

# **Department of Defense**

## **Report on Civilian Casualty Policy**

Submitted pursuant to Section 936 of the National Defense Authorization Act for  
Fiscal Year 2019

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Section 936 of the National Defense Authorization Act for Fiscal Year 2019 states the following:

(a) DESIGNATION OF SENIOR CIVILIAN OFFICIAL.—Not later than 90 days after the date of the enactment of this Act, the Under Secretary of Defense for Policy shall designate a senior civilian official of the Department of Defense within the Office of the Secretary of Defense at or above the level of Assistant Secretary of Defense to develop, coordinate, and oversee compliance with the policy of the Department relating to civilian casualties resulting from United States military operations.

(b) RESPONSIBILITIES.—The senior civilian official designated under subsection (a) shall ensure that the policy referred to in that subsection provides for—

(1) uniform processes and standards across the combatant commands for accurately recording kinetic strikes by the United States military;

(2) the development and dissemination of best practices for reducing the likelihood of civilian casualties from United States military operations;

(3) the development of publicly available means, including an Internet-based mechanism, for the submittal to the United States Government of allegations of civilian casualties resulting from United States military operations;

(4) uniform processes and standards across the combatant commands for reviewing and investigating allegations of civilian casualties resulting from United States military operations, including the consideration of relevant information from all available sources;

(5) uniform processes and standards across the combatant commands for—

(A) acknowledging the responsibility of the United States military for civilian casualties resulting from United States military operations; and

(B) offering ex gratia payments to civilians who have been injured, or to the families of civilians killed, as a result of United States military operations, as determined to be necessary by the designated senior civilian official;

(6) regular engagement with relevant intergovernmental and nongovernmental organizations;

(7) public affairs guidance with respect to matters relating to civilian casualties alleged or confirmed to have resulted from United States military operations; and

(8) such other matters with respect to civilian casualties resulting from United States military operations as the designated senior civilian official considers appropriate.

(c) REPORT.—Not later than 180 days after the date of the enactment of this Act, the senior civilian official designated under subsection (a) shall submit to the congressional defense committees a report that describes—

(1) the policy developed by the senior civilian official under that subsection; and

(2) the efforts of the Department to implement such policy.

## **I. INTRODUCTION**

This report is submitted pursuant to subsection (c) of section 936 of the John S. McCain National Defense Authorization Act (NDAA) for Fiscal Year 2019 (Public Law 115-232), enacted on August 13, 2018. Subsection (a) of section 936 requires the Under Secretary of Defense for Policy to “designate a senior civilian official of the Department of Defense within the Office of the Secretary of Defense at or above the level of Assistant Secretary of Defense to develop, coordinate, and oversee compliance with the policy of the Department relating to civilian casualties resulting from United States military operations.” Subsection (b) of section 936 further requires the designated official to ensure that the policy provides for eight matters, which are enumerated in subsection (b). In accordance with subsection (c) of section 936, this report describes progress on the required policy to date, as well as the Department’s efforts to implement the policy.

## **II. DESIGNATION OF A SENIOR DOD CIVILIAN OFFICIAL**

On October 23, 2018, the Under Secretary of Defense for Policy, Mr. John Rood, designated the Deputy Under Secretary of Defense for Policy (DUSDP), Mr. David Trachtenberg, as the civilian official in the Department of Defense (DoD) responsible for developing, coordinating, and overseeing compliance with the Department’s policy related to civilian casualties.

## **III. BACKGROUND ON DOD CIVILIAN CASUALTY POLICY**

DoD has a strong history of taking care to protect innocent civilians while successfully defending the nation. Focusing combat power at the decisive place and time, refraining from unnecessary or excessive means to achieve objectives, and leveraging technologies to provide decision makers with as much accurate, real-time information as is possible, reflects true professionalism and respect for the law of war. Moreover, implementing measures to protect civilians, while still accomplishing the mission, serves to promote our values, preserve our honor, and enhance the legitimacy of military operations.

In the context of these longstanding efforts to minimize civilian casualties, the implementation of section 936 builds upon the significant work that DoD has undertaken in recent years to evaluate and improve on efforts to minimize civilian casualties.

### *2017 Secretary of Defense’s Roundtable*

On December 12, 2017, then-Secretary of Defense James Mattis and other senior civilian and military officials met with representatives of nongovernmental organizations (NGO) to discuss issues related to civilian casualties, particularly in the context of U.S. military operations to help

liberate Mosul and Raqqa from control by the Islamic State of Iraq and Syria (ISIS). The meeting addressed current DoD policies and practices, and NGO participants were given the opportunity to raise concerns regarding civilian casualties where U.S. forces are engaged in military operations or are supporting allies and partners. Discussion topics included U.S. and DoD values in protecting innocent life on the battlefield, military commanders' responsibilities, operational planning and targeting methodologies that help reduce civilian casualties, and DoD assessments and publicly available reports about civilian casualties.

### *Civilian Casualties Study*

In December 2017, the Chairman of the Joint Chiefs of Staff directed an assessment of civilian casualties that resulted from U.S. air or artillery strikes in U.S. Central Command's and U.S. Africa Command's respective areas of responsibility from 2015 to 2017. The study focused primarily on Operations INHERENT RESOLVE, FREEDOM'S SENTINEL, and ODYSSEY LIGHTNING. It made findings and provided recommendations related to policy, doctrine, operational planning, and technological investments.

The study was organized around the following tasks: a) guidance, intent, and oversight with respect to civilian casualties; b) accuracy and transparency of civilian casualty reporting procedures; c) effective measures to reconcile and verify civilian casualty reporting; d) proper assessment and investigation of civilian casualty allegations; e) use of *ex gratia* payments, including *solatia*, and other types of response to civilian casualty incidents; and f) overarching current DoD policies in these areas.

### *Annual DoD Report on Civilian Casualties*

Pursuant to section 1057 of the NDAA for Fiscal Year 2018 (Public Law 115-91), DoD submitted in 2018 its first annual report to the congressional defense committees on civilian casualties in connection with U.S. military operations. The report described: (1) U.S. military operations during 2017 that were confirmed, or reasonably suspected, to have resulted in one or more civilian casualties; (2) DoD processes for assessing reports of civilian casualties resulting from U.S. military operations; and (3) steps DoD takes to minimize harm to civilians. Section 1057 requires that the annual report for U.S. military operations in 2018 be submitted by May 1, 2019.

### *Civilian Casualties Working Group*

To study and identify improvements for policies and procedures related to minimizing civilian casualties during military operations, since December 2017, the Office of the Under Secretary of Defense for Policy (OUSD(P)) and the Joint Staff have convened a Civilian Casualties Working

Group, which has included representatives of OUSD(P); the DoD Office of General Counsel (OGC); the Joint Staff, including the Office of the Legal Counsel to the Chairman of the Joint Chiefs of Staff; the Combatant Commands; and the Military Services. Personnel from the National Defense University, RAND, and the Center for Naval Analyses have also contributed to the working group's discussions on civilian casualty issues. The working group has performed a number of functions, including study, response, and coordination functions related to civilian casualty issues, but has been most recently focused on reviewing operational and reporting practices related to civilian casualties and drafting proposed updated policies related to minimizing civilian casualties. The working group has also helped DoD fulfill requirements to report to Congress on civilian casualty issues.

### *Geographic Combatant Command and U.S. Special Operations Command (USSOCOM) Policies and Practices*

Under U.S. law, the Combatant Commanders have authority to “giv[e] authoritative direction to subordinate commands and forces necessary to carry out missions assigned to [their respective] command[s],” which would include the authority to provide direction on aspects of those missions related to minimizing civilian casualties.<sup>1</sup> In this role, Combatant Commanders conducting military operations apply established policies and practices that seek to minimize civilian casualties.

In carrying out their respective missions, all Commands and forces assigned to Combatant Commands adhere to Secretary of Defense-approved rules of engagement, instructions promulgated by the Chairman of the Joint Chief of Staff, and joint doctrine that establish policies, processes, and procedures that help to protect civilians and minimize civilian casualties.<sup>2</sup> For example, all Combatant Commands conducting military operations adhere to Chairman of the Joint Chief of Staff Instructions (CJCSIs) with guidance to help protect civilians and minimize civilian casualties, including CJCSI 3160.01C, *No-Strike and the Collateral Damage Estimation Methodology*. Like other DoD issuances, CJCSI 3160.01C is routinely updated, including through lessons learned from U.S. military operations. Successive versions of CJCSI 3160.01 have incorporated lessons learned from Operations IRAQI FREEDOM, ENDURING FREEDOM, ODYSSEY DAWN, UNIFIED PROTECTOR, FREEDOM'S SENTINEL, and INHERENT RESOLVE. As an example of how seriously the Joint Force takes the responsibility to proportionately apply force while taking care to protect civilians, the

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<sup>1</sup> 10 U.S.C. § 164(c). The Commanders of the Combatant Commands are responsible to the President and the Secretary of Defense and are subject to their direction.

<sup>2</sup> See, for example, CJCSI 3121.01B, *Standing Rules of Engagement (SROE)/Standing Rules for the Use of Force (SRUF) for U.S. Forces*, June 13, 2005; CJCSI 3160.01C, *No-Strike and the Collateral Damage Estimation Methodology*, April 9, 2018; CJCSI 3370.01C, (U) *Target Development Standards*, August 14, 2018; Chairman of the Joint Chiefs of Staff Manual (CJCSM) 3162.01A, *Joint Methodology for Battle Damage Assessment*; December 15, 2016.

Chairman of the Joint Chiefs of Staff has also established a committee of senior targeting representatives from the Joint Staff, the Military Services, the Combatant Commands, DoD Combat Support Agencies, and representatives of participating partner nations to propose, review, debate, analyze, and prioritize targeting issues of mutual concern, and, when appropriate to decide on and implement common solutions.<sup>3</sup>

Combatant Commands also usually have several boards, bureaus, centers, cells, and working groups that contribute to efforts to reduce the likelihood of civilian casualties. Because much of the relevant work occurs during the targeting process, these efforts are focused in groups that implement the targeting process, such as a Target Development Working Group, a Joint Targeting Working Group, and a Joint Targeting Coordination Board. Though the primary purpose of a Target Development Working Group, Joint Targeting Working Group, and Joint Targeting Coordination Board is to achieve an intended outcome against an enemy target, when components of the Combatant Commands identify potential targets for military operations, those targets are reviewed and evaluated to minimize the potential for civilian casualties. Proposed targets are also reviewed for compliance with the law of war. For example, a judge advocate would review a proposed target to advise the Target Engagement Authority whether the proposed target is a valid military objective under the law of war.

Other working groups that are not as directly involved in the targeting process could also contribute to efforts to minimize civilian casualties or to respond to reports that U.S. forces caused civilian casualties. For example, an Information Operations Working Group could help generate warnings for civilians to avoid military objectives or areas of active combat.

Combatant Commands or subordinate commands also use civilian casualty “cells” to address civilian casualty issues specifically, such as by responding to reports that U.S. or Coalition military operations caused civilian casualties.

In recent years, a number of the Combatant Commands have promulgated additional guidance, policies, and procedures to minimize civilian casualties and to guide response when civilian casualties do occur. Although there are similarities between different Combatant Commands’ processes, they differ in some respects due to host nation requests, different mission objectives, different operational designs, different available resources, and different organizational designs and command relationships within the respective areas of responsibility. Also, these descriptions of additional Combatant Command-level guidance, policies, and procedures are not comprehensive; rather, they are intended merely to provide general insights into policies and processes applicable at certain Combatant Command-levels. Combatant Commands’ guidance,

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<sup>3</sup> See, for example, CJCSI 5140.01A, *Military Targeting Committee Governance and Management*, April 15, 2017; Chairman of the Joint Chief of Staff Notice 5140.02, *Interim Policy Change to Military Targeting Committee Governance*, November 21, 2017.

policies, and procedures will remain in effect and will be updated, as appropriate, as DoD implements various aspects of section 936 of the NDAA for Fiscal Year 2019.

### U.S. Africa Command (USAFRICOM)

USAFRICOM has applied practices to minimize the risk of civilian casualties in U.S. military operations in the USAFRICOM area of responsibility (AOR). These practices include maximizing the use of available, timely intelligence to enhance battlespace awareness and the regular development and dissemination of best practices to forces operating in the USAFRICOM AOR to minimize the risk of future civilian casualties.

USAFRICOM practice is to review and assess every report that its forces may have caused civilian casualties. Based on the assessment, a competent authority (*i.e.*, the commander or his or her designee) determines whether it is more likely than not that civilians were killed or injured, or if additional information is required. Following the assessment, the relevant authority may require an investigation if further information is needed to determine the underlying facts or to answer additional questions. The results of civilian casualty reviews are made public to the greatest extent practicable, and reviews may include recommendations for future operations.

USAFRICOM values transparency and relationship-building with NGOs and has met with NGOs, including during a tabletop exercise at USAFRICOM and on an individual basis. Such interaction has helped form constructive and effective relationships with NGOs active in Africa and has enriched USAFRICOM's approach to assessing and investigating reports of civilian casualties.

### U.S. Central Command (USCENTCOM)

USCENTCOM has established policies and procedures that provide specific guidance on minimizing civilian casualties in the USCENTCOM AOR.<sup>4</sup> First and foremost, like all U.S. service members, all USCENTCOM personnel are trained in the law of war. USCENTCOM takes feasible precautions when conducting attacks to reduce the likelihood of civilian casualties. It is also USCENTCOM policy to maintain and promote best practices that reduce the likelihood of civilian casualties and to take appropriate steps when such casualties occur, including by identifying lessons to enhance the protection of civilians. For example, to the greatest extent possible, USCENTCOM uses intelligence collection methodologies that maximize battlespace awareness. In addition, USCENTCOM maintains open lines of communication with NGOs operating in conflict zones in the USCENTCOM AOR to support efforts to distinguish between military objectives and civilian objects.

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<sup>4</sup> USCENTCOM Command Policy Letter No. 85, *Civilian Casualty Policy*, September 1, 2016.

USCENTCOM also has established procedures for reporting, assessing, tracking, investigating, and publicly releasing information regarding civilian casualty reports and incidents in the USCENTCOM AOR.<sup>5</sup> Like the USAFRICOM practice, the USCENTCOM policy provides that all reports claiming USCENTCOM forces caused civilian casualties are to be treated as serious reports, regardless of their origin, and are to be reviewed. The policy requires a multi-step process, starting with a first impression report, followed by an assessment using relevant and credible information from all available sources, including information from allies, partners, and NGOs. Based on the assessment, a competent authority (*i.e.*, the command or a special board or team designated by the command) determines whether it is more likely than not that civilians were killed or injured, or if additional information is required. Following the assessment, the relevant authority may require an investigation if further information is needed to determine the underlying facts or to answer additional questions.

#### U.S. European Command (USEUCOM)

USEUCOM, through established staff processes, ensures compliance with the law of war and DoD policy, including review of potential targets during military operations to minimize the risk of harm to civilians and other protected persons and objects. As part of this process, USEUCOM and its subordinate component commands synchronize the efforts of relevant working groups and boards, including a Joint Targeting Working Group and a Joint Targeting Coordination Board. Through this targeting and planning process, these working groups and boards are informed by the latest intelligence assessments and collateral damage estimates, enabling USEUCOM to ensure compliance with rules related to the protection of civilians. The USEUCOM processes also help ensure compliance with all aspects of the law of war during all operations. USEUCOM is further developing a civilian casualty mitigation policy that incorporates best practices for a combined U.S. and NATO operational environment.

#### U.S. Special Operations Command (USSOCOM)

While under the operational control of a Geographic Combatant Command, USSOCOM components fully support and adhere to the respective Geographic Combatant Command's policies and procedures that provide additional guidance on minimizing civilian casualties. Additionally, USSOCOM components minimize civilian casualties by relying heavily on their training, technological advantages, and prudent use of combat power. USSOCOM components incorporate briefs to partner forces on the law of war and rules of engagement (ROE) to minimize civilian casualties, emphasizing that zero civilian casualties is the goal. USSOCOM components continuously strive to improve operations by updating and implementing new tactics, techniques, and procedures. Moreover, joint tactical air controller, ground force

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<sup>5</sup> USCENTCOM Command Policy Letter No. 97, *U.S. Central Command (USCENTCOM) Policy for Reporting and Responding to Civilian Casualty Allegations and Incidents*, January 22, 2018.



commander, and collateral damage estimate training have improved with scenario-based training and practical exercises using examples drawn from actual military operations, as well as experience gained in combat.

Advances in weapon systems and other technological capabilities have further enabled USSOCOM components to discriminate in the use of force by providing USSOCOM components with increased situational awareness, precision capabilities, and non-lethal options on the battlefield. Additionally, USSOCOM's components with Target Engagement Authority have made significant training improvements to mitigate the conditions that may lead to civilian casualties. This includes monthly kinetic strike reviews across all Geographic Combatant Command AORs to review reports and errors of weapons employment, as well as to identify and disseminate lessons learned.

#### **IV. DOD CIVILIAN CASUALTY POLICY AND DRAFTING PROCESS**

Building upon existing policies and procedures, as well as DoD's ongoing efforts to evaluate and improve upon those policies and procedures, DoD has established an aggressive schedule to draft a proposed DoD-wide policy that addresses the priority areas identified in section 936 of the NDAA for Fiscal Year 2019, as well as other issues identified during the drafting process. Working collaboratively under the leadership of the Deputy Under Secretary of Defense for Policy, representatives of OUSD(P), DoD OGC, the Joint Staff, the Office of the Legal Counsel to the Chairman of the Joint Chiefs of Staff, and the Combatant Commands have conducted a series of activities to evaluate current policies and practices and to work together to draft a responsive proposed DoD-level policy that reflects best practices across the Department and that incorporates lessons learned from military operations. These activities include a drafting group, made up of representatives from the OUSD(P), DoD OGC, the Joint Staff, the Office of the Legal Counsel to the Chairman of the Joint Chiefs of Staff, USAFRICOM, USCENTCOM, USINDOPACOM, and USSOCOM, which has met on a near-weekly basis to discuss issues relevant to the policy, manage the drafting process, and share lessons learned.

##### *Civilian Casualties Tabletop Exercise*

On December 18, 2018, the Joint Staff hosted a tabletop exercise (TTX) on civilian casualties titled PROFOUND VOYAGE. The TTX helped identify opportunities to integrate certain Combatant Command-level policies and practices into a wider range of potential U.S. military operations and to provide concrete recommendations relevant to drafting the new proposed DoD-level civilian casualty policy. The TTX included representatives from the Combatant Commands, the Military Services, as well as experts on issues related to civilian casualties from other offices in DoD, the Department of State, and the U.S. Agency for International Development (USAID). The Civilian Casualties Working Group met for one and one-half days

following the TTX to discuss and follow-up on issues raised during the TTX, as well as to assess implications of certain policy recommendations on the full-range of military operations. The TTX demonstrated the benefit of soliciting and considering the wide-range of views expressed by stakeholders within DoD and in other U.S. departments and agencies on the issues raised during the TTX.

#### *Consultative Meetings with NGOs*

The Joint Staff and OUSD(P) held individual meetings, group consultations, and roundtable discussions with a range of NGOs to solicit comments about civilian casualty issues and DoD public reporting about civilian casualties during U.S. military operations, as well as to gain a better understanding of the issues NGOs have documented in their work on civilian casualty issues. These consultations addressed numerous areas, including issues about DoD processes for making *ex gratia* payments, receiving reports of civilian casualties, reviewing targets, and recording information about lethal strikes. Some Combatant Commands have also held consultations with NGOs operating within their areas of responsibility to address questions about specific operations or hear broader questions or concerns.

#### *Consultative Meetings with the Department of State and USAID*

The Joint Staff and OUSD(P) have held meetings with the Department of State regarding reports of civilian casualties and DoD's efforts in mitigating unintentional harm to civilians during military operations. Meetings with USAID addressed DoD efforts related to minimizing civilian casualties, responding to reports of civilian casualties, and de-conflicting the operating locations and movements of USAID implementing partners with military operations in conflict areas. Representatives of the Department of State and USAID participated in the civilian casualties TTX and contributed to the subsequent Civilian Casualties Working Group discussions on December 18-19, 2018.

#### *DoD-Level Policy*

The Department is drawing upon all of the above activities and resources to develop an additional DoD-level policy on minimizing civilian casualties and responding to reports of civilian casualties that addresses the eight matters enumerated in subsection (b) of section 936 of the NDAA for FY 2019. Because the proposed DoD-level policy continues to be drafted and refined, this report provides only general information about its content. As part of the policy development process, the draft DoD-level policy will receive inputs from relevant stakeholders across the Department and will be subject to approval by senior DoD officials. Because this policy development process is on-going, the information provided in this report should not be misunderstood to prejudice future policy decisions. It is also worth reiterating that existing DoD

policies and practices related to minimizing civilian casualties will remain in effect and will be updated, as appropriate, while this policy development process is on-going.

The proposed DoD-level policy would provide additional policy guidance that would supplement and reinforce existing policy reflected in (1) Chairman of the Joint Chief of Staff's instructions and manuals; (2) joint doctrine; (3) Military Services' publications, including multi-service publications; and (4) the Combatant Commanders' guidance, policies, and procedures. For example, as referenced above, the Chairman of the Joint of Chiefs of Staff has developed effective instructions and joint doctrine related to minimizing civilian casualties during military operations. USCENTCOM and USAFRICOM have also developed effective policies and procedures for minimizing civilian casualties during current military operations, primarily counter-terrorism operations or where U.S. forces operate by, with, and through allies and partners. The DoD-level policy may necessitate updates to existing policy, which would take place after the adoption of the DoD-level policy.

The proposed DoD-level policy would apply to U.S. military operations, but its exact scope and how to express the particular policy requirements are still being examined considering the many different types of military operations to which the requirements might be applied, including high-intensity conflict against one or several nation-State adversaries. Despite the remaining need to finalize these issues with respect to the proposed DoD-level policy, the proposed requirements in that policy would be consistent with and further implement the best practices DoD implements to protect civilians during armed conflict as catalogued in Executive Order 13732, *United States Policy on Pre- and Post-Strike Measures to Address Civilian Casualties in U.S. Operations Involving the Use of Force*, July 1, 2016.

#### Uniform Processes and Standards Across the Combatant Commands for Accurately Recording Kinetic Strikes by the U.S. Military

Processes and standards for recording U.S. military lethal strikes (current DoD terminology is "lethal strikes" rather than "kinetic strikes") are reflected in publications issued by the Joint Staff and the Military Services, some of which are multi-service publications that apply across the Combatant Commands.<sup>6</sup> The new DoD-level civilian casualty policy would account for existing joint doctrine and standards reflected in DoD issuances to ensure that relevant information about lethal strikes and battle areas is available for review by personnel responsible for assessing reports of civilian casualties (*e.g.*, civilian casualty cells). The policy development process will consider existing databases for recording strikes, as well as how that information is shared in

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<sup>6</sup> See, for example, Joint Publication 3-06, *Joint Urban Operations*, November 20, 2013; Joint Publication 3-09, *Joint Fire Support*, December 12, 2014; Joint Publication 3-09.3, *Close Air Support*, November 25, 2014; ATP 3-09.32/MCRP 3-16.6A/NTTP 3-09.2/AFTTP(I) 3-2.6, *JFIRE, Multi-Service Tactics, Techniques, and Procedures for Joint Application of Firepower*, January 2016; Field Manual 3-09, *Field Artillery Operations and Fire Support*, April 2014; ATP 3-09.30, *Observed Fires*, September 2017; ATP 3-07.6, *Protection of Civilians*, October 2015.

response to civilian casualty reports. There could be personnel and resource implications if the policy requires new functions or new systems to record and manage data about lethal strikes.

### The Development and Dissemination of Best Practices for Reducing the Likelihood of Civilian Casualties from U.S. Military Operations

Under U.S. law, the Chairman of the Joint Chiefs of Staff is responsible for “formulating policies for gathering, developing, and disseminating joint lessons learned” for the U.S. military.<sup>7</sup> Processes and standards for gathering, developing, and disseminating best practices that reflect lessons learned are provided for in various directives issued under the authority of the Chairman of the Joint Chiefs of Staff.<sup>8</sup>

Lessons learned are routinely incorporated into DoD issuances and training. For example, as mentioned above, successive versions of CJCSI 3160.01, *No-Strike and the Collateral Damage Estimation Methodology*, have incorporated lessons learned from Operations IRAQI FREEDOM, ENDURING FREEDOM, ODYSSEY DAWN, UNIFIED PROTECTOR, FREEDOM’S SENTINEL, and INHERENT RESOLVE. The Joint Staff also hosts periodic video-teleconferences with the Combatant Commands to identify and disseminate best practices on reducing civilian casualties.

Policy development with respect to the development and dissemination of best practices for reducing the likelihood of civilian casualties will account for the Chairman of the Joint Chiefs of Staff’s responsibilities related to gathering, developing, and disseminating joint lessons learned, including by ensuring that lessons related to minimizing civilian casualties continue to be incorporated into DoD issuances and joint training.

Currently, each Combatant Command conducting military operations also disseminates to its respective subordinate commands best practices on minimizing civilian casualties. Assessments of reports of civilian casualties also routinely identify lessons learned and best practices for further dissemination. The policy development process will consider how these processes should be reflected in a proposed DoD-level policy and how to promote sharing of lessons learned among and between the Combatant Commands. The policy development process will also consider what, if any, additional requirements may be needed to ensure that policies and procedures are updated periodically to reflect lessons learned.

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<sup>7</sup> 10 U.S.C. § 153(a)(6)(E).

<sup>8</sup> See, for example, CJCSI 3150.25G, *Joint Lessons Learned Program*, January 31, 2018; CJCSM 3151.25A, *Joint Lessons Learned Program*, September 12, 2014.

The Development of Publicly Available Means, Including an Internet-Based Mechanism, for the Submittal to the U.S. Government of Reports of Civilian Casualties Resulting from U.S. Military Operations

The U.S. Government, DoD, the Combatant Commands, and subordinate operational commands currently receive reports of civilian casualties via numerous means, including military units' own after-action reporting, official organizational email accounts established to receive reports of civilian casualties, media reports, NGO reports, face-to-face interactions, and postings on social media. The new DoD-level policy will address means, including internet-based mechanisms, by which members of the public can submit to the U.S. Government reports of civilian casualties resulting from U.S. military operations. During the policy development process, DoD is considering how to improve existing means, including internet-based mechanisms, to receive reports of civilian casualties and whether or how to develop additional means open to the members of the public to submit reports of civilian casualties. To this end, the policy development process will seek and consider suggestions on this issue from various DoD components and others. Any mechanism generally open to the public must take into account the potential for abuse by our enemies or other malign actors.

Uniform Processes and Standards Across the Combatant Commands for Reviewing and Investigating Reports of Civilian Casualties Resulting from U.S. Military Operations, Including the Consideration of Relevant Information from All Available Sources

Over the past few years, USAFRICOM and USCENTCOM have established and refined their practices and procedures for reviewing reports of civilian casualties. The proposed DoD-level policy will likely draw upon existing good practices within the Combatant Commands<sup>9</sup> to establish additional DoD-level policy guidance for assessing and investigating reports of civilian casualties. For example, under current USAFRICOM and USCENTCOM practices and procedures, the command or another entity identified by USAFRICOM and USCENTCOM (such as a special board or team) seeks to assess the credibility of reports of civilian casualties resulting from the command's operations after reports become known. The command or entity considers reports from any source, including after-action reporting of military units or reports from external sources, such as NGOs, the news media, or social media. In assessing the report, the command or entity seeks to review all readily available information from a variety of sources. This may include, but is not limited to, operational planning data, video surveillance and other data from Intelligence, Surveillance, and Reconnaissance (ISR) assets, witness observations (including those of partnered forces) where available, news reports, and information provided by NGOs and other sources, such as local officials or social media.

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<sup>9</sup> See, for example, USCENTCOM Command Policy Letter No. 85, *Civilian Casualty Policy*, September 1, 2016; USCENTCOM Command Policy Letter No. 97, *U.S. Central Command (USCENTCOM) Policy for Reporting and Responding to Civilian Casualty Allegations and Incidents*, January 22, 2018.

After reviewing the available information, a competent official determines whether it is more likely than not that civilians were injured or killed. If warranted, a commander or other competent official could direct that a more extensive administrative investigation be conducted to find additional facts about the incident and to make relevant recommendations, such as identifying process improvements to reduce the likelihood of future civilian casualty incidents. Command-directed investigations would be conducted in accordance with applicable Military Department procedures, such as Army Regulation 15-6.<sup>10</sup>

#### Uniform Processes and Standards Across the Combatant Commands for Acknowledging the Responsibility of the U.S. Military for Civilian Casualties Resulting from U.S. Military Operations

The new DoD-level policy will address uniform processes and standards across the Combatant Commands for acknowledging the responsibility of the U.S. military for civilian casualties resulting from U.S. military operations. During policy development process, DoD is considering the current practice of some commands to release information publicly about civilian casualty assessments in order to provide accurate information to the public and to help counter misinformation and hostile propaganda. The level of detail that can be released publicly can vary due to operational or information security requirements, but could include, to the extent practicable, information that helps show the rationale for the determination.

Consultations with senior leaders within DoD, other U.S. departments and agencies, and NGOs have reflected that the current practices that categorize reports of civilian casualties as “credible” or “non-credible” could be improved. Accordingly, DoD is considering the terminology it uses to convey its conclusions from assessing reports that U.S. military operations resulted in civilian casualties.

#### Uniform Processes and Standards Across the Combatant Commands for Considering *Ex Gratia* Payments, and Other Forms of Response, to Civilians Who Have Been Injured, or to the Families of Civilians Killed, as a Result of U.S. Military Operations, as Determined to Be Necessary by the Designated Senior Civilian Official

The new DoD-level policy will account for the need to have operation-specific, culturally appropriate policies for responding to the death or injury of a civilian caused by U.S. military operations. The proposed DoD-level policy may include a range of responses to civilian casualty incidents, such as acknowledgements, *ex gratia* payments, or other actions. The new DoD-level policy will account for the need for commanders to maintain the authority to respond to changing

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<sup>10</sup> See, for example, Army Regulation 15-6, *Procedures for Administrative Investigations and Boards of Officers*, April 1, 2016; JAG Instruction 5800.7F, *Manual of the Judge Advocate General*, June 26, 2012.

conditions on the ground and to ensure proper coordination with local authorities and local partners, as appropriate. The new DoD-level policy may further account for how Geographic Combatant Commands receive requests for a response following a civilian casualty incident and may note the need in appropriate circumstances to consult with other U.S. departments and agencies in establishing policies and programs to respond effectively to civilian casualty incidents.

#### Regular Engagement with Relevant Intergovernmental and Nongovernmental Organizations

The proposed DoD-level policy will account for the need to have continued regular engagement with relevant intergovernmental organizations and NGOs at the DoD- and Combatant Command-levels. The proposed DoD-level policy will also address channels of engagement with NGOs operating in conflict zones, including for the purpose of encouraging such organizations to assist in efforts to distinguish between military objectives and civilians, including by appropriately marking protected facilities, vehicles, and personnel, and by providing updated information on the locations of such facilities and personnel. The proposed DoD-level policy will consider the importance of all such engagements, including for better understanding the operating environment, further identifying how a conflict is affecting the civilian population, communicating U.S. priorities to NGOs working in conflict zones, and countering misinformation and hostile propaganda.

#### Public Affairs Guidance with Respect to Matters Relating to Civilian Casualties Alleged or Confirmed to Have Resulted from U.S. Military Operations

The new DoD-level policy will account for the continued need for the proactive release of accurate information to domestic and international audiences to put military operations in context, to facilitate informed perceptions about military operations, to counter misinformation and hostile propaganda, and to help achieve national, strategic, and operational objectives.

#### New Technologies to Minimize Civilian Casualties in U.S. Military Operations

DoD has consistently developed, acquired, and fielded new ISR systems, weapons systems, and other technological capabilities to improve military operations. Such systems can contribute to the protection of civilians and help to minimize civilian casualties by improving battlespace awareness and further enabling the discriminate use of force.

Under U.S. law, the Under Secretary of Defense for Research and Engineering (R&E) is responsible for establishing policies on and supervising all defense research and engineering, technology development, technology transition, prototyping, experimentation, and

developmental testing activities and programs, including the allocation of resources for defense research and engineering, and unifying defense research and engineering across DoD.<sup>11</sup> Under U.S. law, the Under Secretary of Defense for Acquisition and Sustainment (A&S) is responsible for establishing policies on and supervising all elements of the Department relating to acquisition (including system design, development, and production, and procurement of goods and services) and sustainment (including logistics, maintenance, and materiel readiness).<sup>12</sup> Processes and standards for developing, acquiring, and fielding new ISR systems, weapons systems, and other technological capabilities are provided for in various DoD issuances.<sup>13</sup>

Policy development with respect to new technologies to minimize civilian casualties will fully account for the respective responsibilities of the Under Secretary of Defense for R&E and the Under Secretary of Defense for A&S. As the Department develops and fields new technologies and capabilities to increase a commander's battlefield awareness, to increase the precision of strikes, and to provide non-lethal alternatives, the proposed DoD-level policy will account for the need to ensure that the development and acquisition processes consider the protection of civilians and the need to minimize civilian casualties.

## **V. OTHER EFFORTS TO IMPLEMENT SECTION 936**

Under the leadership of the Deputy Under Secretary of Defense for Policy, DoD has already taken on a more affirmative stance to promote a policy agenda aimed at minimizing civilian casualties in U.S. military operations.

### *Deputy Under Secretary of Defense for Policy Memorandum to Combatant Commanders*

In December 2018, the Deputy Under Secretary of Defense for Policy sent a memorandum to the Combatant Commanders that noted his new role as the civilian official for DoD civilian casualty policy and that requested that the Combatant Commands provide timely and thorough inputs for this report, additional policy developments, and the next annual DoD report on civilian casualties due by May 1, 2019.

### *Deputy Under Secretary of Defense for Policy Letter to NGOs*

In December 2018, the Deputy Under Secretary of Defense for Policy also sent letters to NGOs to introduce his new role as the civilian official for DoD civilian casualty policy and to highlight

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<sup>11</sup> 10 U.S.C. § 133(a)(2).

<sup>12</sup> 10 U.S.C. § 133(b)(2).

<sup>13</sup> See, for example, DoDD 3000.09, *Autonomy in Weapon Systems*, November 21, 2012, incorporating change 1, May 8, 2017; DoDD 5000.01, *The Defense Acquisition System*, May 12, 2003, incorporating change 2, August 31, 2018; DoDD 5134.10, *Defense Advanced Research Projects Agency (DARPA)*, May 7, 2013, incorporating change 1, September 22, 2017; DoDI 5000.2, *Operation of the Defense Acquisition*, May 12, 2003;



upcoming work in DoD on developing additional policies related to civilian casualties. The letters further requested that the NGOs remain willing to engage with DoD on issues related to civilian casualties, including by continuing to raise any concerns they may have.