

Report on pledge:

Strengthen Domestic Implementation of International Humanitarian Law in Military Operations

Actions taken:

The United States has undertaken a range of measures since its pledge to the 33rd International Conference of the Red Cross and Red Crescent to strengthen domestic implementation of international humanitarian law (IHL) in U.S. military operations. This report is intended to provide a brief summary of U.S. efforts to: i) help ensure compliance with IHL obligations in military operations; ii) implement good practices to enhance protections for civilians and other persons and objects protected by IHL; and iii) share U.S. legal interpretations and good practices related to the implementation of IHL and protecting civilians and other persons and objects protected by IHL in military operations.

I. Instituting Effective Programs Within the U.S. Armed Forces to Help Ensure Compliance with IHL Obligations

In 2020, the U.S. Department of Defense (DoD) updated and reissued **DoD Directive 2311.01, the DoD Law of War Program** (available at <https://ogc.osd.mil/Law-of-War/Practice-Documents/>). This document provides overarching DoD policy to comply with U.S. obligations under IHL during all armed conflicts and, in all other military operations, to continue to act consistent with the law of war's fundamental principles and rules, including those in Common Article 3 of the 1949 Geneva Conventions and the principles of military necessity, humanity, distinction, proportionality, and honor.

DoD Directive 2311.01 also provides for DoD Components to implement effective programs to prevent violations of the law of war, including with respect to: (a) dissemination of IHL to the armed forces and training of military personnel on IHL; (b) legal advisers advising commanders and other decision-makers on IHL; (c) instructions, regulations, and procedures reflecting IHL standards and establishing processes for ensuring compliance with IHL; (d) reporting of incidents involving potential IHL violations; (e) assessments, investigations, inquiries, or other reviews of incidents involving potential IHL violations; and (f) corrective actions, as appropriate.

A. Dissemination of IHL to the Armed Forces and Periodic Training of Members of the Armed Forces on IHL

DoD disseminates IHL to the armed forces through a variety of activities. Under DoD Directive 2311.01, the **DoD Law of War Manual**, which is prepared by the DoD Law of War Working Group and issued by the DoD General Counsel, serves as the authoritative statement on the law of war within the DoD (available at <https://ogc.osd.mil/Law-of-War/Practice-Documents/>). The DoD Law of War Manual has been updated three times, most recently in July 2023. The 1200-page Manual comprehensively addresses U.S. obligations in both international armed conflicts and non-international armed conflicts, and enables consistent interpretation of IHL throughout DoD. In addition, a variety of other official publications provide information on IHL to DoD

personnel. For example, the DoD Office of General Counsel has issued a 12-page **Brief Overview of the Law of War** for DoD personnel (available at <https://ogc.osd.mil/Law-of-War/Practice-Documents/>). In addition, each of the Military Services has issued Field Manuals, Pamphlets, Handbooks, and other publications on IHL for their personnel.

The U.S. Department of Defense, Office of General Counsel, maintains a website that provides the DoD Law of War Manual and other official documents on the law of war that may be useful to practitioners. In the interests of transparency, these documents are posted online. This website also includes a page dedicated to treaty documents, which includes official copies of IHL instruments to which the United States is a party, such as the 1949 Geneva Conventions, as well as relevant U.S. documents, such as article-by-article analyses of treaties prepared in connection with U.S. domestic procedures prior to U.S. ratification of the treaties or U.S. reports regarding its implementation of the treaty.

Although all DoD Components have responsibilities for law of war dissemination and training for their personnel under DoD Directive 2311.01, the Departments of the Army, Navy (including the Marine Corps), and Air Force have a lead role in providing training so that all military members of their respective Military Department know the fundamental precepts of the law of war and that all members have knowledge of the law commensurate with each individual's duties and responsibilities.

Throughout DoD, efforts include training on IHL in the following contexts:

- upon an individual's initial entry to the military service;
- at the unit level, for example, incident to annual field training;
- as part of each military member's professional military education;
- for personnel with certain duties and responsibilities (*e.g.*, detention operations, interrogation, medical care, targeting, cultural property) that focuses on relevant IHL rules;
- for judge advocates (for example, at the Military Service's Schools for judge advocates) that goes into greater detail and enables the judge advocate to advise commanders and help train other military personnel;
- as part of additional training for commanders;
- integrated into military exercises, in which IHL issues may be presented in the simulations or scenarios; and
- prior to deployment.

B. Legal Advisers Advising Commanders and Other Decision-Makers within the Armed Forces on IHL

Under DoD Directive 2311.01, each head of a DoD component is to make available qualified legal advisers to appropriate levels of command to advise on law of war compliance during planning and execution of exercises and operations and to help implement programs to comply with the requirements to report incidents involving potential IHL violations.

In addition, Commanders of the Combatant Commands are required to ensure that all plans, policies, directives, and rules of engagement, and those of subordinate commands and components, are reviewed by legal advisers to ensure their consistency with the law of war and DoD Directive 2311.01.

Legal advisers also assist by conducting reviews of the intended acquisition, procurement, or modification of weapons or weapon systems, for consistency with U.S. obligations under the law of war.

Legal advisers are often integrated into the work of relevant working groups, cells, and boards, (e.g., targeting cells, detainee review boards) and provide advice to the group or the commander or decision-maker on IHL requirements. Although legal advisers play an important role in facilitating implementation of IHL in military operations, it should be emphasized that IHL compliance remains the responsibility of commanders, who have the duty to take appropriate measures as are within their power to control the forces under their command for the prevention of violations of the law of war.

C. Instructions, Regulations, and Procedures Reflecting IHL Standards and Establishing Processes for Ensuring Compliance with IHL

An important part of DoD efforts to implement IHL is the issuance of guidance reflecting IHL standards and establishing processes for ensuring compliance with IHL. This includes guidance from specific DoD components similar to the overarching DoD Directive 2311.01, which specifically outline that component's guidance, including responsibilities, standards, and procedures, for implementing DoD Directive 2311.01 and IHL. For example, the Military Departments have issued guidance specifying the IHL training requirements for different categories of military personnel. As another example, the Military Departments have also issued guidance on the legal review of weapons.

IHL standards are also included in more general guidance that is not solely focused on IHL implementation. For example, IHL standards may be included in:

- Military doctrine on targeting;
- Regulations for detention operations;
- Policy on intelligence interrogation;
- Standard Operating Procedures for detainee movement operations; and
- Rules of Engagement.

D. Reporting of Incidents Involving Potential IHL Violations

Reporting through the chain of command ensures that commanders can exercise their responsibilities to implement and enforce IHL. DoD Directive 2311.01 provides that DoD personnel, as well as contractor and subcontractor personnel assigned to or accompanying a DoD Component, must report through their chain of command all incidents that potentially involve violations of IHL. A reportable incident under DoD Directive 2311.01 is defined as:

An incident that a unit commander or other responsible official determines, based on credible information, potentially involves: a war crime; other violations of the law of war; or conduct during military operations that would be a war crime if the military operations occurred in the context of an armed conflict. The unit commander or responsible official need not determine that a potential violation occurred, only that credible information merits further review of the incident.

If the unit commander or a superior commander determines that U.S. persons are not involved in a reportable incident, a U.S. investigation or review will be continued only at the direction of the appropriate Combatant Commander. However, such incidents must be reported in accordance with DoD Directive 2311.01. In particular, incidents that involve allegations of partner forces violating IHL must be reported with a view to ensuring compliance with laws and policies relating to security assistance.

E. Assessments, Investigations, Inquiries, or Other Reviews of Incidents Involving Potential IHL Violations

DoD Directive 2311.01 provides for assessments, investigations, inquiries, or other reviews of incidents involving potential IHL violations, as needed to determine appropriate responses to those incidents. For example, criminal investigations are used to investigate alleged criminal misconduct, while command-directed administrative investigations are used to determine the facts and make recommendations regarding non-criminal matters.

Similarly, for example, if a review of an alleged incident determines that an allegation is not supported by credible information, DoD Directive 2311.01 does not require that further action be taken other than reporting this determination through the chain of command to the appropriate Combatant Commander. DoD Directive 2311.01 defines credible information:

Information that a reasonable military commander would believe to be sufficiently accurate to warrant further review of the alleged violation. The totality of the circumstances is to be considered, including the reliability of the source (e.g., the source's record in providing accurate information in the past and how the source obtained the information), and whether there is contradictory or corroborating information.

F. Corrective Actions, as Appropriate.

The United States is committed to continually strengthening its efforts to implement IHL in military operations. As explained in DoD Directive 2311.01, appropriate actions to ensure accountability and to improve efforts to prevent violations of the law of war in U.S. military operations may include:

- (a) Providing additional training.
- (b) Taking adverse or corrective administrative action, including non-judicial punishment.
- (c) Instituting criminal proceedings.
- (d) Revising or issuing policies, regulations, instructions, procedures, training documents, or other guidance to incorporate lessons learned.

Efforts to improve can include the use of independent mechanisms, such as the DoD Office of the Inspector General or the U.S. Government Accountability Office, which have conducted reviews and provided recommendations regarding the implementation of the DoD Law of War Program.

The Army Judge Advocate General's Legal Center and School also operates a Center for Law and Military Operations (CLAMO), which among other things, serves as the central repository

within The Judge Advocate General's Corps for data, documents, and after-action reports pertaining to legal support to operations. CLAMO supports judge advocates by analyzing all data and information collected from foreign and domestic operations, developing lessons learned across all military legal disciplines, and by disseminating those lessons and associated documents (authorities, guides, templates, etc.) to the Army, and other services, through publications, instructions and training modules.

II. Developing and Implementing Good Practices to Enhance Protections for Civilians and Other Persons and Objects Protected by IHL

The United States often takes steps supplementary to IHL requirements in order to enhance the protection of civilians and other persons and objects protected by IHL. The following discussion addresses a few examples of such practices related to: a) protection of civilians; b) detention operations; and c) interrogation.

A. Protection of Civilians

Longstanding U.S. military practice, as reflected in **Executive Order 13732, as amended** (available at <https://ogc.osd.mil/Law-of-War/Practice-Documents/>), includes taking steps supplementary to the requirements of IHL to enhance protections for civilians.

In August 2022, the Secretary of Defense approved and released the **DoD Civilian Harm Mitigation and Response Action Plan** (available at <https://policy.defense.gov/OUSSDP-Offices/Civilian-Harm-Mitigation-and-Response/>). This plan is designed to promote significant improvements in DoD's ability to mitigate and respond to civilian harm in armed conflict. For example, the Action Plan includes the establishment of a new Civilian Protection Center of Excellence; the hiring of new personnel dedicated to civilian harm mitigation and response throughout the Department; the creation of a new DoD-wide data management platform for data related to civilian harm; and the issuance of new doctrine and guidance for DoD personnel. The Action Plan sets forth eleven objectives and details specific actions to advance those objectives.

In December 2023, the Secretary of Defense issued **DoD Instruction 3000.17, Civilian Harm Mitigation and Response** (available at <https://policy.defense.gov/OUSSDP-Offices/Civilian-Harm-Mitigation-and-Response/>). This more than 50-page document establishes policy, assigns responsibilities, and provides procedures for civilian harm mitigation and response. The Directive affirms DoD policy to comply with IHL requirements for the protection of civilians and civilian objects in armed conflict, including by taking feasible precautions. In addition, the Directive provides that commanders should take additional protective measures not required by the law of war as they deem appropriate to the circumstances when planning and conducting military operations, such as:

- (1) Considering other possible alternatives to an attack against a military objective that poses risks of civilian harm, even when the attack would be lawful;
- (2) Issuing standards for the identification of targets above what the law of war requires;
- (3) Selecting for employment weapon systems or munitions that may help mitigate civilian harm (e.g., precision-guided munitions, non-lethal effects, non-kinetic effects, and systems that incorporate features such as render safe, pre-planned post-

launch abort, and scalable yields) when employment of weapon systems or munitions without such features or effects would be lawful; or
(4) Taking other precautions not required by the law of war.

B. Detention Operations

In 2022, the U.S. Department of Defense reissued **DoD Directive 2310.01E** (available at <https://ogc.osd.mil/Law-of-War/Practice-Documents/>), which establishes policy and assigns responsibilities for *the DoD Detainee Program*. This directive includes specific requirements for the humane treatment of detainees and includes a number of good practices that support the protection of detainees in armed conflict. For example, the Directive provides for Combatant Commanders to accept the services of the ICRC to perform humanitarian functions related to detainees in any armed conflict, including non-international armed conflicts, to which the United States is a party. In addition, the Directive provides that:

(b) DoD Components will maintain full accountability for all detainees under DoD control. Detainees will be assigned an internment serial number within 14 days of their capture by, or transfer to, the custody or control of DoD personnel, barring exceptional circumstances.

(c) The ICRC or PP [Protecting Power] will be promptly notified of all internment serial number assignments and afforded the opportunity to meet with detainees, subject to reasons of imperative military necessity.

C. Interrogation

In 2020, DoD updated **DoD Directive 3115.09** (available at <https://ogc.osd.mil/Law-of-War/Practice-Documents/>), which establishes DoD policy and assigns responsibilities related to *DoD Intelligence Interrogations, Detainee Debriefings, and Tactical Questioning*. The Directive includes a number of good practices, for example, requiring that:

DoD intelligence interrogations and detainee debriefings shall be conducted only by DoD personnel properly trained and certified in accordance with the standards established pursuant to subparagraph 2.d.(2) of Enclosure 2 of this Directive. DoD personnel who conduct, support, or participate in tactical questioning shall be trained, at a minimum, in the law of war and humane treatment standards.

As another example, the Directive provides that:

No person in the custody or effective control of the DoD, detained in a DoD facility, or otherwise interrogated by DoD military personnel, civilian employees, or DoD contractor personnel will be subject to any interrogation treatment or technique that is not authorized by and listed in Reference (i) [the Department of the Army's Field Manual on Intelligence Interrogation].

III. Sharing Legal Interpretations and Relevant Good Practices

The U.S. Government routinely shares its interpretations of IHL and relevant good practices with other States, non-governmental organizations, and the public. This sharing can occur in bilateral

or multilateral meetings, in speeches and remarks, and through the publication of official documents. As noted above, the Department of Defense Law of War Manual and other documents regarding U.S. practice in IHL are publicly available at <https://ogc.osd.mil>. DoD Directives and Instructions are available at: <https://www.esd.whs.mil/DD/DoD-Issuances/>.

The United States has submitted annual reports on its implementation of the CCW and its Protocols.

The United States has submitted a report on its implementation of the 1954 Hague Cultural Property Convention. This report and its annexes are available at: <https://ogc.osd.mil/Law-of-War/Treaty-Documents/#documents-regarding-1954-hague-convention>.

The United States has submitted working papers to the Group of Governmental Experts on emerging technologies in the area of lethal autonomous weapons systems, which explain U.S. views and practice related to autonomy in weapon systems and IHL, and which are collected at <https://ogc.osd.mil/Law-of-War/Practice-Documents/>. Notably, the United States, along with Australia, Canada, Japan, Poland, the Republic of Korea, and the United Kingdom, has submitted a proposal titled *Draft Articles on Autonomous Weapon Systems – Prohibitions and other regulatory measures on the basis of international humanitarian law*, available at: <https://documents.un.org/api/symbol/access?s=CCW/GGE.1/2023/WP.4/REV.2&l=en>. This proposal seeks to clarify how IHL applies to the use of autonomous weapon systems and to specify measures to satisfy IHL requirements.

As part of the process led by Ireland to develop the *Political Declaration on Strengthening the Protection of Civilians from the Humanitarian Consequences arising from the use of Explosive Weapons in Populated Areas*, the United States submitted jointly with Belgium, France, Germany, and the United Kingdom a technical compilation of practical measures to strengthen the protection of civilians during military operations in armed conflict, available here: <https://www.dfa.ie/media/dfa/ourrolepolicies/peaceandsecurity/ewipa/United-States-Written-Submission-18-November-2019.pdf>. This working paper includes the six core good practices on implementing IHL that are the subject of this pledge. This working paper also provides 10 specific good practices to improve the protection of civilians in military operations.

Implementation completion:

yes