine arts, or of a scientific character,” as well as “[c]lassical works of art, libraries, scientific collections, or precious instruments, such as astronomical telescopes.”⁵⁷² The Hague IV Regulations seek to protect “buildings dedicated to religion, art, science, or charitable purposes, historic monuments.”⁵⁷³ Hague IX seeks to protect “sacred edifices, buildings used for artistic, scientific, or charitable purposes, [and] historic monuments.”⁵⁷⁴ The Roerich Pact seeks to protect “historic monuments, museums, scientific, artistic, educational and cultural institutions.”⁵⁷⁵ AP I seeks to protect “historic monuments, works of art or places of worship which constitute the cultural or spiritual heritage of peoples.”⁵⁷⁶

Because the definition of cultural property in the 1954 Hague Cultural Property Convention is different from the categories of property protected by other instruments, the scope of objects being protected by each instrument is not the same (although there may be overlap). Nevertheless, the protections afforded cultural property by the 1954 Hague Cultural Property Convention are supplementary to those afforded by earlier treaties, although the distinctive

scientific collections and important collections of books or archives or of reproductions of the property defined above; (b) buildings whose main and effective purpose is to preserve or exhibit the movable cultural property defined in sub-paragraph (a) such as museums, large libraries and depositories of archives, and refuges intended to shelter, in the event of armed conflict, the movable cultural property defined in subparagraph (a); (c) centres containing a large amount of cultural property as defined in sub-paragraphs (a) and (b), to be known as ‘centres containing monuments’.”).

⁵⁶⁹ Refer to § 5.18.1.2 (Movable or Immovable Property of Great Importance to the Cultural Heritage of Every People).

⁵⁷⁰ Refer to § 5.18.1.3 (Buildings Intended to Preserve Cultural Property).

⁵⁷¹ Refer to § 5.18.1.4 (Centers Containing Monuments).

⁵⁷² LIEBER CODE arts. 34-36.

⁵⁷³ HAGUE IV REG. art. 27.

⁵⁷⁴ HAGUE IX art. 5.

⁵⁷⁵ ROERICH PACT art. 1.

⁵⁷⁶ AP I art. 53.

emblem for cultural property established in the 1954 Hague Cultural Property Convention is to be used where appropriate instead of emblems established in earlier treaties.⁵⁷⁷

5.18.1.2 *Movable or Immovable Property of Great Importance to the Cultural Heritage of Every People*. Property must be “of great importance to the cultural heritage of every people” to qualify as cultural property. Ordinary property (such as churches or works of art) that are not of great importance to the cultural heritage of every people would not qualify as cultural property, although such property may benefit from other protections, such as those afforded civilian objects or enemy property.⁵⁷⁸

The question of whether cultural property is “of great importance to the cultural heritage of every people” may involve delicate and somewhat subjective judgments.⁵⁷⁹ Items that can easily be replaced would not qualify as being of great importance.⁵⁸⁰ On the other hand, irreplaceable items may be of great cultural importance, even if they have little monetary value.⁵⁸¹

Cultural property may include, but is not limited to, the following types of property (provided the property is of great importance to the cultural heritage of every people):

- monuments of architecture, art, or history, whether religious or secular;⁵⁸²
- archaeological sites;
- groups of buildings that, as a whole, are of historical or artistic interest;⁵⁸³

⁵⁷⁷ Refer to § 19.17.1 (Relationship Between the 1954 Hague Cultural Property Convention and Earlier Treaties).

⁵⁷⁸ Refer to § 5.5.2 (Persons, Objects, and Locations That Are Protected From Being Made the Object of Attack); § 5.17 (Seizure and Destruction of Enemy Property).

⁵⁷⁹ See ROGERS, LAW ON THE BATTLEFIELD 90 (“It must be property of great importance to the cultural heritage of every people. This may involve delicate decisions about whether, for example, an original manuscript by a minor composer, say Spohr, was of great importance to the cultural heritage of every people, perhaps not. The situation would be different if it were an original manuscript by one of the great composers, say Schubert.”).

⁵⁸⁰ See JIRI TOMAN, CULTURAL PROPERTY IN WARTIME 50 (1996) (“Certain objects, although of limited value, may be important for the national culture while others, even though of great value, can be replaced and are therefore less important.”).

⁵⁸¹ For example, JIRI TOMAN, CULTURAL PROPERTY IN WARTIME 49-50 (1996) (“[A] papyrus reporting a marriage that took place three thousand years ago, although it was of no intrinsic cultural value, was of very great cultural importance because of the fact that it enabled an institution, on which no such ancient information existed, to be studied.”) (internal quotation marks omitted).

⁵⁸² See also JIRI TOMAN, CULTURAL PROPERTY IN WARTIME 50-51 (1996) (“[W]orks of architecture, sculpture, specially designed to perpetuate the memory of a person, action, period, event or thing, or as buildings, structures, edifices remarkable for their archaeological, historical or aesthetic interest or intended to commemorate a notable person, action or event.”).

⁵⁸³ See also JIRI TOMAN, CULTURAL PROPERTY IN WARTIME 51 (1996) (During the drafting of the 1954 Hague Cultural Property Convention “the Scandinavian countries proposed the protection of certain sites which, although not containing particularly remarkable monuments, were of undoubted value from a cultural point of view and for that reason had a right to be protected. It was explained that the Scandinavian countries had very little cultural

- works of art;
- manuscripts, books, and other objects of artistic, historical, or archaeological interest;
- scientific collections;⁵⁸⁴ and
- important collections of books or archives or of reproductions of the property defined above.⁵⁸⁵

Natural sites of great beauty are not included within the definition of cultural property.⁵⁸⁶

5.18.1.3 *Buildings Intended to Preserve Cultural Property.* Cultural property is also understood to include buildings whose main and effective purpose is to preserve or exhibit movable cultural property, such as museums, large libraries, and depositories of archives, and refuges intended to shelter cultural property in the event of armed conflict.⁵⁸⁷

For these types of buildings, protection is gained from the structure's purpose and contents as opposed to the physical structure itself constituting immovable property of great importance to the cultural heritage of every people. The building must be intended to contain and, in fact, contain, conserve, or exhibit movable cultural property as its primary purpose.⁵⁸⁸ Alternatively, the structure may be intended to store movable cultural property for protection in the event of armed conflict. Some of these refuges may be subject to special protection.⁵⁸⁹

property and that their gift to culture consisted mainly in distant mediaeval villages or lonely farms.”) (internal quotation marks omitted).

⁵⁸⁴ See also JIRI TOMAN, CULTURAL PROPERTY IN WARTIME 52 (1996) (Scientific “collections are made up of scientific books but also cover other objects such as Boissier’s herbarium in Geneva or the collections of important laboratories ... [and] national monuments that were objects of valuable scientific research, such as rare animals or plants that were becoming extinct.”).

⁵⁸⁵ See also JIRI TOMAN, CULTURAL PROPERTY IN WARTIME 52 (1996) (“[P]rotection is accorded to important collections of books without their necessarily having to be of artistic, historical or archaeological interest. Any important library is thus protected, probably in the spirit of protecting human knowledge.”).

⁵⁸⁶ See JIRI TOMAN, CULTURAL PROPERTY IN WARTIME 53 (1996) (“The [1954 Hague Cultural Property] Conference also discussed the protection of ‘natural sites of great beauty’ (United States of America and Japan), but appears to have given up the idea for reasons mentioned by the delegation of France, who considered that ‘it was probably difficult to define the protection of natural sites as their value was of a subjective nature. At best, only a diluted form of protection could result. Finally, it had been observed that natural sites could often be restored very quickly.”).

⁵⁸⁷ 1954 HAGUE CULTURAL PROPERTY CONVENTION art. 1(b) (defining the term cultural property to include, *inter alia*, “buildings whose main and effective purpose is to preserve or exhibit the movable cultural property defined in sub-paragraph (a) such as museums, large libraries and depositories of archives, and refuges intended to shelter, in the event of armed conflict, the movable cultural property defined in subparagraph (a)”).

⁵⁸⁸ See JIRI TOMAN, CULTURAL PROPERTY IN WARTIME 53-54 (1996) (“According to subparagraph (b), such buildings are protected not because of their own historical value but because of their purpose and their content. The purpose must be the primary one, the very aim and *raison d’etre* of such a building; it must also be effectively true -- the building must in fact contain, conserve or exhibit movable cultural property.”).

⁵⁸⁹ Refer to § 5.18.8 (Special Protection for Certain Cultural Property).

5.18.1.4 *Centers Containing Monuments*. Cultural property also includes centers containing monuments, *i.e.*, centers containing a large amount of cultural property or buildings intended to preserve cultural property.⁵⁹⁰ This includes monument complexes or major groups of buildings containing movable and immovable cultural property.

5.18.2 *Respect and Safeguarding of Cultural Property*. The protection of cultural property comprises the safeguarding of and respect for such property.⁵⁹¹ Safeguarding consists of the affirmative acts that are to be taken to ensure the protection of cultural property.⁵⁹² On the other hand, respect essentially requires parties to refrain from certain acts, such as placing cultural property in peril or causing damage to it.⁵⁹³

Safeguarding and respect are mutually reinforcing obligations that help ensure the protection of cultural property.

5.18.2.1 *Peacetime Obligations to Prepare for the Safeguarding of Cultural Property*. Parties to 1954 Hague Cultural Property Convention are obliged to undertake to prepare in time of peace for the safeguarding of cultural property situated within their own territory against the foreseeable effects of an armed conflict, by taking such measures as they consider appropriate.⁵⁹⁴ This obligation reflects the opinion that measures for the protection of cultural property during armed conflict, in order to be effective, must begin in peacetime.⁵⁹⁵

The failure of a State to fulfill its obligations in peacetime to safeguard cultural property during armed conflict does not relieve other States of their obligation to respect cultural

⁵⁹⁰ 1954 HAGUE CULTURAL PROPERTY CONVENTION art. 1(c) (defining the term cultural property to include, *inter alia*, “centres containing a large amount of cultural property as defined in sub-paragraphs (a) and (b) to be known as ‘centres containing monuments’”). See also JIRI TOMAN, CULTURAL PROPERTY IN WARTIME 54 (1996) (“The term ‘centres containing monuments’ was preferred to the terms ‘groups’ or ‘groups of buildings’ when the reference was to larger areas containing a considerable amount of cultural property coming under subparagraphs (a) and (b). The term comprises a group of historical or artistic monuments situated in the same vicinity, such as the districts of certain cities or even entire cities.”).

⁵⁹¹ 1954 HAGUE CULTURAL PROPERTY CONVENTION art. 2 (“For the purposes of the present Convention, the protection of cultural property shall comprise the safeguarding of and respect for such property.”).

⁵⁹² JIRI TOMAN, CULTURAL PROPERTY IN WARTIME 57 (1996) (“‘Safeguarding’ consists of all the positive measures (defining the action to be taken) which are designed to ensure the best possible material conditions for the protection of cultural property.”).

⁵⁹³ JIRI TOMAN, CULTURAL PROPERTY IN WARTIME 57 (1996) (“Respect ... has an essentially negative character: it represents an obligation not to commit a number of prohibited acts. Respect therefore implies a requirement to refrain from certain acts, such as placing cultural property in peril or causing damage to it.”).

⁵⁹⁴ 1954 HAGUE CULTURAL PROPERTY CONVENTION art. 3 (“The High Contracting Parties undertake to prepare in time of peace for the safeguarding of cultural property situated within their own territory against the foreseeable effects of an armed conflict, by taking such measures as they consider appropriate.”).

⁵⁹⁵ 1954 HAGUE CULTURAL PROPERTY CONVENTION preamble (“Guided by the principles concerning the protection of cultural property during armed conflict, as established in the Conventions of The Hague of 1899 and of 1907 and in the Washington Pact of 15 April, 1935; Being of the opinion that such protection cannot be effective unless both national and international measures have been taken to organize it in time of peace;”).

property.⁵⁹⁶

5.18.3 Refraining From Any Use for Purposes That Are Likely to Expose It to Destruction or Damage. In general, no use should be made of cultural property, its immediate surroundings, or appliances in use for its protection, for purposes that are likely to expose it to destruction or damage in the event of armed conflict.⁵⁹⁷ However, such use is permissible when military necessity imperatively requires such use.⁵⁹⁸

Uses that would be likely to expose cultural property to destruction or damage in the event of armed conflict would include: (1) using the cultural property for military purposes;⁵⁹⁹ (2) placing military objectives near cultural property; or (3) using the cultural property in such a way that an adversary would likely regard it as a military objective.⁶⁰⁰ For example, such uses would include billeting military personnel in buildings that constitute cultural property, or emplacing artillery, mortars, or anti-air systems on the grounds of cultural property.

In addition, it is prohibited to use deliberately the threat of potential harm to cultural property to shield military objectives from attack, or otherwise to shield, favor, or impede military operations.⁶⁰¹ There is no waiver of this obligation in cases of imperative military necessity.

5.18.3.1 *Imperative Military Necessity Waiver*. Cultural property, its immediate surroundings, and appliances in use for its protection may be used for purposes that are likely to expose it to destruction or damage if military necessity imperatively requires such use. The requirement that military necessity imperatively require such acts should not be confused with convenience or be used to cloak slackness or indifference to the preservation of cultural property.⁶⁰² This waiver of obligations with respect to cultural property is analogous to the

⁵⁹⁶ 1954 HAGUE CULTURAL PROPERTY CONVENTION art. 4(5) (“No High Contracting Party may evade the obligations incumbent upon it under the present Article, in respect of another High Contracting Party, by reason of the fact that the latter has not applied the measures of safeguard referred to in Article 3.”).

⁵⁹⁷ 1954 HAGUE CULTURAL PROPERTY CONVENTION art. 4(1) (“The High Contracting Parties undertake to respect cultural property situated within their own territory as well as within the territory of other High Contracting Parties by refraining from any use of the property and its immediate surroundings or of the appliances in use for its protection for purposes which are likely to expose it to destruction or damage in the event of armed conflict . . .”).

⁵⁹⁸ 1954 HAGUE CULTURAL PROPERTY CONVENTION art. 4(2) (“The obligations mentioned in paragraph 1 of the present Article may be waived only in cases where military necessity imperatively requires such a waiver.”).

⁵⁹⁹ Compare § 5.18.8.2 (Conditions for the Granting of Special Protection – No Use for Military Purposes).

⁶⁰⁰ Refer to § 5.6 (Military Objectives).

⁶⁰¹ Refer to § 5.16 (Prohibition on Using Protected Persons and Objects to Shield, Favor, or Impede Military Operations).

⁶⁰² See General Dwight D. Eisenhower, Commander-in-Chief, U.S. Army, *Memorandum Regarding the Protection of Historical Monuments in Italy*, Dec. 29, 1943, X WHITEMAN’S DIGEST 438 (§13) (“If we have to choose between destroying a famous building and sacrificing our own men, then our men’s lives count infinitely more and the building must go. But the choice is not always so clear-cut as that. In many cases the monuments can be spared without any detriment to operational needs. Nothing can stand against the argument of military necessity. That is an accepted principle. But the phrase ‘military necessity’ is sometimes used where it would be more truthful to speak of military convenience or even personal convenience. I do not want it to cloak slackness or indifference.”).

requirement that enemy property may only be seized or destroyed if imperatively required by the necessities of war.⁶⁰³

5.18.4 Other Feasible Precautions to Reduce the Risk of Harm to Cultural Property. Other feasible precautions should be taken to reduce the risk of harm to cultural property.⁶⁰⁴ Such precautions may include:

- determining the location of cultural property and disseminating that information among the armed forces;⁶⁰⁵
- compiling and promulgating lists of cultural property and areas that are not to be attacked;⁶⁰⁶
- establishing civil authorities to assume responsibility for planning and acting to ensure respect for cultural property under its control;⁶⁰⁷
- physically shielding cultural property from harm; and
- establishing refuges and evacuating movable cultural property to them.⁶⁰⁸

5.18.5 Refraining From Any Act of Hostility. In general, acts of hostility may not be directed against cultural property, its immediate surroundings, or appliances in use for its

⁶⁰³ Refer to § 5.17.2 (Enemy Property – Military Necessity Standard). For general discussion of military necessity refer to § 2.2 (Military Necessity).

⁶⁰⁴ Refer to § 5.2.3 (Affirmative Duties to Take Feasible Precautions for the Protection of Civilians and Other Protected Persons and Objects).

⁶⁰⁵ For example, General Dwight D. Eisenhower, Commander-in-Chief, U.S. Army, *Memorandum Regarding the Protection of Historical Monuments in Italy*, Dec. 29, 1943, X WHITEMAN'S DIGEST 438 (§13) ("It is a responsibility of higher commanders to determine through A.M.G. Officers the locations of historical monuments whether they be immediately ahead of our front lines or in areas occupied by us. This information passed to lower echelons through normal channels places the responsibility on all Commanders of complying with the spirit of this letter.").

⁶⁰⁶ For example, Strobe Talbot, *Letter of Submittal*, May 12, 1998, MESSAGE FROM THE PRESIDENT TRANSMITTING THE 1954 HAGUE CULTURAL PROPERTY CONVENTION VIII (1999) ("During Operation Desert Storm, for example, intelligence resources were utilized to look for cultural property in order to properly identify it. Target intelligence officers identified cultural property or cultural property sites in Iraq; a 'no-strike' target list was prepared, placing known cultural property off limits from attack, as well as some otherwise legitimate targets if their attack might place nearby cultural property at risk of damage."); 7th Air Force Operations Order 71-17 (Rules of Engagement), reprinted in 121 CONGRESSIONAL RECORD 17555 (Jun. 6, 1975) (specifying during the Vietnam War "Angkor Wat Park: This area will not be attacked for any reason. Under no circumstances will [forward air controllers] control or assist air strikes of any nation within the Angkor Wat area. Should a [forward air controller] observe such a strike being made, he will advise the [Forces Armée Nationale Khmer] ground commander and depart the area immediately. Other Areas of Cultural Value: Except during [combat search and rescue] operations, no U.S. air strikes will be made within 1,000 meters of any of the areas of cultural value [nearly 100 other sites specifically listed in the directive]. U.S. [forward air controllers] will not control or assist air strikes of any nation within 1,000 meters of these areas regardless of [Forces Armée Nationale Khmer] request of validation.").

⁶⁰⁷ These include museum curators and staff, local fire and law enforcement authorities, and civil defense personnel.

⁶⁰⁸ Refer to § 5.18.1.3 (Buildings Intended to Preserve Cultural Property).

protection.⁶⁰⁹ Acts of hostility may, however, be directed against cultural property, its immediate surroundings, or appliances in use for its protection, when military necessity imperatively requires such acts.⁶¹⁰

5.18.5.1 *Imperative Military Necessity Waiver.* Acts of hostility may be directed against cultural property, its immediate surroundings, or appliances in use for its protection when military necessity imperatively requires such acts. The requirement that military necessity imperatively require such acts should not be confused with convenience or be used to cloak slackness or indifference to the preservation of cultural property.⁶¹¹ This waiver of obligations with respect to cultural property is analogous to the requirement that enemy property may only be seized if imperatively required by the necessities of war.⁶¹²

For example, if cultural property is being used by an opposing force for military purposes, then military necessity generally would imperatively require its seizure or destruction.⁶¹³

Similarly, if an opposing force uses cultural property and its immediate surroundings to protect military objectives, then the attack of those military objectives may be imperatively required by military necessity.⁶¹⁴ Or, if a military objective was located near cultural property, the protection afforded the area surrounding the cultural property could be subject to waiver for reasons of imperative military necessity such that the attack of the military objective would be permissible, despite its proximity to cultural property.⁶¹⁵

⁶⁰⁹ 1954 HAGUE CULTURAL PROPERTY CONVENTION art. 4(1) (“The High Contracting Parties undertake to respect cultural property situated within their own territory as well as within the territory of other High Contracting Parties ... by refraining from any act of hostility directed against such property.”).

⁶¹⁰ 1954 HAGUE CULTURAL PROPERTY CONVENTION art. 4(2) (“The obligations mentioned in paragraph 1 of the present Article may be waived only in cases where military necessity imperatively requires such a waiver.”).

⁶¹¹ Refer to footnote 602 in § 5.18.3.1 (Imperative Military Necessity Waiver).

⁶¹² Refer to § 5.17.2 (Enemy Property – Military Necessity Standard). For general discussion of military necessity, refer to § 2.2 (Military Necessity).

⁶¹³ Cf. ROERICH PACT art. 5 (“The monuments and institutions mentioned in article I shall cease to enjoy the privileges recognized in the present treaty in case they are made use of for military purposes.”); HAGUE IV REG. art. 27 (“In sieges and bombardments all necessary steps must be taken to spare, as far as possible, buildings dedicated to religion, art, science, or charitable purposes, historic monuments, hospitals, and places where the sick and wounded are collected, provided they are not being used at the time for military purposes.”) (emphasis added); HAGUE IX art. 5 (“In bombardments by naval forces all the necessary measures must be taken by the commander to spare as far as possible sacred edifices, buildings used for artistic, scientific, or charitable purposes, historic monuments, hospitals, and places where the sick or wounded are collected, on the understanding that they are not used at the same time for military purposes.”) (emphasis added). Compare § 5.18.8.2 (Conditions for the Granting of Special Protection – No Use for Military Purposes).

⁶¹⁴ FINAL REPORT ON THE PERSIAN GULF WAR 610 (“While Article 4(1) of the 1954 Hague Convention provides specific protection for cultural property, Article 4(2) permits waiver of that protection where military necessity makes such a waiver imperative; such ‘imperative military necessity’ can occur when an enemy uses cultural property and its immediate surroundings to protect legitimate military targets, in violation of Article 4(1).”).

⁶¹⁵ Strobe Talbot, *Letter of Submittal*, May 12, 1998, MESSAGE FROM THE PRESIDENT TRANSMITTING THE 1954 HAGUE CULTURAL PROPERTY CONVENTION VIII (1999) (During Operation DESERT STORM, when “attacking legitimate targets in the vicinity of cultural objects, to the extent possible, weapons were selected that would

Even where the waiver of the protection afforded cultural property, its immediate surroundings, or appliances in use for its protection may be warranted for reasons of imperative military necessity, the risk of harm to the cultural property must be considered in a proportionality analysis⁶¹⁶ and feasible precautions should be taken to reduce the risk of harm to the cultural property.⁶¹⁷ And, even where waiver of the protection of cultural property may be warranted as a matter of law, as a matter of policy, decision-makers may still seek to refrain from harming cultural property.⁶¹⁸

5.18.6 Prohibition Against and Prevention of Theft, Pillage, Misappropriation, or Acts of Vandalism, and Prohibition Against Requisition of Foreign Cultural Property. Any form of theft, pillage, or misappropriation of, and any acts of vandalism directed against, cultural property are prohibited.⁶¹⁹ In addition, Parties to the 1954 Hague Cultural Property Convention shall refrain from requisitioning movable cultural property situated in the territory of another Party to the 1954 Hague Cultural Property Convention.

There are no “imperative military necessity” waivers from these obligations.

Pillage is prohibited, even if the property does not constitute cultural property.⁶²⁰

5.18.6.1 *Obligation to Stop or Prevent Theft, Pillage, or Misappropriation of, and Acts of Vandalism Against, Cultural Property.* Military commanders have an obligation to take reasonable measures to prevent or stop any form of theft, pillage, or misappropriation of, and any acts of vandalism directed against, cultural property. This obligation may also be viewed as part of the obligation to take feasible precautions to reduce the risk of harm to cultural property.⁶²¹

What efforts would be reasonable would depend on a variety of factors, such as availability of forces, the commander’s mission, and enemy threats. What efforts would be

accomplish destruction of the target while minimizing the risk of collateral damage to nearby cultural or civilian property. However, the proximity of military objectives to cultural property did not render those military objectives immune from attack, nor would it under the [1954 Hague Cultural Property] Convention.”).

⁶¹⁶ Refer to § 5.12 (Proportionality – Prohibition on Attacks Expected to Cause Excessive Incidental Harm).

⁶¹⁷ Refer to § 5.11 (Proportionality – Feasible Precautions in Planning and Conducting Attacks to Reduce the Risk of Harm to Protected Persons and Objects).

⁶¹⁸ For example, H. STIMSON, ON SERVICE IN PEACE AND WAR 625 (1948) (“With President Truman’s warm support I struck off the list of suggest targets the city of Kyoto. Although it was a target of considerable military importance, it had been the ancient capital of Japan and was a shrine of Japanese art and culture. We determined that it should be spared. I approved four other targets including the cities of Hiroshima and Nagasaki.”).

⁶¹⁹ 1954 HAGUE CULTURAL PROPERTY CONVENTION art. 4(3) (“The High Contracting Parties further undertake to prohibit, prevent and, if necessary, put a stop to any form of theft, pillage or misappropriation of, and any acts of vandalism directed against, cultural property.”). See also LIEBER CODE art. 36 (“In no case shall [classical works of art, libraries, scientific collections, or precious instruments] be sold or given away, if captured by the armies of the United States, nor shall they ever be privately appropriated, or wantonly destroyed or injured.”).

⁶²⁰ Refer to § 5.17.4 (Pillage Prohibited).

⁶²¹ Refer to § 5.18.4 (Other Feasible Precautions to Reduce the Risk of Harm to Cultural Property).

reasonable would also depend on the information available to the commander at the time.⁶²²

Some measures to ensure adherence to this obligation may include training members of the armed forces and persons authorized to accompany the armed forces on the protection of cultural property in general (and the prohibition of theft, pillage, or vandalism in particular) as part of general procedures for the dissemination and implementation of the law of war.⁶²³ Other measures may include: (1) issuing and enforcing orders to the same effect;⁶²⁴ (2) investigating alleged or suspected offenses and taking disciplinary or punitive action, as appropriate under U.S. law;⁶²⁵ and (3) taking measures to facilitate the recovery and return of stolen or misappropriated cultural property.

Although it may not always be feasible to prevent or stop theft, pillage, or misappropriation of, or acts of vandalism against, cultural property, efforts to identify cultural property within an area of operations and to secure it from theft or pillage are a prudent part of the planning process of military operations. For example, such efforts may deny opposing forces the opportunity to exploit harm to cultural property for propaganda purposes.

5.18.6.2 Prohibition Against Requisition of Movable Cultural Property Situated in the Territory of Another Party to the 1954 Hague Cultural Property Convention. Parties to the 1954 Hague Cultural Property Convention shall refrain from requisitioning movable cultural property situated in the territory of another Party to the 1954 Hague Cultural Property Convention.⁶²⁶

This rule makes no distinction between movable property of nationals of the country in which it is located and property of nationals of another High Contracting Party. As such, it would also protect from requisition any movable property from a third State temporarily on loan for an exhibition within the territory of a State participating in an armed conflict.⁶²⁷

5.18.7 Marking of Cultural Property With the Distinctive Emblem. Cultural property

⁶²² Refer to § 5.3 (Assessing Information Under the Law of War).

⁶²³ Refer to § 18.6 (Dissemination, Study, and Other Measures to Facilitate Understanding of Duties Under the Law of War).

⁶²⁴ For example, General John P. Abizaid, U.S. Central Command, General Order 1B (GO-1B), Prohibited Activities for U.S. Department of Defense Personnel Present Within the United States Central Command (USCENTCOM) Area of Responsibility (AOR), ¶2h (Mar. 13, 2006) (prohibiting “[r]emoving, possessing, selling, defacing or destroying archaeological artifacts or national treasures.”).

⁶²⁵ Refer to § 18.19 (Discipline in National Jurisdictions of Individuals for Violations of the Law of War).

⁶²⁶ 1954 HAGUE CULTURAL PROPERTY CONVENTION art. 4(3) (“They [the High Contracting Parties] shall, refrain from requisitioning movable cultural property situated in the territory of another High Contracting Party.”).

⁶²⁷ JIRI TOMAN, CULTURAL PROPERTY IN WARTIME 71 (1996) (“[T]he prohibition of requisitioning should also apply to property existing on the territory of a High Contracting Party but belonging to the nationals of another High Contracting Party, as in the case of the collections of the historical or scientific institutes in Athens, Cairo, Paris, and Rome. The same guarantee would also apply in respect of movable cultural property made available on loan for an exhibition ...”).

may bear a distinctive emblem so as to facilitate its recognition.⁶²⁸ This distinctive emblem is described in Article 16 of the 1954 Hague Cultural Property Convention.⁶²⁹ There is a degree of discretion as to the placing of the distinctive emblem and its degree of visibility.⁶³⁰ The emblem may be displayed on flags or armlets, and it may be painted on an object or represented in any other appropriate form.⁶³¹

5.18.7.1 *Distinctive Emblem Facilitates Identification Rather Than Confers Status as Such.* As is the case with distinctive emblems for medical personnel, units, transport, and facilities, the distinctive emblem for cultural property facilitates identification, rather than confers cultural property status as such.⁶³² For example, cultural property may be protected, even though it is not marked with the distinctive emblem. On the other hand, a distinctive emblem placed on property does not make that property cultural property (and grant corresponding protections) if that property does not meet the criteria for cultural property (or the corresponding criteria for protection).⁶³³

5.18.7.2 *Display of the Distinctive Emblem for Cultural Property – Once Versus Three Times.* In some cases, the distinctive emblem for cultural property is to be used once, while in other cases, the distinctive emblem for cultural property is to be displayed three times in a triangular formation (one shield below the other two shields).⁶³⁴

The distinctive emblem for cultural property used once may only be used as a means of identification of:

- cultural property not under special protection;
- the persons responsible for the duties of control in accordance with the Regulations for the Execution of the 1954 Hague Cultural Property Convention;⁶³⁵

⁶²⁸ 1954 HAGUE CULTURAL PROPERTY CONVENTION art. 6 (“In accordance with the provisions of Article 16, cultural property may bear a distinctive emblem so as to facilitate its recognition.”).

⁶²⁹ 1954 HAGUE CULTURAL PROPERTY CONVENTION art. 16(1) (“The distinctive emblem of the Convention shall take the form of a shield, pointed below, per saltire blue and white (a shield consisting of a royal-blue square, one of the angles of which forms the point of the shield, and of a royal-blue triangle above the square, the space on either side being taken up by a white triangle).”).

⁶³⁰ REGULATIONS FOR THE EXECUTION OF THE 1954 HAGUE CULTURAL PROPERTY CONVENTION art. 20(1) (“The placing of the distinctive emblem and its degree of visibility shall be left to the discretion of the competent authorities of each High Contracting Party.”).

⁶³¹ REGULATIONS FOR THE EXECUTION OF THE 1954 HAGUE CULTURAL PROPERTY CONVENTION art. 20(1) (“It may be displayed on flags or armlets; it may be painted on an object or represented in any other appropriate form.”).

⁶³² Compare § 7.15 (Display of the Distinctive Emblem to Facilitate Identification).

⁶³³ Refer to § 5.18.1 (Definition of Cultural Property).

⁶³⁴ 1954 HAGUE CULTURAL PROPERTY CONVENTION art. 16(2) (“The emblem shall be used alone, or repeated three times in a triangular formation (one shield below), under the conditions provided for in Article 17.”).

⁶³⁵ Refer to § 4.14 (Personnel Engaged in Duties Related to the Protection of Cultural Property).

- the personnel engaged in the protection of cultural property;⁶³⁶ and
- the identity cards mentioned in the Regulations for the Execution of the 1954 Hague Cultural Property Convention.⁶³⁷

The distinctive emblem, repeated three times, may be used only as a means of identification of:⁶³⁸

- immovable cultural property under special protection;⁶³⁹
- the transport of cultural property under the special protection or in urgent cases;⁶⁴⁰ and
- improvised refuges, under the conditions provided for in the Regulations for the Execution of the 1954 Hague Cultural Property Convention.⁶⁴¹

5.18.7.3 *Display of the Distinctive Emblem on Immovable Cultural Property.* The distinctive emblem for cultural property may not be placed on any immovable cultural property unless at the same time there is displayed an authorization duly dated and signed by the competent authority of the relevant State.⁶⁴²

5.18.7.4 *Other Uses of the Distinctive Emblem for Cultural Property Prohibited During Armed Conflict.* During armed conflict, the use of the distinctive emblem for cultural property in any other cases than those mentioned in the 1954 Hague Cultural Property Convention, and the use for any purpose whatsoever of a sign resembling the distinctive emblem, is forbidden.⁶⁴³

⁶³⁶ Refer to § 4.14 (Personnel Engaged in Duties Related to the Protection of Cultural Property).

⁶³⁷ 1954 HAGUE CULTURAL PROPERTY CONVENTION art. 17(2) (“The distinctive emblem may be used alone only as a means of identification of: (a) cultural property not under special protection; (b) the persons responsible for the duties of control in accordance with the Regulations for the execution of the Convention; (c) the personnel engaged in the protection of cultural property; (d) the identity cards mentioned in the Regulations for the execution of the Convention.”).

⁶³⁸ 1954 HAGUE CULTURAL PROPERTY CONVENTION art. 17(1) (“The distinctive emblem repeated three times may be used only as a means of identification of: (a) immovable cultural property under special protection; (b) the transport of cultural property under the conditions provided for in Articles 12 and 13; (c) improvised refuges, under the conditions provided for in the Regulations for the execution of the Convention.”).

⁶³⁹ Refer to § 5.18.8 (Special Protection for Certain Cultural Property).

⁶⁴⁰ Refer to § 5.18.9 (Transport of Cultural Property).

⁶⁴¹ Refer to § 5.18.8 (Special Protection for Certain Cultural Property).

⁶⁴² 1954 HAGUE CULTURAL PROPERTY CONVENTION art. 17(4) (“The distinctive emblem may not be placed on any immovable cultural property unless at the same time there is displayed an authorization duly dated and signed by the competent authority of the High Contracting Party.”).

⁶⁴³ 1954 HAGUE CULTURAL PROPERTY CONVENTION art. 17(3) (“During an armed conflict, the use of the distinctive emblem in any other cases than those mentioned in the Cultural Property Convention, and the use for any purpose whatever of a sign resembling the distinctive emblem, shall be forbidden.”). Consider AP I art. 38(1)(a) (“It is also prohibited to misuse deliberately in an armed conflict other internationally recognized protective emblems, signs or signals, including the flag of truce, and the protective emblem of cultural property.”).

5.18.8 Special Protection for Certain Cultural Property. A highly limited category of cultural property receives special protection by its entry in an International Register.⁶⁴⁴

The standards governing the protection of such cultural property are essentially the same as the standards governing the protection of cultural property under customary law⁶⁴⁵ and the protection afforded all cultural property under the 1954 Hague Cultural Property Convention.⁶⁴⁶ However, the special procedures applicable to cultural property under special protection facilitate its protection beyond that afforded cultural property that is not under special protection.

Special protection can apply to:⁶⁴⁷

- a limited number of refuges intended to shelter movable cultural property in the event of armed conflict;
- a limited number of centers containing monuments and other immovable property of very great importance; and
- improvised refuges under the procedures specified in the Regulations for the Execution of the 1954 Hague Cultural Property Convention.⁶⁴⁸

⁶⁴⁴ 1954 HAGUE CULTURAL PROPERTY CONVENTION art. 8(6) (“Special protection is granted to cultural property by its entry in the ‘International Register of Cultural Property under Special Protection’. This entry shall only be made, in accordance with the provisions of the present Convention and under the conditions provided for in the Regulations for the execution of the Convention.”).

⁶⁴⁵ See United States, *Statement on Ratification of the 1954 Hague Cultural Property Convention*, Mar. 13, 2009, 2575 UNTS 7, 8 (“It is the understanding of the United States of America that ‘special protection’, as defined in Chapter II of the Convention, codifies customary international law in that it, first, prohibits the use of any cultural property to shield any legitimate military targets from attack and, second, allows all property to be attacked using any lawful and proportionate means, if required by military necessity and notwithstanding possible collateral damage to such property.”).

⁶⁴⁶ Compare 1954 HAGUE CULTURAL PROPERTY CONVENTION art. 9 (“The High Contracting Parties undertake to ensure the immunity of cultural property under special protection by refraining, from the time of entry in the International Register, from any act of hostility directed against such property and, except for the cases provided for in paragraph 5 of Article 8, from any use of such property or its surroundings for military purposes.”) with 1954 HAGUE CULTURAL PROPERTY CONVENTION art. 4(1) (“The High Contracting Parties undertake to respect cultural property situated within their own territory as well as within the territory of other High Contracting Parties by refraining from any use of the property and its immediate surroundings or of the appliances in use for its protection for purposes which are likely to expose it to destruction or damage in the event of armed conflict; and by refraining from any act of hostility directed against such property.”).

⁶⁴⁷ 1954 HAGUE CULTURAL PROPERTY CONVENTION art. 8(1) (“There may be placed under special protection a limited number of refuges intended to shelter movable cultural property in the event of armed conflict, of centres containing monuments and other immovable cultural property of very great importance, provided that they: (a) are situated at an adequate distance from any large industrial centre or from any important military objective constituting a vulnerable point, such as, for example, an aerodrome, broadcasting station, establishment engaged upon work of national defence, a port or railway station of relative importance or a main line of communication; (b) are not used for military purposes.”).

⁶⁴⁸ REGULATIONS FOR THE EXECUTION OF THE 1954 HAGUE CULTURAL PROPERTY CONVENTION art. 11 (“1. If, during an armed conflict, any High Contracting Party is induced by unforeseen circumstances to set up an improvised refuge and desires that it should be placed under special protection, it shall communicate this fact

Property granted special protection must be marked with the distinctive emblem for special protection, and opened to international control as provided for in the Regulations for the Execution of the 1954 Hague Cultural Property Convention.⁶⁴⁹

5.18.8.1 *Conditions for the Granting of Special Protection – Adequate Distance From Military Objectives*. In order to qualify for special protection, these categories of property must: (1) be situated an adequate distance from any large industrial center, or from any important military objective constituting a vulnerable point; and (2) not be used for military purposes.

The property must be situated at an adequate distance from any large industrial center or from any important military objective, such as an airport, railway station, or marshalling yards, port facilities, key lines of communication, command and control activity, or other defense facility.⁶⁵⁰ The term “adequate distance” is not defined within the 1954 Hague Cultural Property Convention, but relies upon determinations and actions by the State Party requesting “special protection” status, and by States Parties in determining whether the distance set forth by the requesting nation is sufficient to support approval of the request.

Immovable cultural property of very great importance adjacent to a military objective may retain its special protection status provided, in the event of armed conflict, all use of the military objective ceases.⁶⁵¹ For example, if the military objective in question is an airport, port facility, or railway station or marshaling yards, all activity must cease, and military traffic must be diverted, in order for the site to maintain its protected status.

A refuge for storing and protecting movable cultural property may also be placed under

forthwith to the Commissioner-General accredited to that Party. 2. If the Commissioner-General considers that such a measure is justified by the circumstances and by the importance of the cultural property sheltered in this improvised refuge, he may authorize the High Contracting Party to display on such refuge the distinctive emblem defined in Article 16 of the Convention. He shall communicate his decision without delay to the delegates of the Protecting Powers who are concerned, each of whom may, within a time-limit of 30 days, order the immediate withdrawal of the emblem. 3. As soon as such delegates have signified their agreement or if the time-limit of 30 days has passed without any of the delegates concerned having made an objection, and if, in the view of the Commissioner-General, the refuge fulfils the conditions laid down in Article 8 of the Convention, the Commissioner-General shall request the Director-General of the United Nations Educational, Scientific and Cultural Organization to enter the refuge in the Register of Cultural Property under Special Protection.”).

⁶⁴⁹ 1954 HAGUE CULTURAL PROPERTY CONVENTION art. 10 (“During an armed conflict, cultural property under special protection shall be marked with the distinctive emblem described in Article 16, and shall be open to international control as provided for in the Regulations for the execution of the Convention.”).

⁶⁵⁰ 1954 HAGUE CULTURAL PROPERTY CONVENTION art. 8(1) (Refuges and centers may only be placed under special protection if “they: (a) are situated at an adequate distance from any large industrial centre or from any important military objective constituting a vulnerable point, such as, for example, an aerodrome, broadcasting station, establishment engaged upon work of national defence, a port or railway station of relative importance or a main line of communication.”). Refer to § 5.6 (Military Objectives).

⁶⁵¹ 1954 HAGUE CULTURAL PROPERTY CONVENTION art. 8(5) (“If any cultural property mentioned in paragraph 1 of the present Article is situated near an important military objective as defined in the said paragraph, it may nevertheless be placed under special protection if the High Contracting Party asking for that protection undertakes, in the event of armed conflict, to make no use of the objective and particularly, in the case of a port, railway station or aerodrome, to divert all traffic therefrom. In that event, such diversion shall be prepared in time of peace.”).

special protection, whatever its location, if it is so constructed that, in all probability, it will not be damaged by bombs.⁶⁵²

5.18.8.2 *Conditions for the Granting of Special Protection – No Use for Military Purposes.* A “center containing monuments”⁶⁵³ shall be deemed to be used for military purposes whenever it is used for the movement of military personnel or material, even in transit. The same shall apply whenever activities directly connected with military operations, the stationing of military personnel, or the production of war material are carried on within the center.⁶⁵⁴

The guarding of cultural property under special protection by armed custodians specially empowered to do so, or the presence, in the vicinity of such cultural property, of police forces normally responsible for the maintenance of public order, however, shall not be deemed to be use for military purposes.⁶⁵⁵ Such activities may fulfill the obligation to safeguard cultural property, especially against looters.⁶⁵⁶ Employment of law enforcement personnel to protect cultural property is analogous to activities of armed military medical personnel deployed in and around military medical units and facilities in order to provide security from criminal acts.⁶⁵⁷

5.18.8.3 *Marking of Cultural Property Under Special Protection.* The distinctive emblem for cultural property is to be displayed three times in a triangular formation to indicate cultural property under special protection.⁶⁵⁸

The emblem shall be visible from the ground: (a) at regular intervals sufficient to indicate clearly the perimeter of a center containing monuments under special protection; and (b) at the entrance to other immovable cultural property under special protection.⁶⁵⁹

5.18.8.4 *Withdrawal of Special Protection.* If a Party to 1954 Hague Cultural

⁶⁵² 1954 HAGUE CULTURAL PROPERTY CONVENTION art. 8(2) (“A refuge for movable cultural property may also be placed under special protection, whatever its location, if it is so constructed that, in all probability, it will not be damaged by bombs.”).

⁶⁵³ Refer to § 5.18.1.4 (Centers Containing Monuments).

⁶⁵⁴ 1954 HAGUE CULTURAL PROPERTY CONVENTION art. 8(3) (“A centre containing monuments shall be deemed to be used for military purposes whenever it is used for the movement of military personnel or material, even in transit. The same shall apply whenever activities directly connected with military operations, the stationing of military personnel, or the production of war material are carried on within the centre.”).

⁶⁵⁵ 1954 HAGUE CULTURAL PROPERTY CONVENTION art. 8(4) (“The guarding of cultural property mentioned in paragraph 1 above by armed custodians specially empowered to do so, or the presence, in the vicinity of such cultural property, of police forces normally responsible for the maintenance of public order shall not be deemed to be used for military purposes.”). Compare § 4.23.1 (Police as Civilians).

⁶⁵⁶ Refer to § 5.18.6.1 (Obligation to Stop or Prevent Theft, Pillage, or Misappropriation of, and Acts of Vandalism Against, Cultural Property).

⁶⁵⁷ Refer to § 7.10.3.5 (Use of Weapons in Self-Defense or Defense of the Wounded and Sick).

⁶⁵⁸ Refer to § 5.18.7.2 (Display of the Distinctive Emblem for Cultural Property – Once Versus Three Times).

⁶⁵⁹ REGULATIONS FOR THE EXECUTION OF THE 1954 HAGUE CULTURAL PROPERTY CONVENTION art. 20(2) (“The emblem shall be visible from the ground: (a) at regular intervals sufficient to indicate clearly the perimeter of a centre containing monuments under special protection; (b) at the entrance to other immovable cultural property under special protection.”).

Property Convention commits, in respect of any item of cultural property under special protection, a violation of its obligations to refrain from any act of hostility directed against such property and from use of such property or its surroundings for military purposes, the opposing Party shall, so long as this violation persists, be released from the obligation to ensure the immunity of the property concerned.⁶⁶⁰ Nevertheless, whenever possible, the latter Party shall first request the cessation of such violation within a reasonable time.⁶⁶¹

Apart from violations by the opposing Party, immunity shall be withdrawn from cultural property under special protection only in exceptional cases of unavoidable military necessity, and only for such time as that necessity continues.⁶⁶² Such necessity can be established only by an officer commanding a force the equivalent of a division in size or larger.⁶⁶³ However, such necessity should not be construed to impose an unreasonable and disproportionate responsibility on the attacker to avoid damage to cultural property.⁶⁶⁴ Moreover, all property may be attacked using any lawful and proportionate means if required by military necessity and notwithstanding possible collateral damage to such property.⁶⁶⁵

Whenever circumstances permit, the opposing Party shall be notified, a reasonable time in advance, of the decision to withdraw immunity.⁶⁶⁶ The Party withdrawing immunity is also to notify the Commissioner-General for Cultural Property as soon as possible as provided for in the Regulations for the Execution of the 1954 Hague Cultural Property Convention, in writing,

⁶⁶⁰ 1954 HAGUE CULTURAL PROPERTY CONVENTION art. 11(1) (“If one of the High Contracting Parties commits, in respect of any item of cultural property under special protection, a violation of the obligations under Article 9, the opposing Party shall, so long as this violation persists, be released from the obligation to ensure the immunity of the property concerned.”).

⁶⁶¹ 1954 HAGUE CULTURAL PROPERTY CONVENTION art. 11(1) (“Nevertheless, whenever possible, the latter Party shall first request the cessation of such violation within a reasonable time.”).

⁶⁶² 1954 HAGUE CULTURAL PROPERTY CONVENTION art. 11(2) (“Apart from the case provided for in paragraph I of the present Article, immunity shall be withdrawn from cultural property under special protection only in exceptional cases of unavoidable military necessity, and only for such time as that necessity continues.”).

⁶⁶³ 1954 HAGUE CULTURAL PROPERTY CONVENTION art. 11(2) (“Such necessity can be established only by the officer commanding a force the equivalent of a division in size or larger.”).

⁶⁶⁴ *Section-by-Section Analysis of Provisions*, 6, Tab 1 to Strobe Talbot, *Letter of Submittal*, May 12, 1998, MESSAGE FROM THE PRESIDENT TRANSMITTING THE 1954 HAGUE CULTURAL PROPERTY CONVENTION 7 (“Due to ambiguous modifiers such as those in the Article 11 phrase ‘exceptional cases of ‘unavoidable’ military necessity,’ the provisions may be misconstrued to impose an unreasonable and disproportionate responsibility on the attacker to avoid damage to cultural property. Clarification would help avoid a suggestion that strict compliance with the Convention would mean that any collateral damage would constitute a violation of the Convention.”).

⁶⁶⁵ See United States, *Statement on Ratification of the 1954 Hague Cultural Property Convention*, Mar. 13, 2009, 2575 UNTS 7, 8 (“It is the understanding of the United States of America that ‘special protection’, as defined in Chapter II of the Convention, ... allows all property to be attacked using any lawful and proportionate means, if required by military necessity and notwithstanding possible collateral damage to such property.”).

⁶⁶⁶ 1954 HAGUE CULTURAL PROPERTY CONVENTION art. 11(2) (“Whenever circumstances permit, the opposing Party shall be notified, a reasonable time in advance, of the decision to withdraw immunity.”).

stating the reasons for withdrawing immunity.⁶⁶⁷

5.18.9 Transport of Cultural Property. The transport of cultural property may take place: (1) under special protection through procedures provided in the Regulations for the Execution of the 1954 Hague Cultural Property Convention; and (2) in urgent cases without such procedures. Additional rules apply to the transport of cultural property in occupied territory.⁶⁶⁸

The distinctive emblem for cultural property should be placed on vehicles of transport so as to be clearly visible in daylight from the air as well as from the ground.⁶⁶⁹

5.18.9.1 Transport Under Special Protection. Transport exclusively engaged in the transfer of cultural property, whether within a territory or to another territory, may, at the request of the State concerned, take place under special protection in accordance with the conditions specified in the Regulations for the Execution of the 1954 Hague Cultural Property Convention.⁶⁷⁰ No acts of hostility may be directed against transport under special protection.⁶⁷¹

A request for such transport should be addressed to the Commissioner-General for Cultural Property and should contain all relevant information, including the reason for the transfer, the approximate number and importance of objects to be transferred, their present location, the intended destination, the means of transport to be used, the route to be followed, and the date proposed for transfer.⁶⁷² The Commissioner-General for Cultural Property determines whether such transfer is justified and notifies parties to the conflict concerned of the transfer.⁶⁷³

⁶⁶⁷ 1954 HAGUE CULTURAL PROPERTY CONVENTION art. 11(3) (“The Party withdrawing immunity shall, as soon as possible, so inform the Commissioner-General for cultural property provided for in the Regulations for the execution of the Convention, in writing, stating the reasons.”).

⁶⁶⁸ Refer to § 11.19 (Protection of Cultural Property During Occupation).

⁶⁶⁹ REGULATIONS FOR THE EXECUTION OF THE 1954 HAGUE CULTURAL PROPERTY CONVENTION art. 20(2) (“However, without prejudice to any possible fuller markings, the emblem shall, in the event of armed conflict and in the cases mentioned in Articles 12 and 13 of the Convention, be placed on vehicles of transport so as to be clearly visible in daylight from the air as well as from the ground.”).

⁶⁷⁰ 1954 HAGUE CULTURAL PROPERTY CONVENTION art. 12(1) (“Transport exclusively engaged in the transfer of cultural property, whether within a territory or to another territory, may, at the request of the High Contracting Party concerned, take place under special protection in accordance with the conditions specified in the Regulations for the execution of the Convention.”).

⁶⁷¹ 1954 HAGUE CULTURAL PROPERTY CONVENTION art. 12(3) (“The High Contracting Parties shall refrain from any act of hostility directed against transport under special protection.”).

⁶⁷² REGULATIONS FOR THE EXECUTION OF THE 1954 HAGUE CULTURAL PROPERTY CONVENTION art. 17(1) (“The request mentioned in paragraph 1 of Article 12 of the Convention shall be addressed to the Commissioner-General for Cultural Property. It shall mention the reasons on which it is based and specify the approximate number and the importance of the objects to be transferred, their present location, the location now envisaged, the means of transport to be used, the route to be followed, the date proposed for the transfer, and any other relevant information.”).

⁶⁷³ REGULATIONS FOR THE EXECUTION OF THE 1954 HAGUE CULTURAL PROPERTY CONVENTION art. 17(2) (“If the Commissioner-General, after taking such opinions as he deems fit, considers that such transfer is justified, he shall consult those delegates of the Protecting Powers who are concerned, on the measures proposed for carrying it out. Following such consultation, he shall notify the Parties to the conflict concerned of the transfer, including in such notification all useful information.”).

Transport under special protection shall take place under the international supervision provided for in the Regulations for the Execution of the 1954 Hague Cultural Property Convention and shall display the distinctive emblem described in Article 16.⁶⁷⁴ The distinctive emblem for cultural property is to be displayed repeated three times in a triangular formation to indicate that the transport occurs under special protection.⁶⁷⁵

The transport of cultural property to the territory of another State is subject to additional rules.⁶⁷⁶

5.18.9.2 *Transport in Urgent Cases.* If a State that is a Party to the 1954 Hague Cultural Property Convention considers that the safety of certain cultural property requires transfer, and that the matter is of such urgency that the request procedure to the Commissioner-General for Cultural Property cannot be followed, the transport may display the distinctive emblem for cultural property, provided that a request for transport under special protection has not already been made and refused.⁶⁷⁷ As far as possible, notification of transfer should be made to the opposing Parties.⁶⁷⁸ Nevertheless, transport conveying cultural property to the territory of another State may not display the distinctive emblem unless immunity has been expressly granted to it.⁶⁷⁹

⁶⁷⁴ 1954 HAGUE CULTURAL PROPERTY CONVENTION art. 12(2) (“Transport under special protection shall take place under the international supervision provided for in the aforesaid Regulations and shall display the distinctive emblem described in Article 16.”). See also REGULATIONS FOR THE EXECUTION OF THE 1954 HAGUE CULTURAL PROPERTY CONVENTION art. 17(3) (“The Commission-General shall appoint one or more inspectors, who shall satisfy themselves that only the property stated in the request is to be transferred and that the transport is to be by the approved methods and bears the distinctive emblem. The inspector or inspectors shall accompany the property to its destination.”).

⁶⁷⁵ Refer to § 5.18.7.2 (Display of the Distinctive Emblem for Cultural Property – Once Versus Three Times).

⁶⁷⁶ See REGULATIONS FOR THE EXECUTION OF THE 1954 HAGUE CULTURAL PROPERTY CONVENTION art. 18 (“(a) [W]hile the cultural property remains on the territory of another State, that State shall be its depositary and shall extend to it as great a measure of care as that which it bestows upon its own cultural property of comparable importance; (b) the depositary State shall return the property only on the cessation of the conflict; such return shall be effected within six months from the date on which it was requested; (c) during the various transfer operations, and while it remains on the territory of another State, the cultural property shall be exempt from confiscation and may not be disposed of either by the depositor or by the depositary. Nevertheless, when the safety of the property requires it, the depositary may, with the assent of the depositor, have the property transported to the territory of a third country, under the conditions laid down in the present article; (d) the request for special protection shall indicate that the State to whose territory the property is to be transferred accepts the provisions of the present Article [of the Regulations for the Execution of the 1954 Hague Cultural Property Convention].”).

⁶⁷⁷ 1954 HAGUE CULTURAL PROPERTY CONVENTION art. 13(1) (“If a High Contracting Party considers that the safety of certain cultural property requires its transfer and that the matter is of such urgency that the procedure laid down in Article 12 cannot be followed, especially at the beginning of an armed conflict, the transport may display the distinctive emblem described in Article 16, provided that an application for immunity referred to in Article 12 has not already been made and refused.”).

⁶⁷⁸ 1954 HAGUE CULTURAL PROPERTY CONVENTION art. 13(1) (“As far as possible, notification of transfer should be made to the opposing Parties.”).

⁶⁷⁹ 1954 HAGUE CULTURAL PROPERTY CONVENTION art. 13(1) (“Nevertheless, transport conveying cultural property to the territory of another country may not display the distinctive emblem unless immunity has been expressly granted to it.”).

As far as possible, necessary precautions shall be taken to avoid acts of hostility directed against transport of cultural property under the protection provided in urgent cases and while displaying the distinctive emblem.⁶⁸⁰

5.18.9.3 *Immunity From Seizure, Capture, and Prize.* Transport of cultural property under special protection or under the protection provided in urgent cases is immune from seizure, placing in prize, or capture.⁶⁸¹ Means of transport exclusively engaged in the transport of such property is similarly immune.⁶⁸² However, such immunity does not limit the right of visit and search of such transportation or property.⁶⁸³

5.18.10 AP I Provision on the Protection of Objects Which Constitute the Cultural or Spiritual Heritage of Peoples. Article 53 of AP I provides certain protections to “historic monuments, works of art or places of worship which constitute the cultural or spiritual heritage of peoples.”⁶⁸⁴ This provision has been interpreted in a more limited fashion than its text would suggest.

For example, based on the statements of national delegations, including the U.S. delegation, during the negotiations of this provision, it appears that objects that qualify for special protection under Article 53 of AP I are substantially those that qualify for special protection under the 1954 Hague Cultural Property Convention.⁶⁸⁵

In addition, protection is waived when an object is used in support of the military effort or for military purposes.⁶⁸⁶ In addition, Canada has interpreted Article 53 to permit waiver of its

⁶⁸⁰ 1954 HAGUE CULTURAL PROPERTY CONVENTION art. 13(2) (“The High Contracting Parties shall take, so far as possible, the necessary precautions to avoid acts of hostility directed against the transport described in paragraph 1 of the present Article and displaying the distinctive emblem.”).

⁶⁸¹ 1954 HAGUE CULTURAL PROPERTY CONVENTION art. 14(1) (“Immunity from seizure, placing in prize, or capture shall be granted to: (a) cultural property enjoying the protection provided for in Article 12 or that provided for in Article 13; (b) the means of transport exclusively engaged in the transfer of such cultural property.”).

⁶⁸² *Compare* § 4.9.2.3 (Exclusively Engaged in Humanitarian Duties).

⁶⁸³ 1954 HAGUE CULTURAL PROPERTY CONVENTION art. 14(2) (“Nothing in the present Article shall limit the right of visit and search.”). *Refer to* § 15.13 (Belligerent Right of Visit and Search of Merchant Vessels).

⁶⁸⁴ AP I art. 53 (“Without prejudice to the provisions of the Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict of 14 May 1954, and of other relevant international instruments, it is prohibited: (a) to commit any acts of hostility directed against the historic monuments, works of art or places of worship which constitute the cultural or spiritual heritage of peoples; (b) to use such objects in support of the military effort; (c) to make such objects the object of reprisals.”).

⁶⁸⁵ BOTHE, PARTSCH, & SOLF, NEW RULES 333 (AP I art. 53, ¶2.5.1) (“In light of this understanding [by the U.S. delegation], it appears that the objects which qualify for special protection under Art. 53 are substantially those which would qualify for special protection under Art. 8 of the Hague Convention of 1954 without, however, imposing a requirement for the procedural measures required by that Convention to effect such special protection.”).

⁶⁸⁶ *See, e.g.,* France, *Statement on Ratification of AP I, translated in* SCHINDLER & TOMAN, THE LAWS OF ARMED CONFLICTS: A COLLECTION OF CONVENTIONS, RESOLUTIONS, AND OTHER DOCUMENTS 801 (2004) (“The Government of the French Republic declares that if the objects protected by Article 53 are used for military purposes, they will lose protection which they would otherwise have according to the provisions of the Protocol.”); Ireland, *Statement on Ratification of AP I*, Nov. 19, 1999, 2073 UNTS 28, 30 (“It is the understanding of Ireland in relation to the protection of cultural objects in Article 53 that if the objects protected by this Article are unlawfully used for military purposes they will thereby lose protection from attacks directed against such unlawful military

obligations when military necessity imperatively requires such waiver.⁶⁸⁷

5.19 SIEGES AND ENCIRCLED AREAS

It is lawful to besiege enemy forces. Commanders must seek to make arrangements to permit the passage of certain consignments and should seek to make arrangements for the passage of certain categories of civilians, and of religious and medical personnel. Different rules apply to blockade.⁶⁸⁸

5.19.1 Siege and Encirclement Permissible. It is lawful to besiege enemy forces, *i.e.*, to encircle them with a view towards inducing their surrender by cutting them off from reinforcements, supplies, and communications with the outside world.⁶⁸⁹ In particular, it is permissible to seek to starve enemy forces into submission.⁶⁹⁰

5.19.1.1 Belligerent Authority to Exercise Control in the Immediate Vicinity of Military Operations. The conduct of a siege or encirclement may require the imposition of measures of control to ensure that outsiders may not deliver supplies to enemy forces. Thus, the right to conduct a siege or encirclement impliedly recognizes the authority of the military commander to exercise control (*e.g.*, stopping, searching, and diverting traffic) over civilians and other persons in the immediate vicinity of military operations. For example, commanders may also impose certain restrictions on neutral vessels or aircraft (such as restricting communications) within the immediate vicinity of the belligerent's operations.⁶⁹¹

5.19.2 Removal and Passage of Certain Personnel – Vulnerable Civilians, Diplomatic and Consular Personnel, the Wounded and Sick, and Medical Personnel. Although the commander of the force laying siege has the right to forbid all communications and access between the besieged place and the outside, the parties to the conflict should attempt to conclude local

use.”); Italy, *Statement on Ratification of AP I*, Feb. 27, 1986, 1425 UNTS 438, 439 (“If and so long as the objectives protected by Article 53 are unlawfully used for military purposes, they will thereby lose protection.”); United Kingdom, *Statement on Ratification of AP I*, Jan. 28, 1998, 2020 UNTS 75, 77 (“The United Kingdom declares that if the objects protected by this Article are unlawfully used for military purposes they will thereby lose protection from attacks directed against such unlawful military uses.”).

⁶⁸⁷ Canada, *Statement on Ratification of AP I*, Nov. 20, 1990, 1591 UNTS 462, 465 (“It is the understanding of the Government of Canada in relation to Article 53 that: *a.* Such protection as is afforded by the Article will be lost during such time as the protected property is used for military purposes, and *b.* The prohibitions contained in subparagraphs (a) and (b) of this Article can only be waived when military necessity imperatively requires such a waiver.”).

⁶⁸⁸ Refer to § 13.10 (Blockade).

⁶⁸⁹ 1956 FM 27-10 (Change No. 1 1976) ¶40 (“Investment, bombardment, assault, and siege have always been recognized as legitimate means of land warfare.”). See also 2004 UK MANUAL ¶5.34.1 (“Attacks can be costly in casualties and incidental loss or damage. A more effective method may be to encircle enemy forces, cutting them off from supplies and communications with the outside world and forcing their surrender. The same is true of besieging a town or stronghold. Siege is a legitimate method of warfare as long as it is directed against enemy armed forces. It would be unlawful to besiege an undefended town since it could be occupied without resistance.”).

⁶⁹⁰ Refer to § 5.20 (Starvation).

⁶⁹¹ Refer to § 13.8 (Belligerent Control of the Immediate Area of Naval Operations); § 14.6 (Belligerent Control of Aviation in the Immediate Vicinity of Hostilities).

separated.¹⁴⁰

Measures shall be taken, if necessary, and whenever possible with the consent of their parents or persons who by law or custom are primarily responsible for their care, to remove children temporarily from the area in which hostilities are taking place to a safer area within the country and ensure that they are accompanied by persons responsible for their safety and well-being.¹⁴¹

The death penalty shall not be pronounced on persons who were under the age of eighteen years at the time of the offense and shall not be carried out on pregnant women or mothers of young children.¹⁴²

17.10.2 Children and Participation in Non-International Armed Conflict. Children who have not attained the age of fifteen years shall neither be recruited in the armed forces or groups nor allowed to take part in hostilities.¹⁴³ Children who are captured and who have taken a direct part in hostilities remain entitled to the special protections afforded to children.¹⁴⁴

The use or recruitment of child soldiers is an offense in U.S. law.¹⁴⁵ The United States has additional obligations as a Party to the Child Soldiers Protocol.¹⁴⁶

17.11 PROTECTION OF CULTURAL PROPERTY IN NIAC

17.11.1 Application of Certain Provisions of the 1954 Hague Cultural Property Convention. In the event of an armed conflict not of an international character occurring within the territory of one of the Parties to the 1954 Hague Cultural Property Convention, each party to the conflict shall be bound to apply, as a minimum, the provisions of the 1954 Hague Cultural Property Convention that relate to respect for cultural property.¹⁴⁷

¹⁴⁰ Consider AP II art. 4(3)(b) (“all appropriate steps shall be taken to facilitate the reunion of families temporarily separated;”).

¹⁴¹ Consider AP II art. 4(3)(e) (“[M]easures shall be taken, if necessary, and whenever possible with the consent of their parents or persons who by law or custom are primarily responsible for their care, to remove children temporarily from the area in which hostilities are taking place to a safer area within the country and ensure that they are accompanied by persons responsible for their safety and well-being.”).

¹⁴² Refer to § 8.16.2.4 (Limitations on the Death Penalty).

¹⁴³ Consider AP II art. 4(3)(c) (“[C]hildren who have not attained the age of fifteen years shall neither be recruited in the armed forces or groups nor allowed to take part in hostilities;”); ROME STATUTE art. 8(2)(e)(vii) (defining “war crime” to include “[c]onscripting or enlisting children under the age of fifteen years into armed forces or groups or using them to participate actively in hostilities” in non-international armed conflict).

¹⁴⁴ Consider AP II art. 4(3)(d) (“the special protection provided by this Article to children who have not attained the age of fifteen years shall remain applicable to them if they take a direct part in hostilities despite the provisions of sub-paragraph c) and are captured;”).

¹⁴⁵ Refer to § 4.20.5.1 (U.S. Offense of Recruiting or Using Child Soldiers).

¹⁴⁶ Refer to § 4.20.5 (Child Soldiers); § 17.2.1.2 (Implicit Application of Treaty Provisions to Situations in NIAC).

¹⁴⁷ 1954 HAGUE CULTURAL PROPERTY CONVENTION art. 19(1) (“In the event of an armed conflict not of an international character occurring within the territory of one of the High Contracting Parties, each party to the

17.11.2 Obligations to Respect Cultural Property. The obligation to respect cultural property includes essentially negative duties, *i.e.*, duties to refrain from acts of hostility directed against cultural property and duties to refrain from the use of cultural property in support of military operations where such use is not imperatively necessary.¹⁴⁸

For example, parties to a conflict must not direct acts of hostility against cultural property, its immediate surroundings, or appliances in use for its protection, unless such action is required by imperative military necessity.¹⁴⁹

In addition, no use should be made of cultural property, its immediate surroundings, or appliances in use for its protection, for purposes that are likely to expose it to destruction or damage in the event of armed conflict, unless such action is required by imperative military necessity.¹⁵⁰

17.12 USE OF CAPTURED OR SURRENDERED ENEMY PERSONNEL IN NIAC

In contrast to the rules during international armed conflict, State forces may use captured or surrendered enemy personnel in operations against enemy non-State armed groups. The cooperation of enemy personnel may not, however, be procured through illegal methods.

17.12.1 Compelling Captured or Surrendered Enemy Personnel to Take Part in the Conflict. During international armed conflict, it is prohibited to compel the nationals of the hostile party to take part in the operations of war directed against their own country.¹⁵¹ Additional restrictions apply with respect to POWs, retained personnel, protected persons in the home territory of a belligerent, and protected persons in occupied territory.¹⁵²

These rules, however, do not apply during non-international armed conflict. Under international law, a State may compel its nationals to serve in its armed forces and to fight against non-State armed groups.¹⁵³ For example, in contrast to POWs, captured insurgents who are nationals of that State could be required to serve in that State's armed forces or to take part in

conflict shall be bound to apply, as a minimum, the provisions of the present Convention which relate to respect for cultural property.”).

¹⁴⁸ Refer to § 5.18.2 (Respect and Safeguarding of Cultural Property). Consider AP II art. 16 (“Without prejudice to the provisions of the Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict of 14 May 1954, it is prohibited to commit any acts of hostility directed against historic monuments, works of art or places of worship which constitute the cultural or spiritual heritage of peoples, and to use them in support of the military effort.”).

¹⁴⁹ Refer to § 5.18.5 (Refraining From Any Act of Hostility).

¹⁵⁰ Refer to § 5.18.3 (Refraining From Any Use for Purposes That Are Likely to Expose It to Destruction or Damage).

¹⁵¹ Refer to § 5.27 (Prohibition Against Compelling Enemy Nationals to Take Part in the Operations of War Directed Against Their Own Country).

¹⁵² Refer to § 9.19.2.3 (Labor Assignments That May Be Compelled); § 7.9.5.6 (No Other Compulsory Duties); § 10.7.3 (Compulsory Work for Protected Persons in a Belligerent's Home Territory); § 11.20.1.1 (Prohibition on Compulsory Service in an Occupying Power's Armed Forces).

¹⁵³ Refer to § 4.5.2.4 (Draftees).

this manual.

18.6 DISSEMINATION, STUDY, AND OTHER MEASURES TO FACILITATE UNDERSTANDING OF DUTIES UNDER THE LAW OF WAR

A basic step in implementing and enforcing the law of war is to ensure that people understand its requirements. Certain treaties require that Parties disseminate the text of that treaty and promote its study, especially by those personnel who are assigned to implement its obligations.

18.6.1 General Dissemination and Study of Treaties. Certain treaties require that Parties disseminate the treaty and promote study of that treaty by the armed forces and the civilian population.

18.6.1.1 Dissemination and Study - 1949 Geneva Conventions. Parties to 1949 Geneva Conventions undertake, in time of peace, as in time of war, to disseminate the text of those Conventions widely as possible in their respective countries, and in particular, to include the study of the Conventions in their programs of military and, if possible, civil instruction.⁵⁰ In addition to the entire population of the Party to the GPW, the GPW emphasizes that Parties' armed forces should know the principles of the GPW.⁵¹ Similarly, the GWS and GWS-Sea emphasize that the armed fighting forces, medical personnel, and chaplains should know the principles of those treaties.⁵²

18.6.1.2 Dissemination and Study - CCW and Protocols. Parties to the CCW also undertake, in time of peace as in time of armed conflict, to disseminate the CCW and those of its annexed Protocols by which they are bound as widely as possible in their respective countries and, in particular, to include the study of these instruments in their program of military instruction, so that those instruments may become known to their armed forces.⁵³

develop and coordinate law of war initiatives and issues, manage other law of war matters as they arise, and provide advice to the General Counsel on legal matters covered by this Directive.”).

⁵⁰ GC art. 144 (“The High Contracting Parties undertake, in time of peace as in time of war, to disseminate the text of the present Convention as widely as possible in their respective countries, and, in particular, to include the study thereof in their programmes of military and, if possible, civil instruction, so that the principles thereof may become known to the entire population.”).

⁵¹ GPW art. 127 (The High Contracting Parties undertake, in time of peace as in time of war, to disseminate the text of the present Convention as widely as possible in their respective countries, and, in particular, to include the study thereof in their programmes of military and, if possible, civil instruction, so that the principles thereof may become known to all their armed forces and to the entire population.”).

⁵² GWS art. 47 (“The High Contracting Parties undertake, in time of peace as in time of war, to disseminate the text of the present Convention as widely as possible in their respective countries, and, in particular, to include the study thereof in their programmes of military and, if possible, civil instruction, so that the principles thereof may become known to the entire population, in particular to the armed fighting forces, the medical personnel and the chaplains.”); GWS-SEA art. 48 (same).

⁵³ CCW art. 6 (“The High Contracting Parties undertake, in time of peace as in time of armed conflict, to disseminate this Convention and those of its annexed Protocols by which they are bound as widely as possible in their respective countries and, in particular, to include the study thereof in their programmes of military instruction, so that those instruments may become known to their armed forces.”).

18.6.1.3 *Dissemination and Study – AP III*. Parties to AP III undertake, in time of peace as in time of armed conflict, to disseminate this Protocol as widely as possible in their respective countries and, in particular, to include the study of it in their program of military instruction and to encourage the study of it by the civilian population, so that this instrument may become known to the armed forces and to the civilian population.⁵⁴

18.6.1.4 *Dissemination and Study – 1954 Hague Cultural Property Convention*. Parties to the 1954 Hague Cultural Property Convention undertake, in time of peace as in time of armed conflict, to disseminate the text of the Convention and the Regulations for its execution as widely as possible in their respective countries. They undertake, in particular, to include the study thereof in their programs of military and, if possible, civilian training, so that its principles are made known to the whole population, especially the armed forces and personnel engaged in the protection of cultural property.⁵⁵

18.6.1.5 *Dissemination and Study – Child Soldiers Protocol*. Parties to the Child Soldiers Protocol undertake to make the principles and provisions of the Child Soldiers Protocol widely known and promoted by appropriate means, to adults and children alike.⁵⁶

18.6.2 *Special Instruction or Training*. In addition to requirements to disseminate and to promote the study of treaties, treaties also require States to ensure that members of the armed forces who have duties under those treaties are trained commensurate with those duties. DoD policy has required, as a general matter, that personnel are trained in the law of war commensurate with their duties.⁵⁷

Training may involve not only classroom instruction or individualized study, but also, for example, unit training exercises.⁵⁸

⁵⁴ AP III art. 7 (“The High Contracting Parties undertake, in time of peace as in time of armed conflict, to disseminate this Protocol as widely as possible in their respective countries and, in particular, to include the study thereof in their programmes of military instruction and to encourage the study thereof by the civilian population, so that this instrument may become known to the armed forces and to the civilian population.”).

⁵⁵ 1954 HAGUE CULTURAL PROPERTY CONVENTION art. 25 (“The High Contracting Parties undertake, in time of peace as in time of armed conflict, to disseminate the text of the present Convention and the Regulations for its execution as widely as possible in their respective countries. They undertake, in particular, to include the study thereof in their programmes of military and, if possible, civilian training, so that its principles are made known to the whole population, especially the armed forces and personnel engaged in the protection of cultural property.”).

⁵⁶ Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict, art. 6(2), May 25, 2000, 2173 UNTS 222, 238 (“States Parties undertake to make the principles and provisions of the present Protocol widely known and promoted by appropriate means, to adults and children alike.”).

⁵⁷ DOD DIRECTIVE 2311.01E, *DoD Law of War Program*, ¶5.8 (May 9, 2006, Certified Current as of Feb. 22, 2011) (“The Secretaries of the Military Departments shall develop internal policies and procedures consistent with this Directive in support of the DoD Law of War Program to: ... 5.8.1. Provide directives, publications, instructions, and training so the principles and rules of the law of war will be known to members of their respective Departments. Such knowledge will be commensurate with each individual's duties and responsibilities.”).

⁵⁸ For example, W. Hays Parks, *The United States Military and the Law of War: Inculcating an Ethos*, 69 SOCIAL RESEARCH 981, 995-96 (2002) (“The Army also maintains four permanent Combat Training Centers (CTCs). The CTCs-at Ft. Irwin, California; Ft. Polk, Louisiana; Ft. Leavenworth, Kansas; and Hohenfels, Germany-offer a variety of combat and peace operations training for Army units. Three of the CTCs are staffed with a full-time

In many cases, training on law of war requirements may not be classified as “law of war” training, or may be conducted without acknowledgment that the requirements are law of war requirements.⁵⁹ Rather, it may be the case that military forces would be trained according to military doctrines or regulations, which have incorporated law of war requirements and have been reviewed for consistency with the law of war.⁶⁰

The 1949 Geneva Conventions, the CCW Amended Mines Protocol, and the CCW Protocol V on Explosive Remnants of War each have specific provisions relating to special instruction or training.

18.6.2.1 *Special Instructions or Training - 1949 Geneva Conventions.* The GPW and GC further provide that the military or other authorities who assume responsibilities for POWs or protected persons must possess the text of the GPW or the GC and be specially instructed as to its provisions.⁶¹

18.6.2.2 *Special Instructions or Training - CCW Amended Mines Protocol.* Each Party to the CCW Amended Mines Protocol shall require that armed forces personnel receive training commensurate with their duties and responsibilities to comply with the provisions of the

opposing force (the OPFOR), which ‘engages’ the training unit, as well as an observer-controller (OC) contingent. The OCs observe the mission, mentor the training unit’s commanders and soldiers, and direct some of the activity that occurs during the training exercise. The Army Judge Advocate General’s Corps has assigned Army judge advocates to serve as OCs at each of the CTCs. As part of their duties, these judge advocate OCs script events involving civilians, who, in turn, interact with the personnel of the unit being trained. These civilians, or role-players, serve critical training functions. For example, they may play the part of ICRC personnel who visit a training unit for the purpose of inspecting the unit’s EPW holding facilities. They may also live in full-scale ‘villages’ on the battlefield, playing the role of civilians who find themselves caught up in the context of an ongoing conflict. The judge advocate observer-controllers monitor the training unit’s interaction with these civilians, ensuring that commanders, staff, and individual soldiers understand and meet their law of war obligations. These ‘villages’ also include such structures as churches and historic sites. Thus, the unit also is ‘tested’ on law of war compliance as it relates to targeting and weaponeering considerations. Experience has shown this type of hands-on, realistic law of war training to be exceptionally effective.”)

⁵⁹ For example, W. Hays Parks, *The United States Military and the Law of War: Inculcating an Ethos*, 69 SOCIAL RESEARCH 981, 982-83 (2002) (“Other training may cover law of war topics, or address law of war obligations, without necessarily referring to the law of war. An example is teaching a soldier how to handle an enemy prisoner of war (EPW). Once the prisoner of war has reached an EPW collection point, or a theater EPW camp, military police personnel working in each will go about their assigned duties to process and care for the prisoner of war. In all likelihood each soldier handling an EPW will have received training relative to his or her assigned duties. But the training of each will not necessarily be listed or categorized as ‘law of war training,’ since it is based on doctrine or regulations. Similarly, military medical personnel are trained to treat battlefield wounded and sick solely on the basis of medical priority. This training may be done without acknowledgment that it is a treaty requirement. The same may be said for training provided to combat engineers in laying minefields. The doctrine will have been reviewed for compliance with treaty requirements, and the mines employed will have been reviewed in compliance with the country’s treaty obligations. The combat engineer will employ lawful mines in a manner consistent with his or her doctrine. It is unlikely this will be classified as law of war training.”).

⁶⁰ Refer to § 18.7.2 (Reasons for Implementation Through Instructions, Regulations, and Procedures).

⁶¹ GPW art. 127 (“Any military or other authorities, who in time of war assume responsibilities in respect of prisoners of war, must possess the text of the Convention and be specially instructed as to its provisions.”); GC art. 144 (“Any civilian, military, police or other authorities, who in time of war assume responsibilities in respect of protected persons, must possess the text of the Convention and be specially instructed as to its provisions.”).

CCW Amended Mines Protocol.⁶²

18.6.2.3 Special Instructions or Training - CCW Protocol V On Explosive Remnants of War. Each Party to the CCW Protocol V on Explosive Remnants of War shall require that its personnel receive training consistent with the relevant provisions of this Protocol.⁶³

18.7 INSTRUCTIONS, REGULATIONS, AND PROCEDURES TO IMPLEMENT AND ENFORCE THE LAW OF WAR

The law of war has traditionally been implemented through military instructions, regulations, and procedures. For example, the Lieber Code, one of the first codifications of the law of war, was called “Instructions for the Government of Armies of the United States in the Field,” and was issued as a General Order.⁶⁴ Similarly, directives and regulations have been issued to implement law of war obligations relating to detainees and to establish higher standards as a matter of policy.⁶⁵

18.7.1 Treaty Provisions Specifically Contemplating or Requiring Military Instructions, Regulations, and Procedures. Law of war treaties contemplate or in some cases require that such instructions will be issued. In some cases, the implementation of a treaty through military instructions or regulations may be understood as a part of the general requirements for States to take appropriate actions to implement and enforce their obligations under that treaty.⁶⁶

18.7.1.1 Instructions, Regulations, and Procedures – Hague Conventions on Land Warfare. Parties to Hague IV shall issue instructions to their armed land forces, which shall be in conformity with the “Regulations respecting the Laws and Customs of War on Land” annexed

⁶² CCW AMENDED MINES PROTOCOL art. 14(3) (“Each High Contracting Party shall also require that its armed forces issue relevant military instructions and operating procedures and that armed forces personnel receive training commensurate with their duties and responsibilities to comply with the provisions of this Protocol.”).

⁶³ CCW PROTOCOL V ON EXPLOSIVE REMNANTS OF WAR art. 11(1) (“Each High Contracting Party shall require that its armed forces and relevant agencies or departments issue appropriate instructions and operating procedures and that its personnel receive training consistent with the relevant provisions of this Protocol.”).

⁶⁴ Refer to § 19.3 (Lieber Code).

⁶⁵ For example, DOD DIRECTIVE 2310.01E, *DoD Detainee Program* (Aug. 19, 2014); DOD DIRECTIVE 2310.01E, *The Department of Defense Detainee Program* (Sept. 5, 2006); 1997 MULTI-SERVICE DETENTION REGULATION § 1-1.b (“This regulation implements international law, both customary and codified, relating to EPW, RP, CI, and ODs which includes those persons held during military operations other than war. The principal treaties relevant to this regulation are: (1) The 1949 Geneva Convention Relative to the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field (GWS). (2) The 1949 Geneva Convention Relative to the Amelioration of the Condition of the Wounded, Sick and Shipwrecked Members of the Armed Forces at Sea (GWS Sea). (3) The 1949 Geneva Convention Relative to the Treatment of Prisoners of War (GPW). (4) The 1949 Geneva Convention Relative to the Protection of Civilian Persons in Time of War (GC), and In the event of conflicts or discrepancies between this regulation and the Geneva Conventions, the provisions of the Geneva Conventions take precedence.”). Refer to § 8.1.2 (DoD Policies and Regulations Regarding the Treatment of Detainees); § 9.1.3 (DoD Policies and Regulations for the Treatment of POWs); § 10.1.2 (DoD Policies and Regulations for the Treatment of Internees).

⁶⁶ Refer to § 18.1.2 (National Obligations to Implement and Enforce the Law of War).

GC.¹⁸⁰ These provisions cover the whole of the populations of the countries in conflict.¹⁸¹

Section I (articles 27-34) of Part III of the GC includes provisions that are common to the home territories of the parties to the conflict and to occupied territories.

Section II (articles 35-46) of Part III of the GC addresses aliens in the home territory of a party to the conflict.

Section III (articles 47-78) of Part III of the GC addresses occupied territories.

Section IV (articles 79-135) of Part III of the GC provides regulations for the treatment of internees.

19.16.5.2 *Relationship Between the GC and the 1899 Hague II and the 1907 Hague IV Conventions.* In the relations between States that are bound by the 1899 Hague II, or the 1907 Hague IV, and that are Parties to the GC, the GC shall be supplementary to Sections II (Articles 22-41 – Hostilities) and III (Articles 42-56 – Military Authority Over the Territory of the Hostile State) of the Regulations annexed to the 1899 Hague II or the 1907 Hague IV.¹⁸²

19.17 1954 HAGUE CULTURAL PROPERTY CONVENTION

The 1954 Hague Cultural Property Convention addresses the protection of cultural property during international armed conflict.¹⁸³ It addresses personnel who are engaged in duties related to the protection of cultural property.¹⁸⁴ It also has provisions that apply during occupation.¹⁸⁵ Some provisions of the 1954 Hague Cultural Property Convention apply to non-international armed conflict.¹⁸⁶

The 1954 Hague Cultural Property Convention was adopted at a diplomatic conference on May 14, 1954.¹⁸⁷ The United States deposited its instrument of ratification to the Hague

¹⁸⁰ Refer to § 10.3.3 (Categories of Nationals Specifically Excluded From the Definition of Protected Person Under the GC).

¹⁸¹ GC art. 13 (“The provisions of Part II cover the whole of the populations of the countries in conflict, without any adverse distinction based, in particular, on race, nationality, religion or political opinion, and are intended to alleviate the sufferings caused by war.”).

¹⁸² GC art. 154 (“In the relations between the Powers who are bound by The Hague Conventions respecting the Laws and Customs of War on Land, whether that of July 29, 1899, or that of October 18, 1907, and who are parties to the present Convention, this last Convention shall be supplementary to Sections II and III of the Regulations annexed to the above mentioned Conventions of The Hague.”).

¹⁸³ Refer to § 5.18 (Protection of Cultural Property).

¹⁸⁴ Refer to § 4.14 (Personnel Engaged in Duties Related to the Protection of Cultural Property).

¹⁸⁵ Refer to § 11.19 (Protection of Cultural Property During Occupation).

¹⁸⁶ Refer to § 17.2.1.1 (Treaties That Have Provisions That Explicitly Apply to NIAC); § 17.11 (Protection of Cultural Property in NIAC).

¹⁸⁷ Convention for the Protection of Cultural Property in the Event of Armed Conflict, May 14, 1954, 249 UNTS 240.

Cultural Property Convention on March 13, 2009, and stated four understandings.¹⁸⁸

Two Protocols to the 1954 Hague Cultural Property Convention have been adopted.¹⁸⁹ The United States has neither signed nor ratified either one.

19.17.1 Relationship Between the 1954 Hague Cultural Property Convention and Earlier Treaties.

19.17.1.1 *Relationship Between the 1954 Hague Cultural Property Convention and Certain 1899 and 1907 Hague Conventions.* In the relations between States that are bound by the Conventions of The Hague concerning the Laws and Customs of War on Land (IV) (Hague IV) and Concerning Naval Bombardment in Time of War (Hague IX), whether those of July 29, 1899, or those of October 18, 1907, and that are Parties to the 1954 Hague Cultural Property Convention, the 1954 Hague Cultural Property Convention shall be supplementary to the Hague IX Convention and to the Regulations annexed to the Hague IV Convention.¹⁹⁰

19.17.1.2 *Relationship Between the 1935 Roerich Pact and the 1954 Hague Cultural Property Convention.* In the relations between States that are bound by the 1935 Roerich Pact and that are Parties to the 1954 Hague Cultural Property Convention, the 1954 Hague Cultural Property Convention shall be supplementary to the Roerich Pact and shall substitute for the distinguishing flag described in Article III of the Roerich Pact the emblem defined in Article 16 of the 1954 Hague Cultural Property Convention—in cases in which the 1954 Hague Cultural Property Convention and the Regulations for its execution provide for the use of this distinctive emblem.¹⁹¹

19.18 VIENNA CONVENTION ON THE LAW OF TREATIES

The Vienna Convention on the Law of Treaties (VCLT) was adopted on May 23, 1969, by the U.N. Conference on the Law of Treaties.

¹⁸⁸ 2575 UNTS 7 (“RATIFICATION (WITH DECLARATIONS) **United States of America** *Deposit of instrument with the Director-General of the United Nations Educational, Scientific and Cultural Organization: 13 March 2009*”).

¹⁸⁹ Protocol for the Protection of Cultural Property in the Event of Armed Conflict, May 14, 1954, 249 UNTS 358; Second Protocol to The Hague Convention of 1954 for the Protection of Cultural Property in the Event of Armed Conflict, Mar. 26, 1999, 2253 UNTS 172.

¹⁹⁰ 1954 HAGUE CULTURAL PROPERTY CONVENTION art. 36(1) (“In the relations between Powers which are bound by the Conventions of The Hague concerning the Laws and Customs of War on Land (IV) and concerning Naval Bombardment in Time of War (IX), whether those of 29 July, 1899 or those of 18 October, 1907, and which are Parties to the present Convention, this last Convention shall be supplementary to the aforementioned Convention (IX) and to the Regulations annexed to the aforementioned Convention (IV) and shall substitute for the emblem described in Article 5 of the aforementioned Convention (IX) the emblem described in Article 16 of the present Convention, in cases in which the present Convention and the Regulations for its execution provide for the use of this distinctive emblem.”).

¹⁹¹ 1954 HAGUE CULTURAL PROPERTY CONVENTION art. 36(2) (“In the relations between Powers which are bound by the Washington Pact of 15 April 1935 for the Protection of Artistic and Scientific Institutions and of Historic Monuments (Roerich Pact) and which are Parties to the present Convention, the latter Convention shall be supplementary to the Roerich Pact and shall substitute for the distinguishing flag described in Article III of the Pact the emblem defined in Article 16 of the present Convention, in cases in which the present Convention and the Regulations for its execution provide for the use of this distinctive emblem.”).