

Information Paper

1. SUBJECT: War Trophies/Souvenirs**2. REFERENCES:**

Operational Law Handbook, International and Operational Law Department, The Judge Advocate General's Legal Center & School, U.S. Army, Charlottesville, VA: 2010

3. DISCUSSION:

The LOW authorizes the confiscation of enemy military property. War trophies or souvenirs taken from enemy military property are legal under the LOW. War trophy personal retention by an individual soldier is restricted under U.S. domestic law. Confiscated enemy military property is property of the United States. The property becomes a war trophy, and capable of legal retention by an individual Soldier as a souvenir, only as authorized by higher authority. Pillage, that is, the unauthorized taking of private or personal property for personal gain or use, is expressly prohibited *1.

War Trophy Policy.

A. 10 U.S.C. § 2579 requires that all enemy material captured or found abandoned shall be turned in to "appropriate" personnel. The law, which directs the promulgation of an implementing directive and service regulations, contemplates that members of the armed forces may request enemy items as souvenirs. The request would be reviewed by an officer who shall act on the request "consistent with military customs, traditions, and regulations." The law authorizes the retention of captured weapons as souvenirs if rendered unserviceable and approved jointly by DoD and the Bureau of Alcohol, Tobacco, and Firearms (BATF). Implementing directives have not been promulgated.

B. Guidance. USCENTCOM General Order Number 1 is perhaps the classic example of a war trophy order. These regulations and policies, and relevant UCMJ provisions must be made known to U.S. forces prior to combat. War trophy regulations must be emphasized early and often, for even those who are aware of the regulations may be tempted to disregard them if they see others doing so.

i. An 11 February 2004 Deputy Secretary of Defense memorandum establishes interim guidance on the collection of war souvenirs for the duration of OPERATION IRAQI FREEDOM (OIF) and will remain in effect until an updated DoD Directive is implemented. This memorandum provides the following:

(1) War souvenirs shall be permitted by this interim guidance only if they are acquired and retained in accordance with the LOW obligations of the United States. Law of war violations should be prevented and, if committed by U.S. persons, promptly reported, thoroughly investigated, and, where appropriate, remedied by corrective action.

(2) All U.S. military personnel and civilians subject to this policy, operating in the Iraqi theater of operations during OIF shall turn over to officials designated by CDRUSCENTCOM all captured, found abandoned, or otherwise acquired material, and may not,

except in accordance with this interim guidance, take from the Iraqi theater of operations as a souvenir any item captured, found abandoned, or otherwise acquired.

(3) An individual who desires to retain as a war souvenir an item acquired in the Iraqi theater of operations shall request to have the item returned to them as a war souvenir at the time it is turned over to persons designated by CDRUSCENTCOM. Such a request shall be in writing, identify the item, and explain how it was acquired.

(4) The guidance defines "War Souvenir" as any item of enemy public or private property utilized as war material (i.e., military accouterments) acquired in the Iraqi area of operations during OIF and authorized to be retained by an individual pursuant to this memorandum. War souvenirs are limited to the following items: (1) helmets and head coverings; (2) uniforms and uniform items such as insignia and patches; (3) canteens, compasses, rucksacks, pouches, and load-bearing equipment; (4) flags (not otherwise prohibited by 10 U.S.C. 4714 and 7216); (5) knives or bayonets, other than those defined as weaponry [in paragraph 3 below]; (6) military training manuals, books, and pamphlets; (7) posters, placards, and photographs; (8) currency of the former regime; or (9) other similar items that clearly pose no safety or health risk, and are not otherwise prohibited by law or regulation. Under this interim guidance, a war souvenir does not include weaponry.

(5) Acquired. A war souvenir is acquired if it is captured, found abandoned, or obtained by any other lawful means. "Abandoned" for purposes of this interim guidance means property left behind by the enemy.

(6) Weaponry. For this guidance, weaponry includes, but is not limited to: weapons; weapons systems; firearms; ammunition; cartridge casings ("brass"); explosives of any type; switchblade knives; knives with an automatic blade opener including knives in which the blade snaps forth from the grip (a) on pressing a button or lever or on releasing a catch with which the blade can be locked (spring knife), (b) by weight or by swinging motion and is locked automatically (gravity knife), or (c) by any operation, alone or in combination, of gravity or spring mechanism and can be locked; club-type hand weapons (for example, blackjacks, brass knuckles, nunchaku); and blades that are (a) particularly equipped to be collapsed, telescoped or shortened, (b) stripped beyond the normal extent required for hunting or sporting, or (c) concealed in other devices (for example, walking sticks, umbrellas, tubes). This definition applies whether an item is, in whole or in part, militarized or demilitarized, standing alone or incorporated into other items (e.g., plaques or frames).

(7) *Prohibited Items*. For the purposes of this interim guidance, prohibited items include weaponry and personal items belonging to enemy combatants or civilians including, but not limited to: letters, family pictures, identification cards, and "dog tags."

(8) See also MNC-I General Order #1, contained as an appendix to the Criminal Law chapter.

C. The key to a clear and workable war trophy policy is to publicize it before deployment, work it into all exercises and plans, and train with it! When drafting a war trophy policy, consider the "6 Cs":

i. COMMON SENSE—does the policy make sense?

ii. CLARITY—can it be understood at the lowest level?

iii. COMMAND INFORMATION—is the word out through all means available?

(Post on unit bulletin boards, post in mess facilities, put in post newspaper, put in PSA on radio, etc.).

iv. CONSISTENCY—are we applying the policy across all layers and levels of command? (A policy promulgated for an entire Corps is better than diverse policies within subordinate divisions; a policy that is promulgated by the unified command and applies to all of its components is better still).

v. CUSTOMS—prepare for customs inspections, “courtesy” inspections prior to redeployment, and amnesty procedures.

vi. CAUTION—Remember one of the primary purposes of a war trophy policy: to limit soldiers from exposing themselves to danger (in both Panama and the 1991 Persian Gulf War, soldiers were killed or seriously injured by exploding ordnance encountered when they were looking for souvenirs). Consider prohibitions on unauthorized “bunkering,” “souvenir hunting,” “climbing in or on enemy vehicles and equipment.” A good maxim for areas where unexploded ordnance or booby-traps are problems: “If you didn’t drop it, don’t pick it up.”