

Department of Defense

Report on Cultural Preservation in Armed Conflict

Submitted pursuant to House Report 115-200, page 201, accompanying H.R. 2810,
the National Defense Authorization Act for Fiscal Year 2018

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The House Report 115-200 — National Defense Authorization Act for Fiscal Year 2018 states the following:

Cultural Preservation in Armed Conflict

“The committee recognizes Department of Defense policy, including the Department Directive 2311.01E, “Department of Defense Law of War Program,” which states it is Department policy to comply with the law of war during all armed conflicts and in all other military operations, including treaties and international agreements to which the United States is a party, such as the 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict. The committee is encouraged by actions the Department has taken to protect cultural property, including its training, education, and cataloging efforts as discussed in the Department’s 2015 report relating to the protection of cultural property in the event of armed conflict, required by section 1273 of the Carl Levin and Howard P. “Buck” McKeon National Defense Authorization Act for Fiscal Year 2015 (Public Law 113-291). However, the committee remains concerned that the development, application, and oversight of policy and principles for cultural preservation in armed conflict remains inconsistent.

Therefore, the committee directs the Secretary of Defense to provide a report to the House Committee on Armed Services by September 29, 2017, that identifies:

- (1) the specific Assistant Secretary of Defense or Deputy Assistant Secretary of Defense responsible for managing and evaluating compliance with the 1954 Hague Convention and other relevant law of war requirements;
- (2) the offices and agencies within the Department that have responsibility for obtaining information related to safeguarding cultural heritage sites during armed conflict and other military operations;
- (3) the funding mechanisms that the Department uses, or would plan to use, to obtain relevant cultural heritage information; and
- (4) any other information the Secretary deems relevant.”

We appreciate the Committee’s interest in the protection of cultural property during armed conflict and are pleased to provide information on this issue for the Committee’s consideration.

As an overall matter, we believe the Department has a strong and consistent record of protecting cultural property and implementing the requirements of the Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict of May 14, 1954 (1954 Hague Convention). In fact, as recognized in then-President Clinton’s letter transmitting the 1954 Hague Convention and the Department of State’s accompanying report:

United States military policy and the conduct of operations are entirely consistent with the Convention’s provisions. In large measure, the practices required by the

Convention to protect cultural property were based upon the practices of U.S. military forces during World War II.

The Senate Committee on Foreign Relations cited these points favorably in its 2008 report on the 1954 Hague Convention (Exec. Rept. 110-26), which recommended that the Senate provide its advice and consent to ratification. In particular, the Senate Foreign Relations Committee noted that the Convention reflects principles that have guided U.S. armed forces, even in the most trying of conflicts like World War II, and that ratification “requires no change in U.S. law or practice.”

After U.S. ratification of the Convention, the Department has continued to conduct its operations in accordance with law of war protections for cultural property, including the 1954 Hague Convention, even though U.S. military operations often occur in places, like Syria or Iraq, that are rich in cultural property. As a recent case in point, in Operation INHERENT RESOLVE, Islamic State of Iraq and Syria (ISIS) fighters were using the historic Rafiqah wall surrounding the Old City of Raqqa as a fighting position. During fighting to secure Raqqa from ISIS control, Coalition forces tried to preserve under difficult combat circumstances as much of the 2,500 meter wall as possible, minimizing breaches that were needed in the wall to two 25 meter sections. As Coalition spokesperson Colonel Ryan Dillon noted, “Unlike ISIS who deliberately destroyed the ruins of Palmyra and the Al-Nuri mosque and uses sites such as the Rafiqa Wall, hospitals, schools and mosques as weapons storage facilities and fighting positions, Coalition forces are making a great effort to protect civilians and preserve these sites for future generations.”

Below are answers to the House Armed Services Committee’s questions.

1. The specific Assistant Secretary of Defense or Deputy Assistant Secretary of Defense responsible for managing and evaluating compliance with the 1954 Hague Convention and other relevant law of war requirements.

As a general matter, ensuring compliance with the law of war is a command responsibility, and the Heads of Department of Defense (DoD) components, and military commanders in particular, are responsible for ensuring their component or unit’s compliance with the law of war, including the 1954 Hague Convention. In addition, many other DoD officials have specific responsibilities related to the 1954 Hague Convention and other relevant law of war requirements.

For example, under U.S. law, the Secretary of Defense, subject to the direction of the President and U.S. law, has authority, direction, and control over the Department of Defense, which would include authority, direction, and control over military operations that may implicate issues under the 1954 Hague Convention. The combatant commanders also have significant responsibilities under U.S. law related to ensuring DoD’s compliance with international legal obligations,

including those related to the 1954 Hague Convention. Combatant commanders are responsible for giving authoritative direction to subordinate commands and forces necessary to carry out missions assigned to the command, which would include authoritative direction over all aspects of military operations and joint training pertaining to the implementation of, and compliance with, U.S. obligations under the 1954 Hague Convention.

As further examples, other senior DoD officials also have significant responsibilities related to ensuring DoD's implementation of, and compliance with, international legal obligations, including those related to the 1954 Hague Convention. For example, the Under Secretary of Defense for Policy is responsible for assisting the Secretary of Defense in preparing written policy guidance for the preparation and review of contingency plans, which would include preparation of policy guidance related to implementation of the 1954 Hague Convention for such contingency plans. Also, the DoD General Counsel is the chief legal officer of DoD and is responsible for providing guidance on, and coordination of, significant legal issues of international law, which includes issues related to compliance with U.S. legal obligations under the 1954 Hague Convention. Under DoD policy, the DoD General Counsel also provides guidance on, and coordination of, significant legal issues related to the DoD Law of War Program, in accordance with DoD Directive 2311.01E, "DoD Law of War Program."

Under the DoD Law of War Program, various offices and agencies within the Department of Defense, including the Military Departments, play a role in ensuring DoD's implementation of, and compliance with, the law of war, including the 1954 Hague Convention. For example, the DoD General Counsel is responsible for exercising primary staff responsibility for the DoD Law of War Program, which establishes policies related to ensuring DoD's implementation of, and compliance with, the law of war obligations of the United States, including the 1954 Hague Convention.

DoD Directive 2311.01E also provides that the DoD General Counsel will develop and promulgate the DoD Law of War Manual. The DoD Law of War Manual is a DoD-wide resource for DoD personnel – including commanders, legal practitioners, and other military and civilian personnel – on the law of war, including the 1954 Hague Convention. Several sections in the DoD Law of War Manual focus on the protection of cultural property, and the Manual includes a comprehensive description of U.S. legal obligations under the 1954 Hague Convention. The Manual helps implement the requirement under Article 25 of the Convention related to disseminating information about the Convention to the armed forces, and the Manual facilitates a consistent understanding of the Convention's requirements throughout the Department.

The Secretaries of the Military Departments also have responsibilities under the DoD Law of War Program, including responsibilities for developing internal policies and procedures related to: (1) providing instructions and training so that U.S. law of war obligations, including those

related to the 1954 Hague Convention, will be known to members of their respective Departments; (2) implementing programs to prevent violations of the law of war (e.g., unlawfully destroying cultural property); and (3) promptly reporting and investigating suspected violations of the law of war committed by or against members of the U.S. military (e.g., a U.S. service member pillaging a protected archaeological site).

Within the Office of the Under Secretary of Defense for Policy, the Deputy Assistant Secretary of Defense for Stability and Humanitarian Affairs maintains an International Humanitarian Policy section with an Action Officer who monitors and provides policy support for issues related to the 1954 Hague Convention.

2. The offices and agencies within the Department that have responsibility for obtaining information related to safeguarding cultural heritage sites during armed conflict and other military operations.

Similar to the information provided in response to the first question, the responsibility for obtaining information related to safeguarding cultural heritage sites during armed conflict and other military operations depends upon different offices, agencies, and commands' specific responsibilities related to armed conflict and such military operations.

For example, as mentioned in the response to the first question, combatant commands are responsible for giving authoritative direction to subordinate commands and forces necessary to carry out missions assigned to the command. Accordingly, combatant commanders, their respective staffs, and subordinate commands and forces would be expected to obtain information related to safeguarding cultural heritage sites during assigned missions in their respective areas of operations. Joint Force Commanders, as recognized in Joint Doctrine Note 2-16, *Identity Activities*, are expected to obtain information about cultural property, including cultural heritage sites, so that they can recognize and differentiate one entity from another to support decision making and protection activities related to their assigned missions.

The Defense Intelligence Agency (DIA), as a combat support agency, supports the efforts of combatant commanders and their subordinate commanders by producing, analyzing, and disseminating military intelligence information. Within DIA, a team of intelligence officers staffs a division that focuses on cultural property protection. This division is responsible for ensuring sites protected by the 1954 Hague Convention and the law of war are resident in a database widely used within DoD to support the full range of military planning, targeting, and response options. DIA works closely with academics, archeologists, and non-governmental organizations to identify and catalogue cultural property—including cultural heritage sites—to populate this database. For example, during Operation ODYSSEY DAWN, the military

campaign in 2011 to enforce United Nations Security Council Resolution 1973, DIA used information provided by a non-governmental organization named the U.S. Committee of the Blue Shield and other sources to populate this database and to help U.S. and participating North Atlantic Treaty Organization (NATO) forces avoid damaging cultural property in Libya during military action. For your perusal, we have included at the end of this report an unclassified example of a product DIA and the National Geospatial-Intelligence Agency (NGA) put together to assist military commanders with the protection of cultural property during operations.

Also, as a general matter and as mentioned in DoD's Report on Protection of Cultural Property in the Event of Armed Conflict that was submitted to Congress on June 16, 2015, in compliance with the reporting requirement contained in section 1273 of the Carl Levin and Howard P. "Buck" McKeon National Defense Authorization Act for Fiscal Year 2015 (Public Law 113-291) (hereinafter "Report"), the primary source of requirements for the protection of cultural property during contingency operations is "Annex L (Information Collection)" of the relevant Operation Order or Operation Plan. Once established, commanders are responsible for complying with the applicable requirements established by the annex, and must keep senior leadership informed of any conditions that may result in noncompliance with the annex. Typically, the annex contains specific provisions for pursuing available documentation and intelligence assets to identify historic and cultural areas, liaising with host nation environmental authorities and local experts during the planning for the construction and/or leasing of major base camps or sites to be occupied by U.S. forces, and developing appropriate guidance and practices to minimize unnecessary disturbance to historically and culturally significant areas in the conduct of military operations.

Military commanders may also issue orders and regulations related to obtaining information regarding cultural heritage sites. For example, and as mentioned in the Report, U.S. Central Command (USCENTCOM) Regulation 200-1, "Protection and Enhancement of Environmental Assets," April 3, 2014, provides that all U.S. forces operating in the USCENTCOM area of responsibility will identify, respect, and protect historic and cultural sites, host nation heritage sites, structures, objects, paleontological and archaeological areas, as well as nature parks, preserves, wetlands, and other similar host nation resources.

As another example from the Report, USCENTCOM Regulation 200-2, "Contingency Environmental Standards," September 15, 2014, includes a chapter on historical and cultural preservation, which establishes criteria to ensure the proper protection of historic and/or cultural resources within the USCENTCOM area of responsibility. This includes creating, maintaining, and reporting an inventory of historic and/or culturally significant locations at or near base camps, and properly staffing units involved in construction and/or ground-disturbing activities to ensure historical/cultural resources are protected.

3. The funding mechanisms that the Department uses, or would plan to use, to obtain relevant cultural heritage information.

No specific funding mechanism is exclusively dedicated to obtaining relevant cultural heritage information. Rather, relevant cultural heritage information for military operations is obtained as a normal part of operational planning and execution. As such, DoD Operation and Maintenance (O&M) appropriations may be used for such purposes.

4. Any other information the Secretary deems relevant.

DoD collaborates with other U.S. Government departments and agencies involved in the protection of cultural property. This includes the Department of State's Bureau of Educational and Cultural Affairs, which chairs both the Interagency Cultural Heritage Coordinating Committee and the congressionally mandated Cultural Antiquities Task Force.

The Cultural Antiquities Task Force works to increase cooperation among law enforcement agencies and the State Department on cultural heritage challenges and produces emergency "Red Lists of Antiquities at Risk," which are specially designed guides for customs officials, police officers, museums, art dealers, and collectors, to help them recognize the general types of archaeological, ethnographic, and ecclesiastical objects that have been looted from cultural sites, stolen from museums and churches, and illicitly trafficked. "Red Lists" have been produced for Iraq, Syria, Afghanistan, West Africa, Egypt, Haiti, Colombia, China, Central America, Mexico, Cambodia, and Peru.