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Environmental Quality

Cultural, Historical, and Natural Resource Protection during African Operations

***This is Revision 1 of USARAF Pamphlet 200-4**

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Summary.

a. This pamphlet is applicable to United States (US) forces conducting operations in Africa operating under the control of US Army Africa (USARAF) or applicable joint task forces (JTF). The intent of this pamphlet is to provide guidance on the protection and management of recognized cultural, historic, and natural resources that may be placed at risk due to the conduct of the full spectrum of US ground operations and associated close air/naval support operations.

b. Guidance for the conduct of Civil Affairs (CA) activities related to working with Host Nations (HN), inter-governmental organizations (IGO), and/or non-government organizations (NGO) on efforts to promote the protection and management of recognized resources is provided in Annex K of the governing operations order and applicable USARAF guidance documents developed by the USARAF G-39.

Applicability.

a. The guidance in this pamphlet is applicable to US forces in the African Theater of Operations under the control of USARAF or applicable JTF.

b. Nothing in this pamphlet shall be construed to create, modify, alter, or amend any existing:

(1) International/multilateral international agreement.

(2) Bilateral agreement between the United States of America (USA) and any African Host Nation.

(3) Obligation or requirement on the part of the USA.

(4) US government regulation as it may pertain to the US military.

c. Nothing in this pamphlet shall create any right or benefit, substantive or procedural, enforceable at law or equity by a party against the US, its agencies, its officers, or any person.

Supplementation. Supplementation of this pamphlet and establishment of command and local forms are prohibited unless prior approval is obtained from the CG, USARAF and/or applicable JTF commander.

Forms.

Records Management. Records created as a result of processes prescribed by this pamphlet must be identified, maintained, and disposed of according to AR 25-400-2. Record titles and descriptions are available on the Army Records Information System website at <https://www.arims.army.mil>.

Suggested Improvements. The proponent of this pamphlet is the command engineer, USARAF. Users may suggest improvements to this pamphlet by sending a DA Form 2028 (Recommended Changes to Publications and Blank Forms) to the command engineer, USARAF.

Distribution. Electronic Media Only.

Table of Contents

1.0. USARAF Guidance

- 1.1. USARAF Goals
- 1.2. Roles and Responsibilities
 - 1.2.1. Commanders
 - 1.2.2. Operational Planners
 - 1.2.3. Engineer (Environmental)
 - 1.2.4. Civil Affairs (CA)
 - 1.2.5. Legal
 - 1.2.6. Public Affairs (PAO)
- 1.3. Regulatory Requirements
 - 1.2.1. US Requirements
 - 1.2.2. Non-US Requirements
- 1.4. Military Necessity
- 1.5. Resource Classification
 - 1.5.1. Protected Property
 - 1.5.1.1. Geneva IV protections
 - 1.5.1.2. No-Strike List protections
 - 1.5.2. Recognized Resources
 - 1.5.2.1. Cultural/Historic Resources
 - 1.5.2.2. Natural Resources
 - 1.5.2.3. Mixed Recognized Resources
 - 1.5.2.4. Other Recognized Resources
 - 1.5.3. Host Nation/IGO/NGO Support Personnel and Resources

2.0. Pre-Operational Planning Guidance

- 2.1. Environmental Resources/Sites Database
- 2.2. Course of Action (COA) Assessments
- 2.3. Immunity Status Violations
- 2.4. Unit Training Activities.

3.0. Guidance during Operations

- 3.1. Conduct of Operations
- 3.2. Previously Unidentified Resources
- 3.3. Resources under US Control
- 3.4. Host Nation/IGA/NGO Coordination
- 3.5. Relinquishing Control of Resources
- 3.6. Preventing Illegal Trade of Resources
- 3.7. Private Possession of Artifacts

REFERENCES

Appendix 1 - International Union for the Conservation of Nature (IUCN) Categories of Wildland Management

Appendix 2 - International Agreements with African scope

Appendix 3 – Excerpts from Chairman of the Joint Chiefs of Staff Instruction (CJCSI) 3160.01, "No-Strike and the Collateral Damage Estimation Methodology"

Appendix 4 – Military Necessity and Underlying Principles

1.0. USARAF Guidance.

a. Protection of the cultural and natural heritage of African peoples is an inherent task for every operation US forces may conduct in Africa. When conducting operations, US personnel will take every reasonable precaution, consistent with the demands of mission requirements and the rules of engagement to minimize damage to the physical artifacts and natural heritage that comprise the cultural patrimony of African peoples.

b. Though the physical artifacts of the cultural and natural heritage of Africa may be irreplaceable, no artifact is worth a human life. At no time will the protection of these artifacts take precedence over the inherent and essential right of collective or individual self-defense, or the requirement to keep people from avoidable risk.

c. US forces will conduct activities to protect and manage cultural and natural resources in compliance with applicable and appropriate US requirements, respecting the sovereignty of host nations, and in compliance with the provisions of applicable international and/or bilateral treaties /conventions ratified by the United States.

d. The unauthorized acquisition, possession, sale, or shipment of recognized resources (see section 1.5 and associated subsections for clarification of resource classifications) by US military and civilian personnel, or personnel accompanying US forces is strictly prohibited.

1.1. USARAF Goals:

a. US forces will:

(1) Avoid conducting activities that may result in adverse impacts to recognized resources except where such activities are justified by military necessity,

(2) Conduct operations in accordance with the requirements of applicable US, Host Nation, and international agreements, and

(3) Take such actions as may be reasonable and prudent to safeguard those resources under US control from harm.

b. In order to achieve these goals US Army Africa will:

(1) Provide US forces with the knowledge necessary to incorporate appropriate measures in operations plans to minimize the potential of unauthorized or inadvertent harm occurring to recognized cultural, historic, and/or natural resources.

(2) Ensure Commanders have visibility on recognized resources within their area of operations and the ability to make informed decisions on courses of action that minimize the potential for adverse impacts to those resources.

(3) Ensure recognized resources coming under the control of US forces are adequately secured and managed.

(4) Rapidly transfer control of recognized resources to applicable responsible parties.

(5) Ensure compliance with applicable United States, African Host Nation, and International requirements.

1.2. Roles and Responsibilities

1.2.1. Commanders – Commanders are responsible for ensuring operations conducted by forces under their command are performed in accordance with all applicable US, host nation, and international laws, conventions, regulations, policy, and guidance. Commanders determine when actions that may result in the damage or destruction of recognized resources are justified by military necessity, and ensure those actions are conducted in a manner that minimizes the risks and damage to protected resources. Commanders ensure recognized resources under the control of their forces are secured from harm, and that host nation, intergovernmental organizations, and/or non-governmental organizations accorded recognized status are not hindered in the conduct of their authorized duties.

2.1.2. Operational Planners – Staff sections responsible for the planning of ground and associated close air/naval support operations are responsible for ensuring known recognized resources within the anticipated area of operations have been identified, that courses of action (COA) have been evaluated to ensure risks to protected resources are unavoidable, and that risk mitigation procedures are incorporated into operational plans and orders.

1.2.3. Engineer (Environmental) - Engineering functions are divided into two main areas, combat engineering and general engineering. General engineering consists of those engineer capabilities and activities, other than combat engineering that modify, maintain, or protect the physical environment; this includes the protection of natural and cultural resources. In coordination with other applicable staff sections the environmental branch of the Engineer staff will provide guidance and direction to units on actions to protect and manage cultural, historic, and natural resources. This guidance is found in Annex L of the applicable operations order, USARAF Regulation 200-2, and this pamphlet.

a. Planning Activities – These will include the identification of recognized cultural, historic, and natural resources in the area of operations, and the generation of products to support the development of operational plans and/or the planning and conduct of events to prepare US personnel to conduct operations. Planning activities will be conducted jointly with applicable USARAF staff sections (i.e., Staff Judge Advocate, G-9 Civil Affairs) and external organizations. These activities may include but may not be limited to:

(1) Coordination with DOD and non-DOD agencies of the US Government (USG), Host Nations (HN), Inter-Governmental Organizations (IGO), and Non-Governmental Organizations

(NGO); purpose of this coordination is to collect/verify information on resources.

(2) Creation of country/regional papers/presentations containing information on those geographic areas and the cultural/historic/natural resources found within them.

(3) Creation of an Africa-wide database containing information on resources; if possible this database will be compatible with existing graphic information systems (GIS) used by the US military.

(4) Generation of hardcopy and electrical versions of maps and operational overlays illustrating resource locations.

(5) Development of instructional materials and the conduct of training on the protection and management of cultural, historic, and natural resources.

b. Operational Activities - During the conduct of operations the environmental staff will:

(1) Provide assistance and advice to units to minimize the potential for protected/recognized cultural, historic, and natural resources to be damaged or destroyed.

(2) Coordinate with other applicable staff sections for support and technical expertise.

(3) Facilitate the safe and speedy transfer of resources under the control of US forces to appropriate non-DOD USG agencies, African HNs, IGOs, and if applicable NGOs.

1.2.4. Civil Affairs (CA) - CA units have subject matter experts (SME) capable of providing technical guidance and assistance with locating, identifying, preserving, and protecting cultural property. When available these SMEs will provide support during both the planning and conduct of operations and may be assigned the technical lead on certain activities. These activities may include but may not be limited to:

a. Planning Activities – CA SMEs will provide expert technical assistance during the conduct of planning activities. These activities may include:

(1) Supporting the conduct of coordination with DOD and non-DOD agencies of the US Government (USG), African Host Nations (HN), Inter-Governmental Organizations (IGO), and Non-Governmental Organizations (NGO); purpose of this coordination is to collect/verify information on resources.

(2) Supporting the creation of country/regional papers/presentations containing information on those geographic areas and the cultural/historic/natural resources found within them.

(3) Supporting the development of instructional materials and the conduct of training on

the protection and management of cultural, historic, and natural resources.

b. Operational Activities:

(1) Provide technical expertise and advice on measures to minimize the potential of recognized cultural, historic, and natural resources being damaged or destroyed.

(2) Provide technical expertise and advice to identify, determine ownership, and safeguard previously unknown cultural/historic resources located during the course of operations.

(3) Provide technical expertise and advice on protecting, preserving, and restoring recognized resources.

(4) Assist in verifying the capabilities/willingness of African HNs, IGOs, and if applicable NGOs to take control of and adequately protect and manage resources under the control of US forces.

(5) Facilitate coordination for the safe and speedy transfer of resources under the control of US forces to appropriate non-DOD USG agencies, African HNs, IGOs, and if applicable NGOs.

(6) Function as the primary point of contact for support between US forces and African HNs, IGOs, and/or NGOs responsible for the protection/management of recognized resources located with the area of operations.

(7) Representatives of Civil Affairs Units may be included in Joint Environmental Management Board (JEMB) activities related to recognized resources.

c. Beyond actions to support maneuver units, Civil Affairs Units may advise and assist in establishing the technical requirements for government, community, and private systems and agencies to protect, preserve, and restore cultural/historic property. These activities will be governed by Annex K of the applicable operations order and applicable CA guidance.

1.2.5 Legal Advisors – The Staff Judge Advocate (SJA) staff provides legal advice on issues related to the protection and management of recognized resources. The SJA staff will provide legal opinions on:

a. The compliance of operations with the requirements of applicable US law, Host Nation law, and International Agreements.

b. The legal sufficiency of military necessity determinations.

c. The ownership of movable protected resources and disposition of those resources under the control of US forces.

1.2.6 Public Affairs Office (PAO) – PAO will serve as the point of contact for all information inquiries related to actions taken by US forces to comply with applicable US law, Host Nation law, and International Agreements. PAO will prepare information releases on actions taken by US forces to minimize adverse impacts to recognized resources, to secure those resources from harm, and to assist Host Nation, Inter-governmental, and/or Non-governmental organizations with the protection & management of those resources. PAO will review information published by non-DOD entities for accuracy, and attempt to correct any inaccuracies that may be published when appropriate.

1.3. Regulatory Requirements.

1.3.1. US Requirements.

a. With one exception, United States (US) laws and associated implementing instructions concerned with the protection of cultural, historic, and natural resources do not have explicit extra-territorial application (the US Congress did not intend for these laws to regulate conduct beyond the borders of the US). The exception is the National Historic Preservation Act Amendments of 1980, Section 402 states,

“Prior to the approval of any Federal undertaking outside the US which may directly and adversely affect a property which is on the World Heritage List or on the applicable country's equivalent of the National Register, the head of a Federal agency having direct or indirect jurisdiction over such undertaking shall take into account the effect of the undertaking on such property for purposes of avoiding or mitigating any adverse effects.”¹

The scope of resources covered by an “*applicable country's equivalent of the National Register*” has the potential to be much wider than those resources normally included in the US National Register. Resources included in these registers may include endangered species, creative artists, and/or cultural practices.

b. The US is a party to a number of international agreements concerned with the protection of cultural, historical and/or natural resources. As a party to these agreements, the US is required to comply with the provisions of those agreements. Violations of the provisions of the Conventions regarding the illegal or unauthorized acquisition and/or willful or wrongful damaging

¹ National Historic Preservation Act Amendments of 1980, Section 402

or destruction of property is punishable under the Uniform Code of Military Justice (UCMJ)².

(1) 1949 Geneva IV Convention (GENEVA IV).³ This agreement and its first Protocol restrict attacks to military objects⁴, and prohibit the destruction of all civilian property unless justified by military necessity⁵. Additional clarification specifying the protection of cultural objects and the natural environment is provided in the 1977 Protocols⁶.

(2) 1954 Hague Convention (HAGUE 54).⁷ The purpose of the Convention is to establish procedures to ensure the continued preservation of specific resources considered to be, “...*of great importance to the cultural heritage of every people*”⁸, rather than all civilian property. As a result, protections under this convention are much more restrictive than those in Geneva IV convention. With some minor additions the resources listed in this document as protected resources are essentially the same as those identified in HAGUE 54

(a) The Convention requires Parties to take steps to protect resources in times of peace, to not take actions that would make those resources military objectives, to avoid intentionally damaging those resources during conflicts unless justified by military necessity, and to deter the theft or vandalism of those resources.

(b) The convention provides protected status to applicable resources⁹, and provides for the granting of special protection to identified resources¹⁰. The Convention states that the requirement to respect protected cultural resources may only be waived, “...*in cases where military necessity imperatively requires such a waiver*,”¹¹. In the case of resources accorded special protection status, “...*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*.”¹²

(3) 1970 UNESCO Cultural Property Convention.¹³ This agreement focused on stopping the illicit trade of cultural property. Parties to this agreement are required to prohibit the import, export, or transfer of ownership of illegally acquired artifacts.

² United States Code (USC), Title 10, Chapter 47, “Uniformed Code of Military Justice”, Subchapter X, “Punitive Articles” §§ 877-934)

³ “Geneva Convention (IV) relative to the Protection of Civilian Persons in Time of War”, (GENEVA IV), 12 August 1949, Geneva, Switzerland

⁴ Protocol I, GENEVA IV, Article 52

⁵ GENEVA IV, Article 53

⁶ Protocol I, GENEVA IV, Articles 53 + 55

⁷ “Convention for the Protection of Cultural Property in the Event of Armed Conflict”, (HAGUE 54) 14 May 54, The Hague, Netherlands

⁸ HAGUE 54, Article 1.(a)

⁹ HAGUE 54, Article 4.

¹⁰ HAGUE 54, Article 8.

¹¹ HAGUE 54, Article 4.2

¹² HAGUE 54, Article 11

¹³ “Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property”, 14 November 1970

(4) 1971 Ramsar Convention.¹⁴ This agreement provides for the protection of wetlands of international importance. Terrain protected by this agreement may include fresh or saltwater marshes, fens, peat lands; permanent or temporary, static or flowing, natural or artificial bodies of water; and coastal marine environments with a depth of less than six meters (<6 m). Suitable wetlands within their territories are designated by host nations for inclusion on the list of sites.

(5) 1972 UNESCO World Heritage Convention.¹⁵ This agreement focuses on protected sites, which may include historic/cultural sites and/or natural resource sites. Sites are nominated by member nations for inclusion in the World Heritage listing. Cultural/historic sites must be judged to be of outstanding universal value from the point of view of history, art or science, while natural resource sites must be of outstanding universal value from the point of view of science, conservation, or natural beauty.

(a) In addition to sites on the listing, there is a tentative listing of sites that have been nominated by States but not yet adopted for inclusion by UNESCO.

(b) In addition to the World Heritage sites, since the 1970s UNESCO has managed Biosphere Reserves under its inter-governmental Man and the Biosphere (MAB) scientific program. The goals of the program are to study ways to reconcile the conservation of biological and cultural diversity with the demands for economic and social development. Consistent with other agreements, sovereign States nominate areas for designation as reserves. Operations conducted near or in these reserves must minimize the potential for interference with reserve operations.

(6) 1973 Treaty on Trade in Endangered Species.¹⁶ This agreement places strict limitations on the international trade of living examples of endangered species and products made from those animals. The agreement identifies what species are to be accorded protection, and establishes procedures to govern the conduct of international trade in specimens of specified species and by-products from those species.

In addition to species listed in the treaty, the US Government (US Fish & Wildlife Service) and the non-governmental International Union for the Conservation of Nature (IUCN) have identified additional species deemed to be at risk. The listing of at-risk species specified in the red list published annually by IUCN is much more extensive than that provided in the Treaty. The IUCN has also developed a classification system for nature conservation areas based upon a uniform set of criteria (see appendix 1).

¹⁴ "Convention on Wetlands of International Importance Especially Waterfowl Habitat" and 1982 Protocol, 2 February 1971

¹⁵ "Convention Concerning the Protection of the World Cultural and Natural Heritage", 23 November 1972

¹⁶ "Convention on International Trade in Endangered Species of Wild Fauna and Flora", (CITES) 3 March 1973

(7) 1992 Convention on Biological Diversity.¹⁷ This agreement focuses on protecting the variety of life across the globe, concurrent with the fair and equitable use of renewable natural resources in a sustainable manner. Under this agreement States are to establish protected areas to conserve and promote biodiversity. Operations in areas identified as having a high level of biodiversity need to ensure activities do not adversely impact that biodiversity. The Cartagena Protocol¹⁸ to this agreement places controls on trans-boundary shipments of “living modified organisms”.

(8) 1994 Convention to Combat Desertification in Countries Experiencing Serious Drought and or Desertification, Particularly in Africa.¹⁹ This agreement is focused on territories such as the Sahel in northern Africa where precipitation is limited, vegetation is marginal, and drought threatens to transform the region into desert. Operations in these threatened environments need to be conducted in a manner that does not increase the risks of desertification.

(9) 1995 Agreement on the Conservation of African-Eurasian Migratory Waterbirds.²⁰ An outgrowth of the 1979 Convention on the Conservation of Migratory Species of Wild Animals²¹, the 1995 agreement focuses on efforts to protect waterbirds that transit between Africa and the Eurasian landmass. Under this agreement Parties agree to identify, protect, and or restore waterbird habitats within their territories, with special attention paid to endangered species of waterbirds.

1.3.2. Non-US Requirements.

a. US forces are required to respect the sovereignty of foreign States, to include laws focused on the protection of cultural, historic, and natural resources. Though African states have lagged behind Europe and the US in the enactment of legislation on this topic, they are quickly closing the gap. As part of the planning process an assessment of the legal and regulatory requirements for applicable African States will be conducted, and the findings of that assessment incorporated into operational plans.

b. Many African States have become parties to global and regional agreements focused on the protection of cultural, historic, and natural resources (see appendix 2 for listing of African agreements). Though the US may not be a Party to all of these agreements, the requirements of those agreements may impact operations since African States that are Party to those agreements have enacted, or can be expected to enact, legislation enforcing the provisions of those agreements.

c. The International Institute for the Unification of Prostate Law (UNIDROIT) Convention on

¹⁷ “Convention on Biological Diversity”, (CBD) 5 June 1992

¹⁸ “Cartagena Protocol on Biosafety to the Convention on Biological Diversity”, 29 January 2000

¹⁹ “United Nations Convention to Combat Desertification in Countries Experiencing Serious Drought and/or Desertification, particularly in Africa” 17 June 1994

²⁰ “Agreement on the Conservation of African-Eurasian Migratory Waterbirds” 16 June 1995

²¹ “Convention on the Conservation of Migratory Species of Wild Animals” (CMS), 1 November 1979

Stolen or Illegally Exported Cultural Objects²² addresses the illicit international trade of cultural properties. The UNIDROIT convention focuses only on the recovery or restitution of stolen or illicitly exported artifacts, while the 1970 UNESCO Cultural Property Convention focused on both prevention and recovery of illegally trafficked artifacts. The United States is a member of UNIDROIT, but is not a Party to the 1995 convention. Only about 30 States are Party to this convention.

d. Established by the Rome Statute²³, the International Criminal Court (ICC) is a permanent tribunal established to prosecute individuals for the crimes of genocide, crimes against humanity, war crimes, and aggression. Under the provisions of the Rome Statute,

“Intentionally directing attacks against buildings dedicated to religion, education, art, science or charitable purposes, historic monuments, hospitals and places where the sick and wounded are collected, provided they are not military objectives;”

are defined as war crimes during both international²⁴ and non-international armed conflicts.²⁵

(1) Over one hundred twenty (>120) foreign States, including twenty four (24) African States, are Party to the treaty, and to date most situations and cases brought before the ICC have been related to activities in Africa²⁶.

(2) Though the US initially signed the treaty in 1998, in 2003 the US announced it did not intend to become a Party to the treaty, and was not legally bound by the requirements of the Statute. According to a 2006 Congressional Study Report,

“The primary objection given by the United States in opposition to the treaty is the ICC’s possible assertion of jurisdiction over U.S. soldiers charged with “war crimes” resulting from legitimate uses of force, or its assertion of jurisdiction over other American officials charged for conduct related to foreign policy initiatives...”²⁷

The US does support & provide assistance in response to specific requests from the ICC.

²² “International Institute for the Unification of Private Law (UNIDROIT) Convention on Stolen or Illegally Exported Cultural Objects”, Rome, Italy, 24 June 1995

²³ United Nations Treaty Series, Volume. 2187, No. 38544, (Document A/CONF.183/9), “Rome Statute of the International Criminal Court” (ICC), Rome, Italy, 17 July 1998

²⁴ ICC Article 8(2)(b)(ix)

²⁵ ICC Article 8(2)(e)(iv)

²⁶ <http://www.icc-cpi.int/Menus/ICC/Situations+and+Cases/>

²⁷ CRS Report RL31495, “US Policy Regarding the ICC”, “U.S. Objections to the Rome Statute”, pa. CRS-5, 29 August 2006

(3) The United States has been negotiating bilateral immunity agreements (Article 98 agreements) with potential Host Nation governments that stipulate those governments will not transfer US national to the jurisdiction of the ICC. Over 100 such 98 agreements have been concluded, including agreements with thirty eight (38) African States²⁸.

1.4. Military Necessity.

a. Both the GENEVA IV and HAGUE 54 conventions invoke the concept of military necessity when discussing requirements for taking actions against protected resources. Military necessity is derived from the concepts that certain legal norms justify the conduct of warfare between States (*jus ad bellum*), and that corresponding proportional constraints are placed on the means of conducting those conflicts (*jus in bello*).²⁹ One of the first times the term was codified by the United States Government was in the Lieber Code of 1863,

“Military necessity, as understood by modern civilized nations, consists in the necessity of those measures which are indispensable for securing the ends of war, and which are lawful according to the modern law and usages of war.”³⁰

Military necessity does not admit of cruelty—that is, the infliction of suffering for the sake of suffering or for revenge, nor of maiming or wounding except in fight, nor of torture to extort confessions. It does not admit of the use of poison in any war, nor of the wanton devastation of a district. It admits of deception but disclaims acts of perfidy; and, in general, military necessity does not include any act of hostility which makes the return to peace unnecessarily difficult.”³¹

b. Though the wording may have changed in the past century and a half, the US military continues to adhere to the principle of military necessity as currently defined in FM 27-10³², and the underlying principles of “Humanity (Unnecessary Suffering)”, “Distinction”, and “Proportionality” as defined in JP 1-4³³ (also see appendix 4 to this pamphlet)..

²⁸ Coalition for the International Criminal Court, “*Status of US Bilateral Immunity Agreements* (BIAs) as of 11 December 2006 http://www.iccnw.org/documents/CICCFS_BIAstatus_current.pdf

²⁹ Forrest, Craig, California Western International Law Journal, “*The Doctrine of Military Necessity and the Protection of Cultural Property During Armed Conflicts*”, Volume 37, Number 2, Spring 2007

³⁰ General Orders No. 100, Instructions of Armies of the US in the Field, 24 Apr 1863 (a.k.a. “The Lieber Code”) Article 14

³¹ Lieber Code, Article 16

³² Field Manual 27-10, “*Law of Land Warfare*”, Section 3.a., 1976

³³ Joint Publication 1-4, “*Legal Support to Military Operations*” Chapter 2, §2, “*Laws of War Principles*” 17 August 2011

c. Though pre-World War II (WWII) agreements and their codes³⁴ were unsuccessful in their application, the principles enshrined in them were successful in raising awareness, generally adhered to by the Western Allies during WWII, and reinforced by General Eisenhower,

“We are bound to respect monuments as far as war allows. If we have to choose between destroying a famous building and sacrificing our men, then our men’s lives count infinitely more and the buildings must go. But the choice is not always so clear cut at that. In many cases the monuments can be spared without detriment to operational needs. Nothing can stand against the argument of military necessity but the phrase is sometimes used where it would be more truthful to speak of military- or even personal convenience.”

General Eisenhower, 29 December 1943

c. Actions when planning operations - In order to invoke military necessity, to waive the immunity of a recognized resource and justify a course of action likely to expose recognized resources to destruction or damage, the following actions must occur prior to the conduct of operations:

(1) The recognized resource must have been made a military objective. Military objectives are,

***(A) combatants; and
(B) those objects during hostilities—
(i) which, by their nature, location, purpose, or use, effectively contribute to the opposing force’s war-fighting or war-sustaining capability; and
(ii) the total or partial destruction, capture, or neutralization of which would constitute a definite military advantage to the attacker under the circumstances at the time of the attack.³⁵***

³⁴ a. *“Project of an International Declaration concerning the Laws and Customs of War”*, 27 August 1874, Brussels, Belgium

b. *“Oxford Manual of the Laws and Customs of War on Land”*, 9 September 1880, Oxford, England

c. *“Hague Convention II - with Respect to the Laws and Customs of War on Land and its annex: Regulation concerning the Laws and Customs of War on Land”* (Hague II), 29 July 1899, the Hague, Netherlands

d. *“Hague Convention IV - Laws and Customs of War on Land”*, (Hague IV), 18 October 1907, The Hague, Netherlands

e. *“Treaty on the Protection of Artistic and Scientific Institutions and Historic Monuments”*, (a.k.a. Roerich Pact), 15 April 1935, Washington DC, United States of America

³⁵ *US Manual for Military Commissions* (2010 edition), Part IV Crimes & Elements, § 1.(a)(1)

(2) No feasible alternative courses of action exist.

(3) Feasible risk mitigation actions have been incorporated into the course of action to minimize adverse impacts to the recognized resource. Tactical instructions which specify offensive actions against recognized resources will be limited to what is required to neutralize the military value of those resources, and will be halted as soon as the resources no longer qualify as military objectives.

(4) The proposed course of action has been approved by a flag grade officer.

(5) When practical advance warning will be given to belligerent forces occupying recognized resources, requesting they take actions to eliminate conditions making those resources military objectives.

d. Actions during the conduct of field operations - If due to changes in the tactical situation the need arises to invoke military necessity to justify actions against recognized resources, Commanders will comply with the procedures above to the degree practical and ensure compliance with the rules of engagement. See section 3.1.b. for additional guidance.

1.5. Resource Classification

The guidance in this pamphlet is primarily focused on the protection and management of resources recognized as being of significant global and/or regional value. If lost these resources may be irreplaceable and/or the impacts from the loss may have irreversible impacts.

1.5.1. Protected Property.

1.5.1.1. Geneva IV protections - Under the provisions of the Geneva IV Convention all property not qualifying as a military objective is accorded protection,

“Any destruction by the Occupying Power of real or personal property belonging individually or collectively to private persons, or to the State, or to other public authorities, or to social or cooperative organizations, is prohibited, except where such destruction is rendered absolutely necessary by military operations.”

GENEVA IV Article 53

a. Not all property meets the demands of being classified as a recognized resource. This is not to diminish the value of this property to their owners and others relying upon that property for physical and/or cultural/spiritual support.

b. Actions to ensure the protection of property as required by the provisions of the Geneva IV Convention are embedded in the rules of engagement (ROE). Even when justified by military necessity the damaging or destruction of property essential to the health and welfare of host nation personnel (i.e. orchards, irrigation systems, livestock), or to their cultural beliefs (i.e. sites

of ancestor worship, cemeteries, communal meeting places) has the potential to adversely impact the attitude of those people towards the presence and mission of US forces, and is therefore to be avoided whenever possible.

1.5.1.2. No-Strike List protections – To ensure the protection of private and public property, and compliance with the provisions of the Geneva IV convention, US guidance³⁶ stipulates:

“The LOW [law of warfare] requires all military personnel to take reasonable precautions to ensure that only military objectives are targeted and to ensure that civilian or noncombatant objects are not made the object of attack...”³⁷

(1) To ensure compliance with the Law of Warfare, protected properties are included as no-strike entities on the No-Strike List (NSL). According to established DOD guidance,

“No-Strike entities can be both traditional and nontraditional in nature, and consist of objects which are functionally characterized as civilian and/or noncombatant and therefore are prohibited from attack. No-Strike entities may include, but are not limited to medical, educational, diplomatic, cultural, religious, and historical sites, or other objects that do not, by their nature, location, purpose, or use, effectively contribute to the enemy’s war-fighting or war-sustaining capability. These entities are generally not lawful targets under normal circumstances;...”³⁸

“No-Strike entities are those designated by the appropriate authority upon which kinetic or non-kinetic operations are prohibited to avoid violating international law, conventions, or agreements, or damaging relations with coalition partners and indigenous populations...”³⁹

(2) Protected properties are identified as either category I protected or collateral objects, category II protected or collateral objects, or as a dual-use targets Category I objects are the most sensitive objects, and category II objects are all objects not defined as category I objects or dual-use targets.

³⁶ Chairman of the Joint Chiefs of Staff Instruction (CJCSI) 3160.01, *“No-Strike and the Collateral Damage Estimation Methodology”*, Enclosure C, *“No-Strike Policy and Guidance”*, 13 February 2009

³⁷ CJCSI 3160.01, Enclosure C, § 2.a

³⁸ CJCSI 3160.01, Enclosure C, § 2.b

³⁹ CJCSI 3160.01, Enclosure C, § 1.a / § 2.b

(3) Dual-use targets are objects determined to have both a military and civilian purpose/function; these targets may include protected properties occupied by belligerents. If belligerents use those objects "*for the purpose of advancing military objectives*", those objects lose their protected status "*provided the adversary has been put on notice*."⁴⁰

(4) For more information on the No-Strike List see appendix 3.

1.5.2. Recognized Resources - Recognized resources are a sub-set of protected resources. They are categorized as either cultural/historic or natural, resources; some resources may be recognized because of both their cultural/historic and natural value. They gain this status by being recognized by international agreements, sovereign States, or if deemed appropriate USARAF. Additionally, sanctioned HN/IGA/NGO resources responsible for the management/protection of recognized resources may be accorded the same level of consideration as the resources under their care.

1.5.2.1. Cultural/Historic Resources.

a. Cultural/historic resources may be tangible and intangible, movable or immovable; religious or secular resources, recognized by the owning sovereign State, that include but may not be limited to:

- (1) Monuments of architecture, art or history, buildings or groups of buildings which are of historical or artistic interest;
- (2) Paintings, sculptures, or other works of art;
- (3) Manuscripts, books, and other objects of artistic, historical, and/or archaeological or ethnological interest;
- (4) Scientific books or visual/audio recordings;
- (5) Archaeological, ethnological, or prehistoric sites and artifacts;
- (6) Buildings such as museums, large libraries, and depositories of archives whose main and effective purpose is to preserve or exhibit movable cultural property; and
- (7) Intangible cultural heritage resources related to how people live, communicate, and pass their individual and collective experiences between generations.

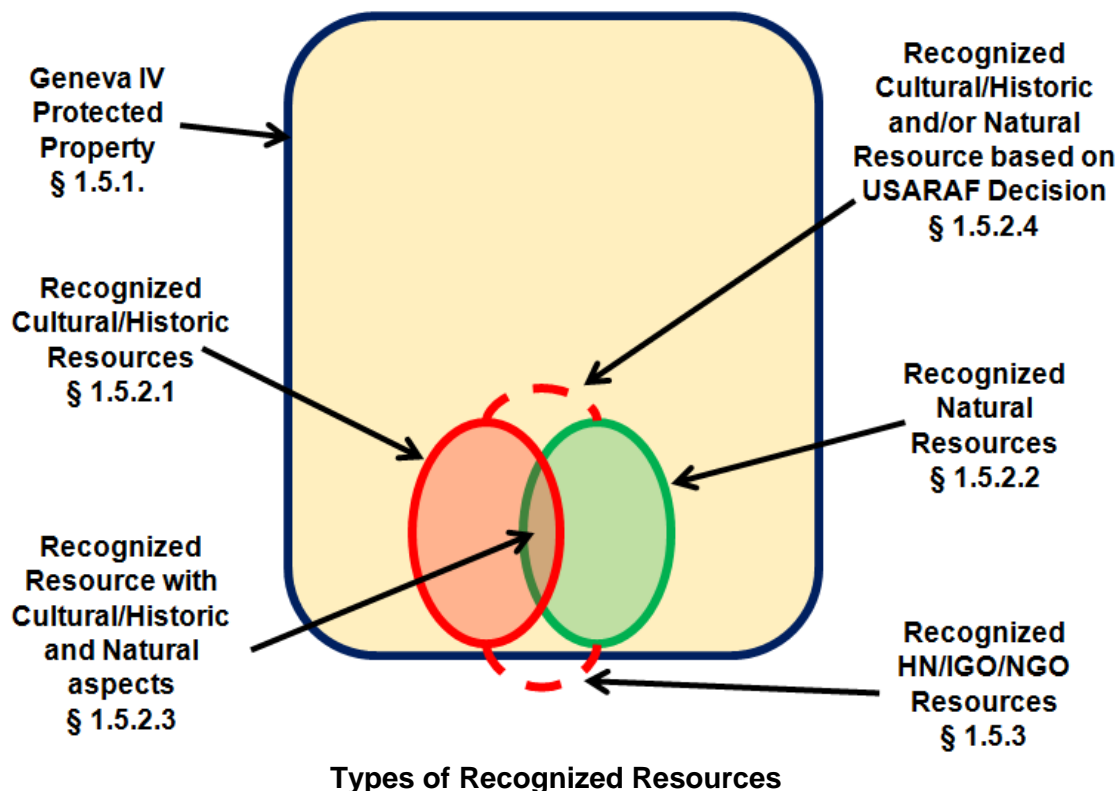
b. Cultural/historic resources of specific interest include those resources protected by international agreements/organizations, including but not limited to the following:

- (1) Resources identified for protection under the provisions of 1954 Hague Convention (HAGUE 54).
- (2) Resources identified for protection under the provisions of 1972 UNESCO World Heritage Convention (including resources on the tentative listing).
- (3) Resources identified for protection under the provisions of 1970 Cultural Property Convention.
- (5) Resources identified on host nations listings that are the equivalent of the US

⁴⁰ CJCSI 3160.01, Enclosure C, § 2.b

National Historical Register.

(6) Inventoried objects/artifacts registered with the International Council of Museums, International Council of African Museums, or similar internationally recognized groups.



1.5.2.2. Natural Resources.

(a) Natural resources may be movable or immovable, animate and/or inanimate resources, recognized by international agreement or the owning sovereign State, that include but are not limited to:

(1) Species and/or habitats of endangered, vulnerable, and/or threatened fauna and flora identified by the US Government, International Union for the Conservation of Nature (IUCN), or similar internationally recognized group.

(2) Protected geographical areas and the flora/fauna within those areas; protected areas include, but are not limited to trans-national/national/regional parks, wildlife/forest/marine reserves, and sanctuaries.

(3) Geological/physiographical formations.

(4) Challenged environments.

(b) Natural resources of specific interest include those resources recognized by international agreements/organizations, including but not limited to the following:

(1) Resources identified for protection under the provisions of and the 1971 Ramsar

Convention

(2) Specimens and products of species the trade of which is prohibited under the provisions of 1973 Treaty on Trade in Endangered Species.

(3) Resources identified for protection under the provisions of the 1992 Convention on Biological Diversity.

(4) Resources identified for protection under the provisions of the 1994 Convention to Combat Desertification in Countries Experiencing Serious Drought and or Desertification, Particularly in Africa.

(5) Resources identified for protection under the provisions of the 1995 Agreement on the Conservation of African-Eurasian Migratory Waterbirds.

(6) Resources identified for protection under the provisions of applicable Regional African Agreements (see appendix 2).

1.5.2.3. Mixed Recognized Resources – Some recognized resources are granted that status because they contain both cultural/historic and natural value.

1.5.2.4. Other Recognized Resources – Cultural/history and/or natural resources not specifically recognized by the owning sovereign State or one of the above international agreements may be included in the listing of recognized resources on a case-by-case basis when such inclusion is deemed appropriate by USARAF Commander.

1.5.3. Host Nation/IGO/NGO Support Personnel and Resources.

a. Consistent with the provisions of HAGUE 54 and operational/force protection considerations, whenever practical recognized resources are to remain under the control of host nation, inter-governmental organizations (IGO), and/or non-governmental organizations (NGO) responsible for their care prior to the start of operations.

b. A list of organizations directly associated with securing, protecting, preserving, conserving and/or maintaining recognized resources in areas of operations will be developed. If deemed to not be a security risk, applicable organizations may be contacted to determine their stance with regard to continuing in their current capacity.

c. If willing, applicable organizations may be accorded recognized status. If determined to be acceptable, these organizations will be requested to identify their personnel, equipment, materials, and facilities, and will be provided appropriate identification documentation. It will be made clear to these organizations that recognized status may be revoked at any time if they are perceived to be a security risk, or if they are unable or unwilling to perform their duties in a manner consistent with the best interests of the recognized resources under their care.

d. Cooperation between these organizations and US forces is completely voluntary. US forces will not interfere with the conduct of their activities unless required by operational/force protection considerations or at the requested by of the organizations.

e. Though US forces may render material assistance to these organizations, the creation of a quid-pro-quo arrangement is strictly prohibited.

f. At no time are US forces to take actions which could compromise or jeopardize the non-combatant status of applicable organizations.

2.0. Pre-Operational Planning Guidance. US forces will take every reasonable precaution to minimize the potential for adverse impacts to historic, cultural, and natural resources when conducting deliberate planning for operations in Africa.

2.1. Environmental Resources/Sites Database.

a. Database. To support training and operations requirements the USARAF Engineer will develop and maintain a database containing information on all environmentally significant resources/sites in Africa. The database will be unclassified, though access may be restricted. The USARAF engineer may collaborate with other organizations to develop and maintain the database.

(1) The database will at a minimum include all recognized cultural, historic, and natural resource sites specified in section 1.5.2 of this document. Additional information on sites of environmental concern (i.e., infrastructure, industrial sites of concern) will be included in the database. Examples of recognized resources to be included in the database will include, but are not limited to:

Internationally Recognized Resources/Sites

- Hague 1954 resources
- UNESCO World Heritage Sites
- UNESCO World Heritage Sites (tentative)
- UNESCO Biosphere Reserves
- RAMSAR Wetlands
- Desertification Treaty-related ecosystems
- CITES-related resources
- Geneva IV resources (only USARAF-recognized cultural/historic/natural resources not already recognized by international agreement)

Regionally Recognized Resources/Sites

- Trans-National Natural Resources
- Regional Treaty Recognized Resources

Nationally Recognized Resources/Sites

- IUCN class I resources (e.g., Scientific or Strict Nature Reserves)
- IUCN class II resources (e.g., National Parks)
- IUCN class III resources (e.g., Natural Monuments)
- IUCN class IV resources (e.g., Managed Nature Reserves or Wildlife Sanctuaries)
- IUCN class V resources (e.g., Tribal Peoples Reserves)
- IUCN class VI resources (e.g., Protected Landscapes)
- IUCN class VII resources (e.g., Resource Reserves)
- IUCN class VIII resources (e.g., Multiple Use Management Areas)

Zoological/Botanical Research Facilities and/or Public Exhibitions
Archaeological, ethnological, or prehistoric sites and artifacts
Museums, large Libraries, and Archives
Monuments of architecture, art or history, buildings or groups of buildings

Other Resources/Sites

Important Bird Areas [IBAs]
Hunting Concessions
Private Nature Preserves
Infrastructure Systems (i.e. Drinking Water, Wastewater, Solid Waste, Medical Waste, Electrical)
Industrial Facilities (i.e. Oil/Natural Gas Operations, Mining/Smelting Operations, Sites with Hazardous Substances)

(2) Data to be collected on sites of interest will include pictures/illustrations of sites, and written data. The written data will include but may not be limited to the following items:

- Site description
- Location data
- Size/boundary of site
- Source(s) of protected status
- Controlling organization data

(3) Data will conform to applicable DOD formatting standards to ensure its compatibility with DOD graphic information system (GIS) mapping applications.

b. Graphic Information Systems (GIS).

(1) The database discussed above will be uploaded to one or more unclassified GIS applications capable of illustrating on topographic maps/overlays the locations of the protected resources. The GIS applications will be used to generate products to support unclassified training and coordination requirements.

(2) The database will be migrated to classified GIS applications to support the planning and conduct of operations in Africa.

2.2. Course of Action (COA) Assessments –

a. During the conduct of pre-operational planning activities potential courses of action (COA) are to be initially analyzed to determine:

(1) The presence of recognized resources within the anticipated area of operations. Identified recognized resources are to be listed, available information on those resources assembled, and an operational overlay illustrating the locations of those resources developed (the overlay should be developed from the GIS-capable database of environmental sites of concern). The listing of recognized resources is to be incorporated into the no-strike target listing.

(2) Whether any of the identified recognized resources can be classified military objectives and the potential to successfully encourage belligerent forces to eliminate conditions making those resources military objects.

(3) The potential for identified recognized resources to be adversely impacted by the conduct of operations specified in the COA.

(4) Whether actions that have the potential for adversely impacting recognized resources are justified by military necessity, and as required developing documentation to support that determination. Refer to section 1.4.c. for additional guidance on this process. Documentation will be reviewed by the Staff Judge Advocate staff for adequacy and legal compliance.

(5) What, if any, risk mitigation actions can be incorporated into the COA to decrease the potential for adverse impacts on to recognized resources.

(6) What recognized resources are anticipated to come under the control of US forces, and the level of support required on the part of US forces to ensure those resources are secured from harm.

(7) Whether there are any host nation, inter-governmental organizations (IGO), and/or non-governmental organizations (NGO) that can be granted recognized status, what recognized resources may be placed under the control of those organizations, and what if any support they may request of US forces.

b. After the initial analysis of potential courses of action (COA), feasible COAs will be analyzed to determine:

(1) Whether one or more COAs does not expose the recognized resources to adverse impacts. If one is identified, then it should be the preferable COA from a recognized resources viewpoint.

(2) If all COAs expose the recognized resources to the potential of adverse impacts, which COA represents the most acceptable level of risk. The COA with the lowest level of risk should be the preferable COA from this group. Military necessity documentation will be approved by a flag grade officer.

2.3. Immunity Status Violations. If it is determined that a recognized resource is being used by belligerents in a manner determined to violate its immunity status, thereby making the resource a military objective, consistent with security considerations the belligerents will be informed of the violation and provided an opportunity to comply with international convention requirements. Nothing in this paragraph is to be construed as limiting the United States' rights of individual and collective self defense.

2.4. Unit Training Activities.

a. Commanders will ensure that, prior to deploying to the theater of operations all personnel

under their command have received training on cultural, historic, and natural resources. This training will be tailored based upon duty requirements. This training will at a minimum include instruction on:

- (1) Relative value of human life/health versus protected resources.
- (2) Rationale and requirements supporting our actions to minimize harm to recognized resources.
- (3) Requirements for invoking military necessity.
- (4) Recognized cultural, historical, and/or natural resources known to be in the anticipated area of operations.
- (5) Actions to be taken to mitigate risks to recognized resources.
- (6) Actions to be taken to secure and manage recognized resources under the control of US forces.
- (7) Do's and don'ts associated with interacting with Host Nation/Inter-governmental, and/or Non-governmental organizations granted recognized status.
- (8) Actions to be taken when relinquishing control of recognized resources.
- (9) Prohibitions on the personal possession of recognized resources.

3.0. Guidance during Operations.

3.1. Conduct of Operations.

a. Risk Mitigation. Courses of Action (COAs) in operations orders are to be developed taking into consideration measures to minimize risks to recognized known cultural, historic, and natural resources. When conducting operations, Commanders are to comply with the requirements of those risk mitigation measures. When authorized to take actions that will damage recognized resources, commanders will closely control the conduct of those actions. Damage to recognized resources will be restricted to only that necessary to accomplish mission requirements.

b. Changed Conditions. Situations will arise during the conduct of operations that require commanders to deviate from pre-defined COAs. Those situations may include actions taken by opposing forces, or the involvement of additional protected resources.

(1) Actions of Opposing Forces. If belligerents take actions that result in a recognized resource becoming a military objective, Commanders will take the following actions:

(a) In compliance with the rules of engagement (ROE), Commanders will take such offensive actions as may be required to protect US forces under active attack or under

immediate threat of an attack from belligerents occupying or using recognized resources as shields. These are characterized as,

“...instances where (1) intelligence confirms the use of the No-Strike entity for hostile purposes and the need to strike is time sensitive ..., and/or (2) troops are in contact and taking hostile fire from traditional No-Strike entities. ...; operational imperatives, established ROE, including the inherent right and obligation of self-defense, provide the combatant command the appropriate authority to engage in these instances unless this authority is expressly limited in SecDef provided supplemental ROE.”⁴¹

If appropriate, Commanders may undertake actions to protect non-combatants and civilian property from the threat posed by the belligerents. Actions will attempt to minimize damage to recognized resources and will not exceed that necessary to neutralize the immediate threat.

(b) If not under immediate threat, Commanders will adhere to the following steps:

(1) Keep the chain of command informed of the situation, and if practical request guidance and/or technical support.

(2) Identify a feasible course of action that minimizes risks to the recognized resource, without unreasonably increasing risks to US forces or host nation personnel.

(3) When practical receive concurrence on the course of action from a flag grade officer in the chain of command.

(4) Provide instructions to US forces on risk mitigation actions to be followed during the course of actions against the belligerents.

(5) Instruct belligerents to evacuate the recognized resource.

(6) Conduct actions against the belligerents occupying the recognized resource following in a manner consistent with the risk mitigation actions incorporated into the course of action.

(7) Halt actions in the vicinity of the recognized resource as soon as the threat poses by the belligerents is neutralized.

(8) Take actions to secure the recognized resource against additional harm.

(9) Document actions supporting the decision to invoke military necessity, risk mitigation measures employed during the action to minimize harm to the resources, and steps taken to secure the resources from additional harm.

⁴¹ CJCSI 3160.01, Enclosure C, Appendix B § 6 d.

(2) Additional Resources. If additional recognized resources, or if previously unidentified resources believed to be entitled to recognized status are identified during the course of operations an impact assessment is to be conducted. Revised instructions based upon the selected COA will be provided to Commanders in FRAGOs.

3.2. Previously Unidentified Resources.

a. During the course of operations the possibility exists for US forces to encounter items of potential cultural, historic, or natural interest not identified during pre-operational planning. Once identified, items of potential interest will be treated as if the item is a recognized resource.

b. When an encounter occurs, US forces may take such actions as the commander deems necessary to ensure an immediate threat to US forces does not exist. If an immediate threat does exist, the commander may take such actions necessary to neutralize the threat. The guidance provided in section 3.1.b. this pamphlet will be applicable to this situation.

c. In the case of larger immovable items (e.g., structures), US forces are not to occupy the items unless the tactical situation requires such occupation.

d. When smaller items are identified, they will not be moved by US forces. A perimeter will be established around the item (e.g., a five meter [5 m] around the item), and US personnel will remain outside the marked off area.

e. The commander will gather available information on the location and physical characteristics of the item, and communicate findings to the JTF/USARAF engineer.

f. The JTF/USARAF engineer will communicate the finding to United States Africa Command (AFRICOM) and appropriate Host Nation authorities. If appropriate the information may be provided to applicable technical experts for verification of the identity of the item.

g. After a determination has been made on the status of the item, guidance on what actions are to be taken will be provided to the responsible Commander.

3.3. Resources under US Control.

a. Upon order, US forces will secure all identified recognized resources not under effective control of the owning Host Nation, or, if applicable, IGO/NGOs.

b. All recognized resources coming under the control of US forces will be identified in status reports. Status reports will detail the identification of those resources and actions taken to protect those resources. Status reports will be submitted through command channels.

c. Unless necessary to preclude harm, US forces are not to move recognized resources from where they were originally found. If it is determined advisable in order to secure movable recognized resources against theft or pilferage, those resources may be moved to a secure collection area. Whenever practical the support of a subject matter expert is to be requested for

the packing and movement of these resources. Accountability for these resources will be maintained at all times.

d. The destruction, damage, or theft of recognized resources under the control of US forces will be detailed in serious incident reports (SIR). SIRs are to be submitted through command channels. SIRs will detail the cause of the damage, the extent of the damage, and what, if any, actions have been taken to preclude additional harm to the affected resource.

3.4. Host Nation/IGA/NGO Coordination. Consistent with the guidance provided in Section 1.4.3., US forces will encourage Host Nation/IGA/NGOs identified as responsible for the management of recognized resources to continue to perform their duties during the course of operations.

3.5. Relinquishing Control of Resources. As soon as feasible US forces will relinquish control of recognized resources under their control to officials of the sovereign State with rights to that resource. Control of recognized resources may be relinquished to officials of appropriate IGOs or NGOs if the owning sovereign State is unable or unwilling to accept control. Final disposition of the resources will be in accordance with the provisions of applicable international agreements.

3.6. Preventing Illegal Trade of Resources. If Host Nation authorities are unable or unwilling to take action, US forces will take actions to prohibit the removal or trans-boundary shipment of recognized resources. This is not to preclude shipments which are conducted in compliance with applicable international treaties or conventions.

3.7. Private Possession of Artifacts.

a. If recognized artifacts are officially presented by owning Host Nation officials to US personnel, such presentations will be reported to the Staff Judge Advocate to ensure compliance with applicable command guidance, DOD Regulations, and US Public Law 97-446.⁴²

b. Prior to all private purchases of cultural artifacts by US military personnel or personnel accompanying US forces, those purchases shall be reviewed by the Staff Judge Advocate to ensure compliance with applicable legal and procedural requirements. Individuals procuring artifacts are required to obtain appropriate ownership and export/import documentation.

c. Any unauthorized acquisition, possession, sale, or shipment of cultural artifacts by US military personnel or personnel accompanying US forces is strictly prohibited. The illegal or unauthorized acquisition (i.e. robbery, looting, plundering) of property is punishable under articles 99(6), 103(b)(2,3), 121(a), 122, and/or 134 of the Uniform Code of Military Justice (UCMJ); the willful or wrongful damaging or destruction of property is punishable under articles

⁴² US PL 97-446, "Convention on Cultural Property Implementation Act", 12 Jan 1983

109 and/or 134 of the UCMJ⁴³.

⁴³ United States Code (USC), Title 10, Chapter 47, "Uniformed Code of Military Justice", Subchapter X, "Punitive Articles" (§§ 877-934)

REFERENCES

1. US Regulatory Requirements.

a. US Public Law (PL) 96-515, "National Historic Preservation Act Amendments of 1980", § 402 (16 U.S.C. § 470a-2).

b. US PL 97-446, "Convention on Cultural Property Implementation Act", 12 Jan 1983; as amended by PL 100-204, (19 U.S.C. § 2602)

c. United States Code (USC), Title 10, Chapter 47, "Uniformed Code of Military Justice",

2. DOD/Joint/DA/USARAF Guidance.

a. General Orders No. 100, Instructions of Armies of the US in the Field, 24 Apr 1863 (a.k.a. "The Lieber Code")

b. Department of Defense Instruction 4715.5, "Management of Environmental Compliance at Overseas Installations" 22 April 1996

c. Combined Joint Chief of Staff Instruction (CJCSI) 3121.01A, "Standing Rules of Engagement for US Forces" 15 January 2000

d. Chairman of the Joint Chiefs of Staff Instruction (CJCSI) 3160.01, "No-Strike and the Collateral Damage Estimation Methodology"

e. Joint Publication 1-04, "Legal Support to Military Operations", 17 August 2011

f. Joint Publication 3-34, "Joint Engineer Operations" 30 June 2011

g. Joint Publication 3-57, Civil-Military Operations, 08 July 2008

h. US Department of the Army Field Manual 3-34, "Engineer Operations" 4 August 2011

i. US department of the Army Field Manual 27-10, "Law of Land Warfare", (18 July 1956) (Change 1, 15 July 1976)

k. Memorandum, US Army Africa, "USARAF Environmental Vision Statement", 3 February 2012

l. USARAF Regulation 200-2, "Environmental Management during African Operations", 1 January 2012

m. US Manual for Military Commissions (2010 edition)

3. International Agreements.

- a. Project of an International Declaration concerning the Laws and Customs of War, 27 August 1874, Brussels, Belgium
- b. Oxford Manual of the Laws and Customs of War on Land, 9 September 1880, Oxford, England
- c. Hague Convention II - with Respect to the Laws and Customs of War on Land and its annex: Regulation concerning the Laws and Customs of War on Land (Hague II), 29 July 1899, the Hague, Netherlands
- d. Hague Convention IV - Laws and Customs of War on Land, (Hague IV), 18 October 1907, The Hague, Netherlands
- e. Treaty on the Protection of Artistic and Scientific Institutions and Historic Monuments, (a.k.a. Roerich Pact), 15 April 1935, Washington DC, United States of America
- f. Constitution of the UN Educational, Scientific, and Cultural Organization (UNESCO), 16 November 1945, London, England
- g. Geneva Convention (IV) Relative to the Protection of Civilian Persons in Time of War, 12 August 1949, Geneva, Switzerland
- h. Convention for the Protection of Cultural Property in the Event of Armed Conflict, 14 May 54, The Hague, Netherlands
- i. Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property, 14 November 1970, Paris, France
- j. Convention Concerning the Protection of the World Cultural and Natural Heritage, 23 November 1972, Paris, France
- k. Convention on the Conservation of Migratory Species of Wild Animals (Bonn Convention), 23 June 1979, Bonn Germany
- l. Convention on the Protection and Promotion of the Diversity of Cultural Expressions, 20 October 2005
- m. Convention for the Safeguarding of the Intangible Cultural Heritage, 3 November 2006, Paris, France
- n. Convention on Wetlands of International Importance Especially Waterfowl Habitat and 1982 Protocol, 2 February 1971, Ramsar, Iran

- o. Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), 3 March 1973, Washington, DC
- p. African-Eurasian Waterbird Agreement (AEWA), 16 June 1995, the Hague, Netherlands
- q. Convention on Biological Diversity (CBD), 5 June 1992, Rio de Janeiro, Brazil
- r. Cartagena Protocol on Biosafety to the Convention on Biological Diversity, 29 January 2000, Cartagena, Venezuela
- s. International Institute for the Unification of Private Law (UNIDROIT) Convention on Stolen or Illegally Exported Cultural Objects, Rome, Italy, 24 June 1995
- t. Rome Statute of the International Criminal Court (ICC), United Nations Treaty Series, Volume. 2187, No. 38544, (Document A/CONF.183/9), Rome, Italy, 17 July 1998

4. Other References.

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Dutli, Maria, International Committee of the Red Cross Report, "Protection of Cultural Property in the Event of Armed Conflict", 6 October 2000

Appendix 1 - International Union for the Conservation of Nature (IUCN) Categories of Wildland Management

I. Scientific or Strict Nature Reserves represent the most restrictive WMA category, intended to maintain representative samples of natural ecosystems in an undisturbed state for scientific research, environmental monitoring, education, and preservation of biological diversity. Tourism, recreation, and most other human uses are usually not permitted.

II. National Parks are usually relatively large areas where native plant and animal species (and often outstanding geological or other scenic features) are of special interest. Controlled tourism and scientific research are permitted; more intensive human uses usually are not.

III. Natural Monuments are often smaller WMAs intended to protect highly localized species, ecosystems, or geological formations. Tourism and scientific research are permitted to the extent that they are compatible with preservation of the unique natural features.

IV. Managed Nature Reserves or Wildlife Sanctuaries protect rare plant or animal species, or large concentrations of resident or migratory wildlife. Manipulation of vegetation and other intensive management may be done to improve the habitat for species of special concern. Tourism, research, and occasionally limited livestock grazing or fuel wood collection are permitted, when these activities are compatible with wildlife management objectives.

V. Tribal Peoples Reserves are relatively unmodified natural areas in which indigenous tribal peoples or vulnerable ethnic minorities (see OMS 2.34) continue to practice traditional, low-intensity forms of land use such as hunting and gathering or nomadic pastoralism. Settlement or potentially disruptive resource utilization by outsiders is not permitted.

VI. Protected Landscapes are areas which have often been significantly modified by people, but which still contain important wild land resources. Traditional land uses, including fishing, grazing, and some agriculture, are often permitted to accommodate the needs and interests of local populations. Land use control is often at the local government level.

VII. Resource Reserves are "interim" WMAs. They are typically fairly extensive areas which are not yet heavily settled, but which may be under relatively recent pressure for colonization, timber or mineral extraction, or other intensive uses. This WMA category is designed to restrict such uses until a land use plan or other management guide is issued to channel further development in an environmentally suitable manner.

VIII. Multiple Use Management Areas are intended to allow sustainable production of such economic goods as water for downstream uses; timber (obtained through low intensity logging); fuel wood; wild fruits, herbs, gums, or other plant products; wildlife; fish; grazing; and outdoor recreation. Included in this category are most "forest reserves" and "protection forests," including those established largely for watershed catchment protection. Within these WMAs, management is primarily oriented to the sustaining of these economic activities, although special zones may also be designated within these areas to achieve

more specific conservation objectives, such as preservation of biological diversity. These WMAs are generally large and capable of sustaining these types of economic activities without degradation or elimination of the wild land resource. Generally, these wild land areas do not possess nationally unique or exceptional natural features.

Appendix 2 - International Agreements with African scope

a. African Convention on the Conservation of Nature and Natural Resources, 15 Sep 68, Algeria, Algeria

b. Protocol Concerning Specially Protected Areas + Biological Diversity in the Mediterranean, 16 February 1976, Barcelona, Spain

c. Convention for Cooperation in the Protection and Development of the Marine and Coastal Environment of the West and Central African Region (Abidjan Convention), 23 March 1981, Abidjan, Ivory Coast

d. Regional Convention for the Conservation of Red Sea + Gulf of Aden Environment, 14 February 1982, Jeddah, Saudi Arabia

e. Convention for the Protection, Management and Development of the Marine and Coastal Environment of the Eastern African Region (Nairobi Convention), 21 June 1985, Nairobi, Kenya

f. Protocol Concerning Protected Areas and Wild Fauna and Flora in the Eastern African Region, 21 June 1985, Nairobi, Kenya

g. Agreement on the Action Plan for the Environmentally Sound Management of the Common Zambezi River System, 28 May 1987, Harare Zimbabwe

h. Convention for the Establishment of the Lake Victoria Fisheries Organization 30 June 1994, Kisumu, Kenya

i. Lusaka Agreement on Co-Operative Enforcement Operations Directed at Illegal Trade in Wild Fauna + Flora, 8 September 1994, Lusaka, Zambia

j. Southern African Development Community Protocol on Wildlife Conservation + Law Enforcement, 18 August 1999, Maputo, Mozambique

k. Convention on the Sustainable Management of Lake Tanganyika, 12 June 2003, Dar es Salaam, Tanzania

l. Protocol for Sustainable Development of Lake Victoria Basin, 29 November 2003, Arusha, Tanzania

Appendix 3 – Excerpts from Chairman of the Joint Chiefs of Staff Instruction (CJCSI) 3160.01, "No-Strike and the Collateral Damage Estimation Methodology"

Enclosure C, "No-Strike Policy Guidance" 13 February 2009

§ 1. Introduction

a. No-Strike entities⁴⁴ are those designated by the appropriate authority upon which kinetic or non-kinetic operations are prohibited to avoid violating international law, conventions, or agreements, or damaging relations with coalition partners and indigenous populations. The infliction of unnecessary suffering or damage to civilian persons or property that is excessive in relation to the concrete and direct military advantage anticipated is inconsistent with international law and is contrary to DOD policy outlined in this document and in references a and b.

b. The source and method for defining a person, place, or thing as a No-Strike entity is derived primarily from the body of international law collectively known as LOW. The LOW incorporates international treaties and agreements adhered to by the U.S. government, as well as customary international law, into a comprehensive set of guidance and requirements governing the conduct of modern warfare.

§ 2. "General Guidance":

a. The LOW requires all military personnel to take reasonable precautions to ensure that only military objectives are targeted and to ensure that civilian or noncombatant objects are not made the object of attack. NSLs identify and functionally characterize LOW protected No-Strike entities, forming the strategic and operational basis for target de-confliction during operational planning, CDE within the target development process, and the de-confliction of Joint Fires during operational and tactical execution. See Enclosure D for additional guidance on CDE.

b. No-Strike Entities. No-Strike entities can be both traditional and nontraditional in nature,⁴⁵ and consist of objects which are functionally characterized as civilian and/or noncombatant and therefore are prohibited from attack. No-Strike entities may include, but are not limited to medical, educational, diplomatic, cultural, religious, and historical sites, or other objects that do not, by their nature, location, purpose, or use, effectively contribute to the enemy's war-fighting or war-sustaining capability. These entities are generally not lawful targets under normal circumstances; however, if used for the furtherance of military or hostile force objectives, No-

⁴⁴ Also sometimes referred to as collateral objects for the purposes of CDE. See Enclosures B and D.

⁴⁵ For the purposes of this instruction, the term "traditional" refers to physical entities such as facilities, units, and other entities geospatially located within the geographic area of operation. The term "nontraditional" refers to entities that are more abstract in nature and are usually associated with transnational information technology and global economic structures. These "non-traditional" entities may include objects such as computer networks, Web sites, IP addresses, bank accounts, etc.

Strike entities lose their protected status and may be subject to attack, provided the adversary has been put on notice. For example, if a hospital structure is used to store weapons or is used for some other military purpose, a warning must be given and if unheeded, the facility forfeits its protected status under the LOW and becomes a lawful military target. When such a change in status occurs, the CDR or authorized designee may approve the entity for attack

c. No-Strike Entities Located on Military Installations. When located on installations determined to be lawful military targets, No-Strike entities should be evaluated for collateral damage concerns and mitigated IAW Enclosure D. It must be assumed these entities host protected functions unless confirmed otherwise.⁴⁶ No-Strike entities must be geospatially defined, developed as separate facilities, and assigned a functional category code and O-suffix, as appropriate. Proximity of lawful military targets to No-Strike entities does not preclude engagement of the lawful military target. However, in these circumstances the commander must weigh the anticipated loss of life, damage to property, or other negative effects incidental to the attack versus the military advantage expected to be gained by the attack. In making the decision, commanders must consider the military necessity for attacking the target, proportionality of the means planned for target engagement, and reasonableness within the framework of operational objectives.

d. No-Strike Entities Versus Restricted Targets. Restricted targets are different from No-Strike entities. Restricted targets are those valid military targets which support the attainment of operational objectives, but which have been restricted from specified means of effects or engagement for operational, political, intelligence gain/loss, environmental, collateral damage, and/or ROE considerations.⁴⁷ CDRs are required to identify, develop, maintain, and distribute a list of restricted targets (known as the restricted target list (RTL)) for tasked plans and/or operational orders (OPORDs) within their assigned AOR. The RTL provides the target identification, effects restrictions, nominating command/agency, rationale, and approval authority for target engagement and effects. The RTL must be separate and distinct from the NSL.

§ 3. The No-Strike Process

a. General. Participation and cooperation among stakeholders is critical to the success of the No-Strike process. Non-DOD stakeholders in particular play a key role in protecting life and property by identifying the location and functionality of non-military entities. Specific instructions on database and NSL development are provided in the appendices to this enclosure.

⁴⁶ If the function of these entities is confirmed as supporting a military objective, it is not necessary to treat them as collateral damage concerns. These entities are deemed lawful targets IAW reference a, and any incidental damage sustained as a result of combat operations should be considered additional damage as defined in reference h.

⁴⁷ Valid targets are those that have been vetted as, "A part of target development that ensures all vetted targets meet the objectives and criteria outlined in the commander's guidance and ensures compliance with the law of armed conflict and rules of engagement." JP 3-60, Joint Targeting, reference e.

b. Identification, Characterization, and Nomination

(1) Identification, characterization, and nomination of No-Strike entities are the first steps in the No-Strike process. All stakeholders have the responsibility to identify and characterize the functionality of No-Strike entities as accurately as possible, and report this information to the responsible combatant command, JTF, or responsible U.S. government department or agency in a timely manner. Every effort shall be made to validate No-Strike entity nominations; however, timeliness of the reporting is critical during the conduct of military operations.

(2) To increase the accuracy and currency of reporting on facilities, combatant commands should encourage organizations to periodically provide a Global Positioning System (GPS) quality center-point and corner points defining the facility boundary for each potential No-Strike entity of interest along with an expected duration of occupancy. Street addresses and/or general descriptions of facility locations are of little use for geospatially defining No-Strike facilities. This information is essential to the collateral damage process and also allows more efficiency via automated tools.

c. Development. No-Strike entities require the same accuracy in location and geospatial definition as that of lawful military targets. Accurate positioning and geospatial development of No-Strike entities and identification of collateral damage/effects concerns is part of both the deliberate and dynamic targeting processes and is a continuous process that does not end when military operations commence (see reference e for detailed discussion on the deliberate and dynamic targeting processes). The continuous identification and development of No-Strike entities, well in advance of and throughout military operations, is critical to campaign success.

d. List Generation and Maintenance. NSL generation and maintenance must be an assigned task with frequent and routine reviews by the combatant command No-Strike Coordinator. Participation by stakeholders and validation by the appropriate agencies will yield additions, changes, and/or deletions to the NSL on a regular basis. Active maintenance will ensure the most up to date information is available to planners and battle management systems supporting target planning and CDE. NSL approval is a CDR responsibility and the procedures governing NSL approval are a command function.

e. Dissemination. After approval, the geographic CDR will ensure routine and timely dissemination of NSLs to all subordinate and supporting commands and supported functional commands with a periodicity appropriate for the tempo of operations. Subordinate and supporting commanders must then ensure the NSL is disseminated down to every level of their commands. See Appendix B to this Enclosure for additional guidance on NSL dissemination.

f. Execution. Deliberate and dynamic targets must be validated against the latest NSL prior to attack. CDE and mitigation will be accomplished IAW Enclosure D and the governing ROE for the particular operation. Targets that cannot be mitigated for collateral damage will be forwarded for review and approval IAW reference d.

g. Follow-on Operations. Traditional No-Strike entities typically consist of facilities and locations that are important to planners in follow-on, stability operations, such as hospitals, food distribution points, and refugee camps. These and similar locations could be inappropriately exploited by insurgent or terrorist groups, in which case they may lose their protected status. Consequently, the No-Strike process remains a U.S. government priority even after the cessation of major combat operations. By limiting unnecessary suffering and disproportionate damage, the No-Strike process will accelerate recovery in post-conflict operations and minimize operational limitations routinely imposed as a result of international sensitivities over the humanitarian impacts of military operations.

Enclosure B, "Collateral Objects, Dual-Use, and Human Shields"

1. Introduction. Objects defined by the Law of War (LOW) as functionally civilian or non-combatant in nature are considered protected or collateral objects.... Knowledge of collateral objects is essential to target development, the No-Strike process, and the CDM. Protected or collateral objects will be treated in accordance with policy and guidance prescribed in this instruction and operational ROE.

2. Protected or Collateral Object Categories. Collateral objects are divided into two categories based on their sensitivity. Objects are represented by MIDB classification category codes (CATCODES) for the purposes of intelligence production, target development, and as a standardized description of each category. Table B-1 and B-2 below show the collateral objects by category type and tie specific CATCODEs to their description (number in parenthesis).

a. Category I Protected or Collateral Objects. This category includes the most sensitive subset of objects defined by the LOW. These objects typically comprise the core of the NSL (see Enclosure C, Appendix A). An operation's ROE may dictate other categories for the supporting NSL.

- (1) Diplomatic offices, foreign missions, and sovereign nonmilitary property of other nations within the AORs.*
- (2) Religious, cultural, historical institutions, and structures.*
- (3) Intergovernmental organizations (e.g., United Nations, North Atlantic Treaty Organization) and Nongovernmental organizations (e.g., International Committee of the Red Cross, Amnesty International) property, equipment, and personnel.*
- (4) Medical facilities (both civilian and military).*
- (5) Public education facilities including nonmilitary schools, colleges, universities, and institutes.*
- (6) Civilian refugee camps and concentrations.*
- (7) Prisoner of war camps and concentrations and government detention facilities/prisons.*
- (8) Facilities whose engagement may result in pollution that cannot be contained to include contamination of standing water, streams, and rivers.*
- (9) Dams or dikes whose engagement may result in the flooding of civilian areas.*

Category I MIDB Codes with potential for including environmental sites/resources of interest:

B-1, 2.a.(2) - Religious, cultural, historical institutions, and structures.

- 77600 *Religious, Cultural and Historical Institutions, General*
- 77610 *Religious Institutions*
- 77620 *Cultural and Historical Institutions*
- 77630 *Cemeteries*
- 77700 *Libraries*

B-1, 2.a.(8) - Facilities whose engagement may result in pollution that cannot be contained to include contamination of standing water, streams, and rivers.

- 43110 *Water Supply Facilities, Treatment Plants*
- 43210 *Sewage Waste Facilities*

B-1, 2.a.(9) - Dams or dikes whose engagement may result in the flooding of civilian areas.

- 43121 *Water Supply Facilities, Storage Facilities, Reservoirs Dikes and Other Water Control Features, General*
- 43810 *Dikes and Other Water Control Features, Critical Dike Sections*
- 43820 *Dikes and Other Water Control Features, Water Control Features, Other Than Dikes and Dams*
- 43900 *Dams, General*
- 43910 *Dams, Concrete Dams*
- 43920 *Dams, Earthen or Rock-Filled Dams*
- 43930 *Dams, Masonry Dams*
- 43940 *Dams, Composite Dams, General Dam Entry*
- 43941 *Dams, Composite Dams, Concrete Component of Composite Dam*
- 43942 *Dams, Composite Dams, Earthen or Rock-Filled Components of Composite Dams*
- 43943 *Dams, Composite Dams, Masonry Component of Composite Dam*

b. Category II Protected or Collateral Objects. This category includes the remainder of objects defined by the LOW and may be on the NSL.

(1) Nonmilitary billeting and accommodations including private civilian housing and family housing on military or government property.

(2) Civilian meeting places including athletic fields, stadiums, racetracks, parks, civic and convention centers, theaters, amusement parks, markets, and recreational facilities.

(3) Public utilities and facilities including those that generate, distribute, or transport electricity, petroleum or water intended for civilian consumption; commercial fuel service stations, civilian mass transit facilities, water supply facilities, waste facilities, urban gas supply, fire stations, postal facilities, police stations, civil defense facilities, and financial institutions.

(4) Agricultural processing and storage facilities that market or distribute foodstuffs for civilian consumption.

(5) Facilities and/or structures for which the functionality/purpose is unknown are classified as Category II Protected or Collateral Objects.

Category II MIDB Codes with potential for including environmental sites/resources of interest:

B-1, 2.b.(2) - Civilian meeting places including athletic fields, stadiums, racetracks, parks, civic and convention centers, theaters, amusement parks, markets, and recreational facilities.

- *43100 Water Supply Facilities, General*
- *43120 Water Supply Facilities, Storage Facilities, General*
- *43122 Water Supply Facilities, Storage Facilities, Tanks*
- *43123 Water Supply Facilities, Storage Facilities, Towers and Standpipes*
- *43130 Water Supply Facilities, Pumping Stations*
- *43140 Water Supply Facilities, Sources, General*
- *43141 Water Supply Facilities, Sources, Wells*
- *43142 Water Supply Facilities, Sources, Springs*
- *43143 Water Supply Facilities, Sources, Rivers or Streams, Intake Points*
- *43144 Water Supply Facilities, Sources, Lakes, Intake Points*
- *43145 Water Supply Facilities, Sources, Salt Water Bodies, Intake Points*
- *43150 Water Supply Facilities, Irrigation Pump Stations*
- *43160 Water Supply Facilities, Water Pipeline Segments*
- *43190 Water Supply Facilities, Water Drilling Towers*
- *43200 Waste Facilities, General*
- *43220 Waste Facilities, Solid Waste Processing, General*
- *43221 Waste Facilities, Solid Waste Processing, Transfer Stations*
- *43222 Waste Facilities, Solid Waste Processing, Landfills*

B-1, 2.b.(3) - Public utilities and facilities including those that generate, distribute, or transport electricity, petroleum or water intended for civilian consumption; commercial fuel service stations, civilian mass transit facilities, water supply facilities, waste facilities, urban gas supply, fire stations, postal facilities, police stations, civil defense facilities, and financial institutions.

- *46250 Parks*

c. Protected or collateral object categories may be modified by the Secretary of Defense (SecDef) or President as the military or political situation dictates. Changes to these categories will be reflected in operation specific ROE.

3. Dual-Use Targets

a. *Targets characterized as having both a military and civilian purpose/function are characterized as dual-use. In most cases, dual-use targets consist of facilities/structures associated with senior governmental level command and control, national communications infrastructure, media centers, national power and petroleum, oil, and lubricants infrastructure, industrial facilities, and public utilities providing support to the civilian population and the military effort.*

b. *Dual-use targets may also consist of LOW protected facilities/structures occupied by combatants. LOW protected structures occupied by enemy combatants for the purpose of advancing military objectives lose their LOW protection and are not classified as dual-use (provided the adversary has been put on notice). Similarly, if the function of a collateral object is determined to be supporting military operations and/or objectives exclusively, it is not classified as dual-use. Such entities are not considered collateral damage or No-Strike concerns and may be deemed lawful targets IAW reference a (also see Enclosure C, subparagraph 2.c. and supporting footnote).*

c. *Commanders are responsible to determine the predominant function of LOW protected structures, based on current intelligence, and decide if the target is dual-use or not. The ROE for a specific operation provides the authorizations and/or prohibitions for targeting dual-use objects. Regardless of the ROE in effect, civilian personnel working within the boundary of dual-use targets must be considered as noncombatant casualties for the purpose of casualty estimation under guidance provided in Enclosure D.*

Appendix 4 – Military Necessity and Underlying Principles

Joint Publication 1-4, "Legal Support to Military Operations" Chapter 2, §2, "Laws of War Principles" 17 August 2011

*a. **Military Necessity.** The principle of military necessity justifies those measures not forbidden by international law that are indispensable for securing the complete submission of the enemy as soon as possible. However, this principle is not applied in a vacuum. It must be applied in conjunction with other law of war principles. Military necessity generally prohibits the intentional targeting of protected persons (civilians, hostile personnel who have surrendered or are otherwise "out of combat," etc.) and places (objects or places that are used for purely civilian purposes, such as hospitals, schools, and cultural property that have not been converted to or for military/hostile use) because they do not constitute legitimate military objectives in furtherance of the accomplishment of the mission.*

*b. **Unnecessary Suffering.** The principle of unnecessary suffering forbids the employment of means and methods of warfare calculated to cause unnecessary suffering. This principle acknowledges that combatants' necessary suffering, which may include severe injury and loss of life, is lawful. This principle largely applies to the legality of weapons and ammunition. Generally, weapons and ammunition that have been issued by DOD have been reviewed to ensure compliance with the law of war and this principle. However, approved weapons and ammunition also may not be used in a way that will cause unnecessary suffering or injury. A weapon or munition would be deemed to cause unnecessary suffering if, in its normal use, the injury caused by it is disproportionate to the military necessity for it, that is, the military advantage to be gained from its use.*

*c. **Distinction.** This principle requires parties to a conflict to distinguish between combatants and noncombatants and to distinguish between military objectives and protected property and places. Parties to a conflict must direct their operations only against military objectives. Military objectives are combatants and those objects which by their nature, location, purpose, or use make an effective contribution to military action and whose total or partial destruction, capture or neutralization, in the circumstances ruling at the time, offer a definitive military advantage.*

*d. **Proportionality.** The principle of proportionality prohibits attacks that may be expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof, which would be excessive in relation to the concrete and direct military advantage expected to be gained. As such, this principle is only applicable when an attack may possibly affect civilians or civilian objects, and thereby, may cause collateral damage. Proportionality is a way in which a military commander must assess his or her obligations as to the principle of distinction, while avoiding actions that are indiscriminate.*