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No Small Change of Soldiering: The Commander's Emergency Response Program (CERP) in Iraq and Afghanistan

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With the battles of last March and April, the collapse of Iraq's military, and the fall of Baghdad now history, U.S. armed forces in Iraq today are engaged in what John Keegan has referred to as "the small change of soldiering."² Keegan's metaphor is apt. In the view of some soldiers, unorthodox missions³—such as peacekeeping, noncombatant evacuation, humanitarian assistance, or, as now, military occupation⁴—fulfill a warrior's calling⁵ about as well as odd nickels build a fortune. Yet ironically, in the lives of ancient and modern soldiers

alike, such missions have tended to outnumber more conventional battles,⁶ just as coins and smaller denominations of currency tend to predominate in daily retail business.

Even unorthodox missions can instantly become deadly ones. As Keegan himself observes, the experience of soldiering outside traditional battlegrounds is often dangerous and violent. Americans have learned for themselves in Iraq, and in post-Taliban Afghanistan, that the overall toll of stability operations⁷

1. I thank the following people for their assistance in preparing this article: Ms. Catherine Ailes, Colonel Dan Bolger, Ms. Ann Cataldo, Captain Hal Dronberger, Colonel Lyle Cayce, Colonel Rich Hatch, Lieutenant Colonel Walt Hudson, Colonel J.D. Johnson, Lieutenant Colonel Randy Lee, Lieutenant Colonel Chuck Pede, Major General David Petraeus, Mr. Roger Pitkin, Colonel Fred Pribble, Lieutenant General Ricardo Sanchez, Captain Rich Snead, Ms. Mary Tompkey, and Colonel Marc Warren. By mentioning their names, I do not impute to my colleagues agreement with what follows, and of course I alone am responsible for any errors. Also, the opinions expressed herein are mine in a personal rather than an official capacity, and should not be regarded as policy or positions of the Department of Defense or the Chairman of the Joint Chiefs of Staff.

2. JOHN KEEGAN, *THE FACE OF BATTLE* 14 (1976) ("For there is a fundamental difference between the sort of sporadic, small-scale fighting which is the small change of soldiering and the sort we characterize as a battle.").

3. Unorthodox missions are those that diverge in one or more respects from conventional notions of war fighting. See Roger Spiller, *The Small Change of Soldiering and American Military Experience*, in U.S. Army, *The U.S. Army Professional Writing Collection*, available at http://www-http://www.army.mil/prof_writing/volumes/volume1/october_2003/10_03_3.html (last visited Feb. 10, 2004). This was an introductory paper presented to a conference, "Armed Diplomacy: Two Centuries of American Campaigning," hosted by the U.S. Army Command and General Staff College's Combat Studies Institute at Fort Leavenworth in August 2003. *Id.* A related but distinguishable expression in official joint doctrine is "military operations other than war," which are defined as "[o]perations that encompass the use of military capabilities across the range of military operations short of war. These military actions can be applied to complement any combination of the other instruments of national power and occur before, during, and after war." U.S. DEP'T OF DEFENSE, JOINT PUB. 1-02, *DICTIONARY OF MILITARY AND ASSOCIATED TERMS* 334 (5 Sept. 2003) [hereinafter JOINT PUB. 1-02]. I choose to use the looser, non-doctrinal "unorthodox" to describe these diverse missions because while ongoing operations in Iraq challenge traditional conceptions of warfighting, I believe they are not "other than" or "short of" war. They are a modern species of war itself.

4. Operation Iraqi Freedom marks the first time since the post-WW II occupations of Germany and Japan that the United States has officially assumed the status and responsibilities of an occupying power under international law. See, e.g., Address to the Iraqi People by L. Paul Bremer, Coalition Provisional Authority Administrator, Nov. 21, 2003, available at http://www.cpa-iraq.org/transcripts/20031121_Nov-21-Bremer-Address.htm ("Under the agreement [between the Coalition and the Governing Council on a process to bring sovereignty to the Iraqi people] the occupation will end at the end of June 2004.") (emphasis added). The international community similarly regards the United States as an occupying power. See S.C. Res. 1483, U.N. SCOR, 4761st mtg, U.N. Doc S/RES/1483 (May 22, 2003) [hereinafter S.C. Res. 1483] (recognizing "the specific authorities, responsibilities, and obligations under applicable international law of [the United States and the United Kingdom] as occupying powers under unified command . . ."). Military occupation is "an incident of war" that "does not transfer sovereignty to the occupant, but simply the authority or power to exercise some of the rights of sovereignty." U.S. DEP'T OF ARMY, FIELD MANUAL 27-10, *LAW OF LAND WARFARE* para. 358 (18 July 1956 (C1, 15 July 1976)) [hereinafter FM 27-10]. The temporary exercise of these sovereignty rights "results from the established power of the occupant and from the necessity of maintaining law and order, indispensable both to the inhabitants and to the occupying force." *Id.* The law and practice of belligerent occupation is a specialized field within the law of war, key rules of which are codified in the Regulations Annexed to Hague Convention No. IV Respecting the Laws and Customs of War on Land, Oct. 18, 1907, 36 Stat. 2277, 205 Consol. T.S. 277 [hereinafter Hague Regulations] and in the Geneva Convention Relative to the Protection of Civilian Persons in Time of War, Aug. 12, 1949, 6 U.S.T. 3516, 75 U.N.T.S. 287 [hereinafter GC]. See generally GERHARD VON GLAHN, *THE OCCUPATION OF ENEMY TERRITORY—A COMMENTARY ON THE LAW AND PRACTICE OF BELLIGERENT OCCUPATION* 3-39 (1957).

5. See, e.g., Spiller, *supra* note 3, at 3 ("As one soldier said of his role in stability operations in Panama, 'I didn't sign up for this bullshit.'") (citing conference notes).

6. A prominent study of U.S. military operations short of conventional war counted 215 overseas interventions between the years 1946 and 1975; many of these included deployment of ground troops. See BARRY M. BLECHMAN & STEPHEN S. KAPLAN, *FORCE WITHOUT WAR: U.S. ARMED FORCES AS A POLITICAL INSTRUMENT* 16 (1978). A more recent Congressional Research Service study counted an additional fifty-four overseas interventions short of war between 1981 and 1996. See CONGRESSIONAL RESEARCH SERVICE, *REPORT FOR CONGRESS 96-119F: INSTANCES OF USE OF U.S. ARMED FORCES ABROAD, 1798-1995* (1996). Sixteen of these occurred during the Reagan presidency, thirteen occurred during the elder Bush's presidency, and twenty-five occurred during the first term of the Clinton presidency. *Id.* Though prepared for a full-scale war in Iraq, coalition commanders anticipated the likelihood soldiers would encounter something else as well. See William H. McMichael, *Army General: U.S. Ready for War*, GANNETT NEWS SERVICE ONLINE NETWORK, Mar. 10, 2003 (quoting Lieutenant General David D. McKiernan: "In a post-hostility environment—what we call stability and support operations—we train and have a lot of experience, actually, between the Balkans and Afghanistan and other operations . . . and we would certainly plan for all of those contingencies.").

can far exceed that of conventional battle.⁸ This holds true whether the toll is measured in blood, life, or national treasure.

For the battle is distinguished from other soldiering by the convergence of time, place, and action, not by whether an enemy is present.⁹ The campaign to defeat the former Iraqi regime occurred in a period of less than three weeks (time) in the Euphrates River Valley, near Baghdad (place), and involved the overwhelming of enemy regiments by massive ground and air fires synchronized with rapid armored maneuver (action).¹⁰ Eighteen months earlier, the initial battles for Afghanistan similarly took only about three weeks, in and near a few key northern cities, where Taliban formations were routed with precision air strikes directed by Special Forces accompanying Northern Alliance ground troops.¹¹ The aftermaths of these battles have spread across many months, into every geographical region of these two large countries, and have involved sporadic and disparate action of varied intensity.

Hostile elements remain in both Iraq and Afghanistan, and though they are smaller, they are also more difficult to identify and more complicated to defang. According to a modern military cliché, the time span of this phase will be as long it takes to win the “hearts and minds”¹² of the Iraqi and Afghan peoples. Potential battlefields will extend to wherever recalcitrant Fedayeen, or the Taliban, or Al Qaeda may be hiding even after most hearts and minds are won. The critical action to succeed in this phase will be the growth of Iraqi and Afghan institutions of security and self-government.

This article describes a program by which field commanders in Iraq and Afghanistan can fund initiatives to win hearts and minds, hunt enemies, and promote the growth of local institutions in this unorthodox phase of war. The Commander’s Emergency Response Program (CERP) is novel and important, providing U.S. governmental appropriations directly to tactical units for the purpose of meeting emergency needs of local Iraqi and Afghan civilians. The CERP’s novelty and importance

7. “Stability operations” is another expression used to refer to unorthodox missions. See, e.g., Lawrence A. Yates, *Military Stability and Support Operations: Analogies, Patterns, and Recurring Themes*, MIL. REV. 51 (Oct. 1997) (exploring generally the distinctions between “nontraditional” or “unorthodox” military operations and “traditional warfare”). Still another expression is “small wars.” See U.S. MARINE CORPS, *SMALL WARS MANUAL* (1940). The Army has officially adopted “stability and support operations” as the counterpoise to traditional “offensive” and “defensive” operations. See U.S. DEP’T OF ARMY, *FIELD MANUAL 3-07, STABILITY OPERATIONS AND SUPPORT OPERATIONS* (20 Feb. 2003) [hereinafter FM 3-07]. Earlier, the Army had experimented with “low-intensity conflict,” see U.S. DEP’T OF ARMY, *FIELD MANUAL 100-20: MILITARY OPERATIONS IN LOW INTENSITY CONFLICT* (5 Dec. 1990) and, “operations other than war,” see U.S. DEP’T OF ARMY, *FIELD MANUAL 100-5: OPERATIONS 2-0* (14 June 1993), a close relative of the current joint doctrinal term. For an account of modern evolutions of related terminology, see generally Colonel David Fastabend, *The Categorization of Conflict*, PARAMETERS 75-87 (1997).

8. The Department of Defense publishes the identity of casualties at <http://www.defenselink.mil/releases/>. U.S. Dep’t of Defense, *News Releases*, available at <http://www.defenselink.mil/releases/> (last visited Feb. 6, 2004). The news media and nongovernmental organizations often give casualty numbers in two separate figures—before and after the President’s announcement of an end to major combat operations on 1 May 2003. See, e.g., Helen Thomas, *Who’s Counting the Dead in Iraq?* MIAMI HERALD, Sept. 5, 2003, at 1; GlobalSecurity.Org, *Casualties in Iraq*, Dec. 30, 2003, available at http://www.globalsecurity.org/military/ops/iraq_casualties.htm (recording 138 U.S. personnel killed and 550 wounded before 1 May and 338 killed and 2152 wounded between 1 May-28 December 2003).

9. See KEEGAN, *supra* note 2, at 14.

10. See, e.g., CNN, *Euphrates Battle May Be Biggest So Far*, Mar. 25, 2003, available at <http://www.cnn.com/2003/world/meast/03/25/sprj.irq.war.main/>; David Espo, *Fierce Fighting on Road to Baghdad*, AP, Mar. 28, 2003, available at <http://www.macon.com/mild/macon/5498063.htm>; CBS News, *Baghdad’s Fall Stuns Arab World*, Apr. 9, 2003, available at <http://cbsnews.cbs.com/stories/2003/04/09/iraq/main548587.shtml>; Dan Rather, *On The Scene: Baghdad After the Fall*, CBS NEWS, Apr. 11, 2003, available at <http://www.cbsnews.com/stories/2003/04/11/iraq/scene/main548945.shtml>.

11. See, e.g., Jim Lehrer, *The Fall of Kabul*, PUBLIC BROADCASTING SERVICE ONLINE NEWS HOUR, Nov. 13, 2001, available at http://www.pbs.org/newshour/bb/asia/afghanistan/kabul_11-13.html; David Rennie & Michael Smith, *Northern Alliance Poised to Capture Key City*, ELECTRONIC TELEGRAPH, Nov. 8, 2001, available at <http://www.telegraph.co.uk/news/main.jhtml?xml=/news/2001/11/08/wafg08.xml>; CNN, *Taliban Agree to Stop Fighting in Konduz*, Nov. 21, 2001, available at <http://www.cnn.com/2001/US/11/21/gen.war.against.terror/>; see also Interview with Lieutenant Colonel Don Bolduc, Former Operations Officer of 2d Battalion, 5th Special Forces Group, in Washington, D.C. (Jan. 20, 2004) (affirming that the fall of Kabul, the political center of gravity, was decisive but also noting that simultaneous actions in and around Kandahar, the religious center of gravity, were critical to success).

12. See, e.g., ROGER TRINQUIER, *MODERN WARFARE: A FRENCH VIEW OF COUNTERINSURGENCY* 8 (D. Lee trans., 1st Eng. ed., 1964) (“We know that the *sine qua non* of victory in modern warfare is the unconditional support of a population.”). See also Gavin Bulloch, *Military Doctrine and Counterinsurgency: A British Perspective*, PARAMETERS 4 n.2 (1996).

When asked if he had sufficient troops [General Sir Gerald Templer, High Commissioner and Director of Operations Malaya in 1952 at the height of the insurgency against the British authorities] responded by saying emphatically that he had, adding that “The answer lies not in pouring more soldiers into the jungle but rests in the hearts and minds of the Malayan people.”

Id. See FM 3-07, *supra* note 7, at 3-4. The manual states:

Success in counterinsurgency goes to the party that achieves the greater popular support. The winner will be the party that better forms the issues, mobilizes groups and forces around them, and develops programs that solve problems of relative deprivation. This requires political, social, and economic development. Security operations by military and police forces, combined with effective and legitimate administration of justice, provide the necessary secure environment in which development can occur.

Id.

present challenges for implementation of the program, as the undisciplined or uncoordinated use of CERP funds could result in Congress abruptly ending them. Such a fate is worth averting, because the program's early success demonstrates that relatively small amounts of money spent locally and intelligently by commanders can yield great benefits.

Origins of the CERP

The CERP originated as an effort to provide commanders in Iraq with a stabilization tool for the benefit of the Iraqi people. Initial resources for that effort came from hoards of ill-gotten Ba'athist Party cash. Days after the toppling of Saddam Hussein's statue in Baghdad, U.S. soldiers discovered huge secret caches of U.S. currency. In the exclusive Baghdad residential cottages of regime officials, soldiers of the 3d Infantry Division found more than a hundred aluminum boxes containing about \$650 million, most of it in sealed stacks of \$100 bills.¹³ Days later, soldiers found another \$112 million hidden in a nearby animal kennel.¹⁴ This cash, along with the other regime assets recovered in the weeks and months that followed, provided a source of funding for—among other things crucial to a secure and democratic Iraq—projects responding to emergency needs of the Iraqi people.

In contrast to the shady handling of these funds by senior Ba'athists, the American handling of the recovered assets was transparent, well-documented, and subject to law. United States Treasury Department officials provided expertise to determine the authenticity of all seized negotiable instruments.¹⁵ A Presidential memo required the Department of

Defense (DOD) to prescribe procedures governing use, accounting, and auditing of seized funds in consultation with the Departments of Treasury, State, and the Office of Management and Budget (OMB).¹⁶ The Defense Department, in coordination with OMB, further determined that seized funds were not to be regarded as "miscellaneous receipts" of the United States because such funds were not received "for the Government" within the meaning of federal appropriations law.¹⁷

Meanwhile, field commanders and senior policymakers ensured that seizure, control, and disposition of former regime property complied with international law relating to armed conflict and occupation.¹⁸ Specifically, U.S. Central Command (USCENTCOM) announced that in seizing the funds, coalition forces were taking possession of and safeguarding movable property of the State of Iraq, rather than personal property of its citizens.¹⁹ Evidence that many of the assets had been obtained from illicit skimming of profits from oil sales in violation of United Nations sanctions caused coalition leaders to reject the notion that individual senior Ba'athists were rightful owners.²⁰

A multitude of emergency needs developed in the vacuum of functioning Iraqi civil institutions. Clearing streets of destroyed vehicles, bulldozing mountains of garbage, distributing rations, repairing damaged roofs, wells, and sewers, rehabilitating broken-down jails and police stations, and tending to a variety of urgent medical needs became the business of soldiers.²¹ These relief and reconstruction activities were undertaken to the extent that continuing combat operations against hostile elements permitted or, in some cases of particularly grievous collateral damage, demanded.²²

13. David Zucchini, *Troops Find Baghdad Stash: \$650 Million—Little-noticed Cottages Hold Boxes of Cash*, SAN. F. CHRON, Apr. 19, 2003, at A-10; Interview with Colonel David Perkins, Former Commander of 2d Brigade, 3d Infantry Division, in Washington, D.C. (Oct. 22, 2003) [hereinafter Interview with COL David Perkins].

14. David Zucchini, *\$768 Million Found So Far in Baghdad*, L.A. TIMES, Apr. 23, 2003, at 7. Some portion of the discovered currency was in Euros. See U.S. CENTRAL COMMAND, NEWS RELEASE NUMBER 03-04-210, *\$100M, 90 M Euros Recovered*, Apr. 29, 2003.

15. *Efforts to Track Down and Recover Saddam Hussein's Assets: Hearings Before Subcomm. on Oversight and Investigations of the House Comm. on Financial Services*, 108th Cong., 1st Sess. (May 14, 2003) (written statement of David D. Aufhauser, General Counsel, Department of Treasury), available at <http://www.treas.gov/press/releases/js373.htm>.

16. Memorandum, The President to the Secretary of Defense, subject: Certain State- or Regime-Owned Property in Iraq (30 Apr. 2003) [hereinafter Presidential Memo on Regime Property].

17. E-mail from E. Scott Castle, General Counsel, Coalition Provisional Authority, and Deputy General Counsel (Fiscal), Department of Defense, to Author (30 Oct. 2003) (on file with author). Mr. Castle recalled interagency coordination, construed 31 U.S.C. § 3302(b), and concluded that

[i]n requiring DoD to [prescribe procedures governing use, accounting and auditing of seized funds in consultation with Treasury, State, and OMB, the Presidential Memo on Regime Property] implicitly recognized that seized funds are regarded as "off-Treasury" for scoring and related purposes, and are not subject to extant fund control procedures applicable to Treasury assets.

Id. See also 31 U.S.C. § 3302(b) (2000).

18. E-mail from Colonel Lyle Cayce, Staff Judge Advocate, 3d Infantry Division to Colonel Marc Warren, Staff Judge Advocate, V Corps, to Colonel Dick Gordon, Staff Judge Advocate, Combined Forces Land Component Command, to Colonel Karl Goetzke, and to Author (22 Apr. 2003) (on file with author).

The earliest humanitarian and civic assistance efforts in Iraqi neighborhoods were resourced with military manpower, services, and supplies but included virtually no disbursements of wages to local civilians capable of contributing.²³ Judge advocates correctly advised that DOD funds could lawfully be spent

on certain emergency relief and reconstruction projects because coalition ground forces had assumed responsibility as an occupying army.²⁴ Yet uncertainty concerning the nature and scope of projects that could be funded under this authority, combined with the conservative mechanisms and habits of financial man-

19. See, e.g., Nicole Winfield, *U.S. Forces Hold \$600 Million Found in Baghdad*, AP, Apr. 22, 2003, available at <http://www.fortwayne.com/mld/newssentinel/5689094.htm> (reporting release by U.S. Central Command that "if it's real, it belongs to the Iraqi people"). The official U.S. military pronouncements regarding seized former regime movable assets were thus consistent with the pertinent rule from the law of occupation:

An army of occupation can only take possession of cash, funds, and realizable securities which are strictly the property of the State, depots of arms, means of transport, stores and supplies, and generally, all movable property belonging to the State which may be used for operations of the war.

Hague Regulations, *supra* note 4, art. 53. Evidence that a large sum of currency had been hastily withdrawn from the Central Bank of Jordan by Ba'athists on the eve of the ground invasion strongly indicated that the funds were not private property, see, e.g., Zucchini, *supra* note 14 (describing seal on one box dated 16 March 2003 and signed by five Ba'ath Party ministers), which the occupying force cannot confiscate under the law of war. See Hague Regulations, *supra* note 4, art. 46. With regard to real property, Coalition forces issued orders that only certain public buildings and lands were to be used in support of military operations, see, e.g., Headquarters, U.S. Army V Corps, Fragmentary Order 165M to Operation Order Final Victory (111536L May 03), thereby also implementing occupation law pertaining to real property. See Hague Regulations, *supra* note 4, art. 55 ("The occupying State shall be regarded only as administrator and usufructuary of public buildings, real estate, forests, and agricultural estates belonging to the hostile State, and situated in the occupied country."), art. 56 ("The property of municipalities, that of institutions dedicated to religion, charity and education, the arts and sciences, even when State property, shall be treated as private property.").

20. See, e.g., CBS News, *Saddam May Still Have Billions*, Dec. 4, 2003, available at <http://www.cbsnews.com/stories/2003/12/04/iraq/main586715.shtml> (reporting former Iraqi planning minister Jewad Hashem's assertions that five percent of oil revenues was ordered deposited abroad in accounts under Saddam's supervision when Iraq nationalized its oil industry in 1972 and recording Hashem's calculations that from 1972 to 1990, the deposits would have amounted to \$31 billion). In May of 2003, the United Nations Security Council called on member states to freeze all funds, financial assets, or economic resources that had been removed from Iraq by Saddam Hussein or other senior former Iraqi officials and their immediate family members and to transfer said funds, assets, and resources to the Development Fund for Iraq. See S.C. Res. 1483, U.N. SCOR, 4761st mtg. U.N. Doc S/RES/1483 para. 23 (2003). At the onset of hostilities, the President of the United States had exercised emergency powers and authority under 50 U.S.C. §§ 1601-51, 1701- 07, and 3 U.S.C. § 301 to order confiscation of certain Iraqi property and vesting of that property in the U.S. Department of Treasury with the intent "that such vested property should be used to assist the Iraqi people and to assist in the reconstruction of Iraq . . ." Exec. Order No. 13,290, 68 Fed. Reg. 14,307 (Mar. 20, 2003). Note that the funds held in the United States and ordered to be "vested" by Executive Order 13,290, an amount totaling approximately \$1.7 billion as of 16 May 2003, must be distinguished from assets that were "seized" in Iraq under the laws and usages of war. *Id.*

The different legal authorities, forms, and locations for assets compel slightly different procedures with regard to receipt, transport, safeguarding, accountability, and use. See generally Action Memorandum, Undersecretary of Defense (Comptroller) to Secretary of Defense, subject: Delegation of Authority to Seize Certain State- or Regime-Owned Property in Iraq and Procedures Applicable to Vested and Seized Iraqi Property (16 May 2003) (enclosing for approval and signature the memorandum cited in note 32, *infra*, as well as seven pages of "Procedures for Administering, Using, and Accounting for Vested and Seized Iraqi Property"). It is important to emphasize that the overriding imperative of all U.S. and international pronouncements with regard to former Iraq regime property was that handling be lawful and transparent and that use be for the benefit of the Iraqi people. The administration successfully defended this policy imperative in federal court. Seventeen former prisoners of war from the 1991 Gulf War and thirty-seven of their close family members sought to attach vested Iraqi funds in the United States under section 201 of the Terrorism Risk Assurance Act (28 U.S.C. § 1610) in satisfaction of a judgment against the Republic of Iraq, Saddam Hussein, and the Iraqi Intelligence Service. See 28 U.S.C. § 1610 (2000); *Acree v. Snow*, 276 F. Supp. 2d 31 (D.D.C. 2003) (denying injunction because on 7 May the President had made section 201 inapplicable with respect to Iraq), *injunction pending appeal denied* 78 Fed. Appx. 133, 2003 U.S. App. LEXIS 15654 (D.C. Cir. Aug. 4, 2003).

21. Interview with Colonel Lyle Cayce, Staff Judge Advocate, 3d Infantry Division, in Baghdad, Iraq (May 15, 2003) [hereinafter Interview with COL Lyle Cayce]; Interview with Captain Jacque Tubbs, Brigade Judge Advocate, 130th Engineer Brigade, in Balad, Iraq (May 2, 2003).

22. Interview with Lieutenant Colonel Paul Grosskruger, Commander of 94th Engineer Battalion (June 5, 2003) [hereinafter Interview with LTC Paul Grosskruger]. The demands did not arise from a legal obligation to compensate victims of combat collateral damage, but rather from U.S. responsibilities as an occupying power. See discussion *infra* at note 24 and accompanying text.

23. See Interview with COL Lyle Cayce, *supra* note 21; Interview with LTC Paul Grosskruger, *supra* note 22.

24. See E-mail from Colonel Lyle Cayce to Author (17 Jan. 2004) [hereinafter COL Lyle Cayce E-mail] (recalling 23 March 2003, during 3d Infantry Division's drive to Baghdad, as the first time 3d Infantry Division commanders were advised that O&M could be used); E-mail from Kelly Wheaton, Deputy Legal Counsel to the Chairman of the Joint Chiefs of Staff to Numerous Addressees (15 May 2003) ("DOD appropriations are legally available to carry out activities reasonably necessary to fulfill those responsibilities imposed on an occupying power under international law."). Certain provisions in the Fourth Geneva Convention provide compelling support for this proposition: "To the fullest extent of the means available to it, the Occupying Power has the duty of ensuring the food and medical supplies of the population; it should, in particular, bring in the necessary foodstuffs, medical stores and other articles if the resources of the occupied territory are inadequate." GC, *supra* note 4, art. 55. Still, authority to use DOD funds attenuates as Congress undertakes to discharge the U.S. treaty obligation with legislation and funding apportioned to various executive branch agencies, thereby relieving the DOD of the necessity of doing so. See Emergency Wartime Supplemental Appropriations Act, 2003, Pub. L. No. 108-11, 117 Stat. 559, 564, 573-74 [hereinafter 2003 EWSAA] (authorizing as of 16 April, when the Act was signed into law, the transfer of funds into the Overseas, Humanitarian, Disaster and Civic Aid appropriation and appropriating \$2.475 billion for an Iraq Relief and Reconstruction Fund). *But see* 10 U.S.C. § 2242 ("The Secretary of Defense and the Secretary of each military department may . . . pay expenses incurred in connection with the administration of occupied areas.").

agement, inhibited direct expenditure of O&M funds to locally purchase goods or services for humanitarian requirements.²⁵

The availability of seized regime cash and the urgent need for humanitarian response compelled the Coalition Commander to establish a “Brigade Commander’s Discretionary Recovery Program To Directly Benefit the Iraqi People.” This was done in a fragmentary order (FRAGO) on 7 May 2003.²⁶ Unit and DOD comptrollers and finance officers, in coordination with officials from the newly arrived Office of Reconstruction and Humanitarian Assistance (ORHA),²⁷ quickly

developed procedures to properly account for, secure, control, and pay out seized Iraqi cash, and to keep it separate from appropriated funds in an austere and fluid field environment.²⁸ Not surprisingly, tactical unit finance and micro-purchase procedures provided the model for these aspects of the new program.²⁹

In June 2003, the Administrator of the Coalition Provisional Authority (CPA)³⁰ gave the program its current name, formally linked it to governing law and authorities relating to Iraqi property,³¹ and articulated its central purpose. Ambassador Bremer,

25. See text accompanying notes 85-118 (explaining significance of CERP).

26. Headquarters, U.S. Army V Corps, Fragmentary Order 104M to Operation Order Final Victory (070220L May 03).

CJTF-7 executes a program to invest monies immediately and directly in support of the Iraqi people by providing cash, guidance, and spending authority directly to Brigade and O-6 level commanders. The intent of this program is to give commanders the capability and flexibility to take immediate action to affect positive impacts on recovery efforts and economic initiatives in their battlespace/AOR.

Id. A fragmentary order (FRAGO) directs new actions within an ongoing operation and with reference to an existing operation order, providing timely changes to subordinate and supporting commanders while providing notification to higher and adjacent commands. See U.S. DEP’T OF ARMY, FIELD MANUAL 101-5, STAFF ORGANIZATION AND OPERATIONS H-2 to H-3 (31 May 1997) [hereinafter FM 101-5].

27. Established in the DOD on 20 January 2003 under the supervision of retired Lieutenant General Jay Garner, the mission of the Office of Reconstruction and Humanitarian Assistance was to “establish[] links with the United Nations specialized agencies and with non-governmental organizations that will play a role in post-war Iraq” and to “reach out also to the counterpart offices in the governments of coalition countries, and, in coordination with the President’s Special Envoy to the Free Iraqis, to the various Free Iraqi groups.” See Undersecretary of Defense (Policy) Douglas Feith, *A Commitment to Post-War Iraq: Basic Principles*, Mar. 12, 2003, available at <http://www.defendamerica.mil/iraq/irq031203.html>.

28. See, e.g., Department of Defense, Disbursement and Distribution Procedures for Office of Reconstruction and Humanitarian Assistance (ORHA) (May 2003); Interview with Lieutenant Colonel Milt Sawyers, Comptroller for 1st Armored Division, in Baghdad, Iraq (May 20, 2003) [hereinafter Interview with LTC Milt Sawyers] (describing unit-level procedures). The ORHA had received authority to determine appropriate uses of and make payments from a limited amount of vested assets designated to the Secretary of Defense from the Secretary of Treasury. See, e.g., Memorandum from Deputy Secretary of Defense to Director, Office of Reconstruction and Humanitarian Assistance and to Secretary of the Army, subject: Second Delegation of Authority to Use Vested Iraqi Property for Assisting the Iraqi People and Assisting in the Reconstruction of Iraq (8 May 2003).

29. See Interview with LTC Milt Sawyers, *supra* note 28. This summarized account of efforts to use seized funds during April and May of 2003 is not intended to gloss over the difficulties and frustrations felt by commanders and staff judge advocates in the field that arrangements were not in place beforehand or quickly enough to halt a rapid slide into lawlessness. The ill-defined relationship between tactical units and representatives from ORHA, the initial unavailability of the seized funds, and the absence of clear authority and mechanisms to apply resources to obvious problems in the street all contributed to leaders’ resolve that much could be done better if the campaign were repeated. See COL Lyle Cayce E-mail, *supra* note 24. Independent studies before and after the onset of the war have detailed useful considerations for comprehensive occupation planning, organization, and preparation. See, e.g., UNITED STATES INSTITUTE OF PEACE, SPECIAL REPORT 104: ESTABLISHING THE RULE OF LAW IN IRAQ (2003) (recording conclusions of a 19 Feb. 2003 workshop); JAMES DOBBINS, JOHN G. MCGINN, KEITH CRANE, SETH G. JONES, ROLLIE LAL, ANDREW RATHMELL, RACHEL SWANGER, & ANGA TIMILSINA, RAND STUDY—AMERICA’S ROLE IN NATION-BUILDING: FROM GERMANY TO IRAQ (2003).

30. The Coalition Provisional Authority (CPA) was formally established on 16 May 2003 with the following stated objectives and authority:

- (1) The CPA shall exercise powers of government temporarily in order to provide for the effective administration of Iraq during the period of transnational administration, to restore conditions of security and stability, to create conditions in which the Iraqi people can freely determine their own political future, including by advancing efforts to restore and establish national and local institutions for representative governance and facilitating economic recovery and sustainable reconstruction and development.
- (2) The CPA is vested with all executive, legislative, and judicial authority necessary to achieve its objectives, to be exercised under relevant U.N. Security Council resolutions, including Resolution 1483 (2003), and the laws and usages of war. This authority shall be exercised by the CPA Administrator.
- (3) As the Commander of Coalition Forces, the Commander of U.S. Central Command shall directly support the CPA by deterring hostilities; maintaining Iraq’s territorial integrity and security; searching for, securing and destroying weapons of mass destruction; and assisting in carrying out Coalition policy generally.

COALITION PROVISIONAL AUTHORITY, REG. NO. 1, § 1, 16 May 2003, available at http://www.cpa-iraq.org/cpa_documents.html. The Administrator of the CPA, Ambassador L. Paul Bremer, arrived in Iraq on 12 May, having recently been named by President Bush to serve as his envoy and as the senior coalition official in Iraq. See Public Broadcasting Service Online News Update, *New U.S. Administrator Arrives In Baghdad To Stabilize Country*, May 12, 2003, available at http://www.pbs.org/newshour/updates/bremer_05-12-03.htm; White House Office of the Press Secretary, *President Names Envoy to Iraq*, May 6, 2003, available at <http://www.whitehouse.gov/news/releases/2003/05/20030506-5.html>. The first significant description of the CPA is contained in Letter from John D. Negroponte, United States Mission to the United Nations and Jeremy Greenstock, United Kingdom Mission to the United Nations, to His Excellency Mr. Munir Akram, President of the Security Council (May 8, 2003). In the latter weeks of May, the functions and organization of ORHA were transferred to the CPA.

having been delegated authority by the Deputy Secretary of Defense over “Certain State-or Regime-Owned Property in Iraq,”³² signed a memo on 16 June 2003, re-delegating some of that authority to the Commander of Coalition Forces. The memo authorized the Commander “to take all actions necessary to operate a Commanders’ Emergency Response Program.”³³ It elaborated that “[t]his Program will enable commanders to respond to urgent humanitarian relief and reconstruction requirements within their areas of responsibility, by carrying out programs that will immediately assist the Iraqi people and support the reconstruction of Iraq.”³⁴ The memo also set an aggregate limit on the expenditure of seized funds under the CERP and dictated total spending ceilings and transactional caps for division and brigade-level commanders.

FRAGO 89

Three days later, on 19 June 2003, the Commander of Combined-Joint Task Force 7 (CJTF-7) implemented the CERP by issuing FRAGO 89 to the operation order in effect at the time.³⁵ Describing the CJTF-7 Commander’s intent as providing major subordinate commanders “with a greater capability and flexibility to take immediate action to make positive impacts in their area of responsibility,”³⁶ FRAGO 89 outlined permissible reconstruction projects, issued implementing tasks, and stated limitations on fund expenditures in non-technical terms. It also announced seized Iraqi assets as the source of CERP funding.³⁷

Permissible “reconstruction assistance” was defined in FRAGO 89 as:

the building, repair, reconstitution, and reestablishment of the social and material infrastructure in Iraq. This includes but is not limited to: water and sanitation infrastructure, food production and distribution, healthcare, education, telecommunications, projects in furtherance of economic, financial, management improvements, transportation, and initiatives which further restore of [sic] the rule of law and effective governance, irrigation systems installation or restoration, day laborers to perform civic cleaning, purchase or repair of civic support vehicles, and repairs to civic or cultural facilities.³⁸

FRAGO 89 also made clear that expenditures could include purchases of goods and services from local Iraqis.³⁹

Subordinate commanders were directed to appoint in writing project purchasing officers (PPOs) who had previously been trained and certified as ordering officers under the Federal Acquisition Regulation and supplemental service regulations.⁴⁰ Each purchase was to be documented on a standard U.S. Government purchase order—the standard form (SF) 44—and purchase order procedures were generally to be followed, except

31. See *supra* notes 16-17, 20, and accompanying text; see also COALITION PROVISIONAL AUTHORITY, ORDER NO. 2—DISSOLUTION OF ENTITIES § 2 (23 May 2003) (promulgating that all assets of named dissolved entities of the former regime shall be held by the Administrator on behalf of and for the benefit of the Iraqi people); COALITION PROVISIONAL AUTHORITY, ORDER NO. 4—MANAGEMENT OF PROPERTY AND ASSETS OF THE IRAQI BAATH PARTY § 3 (25 May 2003) (promulgating that all assets of the Iraqi Baath Party are subject to seizure by the CPA for the benefit of the Iraqi people); COALITION PROVISIONAL AUTHORITY, ORDER NO. 9—MANAGEMENT AND USE OF IRAQI PUBLIC PROPERTY (8 June 2003) (establishing orderly procedures to control occupancy of public facilities and use of public resources); S.C. Res. 1483, U.N. SCOR, 4761st mtg. U.N. Doc S/RES paras. 12 (2003) (noting the establishment of a Development Fund for Iraq), 13 (noting that the funds for the Development Fund for Iraq shall be disbursed at the direction of the [CPA] in consultation with the Iraqi interim administration), and 14 (underlining that the Development Fund for Iraq shall be used in a transparent manner to meet the humanitarian needs of the Iraqi people, for the economic reconstruction and repair of Iraq’s infrastructure, for the continued disarmament of Iraq, and for the costs of Iraqi civilian administration, and for other purposes benefiting the people of Iraq); COALITION PROVISIONAL AUTHORITY, REG. 2—DEVELOPMENT FUND FOR IRAQ (15 May 2003).

32. Memorandum, Deputy Secretary of Defense, to Administrator of the Coalition Provisional Authority, subject: Certain State- or Regime-Owned Property in Iraq (29 May 2003) (exercising authority from the Presidential Memo on Regime Property, *supra* note 16).

33. Memorandum, Administrator of the Coalition Provisional Authority, to the Commander of Coalition Forces, subject: Commanders’ Emergency Response Program (16 June 2003) [hereinafter CERP Delegation Memo]. On the same day, Ambassador Bremer established a parallel program for CPA Regional Directors as well as a Construction Initiative, both of which were also to be funded with seized assets. See Memorandum, Administrator of the Coalition Provisional Authority, to Regional Directors, subject: Regional Directors’ Emergency Response Program (16 June 2003); Memorandum, Administrator of the Coalition Provisional Authority, to Chairman, Program Review Board and Regional Directors, subject: Construction Initiative for Iraq (16 June 2003).

34. See CERP Delegation Memo, *supra* note 33.

35. Headquarters, Combined-Joint Task Force 7, Fragmentary Order 89 (Commander’s Emergency Response Program (CERP) Formerly the Brigade Commander’s Discretionary Fund) to CJTF-7 OPOD 03-036 (192346 June 03) [hereinafter FRAGO 89].

36. *Id.* para. 3.B.

37. *Id.* para. 3.B.3.

38. *Id.* para. 3.B.4.

39. *Id.* para. 3.B.5.

that the SF 44 could be used to document CERP purchases up to \$100,000,⁴¹ forty times the value of the maximum micro-purchase order when appropriated funds are used.⁴² Commanders and PPOs were ordered to take extra precautions for purchases larger than \$10,000, to include informing the division commander in advance, obtaining three competitive bids, identifying an individual to manage the project, and paying for services as progress was made rather than in a lump sum up front.⁴³ FRAGO 89 forbade the mixing of CERP funds with appropriated funds, and required PPOs to maintain separate SF 44s and document registers for the two sources of funds.⁴⁴

Unit finance detachments were to train individuals other than PPOs to serve as pay agents for drawing, safeguarding, and paying the currency to be used in the CERP project purchases.⁴⁵ Finance standing operating procedures ensured adequate security of the funds, to include coordinating for military police or tactical maneuver units to provide point, route, or area security. To enhance security, pay agents were cautioned to draw funds as needed rather than large bulk sums.

FRAGO 89 prohibited expenditures for the following seven categories of purposes:

- the direct or indirect benefit of CJTF-7 forces, to include coalition forces;
- entertainment of local Iraqi population;
- any type of weapons buy-back program or rewards program;
- to buy firearms, ammunition, or the removal of unexploded ordnance (UXO) for any purpose;

- for duplicating services available through municipal governments;
- to provide support to individuals or private businesses (exceptions possible, i.e., repair damage caused by coalition forces);
- salaries to the civil work force, pensions, or . . . emergency civil service worker payments.⁴⁶

Commanders were directed to coordinate all projects with regional offices of the CPA, with governorate support teams, and with Civil Affairs elements “to prevent duplication of effort and to ensure synchronization.”⁴⁷ They were also generally cautioned that “Iraqi seized assets used for this program are not unlimited,” and that they should “work to ensure reasonable prices are paid for goods/services received, and projects are constructed to a modest, functional standard.”⁴⁸

Units were to report weekly to higher headquarters with the dates, locations, amounts spent, and brief descriptions of the CERP projects undertaken.⁴⁹ The initial amount allocated to each brigade commander (\$200,000) and division commander (\$500,000) could be replenished. Upon exhausting available funds, commanders were required to submit a CPA form for forwarding to the CPA’s newly established Program Review Board.⁵⁰

In the coming month and a half, CJTF-7 issued two additional FRAGOs modifying the CERP. The first relaxed the restriction in FRAGO 89 on payment of rewards with CERP funds.⁵¹ The second permitted delegation of approval authority for CERP reward payments to battalion-squadron command level.⁵²

40. *Id.* para. 3.C.1.B; *see* U.S. DEP’T OF ARMY, ARMY FEDERAL ACQUISITION REG. SUPP. pt. 5101.602-2-90 (Oct. 2001) [hereinafter AFARS] (containing governing guidance for Army ordering officers); GENERAL SERVS. ADMIN. ET AL, FEDERAL ACQUISITION REG. pt. 13.306 (Sept. 2001) [hereinafter FAR] (containing guidance for use of the SF 44, Purchase Order– Invoice-Voucher).

41. FRAGO 89, *supra* note 35, para. 3.D.6.

42. *See* FAR, *supra* note 40, § 13.306 (specifying that the SF 44 is to be used when “[t]he amount of the purchase is at or below the micro-purchase threshold, except for purchases made under unusual and compelling urgency or in support of contingency operations”); § 2.101 (defining the micro-purchase threshold generally as \$2,500).

43. FRAGO 89, *supra* note 35, para. 3.D.7.

44. *Id.* para. 3.D.3.F.

45. This paragraph of the text summarizes FRAGO 89, *supra* note 35, para. 3.C.

46. *Id.* para. 3.D.3.

47. *Id.* para. 3.D.1.

48. *Id.* para. 3.D.2.

49. *Id.* para. 3.D.10.

CERP's Dramatic Impact in Iraq

From early June to mid-October, Iraqis benefited noticeably from the seized funds entrusted to commanders. More than 11,000 projects were completed in this time, resulting in the purchase of \$78.6 million of goods and services, mostly from local economies that were being brought to life after decades of centralized rule from Baghdad.⁵³

In and around Baghdad itself, neighborhoods responded to the new decentralized activity.⁵⁴ Thousands of able-bodied Iraqis were paid a daily wage to clean streets, alleys, buildings, and public spaces of debris and garbage, far exceeding the scope of cleanup the Army alone could accomplish and leveraging with self-interested Iraqi hands the efforts of American sergeants and privates operating military equipment. Hundreds of small generators—many of these confiscated from abandoned Ba'athist buildings and villas—were repaired and installed in municipal buildings with Iraqi labor, enabling local communities to resume basic functions despite halting progress being made on the city's electrical grid. Many additional hundreds of air conditioners were purchased and installed in Iraqi buildings under the CERP program, providing relief from temperatures that routinely rose above a 100 degrees fahrenheit, cooling hot tempers, and permitting the application of clear-headed reason to problems of self-governance. Dozens of jails and local police stations were repaired or reconstructed, facilitating a return to public order and creating more secure and humane conditions for detained Iraqi suspects.⁵⁵

Throughout the country, similar projects were feverishly underway in many brigade and division areas of operations. More than \$6 million were spent on 999 rudimentary water and sewage repair projects, providing clean water supplies and preventing the spread of dysentery, cholera and other diseases. Bridge, road, and other small-scale reconstruction projects numbered 1,758 during the first eighteen weeks of the CERP and plowed nearly \$13 million into nascent markets for building materials and labor. More than \$1 million were spent on 188 projects for distribution of humanitarian relief in places nongovernmental and international relief organizations could not reach, and another \$450,000 enabled the movement home of Iraqis displaced during the war and the transportation of supplies and equipment to locations where needed. Myriad expenditures to get local governing councils, town officials, judges, and investigators operating totaled \$4.7 million in 742 separate projects.⁵⁶

The most dramatic and well-publicized uses of the CERP funds occurred in the northern part of Iraq, where the 101st Airborne Division (Air Assault) creatively partnered with—and further promoted—a sympathetic and forward-looking civilian population. As of mid-October, the division and its subordinate brigades had undertaken over 3,600 CERP projects costing more than \$28 million, roughly a third of the CERP activity countrywide.⁵⁷ The 101st refurbished more than 400 schools by installing or upgrading utilities, doing structural repair, and purchasing desks, chairs, and supplies. In addition to employing thousands of Iraqis, the school projects complemented similar work by nongovernmental organizations and the CPA, enabling

50. *Id.* para. 3.D.10.B. COALITION PROVISIONAL AUTHORITY, REG. 3—PROGRAM REVIEW BOARD (19 May 2003).

The Board shall report directly to the Administrator of the CPA. The Board shall carry out its responsibilities, as defined in this Regulation, in a manner consistent with the CPA's obligation to ensure that funds available to the CPA for providing relief to, and the recovery of Iraq are managed in a transparent manner and consistent with applicable law, for and on behalf of the Iraqi people. In addition, the Board shall, when and to the extent appropriate, consult the Iraqi interim administration referred to in paragraph 9 of Resolution 1483 (2003), and shall seek every opportunity to further the CPA's objective of gradually transferring to the Iraqi interim administration the responsibility of budgeting Iraq's financial resources.

Id.

51. Headquarters, Combined-Joint Task Force 7, Fragmentary Order 250 (Amendment to the Commander's Emergency Response Program (CERP) Formerly the Brigade Commander's Discretionary Fund) to CJTF-7 OPOrd 03-036 (011947 July 03).

52. Headquarters, Combined-Joint Task Force 7, Fragmentary Order 480 (C1 to FRAGO 250M—Amendment to Commander's Emergency Response Program) to CJTF-7 OPOrd 03-036 (222351 July 03). By 18 October, reward payments totaled \$218,380. *See* Headquarters, United States Central Command, Commander's Emergency Response Program Expenditures (18 Oct. 2003) [hereinafter CERP Expenditure Table].

53. *See id.* One measure of the degree of control over the economy previously exercised by the former regime is that under the Oil-for-Food program, Iraq oil exports generated more than \$63 billion, and yet severe hardship for ordinary Iraqis in obtaining food, medicine, and essential civilian goods persisted. *See* KENNETH KATZMAN, CONGRESSIONAL RESEARCH SERVICE REPORT RL 30472: OIL-FOR-FOOD PROGRAM, INTERNATIONAL SANCTIONS, AND ILLICIT TRADE (2003).

54. Sources for this and the subsequent paragraph in the text include the CERP Expenditure Table, *supra* note 52; Interview with COL David Perkins, *supra* note 13; Interview with COL Lyle Cayce, *supra* note 21; Interview with LTC Paul Grosskruger, *supra* note 22; Interview with Colonel J.D. Johnson, Former Commander of 2d Brigade, 1st Armored Division, in Washington, D.C., on 30 January 2004 [hereinafter Interview with COL J.D. Johnson]; and author's own experiences in Iraq in 2003.

55. *See supra* note 54.

56. *Id.*

many more children to return to class in an environment conducive to learning.⁵⁸

The CERP of the 101st was front-page news in the *Washington Post* on 30 October, in a story featuring the pediatric wing of a hospital in remote mountains near the Iraq-Syria border:

Within a week, a Humvee pulled up with the first installment of \$9600 in cash to fix the wing. Within four more weeks, the building was rebuilt and refurnished, complete with fuzzy blankets in primary colors and Mickey and Minnie Mouse decorations. “It happened so fast I almost couldn’t believe it,” said [Kifah Mohammad] Kato, director of the Sinjar General Hospital.⁵⁹

The *Post* article contrasted the streamlined procedures under which the seized former regime cash could be spent with the delays plaguing major reconstruction funds handled by the U.S. Agency for International Development. The article also recorded concerns, voiced by humanitarian aid groups, that such streamlined procedures were ripe for abuse, in that commanders could purchase goods or services with a minimum of competitive bidding or market research.⁶⁰ The article mentioned, without elaboration, a trend that had pushed particular CERP projects some distance from the purpose of the program as originally articulated by the CPA Administrator. In addition to hospital refurbishment, a clearly humanitarian expenditure, the CERP had been used for “projects such as hiring a civil defense corps . . . and fixing an oil refinery and a sulfur plant.”⁶¹

Commanders and judge advocates throughout Iraq were justifying these security-oriented and larger infrastructural investments as permissible under the CERP because they were ultimately linked to the humanitarian needs of the Iraqi people. A safe, secure, economically viable country was, so the justifi-

cation went, the most humanitarian thing that could be done for ordinary Iraqis.⁶² The volume of these “indirectly” humanitarian expenditures of the CERP was significant, as more than \$13 million of the \$78.6 million total had been spent to recruit, train, outfit, and deploy police, facility security guards, and civil defense corps units.⁶³ Additional millions had been spent on significant construction or repairs to the country’s industrial plant. Moreover, in September and October the average CERP project cost jumped from about \$4000 to over \$17,000, reflecting commanders’ increasingly ambitious efforts to address the security and infrastructural causes of Iraqi hardships in addition to immediate needs.⁶⁴

Although various legal interpretations of the 16 June 2003 Bremer memorandum and FRAGO 89 are available to reconcile the CERP’s essentially humanitarian purpose with large expenditures on security and industrial infrastructure,⁶⁵ the awkwardness of such expenditures with CERP funds is undeniable. The CERP was established, after all, as an “emergency response” program, not a fund for capital investments in security forces and industrial capacity. In April 2003, Congress had already appropriated nearly \$2.5 billion within an “Iraq Relief and Reconstruction Fund,” which included “rule of law and governance” among its purposes; in the same legislation, Congress had provided for more than \$500 million to be spent in a “Natural Resources Risk Remediation Fund” for, among other things, “repair of damage to old facilities and related infrastructure and preserve a distribution capability.”⁶⁶

Still, despite the duplication of the CERP’s security force and industrial capacity projects with funds administered outside the military command structure, Ambassador Bremer decided to reinforce the CERP’s successes.⁶⁷ Indeed, given the slow pace at which the non-military reconstruction efforts were proceeding, the decision was not a difficult one. Eventually, Ambassador Bremer would fund the CERP with additional mil-

57. See Major Brian Winski, Chief of Operations, 101st Airborne Division (Air Assault), 101st CERP Vignettes (11 Oct. 2003) [hereinafter 101st CERP Vignettes] (copy on file with author); see also Scheherezade Faramarzi, *Search for WMD in Iraq Slows to Crawl*, AP, Sept. 23, 2003, available at <http://www.tallahassee.com/mld/tallahassee/news/world/6838745.htm> (describing the expenditure of \$3.5 million in three months by the PPO-Pay Agent team of judge advocate Captain Julie “Moneypenney” Simoni and Chemical Corps officer Second Lieutenant Ben Shumaker in northern Iraq).

58. *Id.*

59. Ariana Eunjung Cha, *Military Puts Funds to Swift Use Rebuilding*, WASH. POST, Oct. 30, 2003, at A1.

60. *Id.* (quoting Dominic Nutt, a spokesman for British humanitarian group Christian Aid).

61. *Id.*

62. Telephone Interview with Mr. Barry Hammill, Deputy Staff Judge Advocate, U.S. Central Command (Nov. 9, 2003).

63. See 101st CERP Vignettes, *supra* note 57.

64. See CERP Expenditure Table, *supra* note 52.

65. For instance, one could argue that a daily wage is not a “salary” within the use of that term in FRAGO 89, *supra* note 35, para. 3.D.H.3. Also, FRAGO 89 contemplates use of some amount of CERP for “infrastructure.” *Id.*

66. See 2003 EWSAA, *supra* note 24, at 559, 573-74.

lions of seized assets in excess of the original spending cap for the program.⁶⁸

Funding CERP With U.S. Appropriations

Even as the CERP was attracting attention for early achievements, the program was running out of money. As commanders warmed to the program and accelerated the rate at which they reinvested the seized cash into local communities, it became clear that the assets the CPA was willing to devote to the CERP would not last beyond 2003 if the accelerated rate of spending continued.

On 17 September 2003, while the unique contributions the CERP had been making were still relatively unknown to senior policymakers and before the exhaustion of ready funding from seized assets was apparent, the President submitted a request for \$87 billion of emergency supplemental funding to Congress. More than \$20 billion of this request was for appropriations to finance the reconstruction of Iraq and Afghanistan.⁶⁹ Both houses of Congress deliberated on this legislation quickly, so that by the time the administration was prepared to request a specific amount of appropriated funding for the CERP, the House and Senate versions of the supplemental appropriations bill were almost ready to be sent to the joint conference charged with reconciling remaining differences.⁷⁰ In October, before the start of the conference, the administration persuaded managers of the House bill to include in it a draft provision autho-

rizing the expenditure of up to \$180 million of O&M funds on the CERP.⁷¹ An increasing drumbeat of requests by field commanders in Afghanistan for funding to undertake CERP-like projects resulted in a requested provision that would authorize an appropriated-fund CERP for commanders in both countries.⁷²

Upon receiving the House version of the bill, Senate Appropriations Committee staffers identified the CERP provision as one that had not been included in the President's original request. The Senate Appropriations Committee was both concerned about the diversion of O&M funding from its core purpose and acutely aware that controversial billions of dollars were elsewhere in the legislation being granted, not loaned, for the humanitarian and reconstruction needs of Iraq and Afghanistan. Consequently, the Committee requested more information on what the CERP was and on how the requested provision would be implemented if it became law.⁷³

On 22 October 2003, members of the Joint Staff briefed Senate staffers on the CERP and answered questions about the requested funding authority. The Joint Staff outlined the 16 June 2003 Bremer memo and the essential guidance contained in FRAGO 89.⁷⁴ Representative projects were described by officers who had personal experience with the CERP in Iraq, and the value of the program was related as that of a stabilization phase "tool" no less essential to victory than the world's finest tanks, weapons, ships, planes, communications, and individual protective gear with which Congress had already

67. See Dennis Steele, *The Race to Win*, ARMY, Nov. 2003, at 9, 11 (quoting Major General Petraeus' comment "I told Ambassador Bremer that money is ammunition during his first visit [to Mosul], and that we didn't have much. He went back to Baghdad, and money started to flow.")

68. See, e.g., Memorandum, Administrator of the Coalition Provisional Authority, to the Commander of Coalition Forces, subject: Amendment of Commanders' Emergency Response Program (7 July 2003) (increasing the cap to \$11.5 million). The original delegation of authority from the CPA was for an amount not to exceed ten dollars. See CERP Delegation Memo, *supra* note 33. The CPA also took actions to ensure that CERP was not encumbered with additional layers of regulation:

Contracting Guidance will be voted on at the next meeting to incorporate a grandfathering of the Commander's Emergency Response Program (CERP) and allow the CERP to be administered in accordance with Fragmentary Order that CJTF-7 previously propagated directing procedures for executing the CERP. And, at the Chairman's suggestion, the new guidance will have a protest mechanism in place which will not result in the suspension of any contracting activities during resolution of any protests.

Coalition Provisional Authority, Program Review Board Minutes, 16 Aug. 2003.

69. In the weeks that followed, the President and others drew analogies about the generosity of the legislation that resulted from this request and its comparability to the Marshall Plan. See, e.g., The White House, Remarks by the President at the Signing of H.R. 3289 (Nov. 6, 2003) ("Our investment in the future of Afghanistan and Iraq is the greatest commitment of its kind since the Marshall Plan.") [hereinafter Presidential Signing Statement]. The parallels and differences between the United States' support to Iraq and Afghanistan reconstruction and that to Germany's reconstruction after World War II will be a fertile topic for future research. Lieutenant Colonel Walt Hudson, former Deputy Staff Judge Advocate of 1st Armored Division in Iraq and currently on the faculty of the Command and General Staff College, surmises that General Lucius D. Clay "derived a kind of CERP authority" from a directive that empowered Clay to prevent disease and unrest in occupied Germany. See E-mail from Lieutenant Colonel Walter Hudson to Author (14 Jan. 2004) (on file with author) (interpreting *Joint Chiefs of Staff, Directive 1067, Directive to the Commander-in-Chief of the United States Forces of Occupation Regarding the Military Government of Germany (10 May 1945)* in U.S. DEP'T OF STATE, DOCUMENTS ON GERMANY 1944-1985 (1985), citing John Backer, *Morgenthau Plan to Marshall Plan*, in AMERICANS AS PROCONSULS: UNITED STATES MILITARY GOVERNMENT IN GERMANY AND JAPAN, 1944-1952 (1984)).

70. See Interview with Rear Admiral Peter H. Daly, Joint Staff Force Structure, Resources, and Assessment Directorate, in Washington, D.C. (Oct. 22, 2003).

71. See H.R. REP. NO. 108-312 (2003).

72. See Interview with Colonel Steven Schrader, U.S. Air Force, Joint Staff Strategic Plans and Policy Directorate, in Washington, D.C. (Sept. 27, 2003).

73. See E-mail from Mr. Bob Henke, Senate Appropriations Committee, to Mr. Stephen Moffitt, Office of the Secretary of Defense, Legislative Affairs (Oct. 20, 2003) (copy on file with author).

equipped the military. When spent well, CERP funding convinced Iraqis that the coalition was truly committed to their well-being, increased the flow of intelligence to commanders and soldiers about hostile actors in the community, and improved security and economic conditions.⁷⁵

To the question of why O&M funds should be the source of funding, the Joint Staff explained that commanders and tactical unit comptrollers were familiar with its use, accountability, and management. The Joint Staff answered concerns about safeguarding and prevention of abuse by describing the training and separate functions of ordering officers and pay agents as well as the simple but adequate procedures for securing cash, obtaining maximum results from purchases, documenting transactions, and investigating any irregularities.⁷⁶

The Senate was particularly cautious of the administration's request that O&M funding be available for use "notwithstanding any other provision of law."⁷⁷ In both its oral replies and a follow-up written submission, the Joint Staff maintained that this phrase was essential to keeping the CERP a flexible and responsive tool, unencumbered by procedures normally associated with procurement, the payment of claims, or other official actions that involve the expenditure of appropriated funds.⁷⁸

The day following the briefing, the Joint Staff received word that the Senate would recede to the House version of the CERP provision, which had amended the administration's request by adding a quarterly reporting requirement.⁷⁹ Following a week of intense activity and debate on other aspects of the legislation, section 1110 of the bill that was passed by both houses gave

commanders the full requested authority to continue CERP with appropriated funds:

During the current fiscal year, from funds made available in this Act to the Department of Defense for operation and maintenance, not to exceed \$180,000,000 may be used, notwithstanding any other provision of law, to fund the Commander's Emergency Response Program, established by the Administrator of the Coalition Provisional Authority for the purpose of enabling military commanders in Iraq to respond to urgent humanitarian relief and reconstruction requirements within their areas of responsibility by carrying out programs that will immediately assist the Iraqi people, and to establish and fund a similar program to assist the people of Afghanistan: *Provided*, That the Secretary of Defense shall provide quarterly reports, beginning on January 15, 2004, to the congressional defense committees regarding the source of funds and the allocation and use of funds made available pursuant to the authority in this section.⁸⁰

On 6 November 2003, the President signed the bill into law⁸¹ and, for the first time, federal appropriations of the U.S. government could lawfully fund the CERP projects in Iraq and Afghanistan.

74. See Joint Staff, Commanders' Emergency Response Program (CERP), Briefing for Senate Appropriations Committee (Oct. 22, 2003) (Powerpoint presentation and author's notes from the session, on file with author).

75. See *id.*

76. See *id.*

77. See *infra* text accompanying note 80.

78. See Joint Staff, Questions and Answers, 23 Oct. 2003 (on file with author). One of seven responses to questions was as follows:

Notwithstanding Any Other Provision of Law. OGC, the General Counsel for CPA, and OCJCS Legal Counsel all believe that the language is important because Commanders using CERP funds right now are not using Armed Services Procurement Act, Competition in Contracting Act, Foreign Claims Act, and myriad other procedures that would arguably be required by law and implementing regulations (e.g., the Federal Acquisition Regulation) were CERP to be funded with U.S. appropriations. Also without the "notwithstanding" language, various provisions of past, current and even future Foreign Operations Appropriations Acts or organic Foreign Assistance legislation, could arguably be said to apply to the program were it to become funded, as proposed, with appropriated funds. In short, the "notwithstanding" phrase is intended to keep the program the useful tool that it is for commanders in the field and not have it encumbered by processes and procedures in other provisions of law.

Id.

79. See H.R. CONF. REP. 108-337, at 7 (2003); E-mail from Rear Admiral Peter H. Daly, Joint Staff Force Structure, Resources, and Assessment Directorate, to author (24 Oct. 2003) (on file with author).

80. Emergency Supplemental Appropriations Act for Defense and for the Reconstruction of Iraq and Afghanistan, 2004, Pub. L. No. 108-106, § 1110, 117 Stat. 1209, 1215 [2004 ESAA].

81. See Presidential Signing Statement, *supra* note 69.

On 25 November 2003, Under Secretary of Defense Zakheim issued guidance on the use of appropriated funds in the CERP. Recognizing that CERP was “a very powerful tool for the military commanders in carrying out their current security and stabilization mission,” the Under Secretary expressed the Department’s intent that appropriated CERP funding “preserve[] the same flexibility and responsiveness . . . maintained with the original CERP that was funded with seized Iraqi assets.”⁸² Similar to FRAGO 89 with regard to permissible project categories and limitations,⁸³ the guidance also tasked U.S. Central Command and the Department of the Army to develop operating procedures to govern the use of appropriated funds within the program.⁸⁴

Significance of CERP

Having been hailed for its potent contributions to stabilization efforts in Iraq, the CERP became, in section 1110, both a significant development in the law and a potentially transforming influence on modern U.S. military operations. The significance and potential operational impact of the legislative

provision can be appreciated against the background of restrictions historically imposed on a U.S. field commander’s ability to spend public funds.

Under normal circumstances, a brigade commander⁸⁵ with forces in Baghdad or Mosul or Kandahar has no source of discretionary funding to apply toward his mission. Indeed, his environment is cash-free or cash-starved, depending on the point of view. He and his soldiers generally have the finest equipment in the world, but without having to make decisions about paying for the tanks, helicopters, vehicles, machineguns, rifles, artillery pieces, mortars, missiles, radars, radios, global positioning system receivers, night vision devices, or other “end items” used by his soldiers. Funds for these capital expenditures and for their distribution and fielding to tactical units are paid for with procurement dollars appropriated by Congress either programmatically or in “other procurement” appropriations.⁸⁶

Unless a commander’s prior assignments included a tour with a higher headquarters involved in researching, developing, testing, or evaluating a weapon system, vehicle, or piece of

82. See Memorandum, Under Secretary of Defense (Comptroller), to Commander, U.S. Central Command and Secretary of the Army, subject: Guidance on the Use of Appropriated Funds for the Commander’s Emergency Response Program (CERP) (25 Nov. 2003) [hereinafter USDC Guidance Memo].

83. Importantly, Under Secretary Zakheim’s guidance stated that the CERP as executed with appropriated funds must not include rewards programs, *see id.* at 2, so as to comply with congressional intent. In 2002, Congress created specific statutory authority for the Secretary of Defense and certain delegates, to pay a monetary amount, or provide a payment-in-kind, to a person as a reward for providing U.S. government personnel with information or nonlethal assistance that is beneficial to operations or activities of the armed forces conducted outside the United States against international terrorism or to force protection of the armed forces. See Bob Stump National Defense Authorization Act for Fiscal Year 2003, Pub. L. No. 107-314, 116 Stat. 2655 (2002) (enacting and codifying 10 U.S.C. § 127b (LEXIS 2004)). The DOD Rewards Program thus authorized has been implemented by subsequent guidance, which directs that the Under Secretary of Defense (Comptroller) will provide funds to the Director, Washington Headquarters Services, which will then allocate funds to the combatant commanders at the direction of the Assistant Secretary of Defense for Special Operations and Low Intensity Conflict. See Memorandum, Under Secretary of Defense (Policy), for Director of the Joint Staff, subject: Implementation of the DOD Rewards Program (Mar. 5, 2003).

84. See USDC Guidance Memo, *supra* note 82. The U.S. Central Command subsequently issued messages governing use of appropriated funds within the CERP in Iraq. See Message, 092024Z Dec. 03, Headquarters U.S. Central Command to Commander, CJTF-7, subject: Combined Forces Command Fragmentary Order 09-432 Commander’s Emergency Response Program (CERP)- Appropriated Funds (CERP-APF), and establishing a CERP in Afghanistan; Message, 092041Z Dec. 03, Headquarters U.S. Central Command to Commander, ARCENT and CJTF-180, subject: Combined Forces Command Fragmentary Order 07-231 Commander’s Emergency Response Program (CERP)- Appropriated Funds (CERP-APF).

Under Secretary Zakheim’s memorandum and the U.S. Central Command message to CJTF-7 were careful to state that they applied only to situations in which appropriated funds were being used to fund the CERP. In Iraq, the CPA approved additional non-appropriated assets for use within the existing CERP. See, e.g., Coalition Provisional Authority, Program Review Board Minutes, 11 Nov. 2003, funding request #550 (approval of \$36.5 million); Coalition Provisional Authority, Program Review Board Minutes, 6 Dec. 2003, funding request #576 (approval of \$160 million). The Commander of CJTF-7 implemented the new USCENCOM and CPA guidance in Headquarters, Combined-Joint Task Force 7, Fragmentary Order 1268 (CERP Program Update DFI, Appropriated and Seized) to CJTF-7 OPOD 03-036 (221400 Dec. 03). As the Pentagon, USCENCOM, and the CPA worked out the details of the new, appropriated-fund CERP, the program continued to attract media attention. See, e.g., Greg Jaffe & Neil King, *U.S. Commanders Get More Funding for Iraqi Projects*, WALL ST. J., Dec. 9, 2003, at 1. This article states:

The Bush administration is scrambling to award about 25 multiyear contracts to do nearly \$18 billion of work in Iraq. Those contracts—for projects as varied as roads and hospitals to new power plants and waterworks—aren’t scheduled to be awarded until early February, and the process is already running slightly behind schedule. Even if awarded in February, work won’t begin in most cases until the summer . . . Based on the success of the [CERP] initiative, some senior Pentagon officials are pushing to get even more money to senior military commanders for civic-work projects. These officials contend that the division commanders, who have large staffs and extensive contacts with Iraqis in the areas they oversee, can spend money more quickly and efficiently than the Coalition Provisional Authority.

Id. See also Dan Murphy, *The GI’s Weapon of Choice In Iraq: Dollars*, CHRISTIAN SCIENCE MONITOR, Jan. 29, 2004, at 1. It states in pertinent part:

To the soldier on the ground, the most useful side to the money is that it has at least made some friends in communities who have profited from their projects, turning them into useful informants against insurgents operating in their areas and setting up what they hope will be a virtuous cycle of development leading to peace and then leading to more development.

Id.

equipment on his brigade's property books, he will have needed to serve no role whatsoever in spending billions of RDTE dollars.⁸⁷ Nearly a century ago, western industrial nations centralized weapons design, procurement, and fielding as part of a revolution in military affairs,⁸⁸ and the DOD continues to refine the process.⁸⁹ So long as their soldiers are well-equipped and weapons development incorporates lessons learned from the field, officers in command are satisfied to leave management of the enormous resources involved in weapons and equipment programs to others.⁹⁰

The brigade's soldiers patrolling streets and raiding terrorist hideouts are paid with military personnel appropriations within a well-established and well-maintained pay and benefits apparatus.⁹¹ A brigade commander need have no direct function in this apparatus—direct deposit of monthly earnings long ago made unit pay officers unnecessary—though a commander's promotion, evaluation report, and other personnel and disciplinary decisions impact the earnings of particular soldiers.

Contracts centrally planned, competed, managed, and paid for two to four echelons above the brigade level typically fur-

nish most necessary lodging, food, and other life support,⁹² once the tactical situation permits construction of base camps. A brigade commander and his subordinate leaders will have helped define the requirements for these procurements, but without any role in fund management or disbursement. A number of civilian personnel paid under contract accompany the unit to the field, providing maintenance and other services associated with the brigade's more sophisticated command and control and other systems. These contracts, too, are concluded by warranted contracting officers distant from the brigade.

The brigade commander does have substantial influence over millions of dollars appropriated by Congress to the U.S. Army in the O&M account and then made available to the brigade through a process of apportionment, allocation, allotment, and finally budget execution within informal subdivisions of funds known as allowances.⁹³ With these funds, and according to priorities set by the command, the brigade's supply and maintenance personnel order repair parts, ammunition, fuel, batteries, field rations, barrier material, soldier hygiene items, medical supplies, and myriad other items required by the brigade for day-to-day activities.

85. The brigade normally controls from two-to-five attached battalions, themselves units composed of four-to-five companies. Within the U.S. Army's force structure, the brigade is significant because of its ability to operate both independently or as part of a division. The brigade fights combined arms battles and engagements, integrating and coordinating different kinds of battalions—field artillery, aviation, engineer, air defense, combat air support, and naval gunfire—to accomplish its combat mission. The brigade is the first level of command that requires the commander to integrate all of the battlefield operating systems (intelligence, maneuver, fire support, mobility/countermobility/survivability, air defense, combat service support, and command/control), and the brigade provides the link between the division deep and close battle. Because the only permanently assigned element of the divisional brigade is the headquarters and headquarters company, the brigade can accommodate a variety of task organizations depending on the mission, the enemy, the terrain, troops and time available, and civilian considerations (METT-TC situation). According to Army doctrine, the brigade commander is responsible for setting the conditions necessary for these assets to make their contributions to the battle in an organized and synchronized fashion; he is also responsible for placing the battalions in the right place, at the right time, and in the right combination to decisively defeat the enemy. In short, the brigade commander commands a powerful combined arms team—frequently anywhere from 3000 to 5000 personnel and hundreds of vehicles and weapons systems—that is also adaptable to a variety of unorthodox missions. See generally U.S. DEP'T OF ARMY, FIELD MANUAL 7-30, THE INFANTRY BRIGADE ch.1 (31 Oct. 2000).

86. See, e.g., Department of Defense Appropriations Act, 2003, Pub. L. No. 107-248, 116 Stat. 1519, 1527 [hereinafter FY 03 DOD Appropriations Act] (appropriating \$1.096 billion for procurement of missiles), 1528 (appropriating \$5.874 billion for "Other Procurement").

87. See *id.* at 1532 (appropriating \$7.670 billion for Army research, development, test, and evaluation (RDTE)). Note that many brigade commanders choose to stay as actively involved as possible in providing feedback to RDTE and fielding efforts, even if they directly manage no funds in the process. Program managers of major weapons and equipment systems frequently assist field commanders' involvement. See, e.g., Colonel Gregory Fritz, *The Rapid Fielding Initiative*, ARMY AL&T (Nov.-Dec. 2003).

88. See Michael Geyer, *German Strategy in the Age of Machine Warfare, 1914-1945*, in MAKERS OF MODERN STRATEGY 541 (P. Paret ed., 1986).

89. See, e.g., VALERIE BAILEY GRASSO, CONGRESSIONAL RESEARCH SERVICE REPORT 1B96022: DEFENSE ACQUISITION REFORM—STATUS AND CURRENT ISSUES (2002).

90. See Interview with COL J.D. Johnson, *supra* note 54.

91. See, e.g., 10 U.S.C. §§ 31-88 (2000); FY 03 DOD Appropriations Act, *supra* note 86, at 1519 (appropriating \$26.9 billion for Army personnel pay, allowances, etc.); U.S. DEP'T OF DEFENSE, REG. 7000.14-R, FINANCIAL MANAGEMENT REGS. (2002) [hereinafter FMR] (containing military pay policies and procedures).

92. Authority to contract is vested in heads of agencies (e.g., Secretaries of Defense, Army, Navy, and Air Force), see U.S. DEP'T OF DEFENSE, DEFENSE FEDERAL ACQUISITION REG. SUPP. 202.101 (Oct. 2001) [hereinafter DFARS], who in turn establish Heads of Contracting Activities (HCAs), see *id.*, who in turn appoint Principal Assistants Responsible for Contracting (PARC), see AFARS, *supra* note 40, § 5101.601(4), who in turn select and appoint contracting officers who may bind the government to the extent of the authority delegated to them in their certificates of appointment. See FAR, *supra* note 40, subsecs. 1.603-3, 1.602-1(a). Although an Army division table of organization contains one authorization for a contracting officer, procurement activity is typically centralized at Corps or Theatre level with the result that contracting officers combine efforts in contracting offices located in headquarters one or more echelons above division. U.S. DEP'T OF ARMY, FIELD MANUAL 100-10-2: CONTRACTING SUPPORT ON THE BATTLEFIELD 2-7, 2-9, 2-10 & D-3 to D-4 (15 Apr. 1999) [hereinafter FM 100-10-2]. Funding for major life support contracts is typically from O&M and military construction appropriations.

93. See 31 U.S.C. §§ 1512, 1514; GENERAL ACCOUNTING OFFICE, A GLOSSARY OF TERMS USED IN THE FEDERAL BUDGET PROCESS, PAD-81-27, at 34 (1981); FMR, *supra* note 91, vol. 3, ch. 13.

Although most of the brigade's budgeted O&M funds are expended through the charging of accounts maintained within the military's supply and distribution systems, designated brigade personnel will have made small purchases prior to deployment on the open economy using government-wide commercial purchase cards.⁹⁴ Following deployment, occasional trips by purchase card holders to and from developed countries might enable a few commercially purchased supplies to reach the brigade area.

In the cash-based economies of Iraq or Afghanistan, the brigade can spend O&M funds locally outside military supply systems only through designated ordering officers and pay agents according to field ordering procedures.⁹⁵ Local purchases for various unit needs—ice, fans, cleaning supplies, office products, and even pack animals to support movement in difficult terrain—are classic uses of these procedures.

As Army brigade judge advocates know, however, ordering officers and pay agents are trained that disciplinary or adverse administrative action will follow a purchase made for other than official Army purposes.⁹⁶ These purposes are defined by federal law and congressional intentions regarding the proper uses of O&M appropriations.

According to the authoritative Comptroller General decision resulting from perceived misuse of O&M funds in the 1980s, the correct analysis of purpose is “whether a certain expense is necessary or incidental to the proper execution of the object of the appropriation (here, those expenses necessary for the O&M of the various military departments).”⁹⁷ The *Alexander* decision, so-called because it was issued in reply to an inquiry by Congressman Bill Alexander, applied the well-established doctrine of federal appropriations law that in order to be “necessary and incidental,” an expenditure—

- must be reasonably related to the purposes for which the appropriation was made;
- must not be prohibited by law; and,
- must not fall specifically within the scope of some other category of appropriation.⁹⁸

Applying this doctrine to particular Army and Navy expenditures connected with exercises in Honduras, the Comptroller General decision held that expenses for the provision of civic and humanitarian assistance and for training Honduran forces had been charged to the DOD's O&M funds in violation of 31 U.S.C. § 1301—the “purpose” statute.⁹⁹ Although stopping short of finding a similar violation in use of such funds for the building of base camps, airfield runways, and other projects benefiting the Honduran military, the *Alexander* decision was critical of the Department's justifications that O&M funds could be used for this construction.¹⁰⁰

Though subsequent legislation has superseded particular parts of the *Alexander* ruling,¹⁰¹ the decision continues to cast a long shadow over tactical unit expenditures in the field. Thus, in the absence of the CERP, a brigade commander in Iraq would not have authority or funding at his level to pay day-laborers for garbage cleanup, purchase generators for emergency electricity, or acquire local supplies and labor to make jails capable of humanely and securely detaining apprehended criminal suspects.¹⁰²

Without the CERP, rudimentary water and sewage repair projects could be undertaken by the brigade only after receiving approval at higher division, CJTF-7, and USCENTCOM headquarters, with coordination required at the Joint Staff, the Office of the Secretary of Defense, and the Defense Security Cooperation Agency.¹⁰³ Training or equipping new Iraqi secu-

94. See DFARS, *supra* note 92, §§ 213.270, 213.301; AFARS, *supra* note 40, subpt. 5113.270.

95. See generally FAR, *supra* note 40, pt. 13; FM 100-10-2, *supra* note 92, at 2-18.

96. U.S. DEP'T OF ARMY, FEDERAL ACQUISITION REG. MANUAL No. 2—CONTINGENCY CONTRACTING ch. 5 & app. G (Nov. 1997).

97. *The Honorable Bill Alexander, House of Representatives*, 63 Comp. Gen. 422, 427 (1984).

98. *Id.* at 427-28 (citing 42 Comp. Gen. 226, 228 (1962) and 38 Comp. Gen. 782, 785 (1959)).

99. *Id.* at 423.

100. *Id.*

101. See, e.g., 10 U.S.C. § 401 (2000) (Humanitarian and Civic Assistance in Conjunction with Military Operations) (originally enacted in Pub. L. No. 99-661, div. A, tit. III, sec. 333(a)(1), 100 Stat. 3857 (1986)); 10 U.S.C. § 2805(a)2 & (c)(2) (Exercise-Related Construction) (subsections originally enacted in Pub. L. No. 100-180, div. B, subdiv. 3, tit. I, sec. 2310, 101 Stat. 1217 (1987)); 10 U.S.C. § 2011 (Special Operations Forces: Training with Friendly Foreign Forces) (originally enacted in Pub. L. No. 102-190, div. A, tit. X, sec. 1052(a)(1), 105 Stat. 1470 (1991)); 10 U.S.C. § 2561 (Humanitarian Assistance) (originally enacted in Pub. L. No. 102-484, div. A, tit. III, sec. 304(c)(1), 106 Stat. 2361, sec. 2551 (1992)).

102. As discussed in *supra* note 24 and accompanying text, the argument that commanders and the ordering officers in their commands could use O&M funds for these expenditures strictly on the basis of the United States' obligations as an occupying power was so uncertain—particularly after passage of the Emergency Wartime Supplemental Appropriations Act on 16 April—as to inhibit the spending of such funds. This occupation responsibility argument, of course, is not even available for commanders in Afghanistan.

rity forces by U.S. soldiers and using either U.S. equipment or items purchased with O&M funds to resource this effort, even if motivated by humanitarian response, would be off-limits for the reasons enunciated in *Alexander*.¹⁰⁴ This is security assistance that Congress funds with specific appropriations for foreign operations.¹⁰⁵ Congress similarly intends that military units not undertake development or infrastructure construction projects, which are typically funded within programs managed by the State Department and the U.S. Agency for International Development.¹⁰⁶

These fiscal law constraints are real, and commanders know that to circumvent or defy them is to risk serious censure. Although criminal penalties for Anti-Deficiency Act violations are unlikely, the prospect of an investigation—followed potentially by a formal reprimand, adverse evaluation report, and dimmed promotion chances¹⁰⁷—deters commanders from expending government funds and other resources for humanitarian and related projects. Nonappropriated fund and private funding options are unavailable to commanders for a host of reasons.¹⁰⁸

The significance of the CERP is that by authorizing and funding a program for discretionary humanitarian projects of brigade and division commanders, Congress has acknowledged the need for new and different tools to conduct major stability operations. Authority to use a certain amount of O&M funds “notwithstanding any other provision of law” is indispensable to ensuring the CERP remains effective despite overlapping rules and policies that place similar authority elsewhere.

Congressional acknowledgment of the need for new tools is essential because while the Constitution vests authority over foreign affairs and national defense in the President,¹⁰⁹ it also vests separate, broad authority over the purse in the Congress.¹¹⁰ With the military’s traditional role of preparing for and fighting the nation’s wars continuing to define defense budgets and funding mechanisms,¹¹¹ it is the “non-traditional” military operations that bring into highest relief this congressional power to influence foreign affairs and national defense through the appropriations process.

103. See generally Message, 100935Z Mar. 03, Assistant Secretary of Defense for Special Operations & Low-Intensity Conflict, subject: Guidance for FY04 Overseas, Humanitarian, Disaster, and Civic Aid (OHDACA) Activities. The U.S. Central Command’s implementation of this Assistant Secretary of Defense guidance makes clear that except for de minimis Humanitarian and Civic Assistance, all projects require interagency approval:

Authority for approval and execution of HCA projects has not been delegated for any countries in the USCENTCOM [area of responsibility]. Project proposals for all HCA must be nominated to the interagency for approval by USCENTCOM. HCA Activity, except de minimis, shall not be conducted prior to receipt of interagency approval.

See Message 222048Z Mar. 03, Headquarters, U.S. Central Command, subject: USCENTCOM Guidance for Humanitarian Assistance During Operation Enduring Freedom (OEF) and Operation Iraqi Freedom (OIF), para. 3.b. De Minimis Humanitarian and Civic Assistance is that provided under 10 U.S.C. § 401(c)(2) and incurring only minimal expenditures for incidental costs, such as a unit doctor’s examination of villagers for a few hours, with the administration of several shots and the issuance of some medicine, but not the deployment of a medical team for the purpose of providing mass inoculations to locals. See U.S. DEP’T OF DEFENSE, DIR. 2205.2, HUMANITARIAN AND CIVIC ASSISTANCE (HCA) PROVIDED IN CONJUNCTION WITH MILITARY OPERATIONS para. E1.1.1 (6 Oct. 1994) [hereinafter DOD DIR. 2205.2]; U.S. DEP’T OF DEFENSE, DEFENSE SECURITY COOPERATION AGENCY, MANUAL 5105.38, SECURITY ASSISTANCE MANAGEMENT MANUAL ch. 12 (2003) [hereinafter SAMM] (regulating Humanitarian Assistance and Mine Action programs).

104. 10 U.S.C. § 2011; see *supra* note 101. This statute authorizes training with friendly foreign forces by U.S. special operations forces—not by U.S. Army line brigades—and only if the primary purpose to train the U.S. special operations forces themselves. Special operations forces have, as part of their mission essential task list the task of training foreign forces, and it is the need to remain competent at this task that justifies an exception to the general rules governing security assistance. Again while training of an occupied state’s security forces is arguably a responsibility of the occupying power if indigenous forces are needed to restore order, see Hague Regulations, *supra* note 4, art. 43 (“The authority of the legitimate power having in fact passed into the hands of the occupant, the latter shall take all the measures in his power to restore, and ensure, as far as possible, public order and safety, while respecting, unless absolutely prevented, the laws in force in the country.”), the authority to use brigade O&M funds in this fashion is far from clear.

105. “Security assistance” describes a

[g]roup of programs authorized by the Foreign Assistance Act of 1961, as amended, [codified at 22 U.S.C. §§ 2151 *et seq*] and the Arms Export Control Act of 1976, as amended [codified at 22 U.S.C. §§ 2751 *et seq*] or other related statutes by which the United States provides defense articles, military training, and other defense-related services, by grant, loan, credit, or cash sales in furtherance of national policies and objectives.

See JOINT PUB. 1-02, *supra* note 3, at 400. Each year, Congress appropriates money to the programs, for expenditure by agencies subordinate to the Department of State. See, e.g., Consolidated Appropriations Resolution 2003, Division E—Foreign Operations, Export Financing, and Related Programs Appropriations 2003, Title III—Military Assistance, Pub. L. No. 108-7, 117 Stat. 11, 176 [hereinafter FOAA 2003] (appropriating \$ 4.072 billion for the Foreign Military Financing Program). Some of this money may be apportioned to the DOD for execution, but it will be strictly within the context of the program administered by the Department of State. See SAMM, *supra* note 103, para. C.9.7.2.8.4; see also DEFENSE INSTITUTE OF SECURITY ASSISTANCE MANAGEMENT, THE MANAGEMENT OF SECURITY ASSISTANCE chs. 1-3 (2003); U.S. Dep’t of Defense, Security Cooperation Guidance (Apr. 2003).

106. See, e.g., Foreign Assistance Act §§ 531-35 (22 U.S.C. §§ 2346-46d).

107. See 14 FMR, *supra* note 91, chs. 1-9; U.S. DEP’T OF DEFENSE, DIR. 7200.1, ADMINISTRATIVE CONTROL OF APPROPRIATIONS 1995; 31 U.S.C. § 1349 (subjecting individuals to “appropriate administrative discipline including, when circumstances warrant, suspension from duty without pay or removal from office”).

The Constitution provides that “[n]o Money shall be drawn from the Treasury but in Consequence of Appropriations made by Law.”¹¹² Though its impact in the realm of national security affairs has been the subject of much debate, the most persuasive view is that this “Appropriations Clause” gives Congress alone the constitutional authority to draw funds from the Treasury.¹¹³

Laws implementing the Appropriations Clause include those requiring public funds to be spent according to the purposes for which they were appropriated (purpose-based controls),¹¹⁴ to be obligated during their period of availability (time-based controls),¹¹⁵ and to remain within the appropriated amount (amount-based controls).¹¹⁶ To our brigade command-

ers conducting stability operations in Iraq and Afghanistan, these and the other controls in federal appropriations law¹¹⁷ mean that with regard to public funds under their control, they must refrain from exercising the initiative that infuses almost every other aspect of effective command.

As the Supreme Court has made clear, “[t]he established rule is that the expenditure of public funds is proper only when authorized by Congress, not that public funds may be expended unless prohibited by Congress.”¹¹⁸ This rule, surely a sound and proper one to safeguard the people’s treasure in a constitutional democracy, requires no special supplementation during peacetime training and exercises. But during unorthodox operations

108. Nonappropriated fund instrumentalities (NAFIs) of the United States, such as installation morale welfare funds and the Army Air Force Exchange Service, generate revenue that remains outside the body of funds appropriated by Congress. Nonappropriated fund instrumentalities are not available as a source of funding for command expenditures on a foreign populace because NAFIs are governed by councils that implement law and written policy and are intended to provide morale-building welfare, religious, educational, and recreational programs to improve well-being of U.S. military and civilian personnel and their dependents. See generally U.S. DEP’T OF ARMY, REG. 215-1, MORALE, WELFARE, AND RECREATION ACTIVITIES, AND NON-APPROPRIATED FUND INSTRUMENTALITIES (25 Oct. 1998). Private organizations are not an available source of funding to a commander because they must determine how their own funds are spent based upon their own constitutions, bylaws, and procedures. See, e.g., U.S. DEP’T OF DEFENSE, INSTR. 1000.15, PRIVATE ORGANIZATIONS ON DOD INSTALLATIONS (23 Oct. 1997). Nor can commanders conduct fundraisers or solicit contributions from soldiers or non-federal entities. See U.S. DEP’T OF DEFENSE, DIR. 5035.1, COMBINED FEDERAL CAMPAIGN (CFC) FUND-RAISING WITHIN THE DEPARTMENT OF DEFENSE (7 May 1999); U.S. DEP’T OF DEFENSE, REG. 5500.7-R, JOINT ETHICS REGULATION ch. 2 (1994); Standards of Ethical Conduct for Employees of the Executive Branch, 5 C.F.R. 2635 (2003).

The Secretary of Defense has authority to accept contributions of money or real or personal property, see, e.g., 10 U.S.C. § 2608, as do the service secretaries, see *id.* § 2601, but such gifts are not accessible to commanders without extensive coordination with higher headquarters, the donors typically wish to attach strings that may or may not be acceptable to the military department involved, and once the gift is given, there are additional issues of securing it and transporting it. The Secretary of Defense and the Service Secretaries have emergency and extraordinary expense authority, see *id.* § 127. With this authority they have established official representation funds in order to host official receptions, dinners, and similar events and otherwise extend official courtesies to guests of the United States for purposes of maintaining the standing and prestige of the United States and the DOD. See, e.g., U.S. DEP’T OF DEFENSE, DIR. 7250.13, OFFICIAL REPRESENTATION FUNDS (ORF) (10 Sept. 2002). The amounts, however, are limited and strictly regulated to ensure expenditure for the designated purpose. *Id.*

109. Colonel Richard D. Rosen, *Funding “Non-Traditional” Military Operations: The Alluring Myth of a Presidential Power of the Purse*, 155 MIL. L. REV. 1, 115 (1998).

110. See *id.* 116. See also Phillip R. Trimble, *The President’s Foreign Affairs Power*, 83 AM. J. INT’L L. 750, 751 (1989).

An effective foreign policy requires more than ideas and pronouncements. It requires institutions, agencies, people and money, and Congress controls them all. Through the authorization and appropriation process, Congress sets the terms of commerce; it provides military forces and intelligence capabilities; and it establishes the conditions for development assistance, security support programs and U.S. participation in international organizations. . . . Hardly any important executive branch decision is taken without consideration of the reaction in Congress.

Id.

111. See Rosen, *supra* note 109, at 3-6 & n.30 (“The military’s traditional role of preparing for and fighting the nation’s wars will undoubtedly continue to define defense budgets and funding mechanisms; however, America’s military also will find itself increasingly absorbed in operations unrelated to its core missions.”) (citing Samuel P. Huntington, *Keynote: Non-Traditional Roles for the U.S. Military in NON-COMBAT ROLES FOR THE U.S. MILITARY IN THE POST-COLD WAR ERA* 6-7 (James R. Graham ed., 1993)).

112. U.S. CONST. art. I, § 9, cl. 7.

113. See Rosen, *supra* note 109, at 14-26.

114. 31 U.S.C. § 1301 (2000); see also the three-part test for a proper purpose enunciated by the Comptroller General at *supra* note 98 and accompanying text.

115. 31 U.S.C. § 1502(a) (setting forth the bona fide needs rule).

116. *Id.* § 1341(a)(1)(A) (prohibiting any government officer or employee from making or authorizing an expenditure or obligation in excess of the amount available in an appropriation); *id.* § 1514(a) (prohibiting making or authorizing expenditures or incurring obligations in excess of formal subdivisions of funds); *id.* § 1341(a)(1)(B) (prohibiting incurring an obligation in advance of an appropriation); *id.* § 1342 (prohibiting the acceptance of voluntary services unless otherwise authorized by law). An appropriation, the most common form of budget authority, is a statutory authorization “to incur obligations and make payments out of the Treasury for specified purposes.” 1 GENERAL ACCOUNTING OFFICE, PRINCIPLES OF FEDERAL APPROPRIATIONS LAW 2-3 to 2-13 (2d ed., 1991) [hereinafter FED. APPROP. LAW] (quoting GENERAL ACCOUNTING OFFICE, A GLOSSARY OF TERMS USED IN THE FEDERAL BUDGET PROCESS 42 (1981)). Other types of budget authority are borrowing authority, contract authority, and spending authority from offsetting collections. See OFFICE OF MANAGEMENT AND BUDGET, CIR. A-11, PREPARATION, SUBMISSION, AND EXECUTION OF THE BUDGET § 20.4 (2002).

and particularly a military occupation, the absence of congressional authority for commanders, on their own initiative, to spend small amounts of that treasure quickly on urgent humanitarian projects can spell defeat in the struggle for hearts and minds. By providing a source of funding for the CERP in section 1110, Congress has furnished such authority.

Challenges

As with other sophisticated tools, this one will help achieve the desired end only if employed with intelligence. Here the requirement is literal: if a commander spends CERP funds in a vacuum of military intelligence, it is quite possible to do more harm than good. The brief history of projects funded with seized former regime cash has demonstrated that all available information about local hostile elements and about the civilian population's sympathies, animosities, capabilities, economic condition, needs, wants, and traditions—both cultural and religious—should be brought to bear in the selection process.

Order generators and copper wiring from Ba'athists, and you may set off a spree of burglaries while also financing next month's attacks on your own troops. Ignore the tip from a townsman that Fedayeen mortars collapsed the roof of a neighborhood school, and you will lose the chance to help children return to their studies while gaining information about the location of improvised explosive devices (IEDs) and the organization of hostile cells¹¹⁷ from their grateful parents. In terms of

how the brigade or division staff conducts operations, the key is to decide on CERP projects using the military decision-making process, built on thorough intelligence preparation of the battlefield.¹²⁰

Integration of available intelligence into CERP-project planning is essential, but so too is synchronized execution of the project with the brigade's other systems.¹²¹ Neighborhoods suffering collateral damage from direct and indirect fires should be high priorities for immediate and focused reconstruction. Opportunities to stretch the CERP funds or enhance their impact should be seized by using them in tandem with bulldozers, backhoes, and other engineer assets. Patrolling by ground maneuver forces should secure the areas where projects have been newly completed. Public affairs messages should be timed to make the most of these good news stories while avoiding any suggestion that loyalty or affection can simply be purchased—a notion revolting to cultural and religious sensibilities in this region of the world.¹²²

Due effort should be made to ensure CERP projects complement rather than compete with projects and programs of other U.S. government organizations, of nongovernmental organizations, and of emerging local and national programs. In Iraq, priorities for reconstruction are established by the Coalition Provisional Authority in coordination with the Commanders of CJTF-7 and USCENTCOM, the DOD, and the National Security Council. In Afghanistan, the Chief of the U.S. diplomatic mission sets these priorities after consulting with the Com-

117. Such as the rule strictly defining the circumstances in which adjustments may be made between appropriations, 31 U.S.C. § 1534, the rule requiring miscellaneous receipts to be deposited in the general treasury, *id.* §§ 3302(b) & 1552(b), the rules limiting non-reimbursable details between agencies, 4 FED. APPROP. LAW, *supra* note 116, at 15-52 to 15-57, and rules against augmenting one agency's appropriations with those of another, *see* 2 FED. APPROP. LAW, *supra* note 116, ch. 6. The property clause, *see* U.S. CONST. art. IV, § 3, cl. 2, and related laws and regulations, similarly prevent commanders from expending property on their own initiative (as opposed to funds) in an effort to win hearts and minds. This clause states that "The Congress shall have Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States." *Id.*

118. *United States v. MacCollom*, 426 U.S. 317 (1976).

119. The identification of the structure and coordination of armed clandestine organizations that seek to impose their will upon a population is critical to destroying them without also destroying that population. *See* Trinquier, *supra* note 12, at 9, 11, 23; FM 3-07, *supra* note 7, at D-7 and fig. D-1.

120. *See* FM 101-5, *supra* note 26, ch. 5 (describing the military decision-making process); U.S. DEP'T OF ARMY, FIELD MANUAL 34-130, INTELLIGENCE PREPARATION OF THE BATTLEFIELD (8 July 1994).

121. Recall from the discussion, *supra* note 85, that a brigade commander has a distinct role in synchronizing operating systems. Synchronization of those systems at brigade level staffs occurs within a targeting team that employs a methodology that originated in the need to coordinate lethal fires but that has increasingly adapted to the demand for coordinating non-lethal effects throughout the brigade's area of operations. *See* U.S. DEP'T OF ARMY, FIELD MANUAL 6-20-10, TACTICS, TECHNIQUES, AND PROCEDURES FOR THE TARGETING PROCESS (8 May 1996); U.S. DEP'T OF ARMY, FIELD MANUAL 3-13, INFORMATION OPERATIONS DOCTRINE, TACTICS, TECHNIQUES, AND PROCEDURES app. E (Nov. 2003).

122. *See, e.g.,* BERNARD LEWIS, THE MIDDLE EAST 384 (1995).

Western technology and Western-style business introduced new ways of acquiring money; Western consumer culture offered a wide range of new ways of spending it. But for many, and not only those directly and adversely affected, the new ways were both an affront and a threat—an affront to their sense of decency and propriety, and a mortal threat to the most cherished of all their values, the religious basis of their society.

Id. Whether the spread of Western consumer goods should be judged as radically democratic or as cultural hegemony is beyond the scope of this paper. Some have observed that ordinary Iraqis appeared to have no religious, moral, or philosophical qualms about accepting goods from the United Arab Emirates that bore prominent labels explaining that the goods were donations from that wealthy country; nor did they seem offended by CERP-funded goods that soon bore similar labels explaining that they were from the United States. *See* E-mail from Colonel Richard Hatch, former Staff Judge Advocate of the 101st Airborne Division (Air Assault) to Author (7 Jan. 2004). The point here is simply that messages publicizing the good being done with CERP projects must be sensitive to religious and cultural values.

manders of the Combined Forces Command-Central Asia (CFC-CA), USCENTCOM, and members of his country team, and after receiving strategic guidance from the President and the Secretary of State.

A central, nationwide program to train, equip, and pay salaries of facility protection or other security personnel may be disrupted by disconnected programs initiated by commanders on a decentralized basis. Military-sponsored medical or dental care should emphasize the building of indigenous capability and should be coordinated with longer-term programs managed by humanitarian relief organizations and the U.S. Agency for International Development (USAID) to improve sustainability of necessary follow-on care and prevent the raising of unrealistic expectations.¹²³ Construction projects should balance responsiveness with quality by demonstrating rapid action to meet basic needs while also avoiding the situation where civilians are soon complaining over the roof that leaks, the sewage system that fails, or the U.S.-built pediatric ward that collapses. In general, the allure of quick, headline-grabbing victories should be tempered by the longer view habitual to agencies and organizations whose main mission and expertise is reconstruction and nation-building.¹²⁴ Also, commanders must be careful that local perceptions of them as powerful providers do not stunt the growth of legitimate local institutions and authorities.

Although the intent of section 1110 was to preserve the CERP as the responsive program it was in its early months, the use of appropriated funds inherently complicates things for commanders in ways that the use of seized funds did not. Appropriated CERP funds are not to be used to pay cash rewards to civilians for information they provide that is beneficial to tracking terrorists or locating arms caches because the DOD already has a rewards program authorized by statute.¹²⁵ Also, while the Foreign Claims Act does not apply, the funding of CERP with U.S. government appropriations creates policy implications inhibiting commanders from making CERP outlays that could be perceived as compensation for combat-related damage to civilians or their property, or even payments of solatia, nominal amounts offered as expressions of sympathy or condolence in some societies following a death.¹²⁶

Additionally, the use of appropriated funds now more formally incorporates the SF 44 into CERP purchases, and while the normal purchase threshold of \$2,500 clearly does not bind project purchasing officers, the tendency of trained ordering officers will be to solicit oral price quotations from three sources for every purchase regardless of size and to otherwise be more careful in documenting measures to promote competition. In general, appropriated funding has anchored CERP to a new text—section 1110—and to a reporting requirement and tradition of accountability that will almost certainly change the program, regardless of stated congressional and Defense Department intent to preserve it intact.

The quarterly reporting requirement, in particular, will cause greater scrutiny of the security-oriented and larger infrastructural investments that were becoming a trend with seized funds in late 2003. In the November supplemental, Congress provided \$3.243 billion for “security and law enforcement” in Iraq, \$1.318 billion for “justice, public safety infrastructure,” \$5.56 billion for the “electric sector,” \$1.89 billion for “oil infrastructure,” and \$370 million for “roads, bridges, and construction,” and other huge reconstruction appropriations.¹²⁷ Given the concerns expressed by Congress during the legislative process about tapping O&M accounts for reconstruction projects when enormous sums were being appropriated specifically for those purposes, reports that large chunks of appropriated CERP funds are being used to recruit, train, equip, and pay security forces would likely raise eyebrows and could potentially threaten continuation of the program. The larger or more “indirectly” humanitarian the project, the more likely it will be subject to congressional skepticism.

In sum, the challenge the CERP presents to commanders is for projects to be coordinated and disciplined. Coordinating CERP projects with the efforts of all individuals, teams, and organizations that are pursuing the common objective—inside the brigade as well as outside—will yield maximum effects per dollar spent. Disciplining expenditures so that they focus on urgent, humanitarian needs of the civilian populace rather than infrastructure and security force investments will yield victo-

123. Relief of “relative deprivation” is a tenet of counterinsurgency, *see* FM 3-07, *supra* note 7, at 3-4 and fig. D-1. Relative deprivation is an individual’s perception that he is worse off than other persons he compares himself to. *See* Walter Runciman, *RELATIVE DEPRIVATION AND SOCIAL JUSTICE: A STUDY OF ATTITUDES TO SOCIAL INEQUALITY IN TWENTIETH-CENTURY ENGLAND* 10 (1966). It is relative deprivation more than absolute deprivation that creates frustration in individuals and instability in a population. Sporadic episodes of assistance followed by neglect would seem more likely to increase than decrease relative deprivation, even if the individuals are, in an absolute sense, no worse off or even slightly better off than before.

124. *See* Cha, *supra* note 59 (“Soldiers are not development workers. There is industry skill, a body of knowledge that goes with it. You can’t just say ‘There’s a pothole over there and get it filled’ and fix a country.”) (quoting a spokesman for Christian Aid, a British humanitarian group).

125. *See supra* note 83.

126. Under the Foreign Claims Act, *see* 10 U.S.C. § 2734, injuries arising from combat activity are not payable; nor are claims for damages, losses, personal injuries, or deaths that are not caused by our armed forces. Solatia may be paid by the command from unit O&M funds if there is a prevailing custom for such payments. *See id.* § 2242; Memorandum, Director, Civil Law and Litigation, Air Force Legal Services Agency, to Air Component Command, U.S. Central Command, subject: Payments [to next of kin for friendly fire accident] (1 Feb. 2002); *see also* Captain Karin Tackaberry, *Judge Advocates Play a Major Role in Rebuilding Iraq: The Foreign Claims Act and Implementation of the Commander’s Emergency Response Program*, *ARMY LAW.*, Feb. 2004, at 39.

127. *See* 2004 ESAA, *supra* note 80, at 1225.

ries—both short and longer term—in the complex terrain of hearts and minds.

Conclusion

If commanders surmount the challenges they face in implementing the CERP with appropriated funds, there is broad agreement among military leaders that the program's impact will be profound. The Chairman of the Joint Chiefs of Staff has described the CERP as the "most effective means we have of persuading ordinary Iraqis that we are there to help them and their families."¹²⁸ The Commander of CJTF-7 insists that "rapid and disciplined use of funds for local Iraqi projects is not only the right thing to do—it is absolutely key to accomplishing our mission."¹²⁹ The 101st Division Commander likely speaks for his fellow division commanders in saying that "we must win over as many people as possible and identify as many as possible who want us to fail," and that "money is our ammunition."¹³⁰

Effectiveness of the program in the near term will require those with oversight responsibility, both within the DOD and in Congress, to resist the tendency to encumber the CERP with purpose-based fiscal prohibitions. An example of such a prohibition would be any policy statement or expression of congressional intent that to pay a reward, or purchase a policeman's uniform, or build a dam is an improper purpose for appropriated CERP funds as a matter of fiscal law. While controls on expenditure of public funds are essential and appropriate, the CERP's positive impact will continue to stem from commanders' ability to make judgment calls quickly about how best to benefit local Iraqis, and now also Afghans. Commanders will make these judgment calls based partly on information that only the mili-

tary among U.S. organizations will receive, due to frequent patrolling by soldiers in affected communities.

Adoption of a policy akin to the deference accorded commanders' decisions on how to dispose of alleged offenses under the Uniform Code of Military Justice would create the freedom of action necessary for the CERP to retain its signature responsiveness.¹³¹ The present legal rule in section 1110 that O&M funds may be used "notwithstanding any other provision of law" is sound in that a commander responding to local urgent needs should not be inhibited by the possibility that his purposes may overlap with those of some other appropriation. Some overlap in purpose is inevitable and desirable. What valuably distinguishes the CERP is not that it is spent for unique purposes, but rather that it is spent by commanders locally, based on local information.¹³² The only purpose-based legal prohibition relating to the CERP should be the extant, longstanding rule that conversion of public funds for personal enrichment is a crime.¹³³

Over the longer term, the CERP should be made part of organic-authorizing legislation and codified in title 10. Division commanders who know that legal authority for the CERP is present and that Congress may choose to fund the program during a deployment can readily train brigade commanders in such a program. Combat Training Center rotations and institutional pre-command courses could similarly incorporate training on a stable program, and lessons learned could be collected, catalogued, and incorporated into leader development programs. Training and leader development provide the best sort of control, maximizing coordinated and disciplined use of the CERP without imposing the heavy hand of the Anti-Deficiency Act. While no system of control can eliminate every ill-chosen project, division and brigade commanders will demonstrate—

128. Memorandum, General Richard B. Myers, Chairman of the Joint Chiefs of Staff to Captain Hal Dronberger, Legal Counsel, subject: CERP (10 Jan. 2004); *see also* General Richard B. Myers, Chairman of the Joint Chiefs of Staff, Posture Statement Before the 108th Congress Senate Armed Services Committee 11 (3 Feb. 2004) ("This program is an invaluable tool for establishing relationships with the Iraqi and Afghan people and assisting in developing and creating a safer environment.").

129. Lieutenant General Ricardo Sanchez, Commander, Combined-Joint Task Force-7, Comments to Commanders, in Baghdad, Iraq (14 June 2003) (author's meeting notes); *see also* E-mail from Lieutenant General Ricardo Sanchez to Author (20 Jan. 2004) ("To this day it remains the most effective combat multiplier for the ground commander in this extremely complex low intensity conflict environment.").

130. *See* Steele, *supra* note 67, at 10-11 (quoting Major General David H. Petraeus).

131. That deference is reflected in Rule for Court-Martial 306, which gives each commander discretion to dispose of offenses allegedly committed by members of that command and establishes the policy that allegations should be disposed at the lowest appropriate level so as to promote the interests of discipline, fairness, and the timely and efficient administration of justice. A superior may withhold the authority of a subordinate commander, but if authority has not been withheld, discretion may not be limited. *See* MANUAL FOR COURTS-MARTIAL, UNITED STATES, R.C.M. 306 (2002); *United States v. Coder*, 39 M.J. 1006, 1009-10 (1994).

132. The decentralized nature of successful counterinsurgency measures is a common theme, for instance, in historians' favorable assessments of the Combined Action Platoons deployed by the U.S. Marine Corps in Vietnam in 1965 and 1966. *See, e.g.,* GUENTER LEWY, *AMERICAN IN VIETNAM* 116-17 (1978). One U.S. Army brigade commander in Baghdad noted that "the CERP decentralized distribution ensured that money was going out through a 'sprinkler system' across the whole 'yard' vs out of a fire hydrant onto just one spot." *See* Interview with COL J.D. Johnson, *supra* note 54.

133. *See* 10 U.S.C. § 921 (2000). I am not advocating the relaxation of time-based, or amount-based fiscal controls. *See* discussion *supra* at notes 114-116 and accompanying text. Nor am I advocating the establishment of emergency and extraordinary expense authority akin to that in 10 U.S.C. § 127 for commanders. A commander's discretion in the use of CERP is circumscribed by deployment, by the requirement for urgent humanitarian response, and by the imperative, acknowledged by Congress in providing this unusual authority to use O&M for the CERP, that U.S. forces in the field be provided a tool for stabilization.

as they have done time and again—the optimal system is one that encourages their initiative and relies on their judgment.¹³⁴

The unorthodox operations we undertake today have challenged our government to provide new mechanisms within the

law no less than they have challenged our armed forces to employ new technologies, weapons, organization, and tactics. The CERP promises to be one part of an answer to the legal challenge. As such, it is no small change of soldiering.

134. Though specific tours of duty vary widely, a brigade commander typically has served about twenty-five years as an officer, has commanded at the company and battalion levels, has served as an operations officer or in other key staff positions at the brigade, division, and corps levels, has deployed twice on contingency or other joint and combined operations where he has teamed with other services, with diplomats and other U.S. government representatives overseas, and with foreign forces, has led units to multiple Combat Training Center (CTC) rotations, has served as an instructor and trainer at Army schools and at the CTCs, has received one or more graduate degrees from civilian universities, and has attended the Army War College or Senior Service College equivalent. Yet even with a wealth of training and prior experiences, brigade commanders seeking to make optimal use of CERP funds require assistance from judge advocates and other staff officers in order to maintain fairness and transparency in all purchasing actions and to ensure the coordinated and disciplined employment of this resource. The preparation of these officers must likewise become a focus of institutional and unit training and leader development.

A Turkish Law Primer for Legal Assistance Attorneys

Colonel Mark Ort¹

Introduction

An assignment to the Republic of Turkey (Turkey) can be one of the most rewarding in the career of any military or civilian employee of the Department of Defense (DOD). Geographically, Turkey straddles the boundary dividing Europe and Asia. Sitting astride the Dardanelles and the Bosphorus, Turkey controls the warm-water naval access of Russia, the Ukraine, and the Commonwealth of Independent States (CIS). Control of the straits between the Black and the Mediterranean Seas has long been a matter of keen interest to Russia, as well as other CIS nations bordering the Black Sea. Historically, Russia has viewed such control as the *sine qua non* of its own sovereignty.² Turkey's strategic position and importance to the NATO Alliance cannot be overstated. Additionally, Turkey is a cultural bridge between the East and West and is an intriguing blend of Asian, Middle Eastern, and European cultures. Understanding the nature of such a transitional culture and the laws governing daily life will ease the entry into the Turkish culture, prevent misunderstandings, and help avoid pitfalls that could detract from an otherwise pleasantly memorable experience.

Although personnel may view an assignment to Turkey with trepidation after listening to fables from the uninformed or viewing unfounded cinematic bombast such as *Midnight Express*,³ these misgivings are unfounded. Despite the fact that the major focus of concern is the Turkish criminal law system, few people will ever become involved with the criminal law system.⁴ Most personnel, on the other hand will have frequent, if unbeknownst, dealings with Turkish civil law.

Legal assistance questions involving Turkish law arise on a daily basis. In light of the number of personnel who are either married to Turkish nationals or who will be stationed in Turkey at one point in their career, some basic knowledge of Turkish civil law is essential for all DOD attorneys, particularly those involved with legal assistance. This article addresses the following frequently encountered topics: (1) the Turkish legal system; (2) entry of personnel and personal property into Turkey; (3) living and working in Turkey; and (4) domestic relations. The scope of this article is limited to the major areas of Turkish civil law which U.S. personnel and their families will encounter from the time of their entry until their departure from Turkey.

Overview of the Turkish Legal System

Before addressing specific issues, it is paramount to examine the underlying legal system. On 20 October 1923, Ghazi Mustafa Kemal Pasha (Ataturk) founded The Republic of Turkey.⁵ This followed a long war of independence that resulted in the expulsion of the post-World War I Allied Occupation Forces and sounded the death knell of the long-declining Ottoman Empire.⁶ Ataturk's main objective was to create a modern state in the mainstream of Western civilization.⁷ One of his first steps to transform this Ottoman remnant with an Islamic-based legal code⁸ into a modern, secular republic was the adoption of a constitution in 1924.⁹ This established a Western European-style civil law system. Turkish legislators continued to build on various Western European models to draft a series of legal codes.¹⁰

1. Judge Advocate, U.S. Army. Presently assigned to the U.S. Army Reserve Control Group (Reinforcement).

2. See Montreaux Convention of 1936, July 20, 1936, 173 L.N.T.S. 213; 1936 Gr. Brit. T.S., Turkey No. 1 (*Cmd.* 5249), 31 AM. J. INT'L L. (Spec. Suppl. 1937); NICHOLAS J. RENGGER, TREATIES AND ALLIANCES OF THE WORLD (6th ed. 1995); see also HEINZ KRAMER, A CHANGING TURKEY: THE CHALLENGE TO EUROPE AND THE UNITED STATES 107 (2000); SYDNEY NETTLETON FISHER, THE MIDDLE EAST, A HISTORY 267, 273-75, 296 (1969).

3. See, e.g., MIDNIGHT EXPRESS (Columbia/Casablanca 1978).

4. Telephone Interview with Colonel Michael J. Touhy, U.S. Fiscal and Property Officer, State of Connecticut, formerly, Deputy Command Judge Advocate, Allied Land Forces, Southeastern Europe, Izmir, Turkey (Sept. 4, 2003) [hereinafter COL Touhy Interview].

5. BERNARD LEWIS, THE EMERGENCE OF MODERN TURKEY 272 (3d ed., 2002). The Grand National Assembly bestowed the title Ghazi—Victor in the Holy War—on Mustafa Kemal in 1923 after he routed Greek invaders in a battle near the Sakarya River. This title was added to his Ottoman title of Pasha, a rank equivalent to a general or a field marshal. After Mustafa Kemal founded the Turkish Republic, he abandoned his name and titles and took the name Ataturk—Father of the Turks. *Id.*

6. *Id.*

7. *Id.*

8. *Id.* at 122 (explaining that this Koranic-based legal system, known as the Madjelle, was adopted in 1870 and became the civil code of the Ottoman Empire).

9. See TURK. CONST. (adopted Apr. 20, 1924).

The constitution, adopted nearly eighty years ago, established a system of courts, which remains largely unchanged today despite the adoption of two constitutions.¹¹ The constitution adopted on 9 July 1980 made no changes to the judicial system established under the 1924 document except to establish a new constitutional court.¹² The current constitution became effective on 9 November 1982.¹³ This most recent constitution merely recognizes the system of courts established under the 1980 constitution.¹⁴

The Turkish system has the following courts, each with specific jurisdictional limits: (1) courts of general jurisdiction; (2) administrative tribunals; (3) military tribunals; and (4) the constitutional court.¹⁵ The courts of general jurisdiction are most analogous to the U.S. district courts, except for the fact that these courts have no jurisdiction to entertain constitutional questions.¹⁶ All civil and criminal proceedings originate and

are tried in the courts of general jurisdiction, with appeals directed to the High Court of Appeals.¹⁷ Administrative tribunals are roughly parallel to American Article I courts and the various administrative boards.¹⁸ The military courts serve a function very similar to their counterparts in the United States.¹⁹ As a party to the North Atlantic Treaty, the Republic of Turkey has agreed to share criminal jurisdiction over members of the force in certain circumstances,²⁰ but since 1 October 1914, Turkey has disaffirmed its long history of capitulations.²¹ Turkish authorities now vigorously exercise their plenary civil jurisdiction over matters arising within Turkish sovereign territory. Consequently, U.S. personnel in Turkey are subject to civil suits in Turkish courts, and are also capable of seeking redress in them.²²

Although the probability that an American national will become a party to a civil lawsuit is relatively low, the possibility does exist. The probability is, in fact, much higher than any

10. MORAL GÜÇLÜ, TURKEY xxviii (1981); see FISHER, *supra* note 2, at 393; LEWIS, *supra* note 5, at 256-67, 271; NASIM SOUSA, THE CAPITULATORY REGIME OF TURKEY, ITS HISTORY, ORIGIN AND NATURE 248 (1933).

11. See TURK. CONST. (adopted Apr. 20, 1924).

12. TURK. CONST. art. 145 (adopted 1960). Article 146 of the 1960 Turkish Constitution established the Constitutional Court, consisting of fifteen judges. *Id.*; see also *id.* art. 147 (adopted 1960, as amended by Law No. 1488, T.C. RESMİ GAZETE NO. 13964 (Sept. 22, 1971)) (establishing the powers of the Constitutional Court) ("The Constitutional Court controls whether statutes and parliamentary regulations of the Turkish Grand National Assembly are reconcilable to the constitution."). Turkish courts differ from their American counterparts in that only the Constitutional Court may decide questions of constitutional law; its decisions are final. The Constitutional Court is also empowered to try the President, the Prime Minister, members of the Council of Ministers, members of judicial bodies, and members of its own bench for crimes committed within their official duties. The jurisdiction of the court may only be invoked by the President of the Republics, the political parties represented in the Grand National Assembly, one sixth of the members of either house of the Grand National Assembly, The High Council of Judges, the Court of Cassation, the Council of State, the Military Court of Cassation or the universities. Other courts may raise issues of constitutional law to the Constitutional Court on their own motion, or if they find merit in a motion of one of the parties to pending litigation that a law is unconstitutional. *Id.* art. 148; see also HELEN CHAPIN METZ, TURKEY, A COUNTRY LAW STUDY 248-50 (1995).

13. See TURK. CONST. (adopted Nov. 7, 1882). This constitution followed a period of military rule from September 1980 until the reestablishment of civilian rule in 1983. The Grand National Assembly drafted this constitution and ninety-two percent of the Turkish public ratified it in a referendum on 7 November 1982. LAW NO. 2709, T.C. RESMİ GAZETE NO. 1784 (Nov. 20, 1982) (implementing legislation).

14. TURK. CONST. art. 142 (amended 2001).

15. *Id.* art. 146 (Constitutional Court); *id.* arts. 140, 142 (Courts of General Jurisdiction); *id.* art. 140 (Administration Courts); *id.* arts. 145, 156 (Military Courts); see also CIV. P. LAW NO. 1086, T.C. RESMİ GAZETE NOS. 622, 623, 624 (July 2-4, 1927) [hereinafter CIV. P. LAW NO. 1086] (discussing specific courts' jurisdictions and infrastructures).

16. See CIV. P. LAW NO. 1086, *supra* note 15; TURK CONST arts. 8-9. Within the courts of general jurisdiction, there are Civil Courts of Peace and Civil Courts of First Instance. The Civil Courts of Peace serve a similar function to the justice of the peace courts, mayor's courts, magistrate courts, or small claims courts in the United States. In addition, these courts deal with matters involving both adoption and probate. See CIV. P. LAW NO. 1086, *supra* note 15. The Civil Courts of First Instance are the true courts of general jurisdiction that handle all matters not specifically falling within the jurisdiction of the Civil Courts of Peace. See *id.*

17. TURK. CONST. art. 154 (amended 2001). This court is also known as the Court of Cassation. The Court of Cassation is composed of fifteen panels of five judges each. Nine of these panels entertain criminal appeals. The remaining six deal with civil matters. A special panel known as the General Board of Chambers hears appeals that the Court of Cassation rules upon twice, when the trial court assents. This Board serves both as an en banc court of appeals and as the highest court of appeal, whose rulings are final and conclusive. *Id.*; METZ, *supra* note 12, at 249.

18. The Turkish judicial system has a tax court, bankruptcy courts, and other tribunals to decide specific and specialized administration law matters similar to the administrative law judge system in the United States. METZ, *supra* note 12, at 249 - 50; TURK. CONST. art. 140 (amended 2001); see U.S. CONST. art. I.

19. METZ, *supra* note 12, at 250. Turkish military courts have jurisdiction over military personnel, and in some circumstances, over civilian personnel. *Id.* Military tribunals also try military administrative matters; much like the U.S. military does before boards of officers. The Military High Court serves as the court of last resort for military matters, much like the U.S. Court of Appeals for the Armed Forces (CAAF), excluding the occasional appeal to the U.S. Supreme Court. *Id.* at 250; TURK. CONST. arts. 145, 156; see *supra* note 15; see also 27 U.S.C. § 1259 (2000).

20. See Agreement between the Parties to the North Atlantic Treaty Regarding the Status of their Forces, London, art. VII, June 19, 1951, 4 U.S.T. 1792, T.I.A.S. 2646 [hereinafter NATO SOFA].

potential involvement with the criminal justice system. The most common claims arise from landlord-tenant disputes and off-duty vehicular accidents.²³ As a result, it is imperative that all DOD personnel and their families have access to sound advice about their rights and duties under Turkish law.

Entry of Personnel and Personal Property into the Republic of Turkey

A permanent change of station to Turkey is a unique experience. If the individuals involved are prepared for what they will experience, the transition should be smooth. Anyone with orders for Turkey should first thoroughly read *Army Regulation (AR) 614-30*.²⁴ This will provide a basic understanding of the Turkish view of nationality and the legal obligations that accompany Turkish citizenship.

Turkish and American laws take very different approaches to citizenship. Under Turkish law, a person obtains the nationality of his parents irrespective of his place of birth.²⁵ Consequently, a child born to a Turkish mother or a Turkish father is considered a Turkish national, even if he was not born in Tur-

key. The Turkish government will recognize dual citizenship if the nation of birth, for example, the United States, confers citizenship based solely on birth within its territorial jurisdiction. Such recognition of dual citizenship does not relieve the Turkish citizen of any obligations he may have under Turkish law.²⁶ Conversely, a child born to foreign parents within the Republic of Turkey will not be recognized as a Turkish citizen, but as a citizen of the country in which the father holds citizenship.²⁷

Obtaining citizenship in another country does not necessarily terminate Turkish citizenship. A Turkish national who obtains citizenship in another country retains his Turkish citizenship until the Turkish government relinquishes sovereignty over the individual.²⁸ To obtain such a release, the individual must file an application through the governor of the province of residence or through the nearest Turkish Consulate.²⁹ Applications from individuals residing in foreign countries will be forwarded from the Turkish Consul General directly to the Interior Ministry.³⁰ If the Interior Ministry approves the application, it will forward it to the Turkish Cabinet for a final decision.³¹ If the Cabinet grants a release, it publishes the same in the *Official*

21. LEWIS, *supra* note 5, at 183, 254-55. Under international law, capitulation refers to the once-common practice under which sovereign states reciprocally recognized the personal nature of, and thus the extra-territoriality of, sister states' laws. Under this personality of law concept, a citizen of a state carried the laws of his state with him and would be largely immune from the laws governing citizens of other states. Each sovereign would refrain from exercising jurisdiction over foreign nationals, and in most matters, they would allow individuals to be subject only to the laws of their own states. At its zenith, this concept even saw foreign powers establishing courts within the territorial jurisdiction of sister states to try their own nationals. *Id.*; see Text at Executive Z, 68th Cong. (1st Sess., May 3, 1924); FOREIGN POL'Y ASS'N PAM. 27, series of 1923-24; Philip Marshall Brown, *The Lausanne Treaty*, 21 AM. J. INT'L L. 503 (1927).

22. TURK. CONST. art. 16 (amended 2001). Articles 10 and 36 of the 1982 Turkish Constitution give every legal person physically present within Turkey the right to apply to Turkish courts for redress of problems or disputes. Thus, U.S. personnel can both sue and be sued in the Turkish courts. Article 16 of the 1982 Constitution limits the rights of foreigners as plaintiffs. *Id.* These provisions may require a foreigner to post a bond to guarantee the payment of court costs and damages. The posting of a bond is not required if the foreign national resides in Turkey. *Id.* A conflicting statute, however, requires the posting of a bond when a foreign plaintiff sues a Turkish defendant, unless the requirement is waived. CIV. P. LAW NO. 1086, *supra* note 15, art. 97.

23. COL Touhy Interview, *supra* note 4.

24. U.S. DEP'T OF ARMY, REG. 614-30, ASSIGNMENTS, DETAILS, AND TRANSFERS, OVERSEAS SERVICE (30 Aug. 2001). Article I, paragraph 1c of the NATO SOFA defines "dependant" as "the spouse of a Member of a Force or of a Civilian Component or a child of such member depending on him or her for support." NATO SOFA, *supra* note 20, art. I, para. 1c. The regulation makes no reference to the nationality of the dependent. Paragraph 4 of the U.S.-Turkey SOFA states as follows: "[I]t is the agreed understanding of the Parties that reasonable quantities of provisions, supplies, and other goods imported for the exclusive use of [U.S.] personnel, directly by . . . post exchanges, or commissaries . . . shall be accorded duty free entry . . ." *Id.* The interpretation that U.S. representatives in Turkey currently give this provision is that "U.S. personnel" is synonymous with the terms "Member of the Force," "Member of the Civilian Component," and "dependent" as defined in the NATO SOFA, in which the United States is the sending state. *Id.*; Minutes of Understanding, Ankara, June 23, 1954, U.S.-Turk., 5 U.S.T. 1465, 23 U.N.T.S. 189. Under this interpretation, the current U.S. policy in Turkey is that all dependents receive ration cards and unimpeded access to all U.S. facilities. The Turkish authorities have never raised or put forth any objections or contrary readings. COL Touhy Interview, *supra* note 4.

25. TURK. CONST. art. 66 (amended 2001); see also, SYLVIA KEDOURIE, SEVENTY FIVE YEARS OF THE TURKISH REPUBLIC 185 - 208 (2000); see generally TURK. NATIONALITY LAW NO. 403, T.C. RESMI GAZETE NO. 11638 (Feb. 22, 1964) [hereinafter TURK. NATIONALITY LAW NO. 403].

26. See TURK. NATIONALITY LAW NO. 403, *supra* note 25. One of the most frequently encountered and burdensome requirements of Turkish law for U.S. personnel with Turkish dependents is the \$100 departure tax (termed a contribution to the collective housing fund) that Turkish nationals must pay each time they leave Turkey. See TURK. COUNCIL OF MINISTERS DEC. NO. 84/8922, T.C. RESMI GAZETE NO. 18619 (Dec. 7, 1984). The Turkish government rigidly enforces this decree despite concerted efforts by the Joint U.S. Military Mission for Aid to Turkey (JUSMAT) to eliminate this burden upon Turkish National dependents. COL Touhy Interview, *supra* note 4.

27. See TURK. NATIONALITY LAW NO. 403, *supra* note 25.

28. *Id.* arts. 19-22; see TURK. CONST. art. 66 (amended 2001).

29. TURK. NATIONALITY LAW NO. 403, *supra* note 25; see also KEDOURIE, *supra* note 25.

30. TURK. NATIONALITY LAW NO. 403, *supra* note 25.

Gazette.³² A release from citizenship is effective only after publication in the *Official Gazette*.³³

Personnel with Turkish national dependents—dual national or otherwise—should give serious thought to the status of those dependents in Turkey. One of the most serious of these obligations is mandatory military conscription for all male Turks between the ages of eighteen and forty-five.³⁴ The Turkish government will not relieve Turkish men of their citizenship obligations until they complete this mandatory military service.³⁵ Prior to deciding whether to accept or decline a tour in Turkey, military personnel with Turkish national dependents must fully evaluate, with the help of a legal assistance officer, those dependents' rights and obligations under Turkish law.

To enter Turkey, every non-Turkish dependent, whether military or civilian, must possess a valid passport.³⁶ Military personnel need only possess a valid military identification card and a copy of their permanent change of station orders.³⁷ All non-Turkish dependents and members of the civilian component must obtain residence permits upon their arrival in Turkey.³⁸ The residence permit is an immigration control document that grants temporary immigration status, as either a dependent or as a member of the civilian component, for a stated period of time,

for up to two years.³⁹ If an individual intends to remain in Turkey beyond the expiration of his residence permit, he must apply for a new residence permit before the expiration of the current permit or within fifteen days after its expiration.⁴⁰

The Turkish government may deny a residence permit to any person either unable to conform to Turkish law, customs, or political conditions, or who engages in any activity not deemed to conform to the above.⁴¹ The Interior Ministry may revoke residence permits at any time.⁴² Furthermore, the Council of Ministers may, at its discretion, make changes in the conditions and duration of residence permits either in general or in specific cases.⁴³

The holder of a residence permit must surrender it to immigration officials upon his departure from Turkey, and may retrieve it upon his return.⁴⁴ In the absence of a residence permit, the entry stamp on a passport is valid as a ninety-day tourist visa.⁴⁵ Any individual who remains in Turkey beyond the ninety days without a valid residence permit is subject to a stiff fine at the time he attempts to leave the country.⁴⁶ In addition to the fines, violators are likely to experience delays and the disruption of their travel plans.⁴⁷

31. *Id.*

32. *Id.*

33. *See id.*

34. *Id.*

35. *Id.*

36. TURK. LAW ON RESIDENCY AND TRAVEL OF FOREIGNERS IN TURKEY No. 5583, T.C. RESMI GAZETE No. 7564 (July 24, 1950) [hereinafter RESIDENCY PERMIT LAW]; NATO SOFA, *supra* note 20, art. III, para. 3, Agreement Between the United States of America and the Republic of Turkey Relative to the Implementation of the Agreement Between the Parties to the North Atlantic Treaty Regarding the Status of their Forces, June 19, 1951, 4 U.S.T. 1792, T.I.A.S. 2846; Minutes of Understanding, Ankara, June 23, 1954, U.S.-Turk., 5 U.S.T. 1465, 23 U.N.T.S. 189.

37. NATO SOFA, *supra* note 20, art. III, para. 3; Minutes of Understanding, Ankara, June 23, 1954, U.S.-Turk., 5 U.S.T. 1465, 23 U.N.T.S. 189.

38. RESIDENCY PERMIT LAW, *supra* note 36; NATO SOFA, *supra* note 20, art. III, para. 3; Minutes of Understanding, Ankara, June 23, 1954, U.S.-Turk., 5 U.S.T. 1465, 23 U.N.T.S. 189.

39. TURK. RESIDENCY PERMIT LAW, *supra* note 36, art. 10.

40. *Id.*

41. *Id.* arts. 19, 21 & 30.

42. *Id.*

43. *Id.*

44. NATO SOFA, *supra* note 20.

45. *Id.*

46. TURK. RESIDENCY PERMIT LAW, *supra* note 36, art. 10.

47. COL Touhy Interview, *supra* note 4 (explaining that affected travellers are likely to miss their scheduled flights while they endeavor to resolve this matter with the government authorities at the departure airport).

When a “member of a force”⁴⁸ enters Turkey, Turkish authorities will affix an entry stamp to his permanent change of station orders.⁴⁹ The member must safeguard this stamped copy of his orders carefully because he must present it each time he enters or leaves Turkey. Otherwise, the traveler risks the same fines he would face for overstaying his residence permit.⁵⁰ The individual will not be granted re-entry after a temporary absence without the stamped copy of permanent change of station orders, because it is the equivalent of a residence visa for the duration of the tour prescribed.⁵¹ Without proof that the individual has a legal right to enter into or remain within Turkey, the Turkish immigration officials at the port of entry will likely deny entry until the individual’s status can be resolved.⁵²

Personnel will confront Turkish regulations governing the importation of personal property soon after they arrive. Paramount among these regulations is the law regarding *beyan-names*,⁵³ the customs declarations. Article IX, paragraph 5 of the NATO Status of Forces Agreement (SOFA) permits members of a force, members of the civilian component, and their dependents to import their personal effects and furniture duty-free for the duration of their service in the receiving state.⁵⁴ The *beyanname* is intended to insure that personnel who bring their goods into Turkey bring them back when they leave, to protect the Turkish economy.⁵⁵ The *beyanname* is a customs declara-

tion form on which personnel must list all items of personal property they import. Personnel must prepare separate *beyan-names* for each shipment of household goods, hold baggage, and vehicles they receive.⁵⁶

Objectively, the *beyanname* should pose no problems. In practice, however, the *beyanname* frequently causes burdensome bureaucratic tangles.⁵⁷ Among the more rigidly burdensome aspects of the *beyanname* is the absolute adherence to the requirement to list all specified items. As a result, even items that were clearly destroyed in shipment are listed on the *beyanname* and must be re-exported.⁵⁸ Compounding this problem is that Turkish customs officials will not accept the DD Form 1348-1A from a defense reutilization and management officer (DRMO) as proof of appropriate disposition.⁵⁹ A provision in the Turkish customs regulation permits owners to return destroyed property to the Customs Ministry with a subsequent removal from the owner’s *beyanname*.⁶⁰ This provision, however, is of little practical use if the individual has filed a claim for the destroyed property. If the replacement cost is used as the basis of adjudication of the claim, the claimant is required to turn the property into the appropriate agent of the United States.⁶¹ Because claimants cannot accomplish the requisite turn-in while in Turkey, they are routinely advised to turn-in the property to the DRMO at their next installation.⁶² The U.S.

48. NATO SOFA, *supra* note 20, art. I, para. 1 a.

49. *Id.*

50. COL Touhy Interview, *supra* note 4.

51. *Id.*

52. TURK. RESIDENCY PERMIT LAW, *supra* note 36, art. 1; COL Touhy Interview, *supra* note 4.

53. TURK. GEN. CUSTOMS LAW No. 1615, art. 10, para. 2, T.C. RESMI GAZETE No. 14263 (Aug. 1, 1972) [hereinafter GEN. CUSTOMS LAW No. 1615].

54. NATO SOFA, *supra* note 20, art. IX, para. 5.

55. *Id.* art. XI, paras. 5, 8b.

56. *Id.* As a practical matter, personnel only list high value items, firearms, electrical appliances, and motor vehicles, but the practices vary with each location. The individual customs inspector has discretion over what to list, and customs officers vary widely in how they exercise this discretion. COL Touhy Interview, *supra* note 4. *But see* U.S. ARMY EUROPE, REG. 600-501, REGULATIONS ON PERSONAL PROPERTY, LOCAL CURRENCY AND MOTOR VEHICLES FOR U.S. PERSONNEL IN TURKEY (PA) (17 Aug. 1987).

57. COL Touhy Interview, *supra* note 4.

58. *Id.*

59. *Id.*; *see* U.S. Dep’t of Defense, DD Form 1348-1A, Issue Release/Receipt of Document (July 1991).

60. GENERAL CUSTOMS LAW No. 1615, *supra* note 53, art. 10, para. 2. Under 31 U.S.C. § 3721 and its implementing regulation, in this case, AR 27-20, there is not a provision permitting the donation of U.S. government property to a foreign government in lieu of turn-in to a DRMO. *See* 31 U.S.C. § 3721 (2000); U.S. DEP’T OF ARMY, REG. 27-20, LEGAL SERVICES, CLAIMS SECS. III, IV (1 July 2003) [hereinafter AR 27-20]; U.S. DEP’T OF ARMY, PAM. 27-162, CLAIMS PROCEDURES paras. 2-73a, 2-77b(3) (8 Aug. 2003); *see also* Agreement Approving the Procedures to be Used in the Sale of Excess and/or Scrap Property in Turkey by the United States, Exchange of Notes, Nov. 13, 1959, 10 U.S.T. 1990, T.I.A.S. 4366; 40 U.S.C. §§ 304g, 483-84, 511-14 (2000); U.S. DEP’T OF DEFENSE, DIR. 4160.21M, DOD DISPOSAL MANUAL (31 July 1979); U.S. ARMY CLAIMS SERVICE MANUAL, PERSONNEL CLAIMS BULL. No. 75 (22 July 1985).

61. AR 27-20, *supra* note 60, para. 11-15b.

62. COL Touhy Interview, *supra* note 4.

government has initiated negotiations with the Turkish Customs Ministry to resolve this problem.⁶³ Until those negotiations produce a resolution, personnel must store the destroyed items for the duration of their tours and re-ship those items when they depart Turkey. Furthermore, the U.S. government provides no additional weight allowance to ship the destroyed property, for which the owners legally serve as temporary trustees of the U.S. government; thus, owners remains liable for any excess shipping costs.⁶⁴

The *beyanname* carries yet another legal risk. The Turkish government considers the *beyanname* holder an absolute insurer of the property.⁶⁵ Thus, if a *beyanname* item is lost or stolen, the individual *beyanname* holder may be liable for the customs duties due on the item.⁶⁶ Even a police report proving that the loss was due to theft is no defense to the assessment of customs duties.⁶⁷ These duties are extremely high and can amount to as much as 115% of the market value declared on the *beyanname*. The *beyanname* form lists the specific amounts levied on particular classes of items.⁶⁸

Not every aspect of Turkish customs law is unfavorable for U.S. personnel. Couples consisting of one Turkish national and one foreign national who intend to reside in Turkey after their expiration of the U.S. government employee's term of service or retirement can legally import a certain amount of personal effects duty-free.⁶⁹ This quantity, known as the *trousseau*,⁷⁰ consists of a limited quantity of personal effects and household goods.⁷¹ The right belongs to the wife, regardless of the respective nationalities of each spouse.⁷² The bride's right to import her *trousseau* will permit the entry of most household goods, but the right is not unlimited and requires prior approval from the Minister of Customs.⁷³ Anyone wishing to take advantage

of this privilege should contact the nearest DOD legal assistance office. The legal assistance officer can contact one either an Army or Air Force legal assistance office in Turkey to assist in this effort.

Living in Turkey

Regarding Dwelling Places

A substantial percentage of U.S. personnel in Turkey live off-post.⁷⁴ Problems between Turkish landlords and American tenants are not uncommon given the cultural differences and the different expectations they can create. United States personnel often pay substantially higher rents than their Turkish neighbors for several reasons, including the common misconception that all Americans are wealthy.⁷⁵ Turkish law limits the amount by which a landlord can increase the rent against a current tenant, but leaves landlords free to set initial rental prices at whatever level the market will bear.⁷⁶

The rate of tour extensions in Turkey is high.⁷⁷ Personnel who extend their tours, however, deprive their landlords of the ability to arbitrarily increase the rent. Unfortunately, some landlords attempt to take advantage of their American tenants, many of whom are unfamiliar with—and intimidated by—the Turkish legal system.⁷⁸ American tenants who understand the basic elements of Turkish law soon realize that those laws generally favor tenants and empower them to halt unscrupulous practices.

The Turkish Law of Obligations and Real Estate Law Number 6570 governs the overall scheme of leases.⁷⁹ At a mini-

63. *Id.*

64. 1 JOINT FED. TRAVEL REGS., U5310(A)(1), U5315(C)(4) & U5340 (1 Feb. 2002), available at <http://www.dtic.mil/perdiem/jftr.pdf> (last visited Jan. 14, 2003).

65. GENERAL CUSTOMS LAW NO. 1615, *supra* note 53, art. 10, para. 2.

66. *Id.*

67. *Id.* If a report is made to both the U.S. military police authorities as well as to the Turkish National Police (TNP) and if the TNP report is accepted and signed by the local governor, the victim of the theft will be immune from prosecution for violating the Turkish anti-smuggling law. This process has no bearing on the Customs Ministry. Consequently, the individual may still be held for customs duties due for introduction of an item into the Turkish economy. *Id.*

68. Turk. Customs Bureau, *Beyanname* Form Sec. 13.

69. GENERAL CUSTOMS LAW NO. 1615, *supra* note 53, art. 10, para. 5.

70. WEBSTER'S II NEW RIVERSIDE UNIVERSITY DICTIONARY 1238 (1984); WEBSTER'S NEW TWENTIETH CENTURY DICTIONARY OF THE ENGLISH LANGUAGE UNABRIDGED 1961 (2nd ed. 1979) (defining a *Trousseau* as a bride's personal possessions, such as jewelry, clothing and linens, that she accumulates in anticipation of her marriage).

71. GEN. CUSTOMS LAW NO. 1615, *supra* note 53, art. 10, para. 5.

72. *Id.*

73. *Id.*

74. COL Touhy Interview, *supra* note 4.

75. *Id.*

mum, a lease must include a description of the premise, a description of its intended use, the names and addresses of the parties, the effective dates of the lease, and the term of the lease.⁸⁰ The parties are free to add any other desired clauses delineating the rights and responsibilities of each party regarding any collateral matter such as payment of utilities or the provision of heat.⁸¹ As with all contracts, the best advice is to write all of the specific terms of the agreement into the lease. It is almost certain that any important detail not specifically and unambiguously set forth in the lease will become a point of contention between the landlord and the tenant. If the landlord makes verbal assurances when the potential lessee views the premises, the lessee should insure they are incorporated, in writing, into the lease document.

It is imperative that the parties conduct a joint inspection before they sign the lease agreement. The prospective tenant should note the condition of the premises in detail in the lease documents. The tenant should then keep one original copy. The local housing referral office will often keep a copy, as well. The housing referral office can also assure that American tenants receive an English version of the lease. Landlords commonly attempt to charge American tenants large sums for putative damages.⁸² Because local housing offices often cooperate more closely with the landlords than with the tenants,⁸³ a tenant may be unable to clear housing if the landlord refuses to sign a release, even in the absence of a pending lawsuit for the alleged damages.⁸⁴ Rather than demanding their day in the

Turkish courts, Americans often accede to this subtle form of extortion to prevent delays in their scheduled departures, even when the putative damage is an obviously pre-existing condition. In some instances, landlords have charged several successive American tenants the same fee for the same putative damage that was actually preexisting damage or ordinary wear and tear.⁸⁵ At the time of the final inspection, landlords will know the precise location and estimated repair cost of every minute defect in their premises.⁸⁶ The tenant's failure to note the damage in the lease documents will be prima facie evidence that the tenant caused the damage. Prospective lessees should know what to expect. A thorough pre-lease inspection of the premises may save many dollars at the time that the tenancy is terminated. Prospective lessees should not hesitate to modify the form leases provided by the housing referral office to add additional safeguards or a more detailed inspection form. If a tenant encounters problems with a landlord, he should immediately seek the advice of a legal assistance officer.

If a lease will extend for a period exceeding one year, it must state the amount of annual rent increases during its term.⁸⁷ The landlord may only increase the rent once each calendar year, and only to the extent that legal limits on rent increases allow.⁸⁸ A tenant is under no obligation to vacate the premises when the lease expires unless the landlord serves him with a notice of intent to evict at least fifteen days before the lease expires.⁸⁹ In the absence of such a notice, the lease is automatically renewed for an additional year.⁹⁰

76. TURK. REAL ESTATE LAW No. 6570, T.C. RESMI GAZETE No. 9013 (May 27, 1955) [hereinafter TURK. REAL ESTATE LAW No. 6570]; File No. 1979/278, Dec. No. 1979/340 (T.C. Yargıtay, Ucüncü Hukuk Dairesi, Jan. 23, 1979). The current ceiling is twenty percent of the base rental price which lags far behind the current rate of inflation, which is officially forty percent. TURK. REAL ESTATE LAW No. 6570, *infra* note 76; File No. 1979/278, Dec. No. 1979/340 (T.C. Yargıtay, Ucüncü Hukuk Dairesi, Jan. 23, 1979). The Third Chamber of the Turkish Court of Cassation established the following formula governing rent increases: if the official rate of inflation is less than twenty percent, rents may only be increased by the amount of inflation. If the official inflation rate runs between twenty and forty percent, rents may be increased by no more than twenty percent. If the official inflation rate exceeds forty percent, rents may be increased by only one-half of the rate of inflation. File No. 1979/278, Dec. No. 1979/340 (T.C. Yargıtay, Ucüncü Hukuk Dairesi, Jan. 23, 1979).

77. COL Touhy Interview, *supra* note 4.

78. *Id.*

79. TURK. LAW OF OBLIGATION No. 818, arts. 48-98, T.C. RESMI GAZETE No. 366 (Oct. 4, 1926) [hereinafter TURK. LAW OF OBLIGATION No. 818]; TURK. REAL ESTATE LAW No. 6570, *supra* note 76.

80. TURK. LAW OF OBLIGATION No. 818, *supra* note 79, arts. 48-98.

81. *Id.*

82. COL Touhy Interview, *supra* note 4.

83. *Id.*

84. *Id.*

85. *Id.*

86. *Id.*

87. See *supra* note 76 and accompanying discussion.

88. *Id.*

89. *Id.*

At the expiration of the lease, landlords frequently attempt to increase the rent far beyond the established government rent-control ceilings.⁹¹ The landlord's right to increase the rent is not unilateral and is subject to several limitations.⁹² Initially, if it is apparent that the tenant intends to continue to occupy the premises, and if the landlord does not have cause to seek eviction, he may propose a rent increase to the tenant by written notice.⁹³ He must present this notice to the tenant at least thirty days before the expiration of the lease.⁹⁴ The tenant is not obligated to accept the proposed increase.⁹⁵ If the tenant refuses to accede to the proposed increase, the landlord may pursue one of the following two options: he may negotiate a mutually agreeable sum with the tenant; or he may apply to the appropriate court for an assessment of the rental value.⁹⁶ Too few military personnel are aware of this protective provision, and it is rare for landlords to seek equitable relief from the courts.⁹⁷

A common tactic of landlords who are distraught over the extension of American tenants who refuse to accept arbitrary rent increases is to threaten these tenants with eviction.⁹⁸ Some landlords even produce neatly printed and "notarized" eviction notices.⁹⁹ These actions may intimidate tenants who do not understand their rights under Turkish law,¹⁰⁰ but if a tenant has

paid his rent on time, a landlord may only evict him for the causes specified by law¹⁰¹ and discussed below.

A landlord can evict a tenant who makes a written promise to vacate on or before a specified date after entering a lease.¹⁰² A promise to move out on the expiration date of the lease, or on any date thereafter must be incorporated into the lease or made at the time the lease was signed to be legally effective.¹⁰³ The term of the lease itself does not imply a promise to vacate on its expiration date, and the expiration of the lease by itself is not a basis for eviction.¹⁰⁴

A landlord may evict a tenant if he can demonstrate that he requires the use of the premises as a residence for himself, or for his wife and children, if he is legally separated.¹⁰⁵ The most common reason landlords cite as a basis for eviction is a purported need to use the premises as a residence for members of the landlord's family.¹⁰⁶ Other legal grounds for eviction include the following: (1) necessity to repair, renovate, or modify the leased premises;¹⁰⁷ (2) failure to pay rent (after two warnings within one year);¹⁰⁸ (3) the possession of another residence by the tenant or his wife;¹⁰⁹ (4) subletting the premises without authority;¹¹⁰ (5) breach of the terms of the lease;¹¹¹ or (6) breach of the peace of the community.¹¹²

90. *Id.*

91. COL Touhy Interview, *supra* note 4.

92. TURK. EXECUTION LAW No. 2004, art. 272, T.C. RESMI GAZETE No. 2128 (June 19, 1932).

93. *Id.*

94. *Id.*

95. *Id.*

96. *Id.*; Dec. No. 1964/2, File No. 1964/2 (T.C. Yargitay (High Ct. of App.), Gen. Bd. of Chambers, (Nov. 16, 1964), T.C. RESMI GAZETE No. 9013 (Nov. 18, 1964).

97. COL Touhy Interview, *supra* note 4.

98. *Id.*

99. *Id.*

100. *Id.*

101. TURK. REAL ESTATE LAW No. 6570, *supra* note 76.

102. *Id.* art 7.

103. *Id.*

104. *Id.* art. 7, para. A.

105. *Id.* art. 7, para. B.

106. *See id.*; COL Touhy Interview, *supra* note 4.

107. TURK. REAL ESTATE LAW No. 6570, *supra* note 76, art. 7, para. C.

108. *Id.* art. 7, para. E(1).

109. *Id.* art. 7, para. E(2).

If, after proper notice, the tenant decides to contest the eviction, the landlord must sue in an appropriate court.¹¹³ The landlord has the burden to prove his alleged need.¹¹⁴ Such suits can take as long as two years to finalize, and the tenant is under no obligation to move in the absence of a court order directing him to do so.¹¹⁵ Mere unfounded assertions by the landlord that he needs the premises—or that he may need them in the future—will not suffice. A landlord can only evict the tenant if he can demonstrate to the court’s satisfaction that he, his wife, or his children require the use of the premises as a place of business.¹¹⁶ If a landlord successfully evicts a tenant to convert the premises to his own use, or to that of his family, he may not subsequently lease the premises to anyone other than the evicted tenant for a period of three years.¹¹⁷

Although buying real estate in Turkey has some built-in disadvantages, personnel may purchase real estate if they desire.¹¹⁸ American citizens may purchase real estate in Turkey, subject to the following two restrictions: foreign nationals may not purchase real property in villages¹¹⁹ or military restricted areas;¹²⁰ and foreign buyers must obtain advance permission from the General Directorate of Titles, Deeds, and Cadasters.¹²¹ The buyer must pay the purchase price in Turkish lira, which he must purchase with hard currency at a Turkish bank.¹²² Resell-

ing the property later will also involve significant legal constraints.¹²³ Before a foreign national sells real property, he must obtain a valuation from the tax assessment commission.¹²⁴ The sale price cannot be less than the assessed value, nor can it exceed the assessed value by more than twenty five percent.¹²⁵ The seller must pay a real estate appreciation tax on the difference between the purchase and sale prices.¹²⁶ The seller must then deposit the balance of the sale price into a special “blocked” account at the central bank, which the seller may not transfer outside of Turkey.¹²⁷ Consequently, a foreign seller may bring funds into Turkey to purchase land, but may not transfer them out again. This effectively restricts the option of buying land to those who are certain they will remain in Turkey.

Employment of Dependents

Once personnel become settled in their new residences, their attention often turns to finding employment for their spouses or other dependents. The prospects of dependent employment in Turkey are limited.¹²⁸ The small size of U.S. government organizations creates few job opportunities for dependents, and the Turkish government and labor unions aggressively protect the indigenous work force from foreign workers.¹²⁹

110. *Id.* art. 12.

111. TURK. LAW OF OBLIGATION NO. 818, *supra* note 79, art. 256.

112. *Id.*

113. *See supra* note 105.

114. *Id.*

115. *Id.*

116. *See id.* art. 7, para. C.

117. *Id.* art. 15.

118. TURK. TITLE DEED LAW NO. 2644, T.C. RESMI GAZETE NO. 2792 (Dec. 29, 1934).

119. TURK. VILLAGE LAW NO. 442, art. 87, T.C. RESMI GAZETE NO. 68 (Apr. 7, 1924).

120. TURK. MILITARY AND FORBIDDEN SECURITY AREA LAW NO. 2565, art. 7, para A & art. 9, para. B, T.C. RESMI GAZETE NO. 7552 (Dec. 22, 1981).

121. *See generally* TURK. TITLE DEED LAW NO. 2644, T.C. RESMI GAZETE NO. 2792 (Dec. 29, 1934).

122. TURK. LAW REGARDING PROTECTION OF THE VALUE OF TURK. CURRENCY NO. 1567, T.C. RESMI GAZETE NO. 1433 (Feb. 25, 1930), *as amended by* TURK. LAW NO. 6258, OFF. GAZETE (Feb. 15, 1954); TURK. COUNCIL OF MINISTERS DECREE NO. 30, REGARDING PROTECTION OF THE VALUE OF TURK. CURRENCY, T.C. RESMI GAZETE NO. 18,451 (July 7, 1984).

123. TURK. LAND USE TAX LAW NO. 1319, T.C. RESMI GAZETE NO. 13,576 (Aug. 11, 1970).

124. *Id.*

125. TURK. DUTY LAW NO. 492, art. 64, T.C. RESMI GAZETE NO. 11,756 (July 17, 1964).

126. TURK. COUNCIL OF MINISTERS DECREE NO. 30, REGARDING THE PROTECTION OF THE VALUE OF TURK. CURRENCY, T.C. RESMI GAZETE NO. 18,451 (July 7, 1984).

127. *Id.*

128. COL Touhy Interview, *supra* note 4.

One of the means the Turkish government uses to protect the local work force is the residence permit system.¹³⁰ The Turkish government admits foreign nationals based on a declared status at the time of entry. Residence permits issued under the NATO SOFA¹³¹ admit personnel either as “dependents” or as “members of the civilian component.”¹³² The 1980 U.S.-Turkish Defense and Economics Agreement (DECA)¹³³ sets ceilings on the number of members of the civilian component that the United States may employ at various listed locations.¹³⁴ Turkey uses both the residence permit system and reports submitted by the U.S. government to ensure compliance with the established ceilings.¹³⁵ Turkish law also prohibits foreigners from engaging in certain occupations.¹³⁶ Finally, the 1980 DECA directs that the U.S. government must hire the maximum feasible number of Turkish nationals.¹³⁷ As a result, tension has developed between the competing interests of the United States—to maximize dependent employment opportunities—and Turkey—to maximize employment opportunities for its population.

When the U.S. government began to increase its hiring of U.S. dependents in the early 1980s, Turkish labor unions protested.¹³⁸ In 1985, the *Harb-İş* Union persuaded a Turkish labor court that when the U.S. government hired dependents, those dependents became members of the civilian component in vio-

lation of both Turkish and international law.¹³⁹ The Turkish High Court of Appeals subsequently affirmed this ruling.¹⁴⁰

Because of the political sensitivity of the situation, the Interior Ministry has increasingly resisted amending or reissuing residence permits since late 1984.¹⁴¹ In fact, the Turkish government has even revoked the residence permits of dependents who applied for work permits. On 29 September 1986, the Turkish Interior Ministry informed the base operations contractor, which is responsible for all U.S. installation operations throughout Turkey, that the Turkish government would not issue residence permits to dependents who joined the contractor’s work force after 17 April 1985.¹⁴² The Interior Ministry may revoke an individual’s residence permit or it may declare that the individual does not possess a valid residence permit and levy a fine against the individual when he attempts to depart the country. Ultimately, the Turkish government could order the deportation of any illegal alien without a valid residence permit.¹⁴³

The U.S. and Turkish governments have discussed these issues at the highest levels but no changes have resulted.¹⁴⁴ Although a limited number of positions are available for dependents, they must understand their legal status in Turkey and the

129. *Id.*

130. See RESIDENCY PERMIT LAW, *supra* note 36.

131. See *id.*

132. “Member of the Force,” “Member of the Civilian Component,” and “dependent” are defined in the NATO SOFA, in which the United States is the sending state. NATO SOFA, *supra* note 20.

133. Agreement for Cooperation on Defense and Economy Between the Governments of the Republic of Turkey and the United States of America in Accordance with Articles II and III of the North Atlantic Treaty, March 29, 1980, 32 U.S.T. 3323, T.I.A.S. 9901 [hereinafter DECA].

134. The DECA Supplementary Agreement Number 3 Between the Governments of the Republic of Turkey and the United States of America on Installations art. IV, 32 U.S.T. 3323, T.I.A.S. 4901 [hereinafter DECA, Suppl. Agreement No. 3].

135. See RESIDENCY PERMIT LAW, *supra* note 36 and accompanying text. The Residence Permit Law requires foreigners who intend to work in Turkey to obtain permission from the pertinent security authorities, and they must have their status registered in their residence permit. *Id.*

136. TURK. LAW PERTAINING TO CRAFTS AND SERVICES ALLOCATED TO TURK. NATIONALS IN TURKEY, No. 2007, T.C. RESMI GAZETE No. 2126 (June 16, 1932).

137. DECA, Suppl. Agreement No. 3, *supra* note 134, art. VI.

138. See Dec. No. 1985/284, File No. 1985/416 (Ankara 5th Labor Ct., Apr. 17, 1985); *affd.*, Dec. No. 1985/5416, File No. 1985/5587 (T.C. Yargıtay) (High Court of Appeals), 9th Legal Dep’t, May 20, 1985) (illustrating that the union filed an action in the Turkish Labor Court).

139. *Id.*

140. *Id.*

141. COL Touhy Interview, *supra* note 4. In at least one case in Izmir, the Turkish government refused to reissue a work permit to an individual as a member of the civilian component; the Turkish National Police ordered her to cease working. This individual quit her job rather than challenge the Turkish Authorities and risk possible criminal prosecution. *Id.*

142. *Id.*

143. See RESIDENCY PERMIT LAW, *supra* note 36 and accompanying text. Note that the Residence Permit Law allows the denial of residence permits based on non-conformity to political condition. The Interior Ministry may revoke residence permits at will. *Id.*

144. COL Touhy Interview, *supra* note 4.

potential problems any attempt to alter their status can create before they accept work.

Domestic Relations Laws

Introduction

Human emotions and relationships are no different in Turkey than in other locations where U.S. personnel are assigned. Legally, however, courting and marriage in Turkey has little resemblance to the common experience of the average American.

Courting and Engagement

In the Turkish culture, courting and engagement hold a special place. Courtship in Turkey is not the casual affair to which Americans are accustomed; it is considered a serious prelude to an engagement and marriage.¹⁴⁵ Under Turkish law, pre-marital chastity is presumed, and sexual intercourse with a previously chaste female implies an enforceable promise to marry.¹⁴⁶ A breach of the implied promise to marry can result in a two-year jail term.¹⁴⁷

An engagement—a promise to marry¹⁴⁸—is a formal status governed by the Turkish Civil Code.¹⁴⁹ A breach of this promise to marry may be grounds for a civil cause of action for damages by the aggrieved party.¹⁵⁰ Furthermore, although the engagement itself establishes no familial ties, the death of one

of the engaged partners can be grounds for a wrongful death lawsuit by the surviving party.¹⁵¹ To state a cause of action, however, the survivor must establish that she would have depended upon the decedent for support after the marriage.¹⁵²

Marriage

The Turkish culture regards marriage as a lifetime commitment—parties should not marry hastily or for the wrong reasons.¹⁵³ Divorce is legally permissible, but society does not condone it.¹⁵⁴ Consequently, the Turkish Civil Code establishes a complex process that frequently requires one to three months to complete before a couple may marry.¹⁵⁵ The process may serve as the first test of whether the parties are serious enough to endure a lifetime together.

The individual military departments, the U.S. Department of Justice, and the Bureau of Customs and Immigration—formerly the Immigration and Naturalization Service—each add another tier of bureaucratic complications.¹⁵⁶ The U.S. government-imposed rules for marrying a foreign national are not unique to Turkey.¹⁵⁷ This article addresses only those procedures required to contract a valid marriage under Turkish law, irrespective of the nationalities of the parties or their intended immigration status.

Under Turkish law, marriage is a strictly secular matter.¹⁵⁸ Religious ceremonies are not legally valid. A religious ceremony may be held for the benefit of the parties after the legally sanctioned civil ceremony, *not* before it.¹⁵⁹ Each neighborhood

145. *Id.*

146. TURK. PENAL LAW No. 765, art. 423, T.C. RESMI GAZETE No. 320 (Mar. 13, 1926) [hereinafter TURK. PENAL LAW]; TURK. CIV. CODE, LAW No. 743, arts. 81-87, T.C. RESMI GAZETE No. 399 (Apr. 4, 1926) [hereinafter TURK. CIV. CODE].

147. *Id.*

148. TURK. LAW OF OBLIGATION No. 818, *supra* note 79, arts. 41-49; TURK. CIV. CODE, *supra* note 146, art. 110.

149. *Id.*

150. TURK. LAW OF OBLIGATION No. 818, *supra* note 79, arts. 41-49.

151. TURK. CIV. CODE, *supra* note 146, art. 110.

152. *Id.*

153. COL Touhy Interview, *supra* note 4.

154. *Id.*

155. *Id.*

156. *Id.*

157. *Id.*

158. *See* TURK. PENAL LAW, *supra* note 146, art. 236; *see also id.* arts. 241, 526.

159. TURK. PENAL LAW, *supra* note 146, arts. 236, 241 & 526; COL Touhy Interview, *supra* note 4.

in a city and each village in Turkey has its own *muhtar*, who is the local registrar of vital statistics information on all persons in his jurisdiction.¹⁶⁰ The *muhtar*'s records supplement the records maintained in the Nafus Office, or central registry, which is located in the hometown of every Turkish national father.¹⁶¹

The marriage process begins with each party who has not previously registered, Americans included, registering with his or her respective *muhtar*.¹⁶² The parties must then obtain a certificate verifying their physical residency from the *muhtar*.¹⁶³ These statements are necessary before the parties may obtain a marriage application package from the local marriage bureau.¹⁶⁴

After each party visits his or her respective *muhtar*, he or she must obtain a statement or affidavit of freedom to marry.¹⁶⁵ Turkish nationals obtain this document from their respective Nafus Office.¹⁶⁶ American citizens may obtain an affidavit of freedom to marry from the nearest U.S. Consulate, which issues this document free of charge on presentation of proof of marital status.¹⁶⁷ The applicant must then take the consulate-issued affidavit of freedom-to-marry to the provincial governor's office for translation, verification of the Consular signature, and a nominal payment for tax stamps.¹⁶⁸ After these steps, the affidavit is legally valid and ready for presentation at the marriage bureau, where the parties receive their marriage application.¹⁶⁹

Both parties must proceed to the marriage bureau with jurisdiction over their particular residential areas with the affidavits of freedom to marry and with the documents from their respective *muhtars*.¹⁷⁰ At the marriage bureau, the parties may obtain a marriage application. Each party must submit two photographs with his or her application.¹⁷¹ They must complete the marriage application and return it to the marriage bureau when they pay the marriage fee and apply for an appointment to be married.¹⁷² If both parties are foreign nationals, they may complete the application and schedule the appointment at this time.¹⁷³

If one of the parties is Turkish and the other is a foreign national, the couple must first obtain a background check on the foreign national from the Turkish National Police.¹⁷⁴ The marriage bureau will provide the foreign national with the two forms necessary to complete this investigation.¹⁷⁵ The Foreign Division of the Turkish National Police Provincial Headquarters will receive and process the application, which consists of the two forms from the marriage bureau and two copies of the foreign national's military identification card or of the passport.¹⁷⁶ The investigation takes approximately one to three weeks.¹⁷⁷

Assuming the result of the investigation is favorable, the couple may return to the marriage bureau to make a wedding appointment. Each party must appear at the marriage bureau with the completed marriage application, any background

160. COL Touhy Interview, *supra* note 4.

161. *Id.*

162. *Id.*

163. *Id.*

164. *Id.*

165. *Id.*

166. *Id.*

167. *Id.*

168. *Id.* At the time the author and the interviewee were stationed in Turkey, the fee was 1500 Turkish lira or approximately two U.S. dollars.

169. *Id.*

170. *Id.*

171. *Id.*

172. *Id.*

173. *Id.*

174. *Id.*

175. *Id.*

176. *Id.*

177. *Id.*

check reports, and four additional photographs of each party.¹⁷⁸ The couple may purchase a blank marriage book¹⁷⁹ for a small fee.¹⁸⁰ Once the couple completes the paperwork and pays the appropriate marriage fee, the marriage bureau sets the date and time for the marriage ceremony.¹⁸¹ A local marriage officer will conduct this secular marriage ceremony.¹⁸² Once this legally binding marriage is completed under the Turkish Civil Code, the couple may re-solemnize their vows in a religious recognition ceremony.¹⁸³ If a Turkish national marries a foreign national outside Turkey, the couple must register the marriage with the nearest Turkish Consulate for the marriage to be valid within the Republic of Turkey.¹⁸⁴

Adoption

A combination of social and economic factors in Turkey has resulted in many children being consigned to orphanages.¹⁸⁵ The Muslim religion prohibits abortions, and although Turkey is legally secular, Turkish law severely restricts abortions. A woman who seeks an abortion and any person performing the procedure outside the limits of these restrictions are both subject to prison sentences of one to five years.¹⁸⁶ Premarital virginity is protected by criminal sanction,¹⁸⁷ and illegitimacy is an

almost irremediable social stigma.¹⁸⁸ Because of these factors, many women who become pregnant outside of marriage or who simply cannot afford to support them consign their children to orphanages.¹⁸⁹ By doing so, however, parents do not relinquish their parental rights, and may reclaim their children at any time.¹⁹⁰ Thus, adopting a Turkish child can be difficult, even frustrating.¹⁹¹

Under Turkish law, adoption of a child requires the consent of the parents and the voluntary relinquishment of their parental rights.¹⁹² Parents who refuse to relinquish their parental rights make their children ineligible for adoption, and may even reclaim custody of their children when they become old enough to work and produce income for the family.¹⁹³ These facts, along with the slowness of working-class Turks to accept adoption,¹⁹⁴ can make adoption of Turkish children prohibitively difficult.

The legal prerequisites for an adoption are as follows: the persons adopting must be at least thirty five years of age;¹⁹⁵ they must have no biological children of their own;¹⁹⁶ and they must be at least eighteen years older than the person whom they intend to adopt.¹⁹⁷ Both parties of a married couple must agree to the adoption,¹⁹⁸ and the parents of the adoptive child must

178. *Id.*

179. The marriage book is the equivalent of a marriage license.

180. *Id.*

181. *Id.*

182. *Id.*

183. *See* METZ, *supra* note 12, at 134.

184. *Id.* at 133 – 34; Telephone Interview with Mr. Gunay Evinch, Counsel for the Embassy of Turkey (Sept. 11, 2003) [hereinafter Gunay Evinch Interview].

185. *See* Gunay Evinch Interview, *supra* note 184.

186. TURK. PENAL LAW, *supra* note 146, arts. 469, 470. *But see* TURK. BIRTH CONTROL LAW No. 2827, T.C. RESMI GAZETE No. 18059 (May 27, 1983), *as implemented* by TURK. ABORTION AND STERILIZATION LAW REG., T.C. RESMI GAZETE No. 18255 (Dec. 18, 1983) (permitting abortions during the first ten weeks of gestation).

187. *See supra* note 86.

188. Gunay Evinch Interview, *supra* note 184.

189. *Id.*

190. Gunay Evinch Interview, *supra* note 184; COL Touhy Interview, *supra* note 4.

191. *Id.*

192. TURK. CIV. CODE, *supra* note 146, art. 254.

193. *Id.*; COL Touhy Interview, *supra* note 4.

194. *Id.*

195. *See* TURK. CIV. CODE, *supra* note 146, arts. 253-258, *as amended* by TURK. LAW No. 2846, T.C. RESMI GAZETE No. 18,081 (June 18, 1983).

196. *Id.*

consent to the adoption.¹⁹⁹ If the child to be adopted was abandoned, a court must approve the adoption in lieu of the parents.²⁰⁰

A couple initiates adoption proceedings by filing a petition with the Ministry of Social Services (Ministry) in the province where they reside.²⁰¹ In this petition, the adoptive parents must set forth the facts indicating that they meet the legal prerequisites for a valid adoption.²⁰² Once the Ministry approves the petition, it will identify an orphan available for adoption.²⁰³ The Ministry will then conduct a home study on the prospective adoptive home, as well as periodic home visits.²⁰⁴ The home study and visits serve the same purpose as those conducted by social service agencies in the United States—to assure that the adoptive home is an adequate, wholesome, and loving environment.²⁰⁵ The home study and home visitations do not result in expense to the potential adoptive parents.²⁰⁶ If the Ministry deems the prospective adoptive family to be acceptable, it may place the child in the new family's foster care pending a final adoption.²⁰⁷

The final adoption proceedings are relatively simple and take place in the local Peace Court.²⁰⁸ The Ministry may appoint a guardian ad litem to represent the interests of the

child.²⁰⁹ Absent any unforeseen difficulty, the court will review the case, determine that the legal criteria are met to its satisfaction, and issue a formal decree of adoption.²¹⁰ Once the court issues the decree of adoption, the parents may obtain a new birth certificate identifying the new parents,²¹¹ who may then obtain a Turkish passport.²¹² It is here that the family enters the most difficult and the most frustrating phase of the adoption process—dealing with the U.S. Bureau of Customs and Immigration.²¹³ Anyone considering adopting a child in Turkey should begin the process at least six months before his scheduled departure from Turkey.

Marital Dissolution

Turkish culture strongly disapproves of the termination of a marriage, but Turkish law provides for it in several forms.²¹⁴ Marital dissolutions can take the form of legal separation, annulment, or absolute divorce.²¹⁵

An annulment is a legal declaration that a putative marriage was null and void *ab initio*.²¹⁶ In a culture that attaches a severe social stigma to divorce, an annulment is the preferable (but rarely applicable) method of marital disengagement.²¹⁷ Under

197. *See id.*

198. *Id.* art. 255.

199. *Id.* art. 254.

200. *Id.* art. 256.

201. *Id.*

202. *Id.*

203. *Id.*

204. *Id.* art. 257.

205. *Id.*

206. *Id.*

207. *Id.*

208. CIV. P. LAW No. 1086, *supra* note 15, art. 8.

209. *See* TURK. CIV. CODE, *supra* note 146, arts. 253-258, *as amended by* TURK. LAW No. 2846, T.C. RESMI GAZETE No. 18,081 (June 18, 1983).

210. *Id.*

211. *Id.* art. 257.

212. *Id.*

213. *See* Lieutenant Colonel Pamela M. Stahl, *The Legal Assistance Attorney's Guide to Immigration and Naturalization*, 177 MIL. L. REV. 1 (2003).

214. *See* TURK. CIV. CODE, *supra* note 146, arts. 112-128.

215. *Id.*

216. *Id.* art. 116.

the Turkish Civil Code,²¹⁸ the grounds for an annulment are as follows: (1) that either party to the putative marriage was legally incompetent to marry;²¹⁹ (2) that either party was already married at the time of the putative marriage;²²⁰ (3) that either of the parties did not possess the power of discernment at the time of the putative marriage;²²¹ or (4) that the parties to the putative marriage are within the proscribed limits of consanguinity.²²² Similarly, annulments may be sought on the grounds of fraud in the inducement; fraud in the execution, duress, or coercion; or in the event that one of the parties alleges that he or she has made a fundamental error.²²³ In the event that either of the parties was legally incompetent to enter into the putative marriage, either the incompetent party or the public prosecutor may petition for the annulment.²²⁴ In all other cases, the allegedly aggrieved party may request an annulment.²²⁵

Regardless of the grounds cited, a judge in the Civil Court of First Instance for the jurisdiction of the putative marital domicile decides the case.²²⁶ Parties must file petitions seeking annulments within six months of the discovery of the grounds for an annulment.²²⁷ If the court renders a decree of annulment, the parties are free to conduct themselves as unmarried persons—as if the marriage had never occurred.²²⁸ Thus, the parties avoid the social stigma attached to a divorce. If the

annulled union produces children, the annulment will not render them illegitimate; they will be treated as if they were born within a bona fide marital relationship.²²⁹

If a party to a troubled marriage files for divorce but believes that reconciliation is possible, that party may request that the court order a legal separation instead of a divorce.²³⁰ During the pendency of a divorce proceeding, the court may also order a legal separation on its own motion.²³¹ Courts may grant legal separations for between one and three years.²³² While the legal separation is in force, the court cannot enter a divorce decree.²³³ When ordering a legal separation, the court will leave the marital contract intact, but it will enter orders regarding child custody, as well as child and spousal support.²³⁴ In the absence of a legal separation or any other court order regarding the custody of the children, the father's preference regarding custody will be legally conclusive.²³⁵

If a married couple residing in Turkey seeks a divorce in Turkish courts, the court must initially determine its jurisdiction to adjudicate the case.²³⁶ Next, it must resolve any conflict of law issues. The answer to both questions depends on the nationality of the parties. If either party is Turkish, Turkish courts have jurisdiction to resolve the case and will apply Turk-

217. *See id.*

218. *Id.* arts. 112-128.

219. *Id.* arts. 116-118.

220. *Id.*

221. *Id.*

222. *Id.* art. 112.

223. *Id.* arts. 116-118.

224. *Id.* art. 112.

225. *Id.* arts. 116-118.

226. TURK. CIV. P. LAW, *supra* note 15, arts. 8, 9.

227. TURK. CIV. CODE, *supra* note 146, art. 125.

228. *Id.*

229. *Id.*

230. *Id.* arts. 135, 162.

231. *Id.* art. 138.

232. *Id.* art. 139.

233. *Id.* art. 140.

234. *Id.* arts. 137, 162.

235. *See id.* art. 152.

236. CIV. P. LAW No. 1086, *supra* note 15, arts. 8, 9.

ish substantive law.²³⁷ If both parties are foreigners residing in Turkey, and if they petition the Turkish courts to dissolve their marriage, the Turkish courts will also have jurisdiction. In such cases, the courts will resolve the conflict of law issues as follows: (1) if both parties share a common nationality, Turkish courts will apply the law of their common nationality;²³⁸ (2) if the parties are of different nationalities, the courts will apply Turkish substantive law as the law of their common residence;²³⁹ and (3) if the parties are either stateless persons or refugees, the courts have jurisdiction to hear the case, and they will apply Turkish substantive law to resolve the issues in the case.²⁴⁰

Because most cases of divorce involve the application of Turkish substantive law, a brief overview of the law is appropriate. The Turkish Civil Code lists the following lawful grounds for divorce: (1) one of the parties has committed adultery;²⁴¹ (2) one of the parties has attempted to kill the other or has subjected the other to cruel treatment;²⁴² (3) one of the parties has committed an ignominious crime that has wrought such disgrace on the family as to render life together unbearable;²⁴³ (4) one party has deserted the other or refuses to return home;²⁴⁴ (5) one of the parties has suffered mental illness for three or more years, the manifestation of which makes continued life together unbearable; or (6) the parties are violently incompatible.²⁴⁵ Either the

husband or the wife may sue for divorce if he or she can prove one or more of the listed grounds—with one severe limitation.²⁴⁶ Turkish law recognizes the defense of recrimination, which means that the court will not grant a divorce unless the petitioning party is free from marital fault.²⁴⁷

Divorce procedures are relatively straightforward. The complaining party first files a complaint in the Civil Court of First Instance with jurisdiction over the marital domicile.²⁴⁸ The court will take and evaluate evidence and will then issue a decree either granting or denying the petition.²⁴⁹ If the court grants the divorce, it will simultaneously rule on the collateral matters of child custody, child support, and alimony, and will order the non-custodial parent to pay child support.²⁵⁰ The court will base the amount of child support on the non-custodial parent's ability to pay.²⁵¹ The court may also order the party guilty of marital fault to support his ex-spouse for one year if she should become a pauper.²⁵² If the court orders a legal separation rather than a divorce, the court will frequently order the husband to pay both child support and alimony during the pendency of the separation.²⁵³

Once the court grants a divorce, obtaining recognition of the divorce and its collateral personal orders in foreign jurisdictions becomes an issue.²⁵⁴ This is equally true whether it is an

237. TURK. LAW REGARDING PRIVATE INT'L LAW AND LAW OF PROCEDURE No. 2675, art. 13, T.C. RESMI GAZETE No. 17,701 (May 22, 1982) [hereinafter TURK. LAW OF PROCEDURE No. 2675].

238. *Id.*

239. *Id.*

240. *Id.*

241. TURK. CIV. CODE, *supra* note 146, arts. 129-134.

242. *Id.*

243. *Id.*

244. *Id.*

245. *Id.*

246. *Id.* art. 134.

247. *Id.* The application of the law of recrimination has been substantially diminished. The party least at fault may petition for a divorce on the ground of violent incompatibility. *Id.*

248. TURK. CIV. PENAL LAW, *supra* note 146, art. 9.

249. TURK. CIV. CODE, *supra* note 146, arts. 138, 148-150.

250. *Id.* arts. 152-153, 163.

251. *Id.*

252. *Id.* art. 144.

253. *Id.* art. 162.

254. See Charles W. Hemmingway, *Foreign Divorces and the Military: Traversing the "You're No Longer Mine" Field*, ARMY LAW., Mar. 1987, at 17.

American seeking recognition of a Turkish divorce decree or a Turkish national divorced in the United States seeking to have Turkey recognize the decree.²⁵⁵ The Law Regarding Private International Law and the Law of Procedures Number 2875 govern recognition of foreign decrees by Turkish courts.²⁵⁶ Recognition of foreign decrees is not automatic.²⁵⁷ The party desiring to obtain the recognition and enforcement of a foreign decree must petition the Civil Court of First Instance that exercises personal jurisdiction over the petitioner.²⁵⁸

Articles 36 - 42 of Law Number 2675 set forth in detail the prerequisites to filing the petition and obtaining recognition.²⁵⁹ There are two pivotal requirements that the petitioner must meet to obtain recognition of a foreign decree.²⁶⁰ The first is that the jurisdiction in which the decree was rendered would, as a matter of fact, and not necessarily as a matter of formal international agreement, recognize similar decrees rendered by Turkish courts.²⁶¹ The second is that the judgment itself must state that the court issuing the decree considered and resolved conflict-of-law issues.²⁶²

The failure of a Turkish national to have the Turkish courts recognize his divorce decree can have severe social and legal

repercussions upon his repatriation to Turkey.²⁶³ Similarly, U.S. personnel could encounter difficulties if American courts do not recognize their Turkish divorce decrees.²⁶⁴ This problem may arise in the event of remarriage and application for benefits, either in the military or elsewhere, for any subsequent spouse.²⁶⁵ Any party contemplating legal action in the Turkish courts should contact both the nearest DOD legal assistance office or the American Consulate and also a Turkish attorney to assure that the legal rights of all parties are fully protected.²⁶⁶ Likewise, a legal assistance attorney in any location who is approached by a Turkish national spouse contemplating divorce proceedings in a U.S. or other “foreign” jurisdiction must carefully investigate what steps the client must take to protect his or her rights under Turkish law.²⁶⁷

Conclusion

In Turkey, DOD legal assistance attorneys must safeguard the legal interests of both their U.S. citizen clients and their foreign national clients who are—and who may remain—subject to the laws of the nation of their citizenship, irrespective of their current nation of residence.²⁶⁸ These tasks, however, may seem

255. Because the recognition of foreign decrees in the United States is a matter courts resolve on a case-by-case basis in accordance with the laws and public policies of each individual state or territory, it is a topic beyond the scope of this article.

256. See TURK. LAW OF PROCEDURE NO. 2675, *supra* note 237.

257. *Id.*

258. *Id.* art. 35.

259. *Id.* arts. 36-42. These articles set forth with specificity the form that the decree must take to be presented, the procedures to notify the other party to afford them an opportunity to contest, and the mandates of comity and reciprocity. See *id.*

260. *Id.* art. 38.

261. *Id.*

262. *Id.* art. 38, para. e.

263. Divorce carries a heavy stigma in Turkey. An individual's marital status will impact his ability to re-marry to avoid social ostracization. The question of who is a legally recognized spouse will impact such matters as inheritance, the legitimacy of children of any subsequent union, and similar social concerns.

264. Similarly, Americans would encounter difficulties if they intend to re-marry, if they apply to DEERS for their new putative spouse, if they list their spouse as the beneficiary of survivor benefits, if the putative spouse applies for social security benefits, if the putative spouse attempts to claim a spousal right of inheritance under the laws of intestate succession in the event of death, etc. All of these matters require proof of the legal termination of any previous marriage.

265. Inheritance and benefits that flow from being a legal spouse, to include military benefits, survivorship benefits, social security benefits, etc., all hinge on demonstrating that the applicant is a bona fide spouse. In the absence of proof that a previous marriage was legally dissolved, the current, putitive spouse may not be able to claim benefits as a legal spouse.

266. A legal assistance officer may contact his or her counterparts serving at a Turkish duty station to assist in arranging for the retention of Turkish counsel. Legal assistance officers may also contact the American and or Turkish Consular officials for assistance.

267. Legal assistance officers confronted with these questions may contact the legal offices of either the Army or the Air Force in Turkey. They may also obtain information from the American Embassy and or consular personnel in Turkey or from the Turkish Embassy or one of Turkey's consulates in the United States or in other countries where soldiers are stationed. This author found that the personnel at both the U.S. and the Turkish consular offices were eager to assist U.S. personnel in search of answers to legal questions or concerns. Some useful points of contact are: The Turkish Consulate General, tcbkny@broadview.net; a general portal to websites for Turkish lawyer referral and to Turkish law libraries at <http://www.turkhksitesi.com/turkishlaw/index.shtml>; and the Library of Congress, Near East Section, African and Middle Eastern Division, 101 Independence Avenue, SE, Washington, D.C., cmur@loc.gov.

268. *Id.*

daunting in light of the long misunderstood Turkish legal system. This brief overview of the Turkish legal system, with its focus on the laws that most frequently affect U.S. personnel and their dependents in Turkey, should help legal assistance attorneys advise their clients before, during, and after an assignment

to Turkey. With the mystical shroud removed from the Turkish legal system, Americans and their dependents will better enjoy this assignment.

Center for Law & Military Operations (CLAMO) Note from the Field

Judge Advocates Play a Major Role in Rebuilding Iraq: The Foreign Claims Act and Implementation of the Commander's Emergency Response Program¹

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Background

Task Force All-American (TF 82) assumed military responsibility for the Al Anbar province of Iraq in September 2003. The task force is comprised of elements of the 82d Airborne Division, the 3d Armored Cavalry Regiment, and the 1st Brigade Combat Team of 1st Infantry Division.³ The unit's primary mission is to create and maintain a secure environment in support of the Coalition Provisional Authority (CPA).⁴ Although, on 1 May 2003, President Bush declared that "major combat operations in Iraq have ended,"⁵ TF 82 continues to execute many offensive combat operations as part of its mission. Nevertheless, stability operations remain a key focus as coalition forces in Iraq continually strive to win the hearts and minds of the Iraqi people. The legal team supporting TF 82 assists in stability operations by managing actions under the Foreign Claims Act (FCA)⁶ and the Commander's Emergency Response Program (CERP).⁷ Using these two tools, legal personnel here play a key role in the positive strides toward rebuilding Iraq.

Foreign Claims Act⁸

Recently, a nationally televised news story on the war in Iraq featured a judge advocate (JA) from the 82d Airborne Division.⁹ In this story, the featured content was not legal advice regarding rules of engagement or even military justice, but the JA's role as a Foreign Claims Commission (FCC).¹⁰ This media interest in how the U.S. government compensates Iraqi civilians for non-battle harm reflects the growing importance of the Army's FCCs in stabilizing and rebuilding Iraq.

On 17 June 2003, the Department of Defense (DOD) Office of the General Counsel issued a memorandum assigning the U.S. Army single-service claims authority for Iraq.¹¹ Before this date, the U.S. Air Force had single-service claims authority. In Iraq, the U.S. Army administers nearly all claims using the FCA. The FCA establishes special requirements to settle "claims of inhabitants of a foreign country, or of a foreign country or a political subdivision thereof, against the United States for personal injury, death, or property damage caused by ser-

1. The author uses only unclassified portions of orders and fragmentation orders (FRAGOS) as citations for this article.
2. Captain Tackaberry is currently attached to the 82d Airborne Division and serves as the Chief, Claims, at the division headquarters in Ramadi, Iraq. This assignment serves as the resource for this article's background information.
3. See Headquarters, U.S. Central Command, *News Release, "Task Force All American" Update*, Jan. 2, 2004, available at <http://209.157.64.200/focus/f-news/1050266/posts> (last visited Jan. 9, 2004); Major General Charles H. Swannack, Jr., Commander, 82d Airborne Division, Letter from Commanding General, Dec. 2003, available at http://www.bragg.army.mil/www-82DV/frg/messages/letter_from_commanding_general.htm (last visited Jan. 9, 2004).
4. American Forces Press Service, *"Task Force All American" Continues Security Operations in Anbar*, Dec. 15, 2003, available at http://www.dod.mil/news/Dec2003/n12152003_200312153.html (last visited Jan. 9, 2004).
5. President George W. Bush, Address Aboard the USS *Abraham Lincoln* (May 1, 2003).
6. See 10 U.S.C. § 2734 (2000).
7. See Emergency Supplemental Appropriations for Defense and for the Reconstruction of Iraq and Afghanistan, 2004, Pub. L. No. 108-106, § 1110, 117 Stat. 1209 (2003). The CERP is a program for commanders. Paragraph 3.D.8, however, states that "commanders will consult with their servicing Staff Judge Advocates and Finance Officers/Resource Managers for guidance on the implementation of this program within their command." *Id.* Within TF 82, the commanding general has delegated the operation of the CERP to the SJA and G8 while maintaining approval authority. Interview with Lieutenant Colonel Thomas Ayres, Staff Judge Advocate, 82d Airborne Division, in Ramadi, Iraq (Dec. 27, 2003) [hereinafter LTC Ayres Interview].
8. See 10 U.S.C. § 2734.
9. Interview by Christianne Ammanpour, CNN, with Captain Patrick Murphy, 82d Airborne Division in Baghdad, Iraq (Dec. 2003). Captain Murphy currently serves as the Trial Counsel for 325th Airborne Infantry Regiment, 2d Brigade, 82d Airborne Division. In Iraq, this unit serves in Baghdad under the direction of the 1st Armored Division.
10. *Id.*
11. Memorandum, Acting General Counsel, Department of Defense, to Secretary of the Army, subject: Claims Responsibility-Iraq (17 June 2003).

vice members or civilian employees, or claims that arise incident to noncombat activities of the Armed Forces.”¹² Under the FCA, the U.S. Army should follow “the law and custom of the country in which the incident occurred to determine which elements of damage are payable and which individuals are entitled to compensation.”¹³ Fortunately, Iraqi tort law follows the same basic principles as common law torts,¹⁴ and JAs can use their previous legal training to make determinations of liability.¹⁵

For TF 82, the pace of claims operations has been brisk—making prompt adjudication a high priority for legal personnel. Upon assuming duties in the Al Anbar province, TF 82 inherited nearly 600 open claims from the previous unit in the area for property damage or loss, and injury or death of local nationals. The one-week period ending 18 December 2003, alone, tallied 102 new claims filed within the province. To date, the number of claims filed within Al Anbar exceeds 2200. Of all claims, only thirty-eight exceeded the staff judge advocate’s FCC authority of \$15,000 for claims processed at the division level. Under the authority of the FCA, TF 82 has presently paid over \$290,000 and approved another \$50,000 for future payments.

To stream-line administration of claims in TF 82’s area of responsibility, a JA in each brigade is appointed as a one-person FCC, and investigates claims in his brigade’s area of responsibility. At the brigade level, the one-person FCCs have the authority to adjudicate and settle claims up to \$2500. Foreign Claims Commissions at the TF 82 headquarters can adjudicate claims up to \$15,000. Claims for amounts over \$15,000 are forwarded to Combined Joint Task Force 7 (CJTF-7) FCC for settlement.

Under TF 82, the staff judge advocate has attached two JAs to each brigade combat team (BCT). The geographic dispersion of the BCTs necessitated this arrangement to facilitate timely and competent legal advice on the wide variety of legal issues that confronted the BCTs. One JA functions as the brigade trial counsel, providing advice in the operational and discipline fields. The second JA serves as a FCC, completing administrative law tasks, and assisting all legal assistance clients within the BCT. The addition of a second JA, however, has markedly increased the BCT’s ability to provide services to the FCA claimants in its area.

Under TF 82’s organization, primary responsibility for intake of claims lies with the BCTs. For example, the JA at 1st BCT, (1st Brigade, 1st Infantry Division) presently intakes

claims at the Ar Ramadi courthouse three days each week, the 3d Armored Cavalry Regiment utilizes unit claims officers (UCOs) for intake of claims during operations, and the JA at the 3d Brigade (82d Airborne Division) intakes claims at the mayor’s office in downtown Fallujah and in the field when conducting operations. The TF 82 headquarters provides support and higher FCC authority for all BCTs. The headquarters also adjudicates any claims collected by Civil Affairs Teams operating under TF 82’s control, though the preference is for the BCTs to collect and adjudicate claims whenever possible.

Experience has demonstrated that interpreters play a vital role in claims administration. The interpreters embedded within the TF 82 headquarters and brigades translated all claims forms, correspondence to claimants, and settlement agreements, in both English and Arabic. An example is at appendix A. Besides creating forms in Arabic, interpreters translate interviews conducted and written claims submitted in Arabic. Additionally, the interpreters frequently obtain estimates of repair costs and fair market value for claims investigations by conversing with local nationals or other interpreters with the unit. Properly resourcing the interpreters increases their ability to perform this work. The TF 82’s use of interpreters created a need for software capable of word processing in Arabic. During pre-deployment mission analysis, units should attempt to determine the computer equipment and appropriate programs needed for word processing in both English and the local language(s). Sufficient manpower and equipment for translation greatly decreases the processing time for claims and increases understanding for all parties involved.

After claims are received and interpreted, the JA acting as a FCC must conduct an investigation and make several determinations before finally adjudicating the claim. The FCC is often obliged to deny claims submitted under the FCA because the claim arose out of combat activities. Pursuant to the FCA, *Army Regulation (AR) 27-20* states that FCA claims may not be paid when the loss arises from “those activities resulting directly or indirectly from action by the enemy, or by the U.S. Armed Forces engaged in armed conflict, or in immediate preparation for impending armed conflict.”¹⁶ Although major combat ended in May 2003, combat operations continue on a routine basis. Acting as FCCs, JAs must weigh the circumstances to determine whether the circumstances causing the damage claimed amount to “combat.” Currently, TF 82 FCCs begin the claims adjudication process with the rebuttable presumption that a combat operation occurs when coalition forces fire weapons. Use of this standard significantly simplifies and standardizes claims adjudication.

12. U.S. DEP’T OF ARMY, REG. 27-20, CLAIMS para. 10-2a (1 July 2003) [hereinafter AR 27-20].

13. *Id.* para. 10-5a.

14. Rosemary E. Libera, *Divide, Conquer, and Pay: Civil Compensation for Wartime Damages*, 24 B.C. INT’L & COMP. L. REV. 291 (2001).

15. Additionally, the FCA provides specific exclusions outlined in *Army Regulation (AR) 27-20, paragraph 10-4*. AR 27-20, *supra* note 12, para. 10-4.

16. *Id.*; COMBINED JOINT TASK FORCE-7, STANDARD OPERATING PROCEDURES, FOR FOREIGN CLAIMS IN IRAQ para. 5b(1) (28 May 2003).

Similar to all claims, adjudication continues with substantiation of the loss, proof of ownership, and valuation of the loss. In many instances, discovering evidence sufficient to make these findings is the most challenging part of the FCC's investigation. Commonly, documentation of ownership for real and personal property is not available. Documentation is often lost, destroyed, or non-existent, as the last recorded owner was an ancestor of the claimant. Claims that TF 82 receive frequently include the loss of currency. In these circumstances, the FCC is faced with the near impossibility of verifying either the existence or amount of currency. Additionally, FCCs must contend with evidence of fraud and abuse that occasionally appears in some claims. For instance, claimants have submitted multiple separate claims with identical pictures for damage; some have also filed the same claim in several locations. Finally, and perhaps not surprisingly, the claimant's valuation of the loss frequently includes an overestimate of replacement or repair costs. Despite these obstacles, TF 82 FCCs have made progress in eliminating the backlog of claims and simplifying the process.

One novel approach TF 82 has taken to assist claimants involves enlisting the services of local Iraqi attorneys to prepare, submit, and assist with the intake of claims.¹⁷ For their legal services, the attorneys are compensated with CERP funds, discussed later in this article. The use of Iraqi attorneys can be beneficial to claimants, as claims submitted are more complete due to the training that the FCC provides to the attorneys. Several safeguards are employed to prevent abuse of this arrangement. To submit a claim, the attorney must have a written attorney-client agreement. The Army pays all claims directly to the claimant—any payment to an attorney is strictly a matter between the claimant and his attorney (the attorney usually

receives a contingency fee of ten percent for successful claims). If attorneys are found submitting fraudulent claims, they are barred from the program, and from submitting future claims. Unfortunately, the coalition caught some Iraqi attorneys attempting to block claimants from submitting claims without representation. These attorneys are barred from submitting any future claims.¹⁸

After adjudication, FCCs contact claimants, through interpreters, and meet to discuss the claim at the location where the claim was submitted. At this meeting, FCCs either deliver a notice of denial or pay the claim in U.S. dollars after claimants sign settlement agreements.¹⁹

Commander's Emergency Response Program²⁰

In many cases, claims cannot be paid under the FCA because of the combat activities exclusion or because the payment of the claim would be "based solely on compassionate grounds."²¹ In these cases, the CERP may provide another avenue to satisfy the claimant. The CERP²² creates financial means for commanders to take immediate action to impact recovery efforts and to enact economic initiatives to rebuild Iraq.²³ Initially, the coalition intended the CERP to provide coverage only when coalition national claims laws, such as the FCA, did not provide recovery for a claim. At that time, the CERP funds were comprised of seized Iraqi assets. Now, two additional forms of funding for the CERP exist. On 6 November 2003, Congress appropriated an amount of DOD operations and maintenance (O&M) funds for the CERP.²⁴ In the Emergency Supplemental Appropriations for Defense and for the Reconstruction of Iraq

17. LTC Ayres Interview, *supra* note 7. This program of using local attorneys is not required for claimants.

18. *Id.*

19. Currently, the 82d Airborne Division Finance Office is authorized to issue U.S. dollars rather than the local currency. With approval of the U.S. Army Claims Service, all claims are paid in U.S. dollars. This is contrary to *Department of the Army Pamphlet (DA Pam.) 27-162, Claims Procedures, paragraph 2-100*, which states the following:

Claims under Foreign Claims Act. The check will be drawn on the currency of the country in which payment is to be made in accordance with AR 27-20, paragraph 10-9, at the Foreign Currency Fluctuation Account exchange rate in effect on the date of approval action. If a payee requests payment in U.S. currency, or the currency of a country other than that of the payee's country of residence, obtain permission from the Commander, USARCS. Where payment must be approved at USARCS or a higher authority, USARCS will complete and sign the voucher and forward it to the original commission for local payment.

U.S. DEP'T OF ARMY, PAM. 27-162, CLAIMS PROCEDURES para. 2-100o (8 Aug. 2003) [hereinafter DA PAM. 27-162].

20. See Emergency Supplemental Appropriations for Defense and for the Reconstruction of Iraq and Afghanistan, 2004, Pub. L. No. 108-106, § 1110, 117 Stat. 1209 (2003).

21. AR 27-20, *supra* note 12, para. 10-4d.

22. Headquarters, Combined-Joint Task Force 7, Fragmentary Order 89 (Commander's Emergency Response Program (CERP), Formerly the Brigade Commanders' Discretionary Fund), to CJTF-7 OPOD 03-036 (19 June 2003) [hereinafter FRAGO 89] (on file with author).

23. See Lieutenant Colonel Mark Martins, *No Small Change of Soldiering: The Commander's Emergency Response Program (CERP) in Iraq and Afghanistan*, ARMY LAW, Feb. 2004, at 1 (providing a comprehensive analysis of CERP).

24. Emergency Supplemental Appropriations for Defense and for the Reconstruction of Iraq and Afghanistan, 2004, Pub. L. No. 108-106, § 1110, 117 Stat. 1209 (2003).

and Afghanistan Act, Congress recognized that the CERP enables “military commanders in Iraq to respond to urgent humanitarian relief and reconstruction requirement . . . that immediately assist the Iraqi people.”²⁵ Additionally, the United Nations established the Developmental Fund for Iraq (DFI) to assist with reconstruction and recovery operations in Iraq.²⁶ The CJTF-7 has instituted specific limitations on the uses of either of the two types of funds.²⁷

The availability of the CERP funds provides commanders with the capability and flexibility to take immediate action to positively impact their area of responsibility.²⁸ Commanders can use the CERP for (1) reconstruction assistance;²⁹ (2) the CERP small rewards program;³⁰ or (3) compensation for economic loss due to death or serious bodily injury.³¹ The CERP funds also continue to pay otherwise meritorious claims that may not be paid under the FCA.

The primary use of CERP funds is “reconstruction assistance to the Iraqi people,”³² which is liberally defined as the “building, repair, reconstitution, and reestablishment of the social and material infrastructure of Iraq.”³³ Commanders *may* compensate for losses that coalition activities cause in its area of operations. This provides the ability to settle otherwise meritorious claims denied because of the FCA’s combat activities exclusion. This compensation, however, must not be used to benefit CJTF-7 forces³⁴ and must serve a primary purpose other than supporting individuals or businesses in a manner constituting a gift or similar unwarranted benefit.³⁵

There are some limits on the flexibility afforded to commanders. For instance, civil affairs units operating within Iraq assist commanders in determining which reconstruction assistance projects take priority. Likewise, legal personnel review proposed projects to ensure compliance with CERP limitations. Renovation and reconstruction of government buildings, schools, mosques, and water treatment facilities are examples of approved CERP projects. Authority was granted directly to commanders and project funds were allocated through C8/comptroller channels to provide greater capability and flexibility to take immediate actions. For reconstruction assistance, brigade commanders were given \$200,000 with an individual project limit of \$50,000 while division commanders received \$500,000 with individual project limits of \$100,000.³⁶ The Civil Affairs or Engineer teams generally identify and manage projects, but the JA does play a role. The JA must ensure that the projects are within the guidelines set forth in the various FRAGOs, as well as review contracts for the projects. The projects can range from installing a well for a small town to refurbishing a super phosphate plant costing millions of dollars.

Commanders may also use CERP funds to pay “rewards for information or other non-lethal assistance that leads to the capture of selected individuals, categories of weapons that appear on a list approved by U.S. Central Command, and documents related to weapons of mass destruction and terrorism.”³⁷ This program is distinct from any type of weapons buy-back program, which O&M funds have paid for in the past.³⁸ Under this program, battalion, brigade, and division commanders each

25. *Id.*

26. Headquarters, Combined-Joint Task Force 7, Fragmentary Order 1268 (CERP Program Update DFI, Appropriated and Seized), to CJTF-7 OPOD 03-036, para. 3.B.1. (22 Dec. 2003) [hereinafter FRAGO 1268] (on file with author).

27. Headquarters, 82d Airborne Division, Fragmentary Order 238 (CERP Program Update DFI, Appropriated and Seized), OPOD 03-12 (CHAMPION VICTORY), Annex A (on file with author). The types of funds available for each type of CERP expenditure are detailed in spreadsheet format. *Id.*

28. FRAGO 89, *supra* note 22, para. 3.B.

29. FRAGO 1268, *supra* note 26, para. 3.D.5.C. Seized and DFI CERP can not be used to repair collateral damaged caused by combat operations. To repair collateral damage caused by combat operations, units will use the CERP. *Id.*

30. *Id.* para. 3.D.5.B (explaining that only appropriated CERP funds will not be used to pay rewards). Only seized CERP or DFI CERP can be used to pay for rewards under the CERP. *Id.*

31. Memorandum, Staff Judge Advocate, Combined Joint Task Force Seven, to CJTF-7 C8 (COL Toner), subject: Use of Commander’s Emergency Response Program Funds to Promote Social and Economic Order (18 Dec. 2003) [hereinafter Use of Commander’s Emergency Response Program Funds to Promote Social and Economic Order Memo] (on file with author).

32. FRAGO 89, *supra* note 22, para. 3.B.4.

33. *Id.* para. 3.B.4.

34. *Id.* para. 3.D.3.A.

35. *Id.* para. 3.D.3.G.

36. *Id.* para. 3.B.

37. Headquarters, Combined-Joint Task Force 7, Fragmentary Order 250 (Amendment to the Commander’s Emergency Response Program (CERP) Formerly the Brigade Commander’s Discretionary Fund), OPOD 03-036, para. 3.B.

exercise authority for monetary awards. In recent experience, these awards have consistently increased. To pay monetary awards, battalion and brigade commanders make reward requests to the first general officer in the chain of command for approval. Judge advocates conduct legal reviews of the requests of all reward requests for the commander before approval.³⁹

Commanders may also use the CERP funds in cases of death or serious bodily harm.⁴⁰ This form of compensation for harm is distinct from solatia payments.⁴¹ The CERP payment compensates for economic losses such as the “loss of the ability of a family member to contribute to the welfare of the family whether in earning income to be used by the family or rendering household or other services for the benefit of the family.”⁴² This form of compensation is often paid when claims are denied under the FCA as a result of combat operations. For example, if a unit establishes a traffic control point (TCP) and uses small arms fire to engage a vehicle that fails to stop at the TCP, this incident will be considered a combat operation. If an innocent Iraqi civilian bystander is killed in the shooting, a claim filed by the family to compensate for the death may not be paid under the FCA because the death was not the result of “noncombat activity or a negligent or wrongful act or omission of soldiers or civilian employees of the U.S. Armed Forces.”⁴³ In this case, compensation may be paid under the CERP to “mitigate the adverse consequences of [Coalition] activities and promote social order and economic stability.”⁴⁴

In TF 82, these claims are usually paid under the CERP after an FCC denies the case as a FCA claim. For this reason, JAs are often the first service members with knowledge of the case and typically maintain responsibility for these CERP payments.

Judge advocates must look at each case carefully and work with many other sections to ensure these payments comply with the guidelines set forth in the CJTF-7 and 82d Airborne Division FRAGOs. Often it is not immediately clear if someone is an innocent bystander or is an active participant in anti-Coalition activity. Consequently, the JAs must sift through the fog of the battlefield to advise commanders whether to make a payment.

A common scenario at TF 82 occurs after a Coalition convoy is ambushed and the attackers flee to buildings or houses. When the Coalition soldiers return fire on the positively identified enemy in the building, the soldiers may kill or wound the enemy as well as other local nationals. This may also happen at TCPs as soldiers fire warning shots when vehicles fail to stop. This may cause death, injury, or property damage. Again, these situations are usually not within the scope of the FCA due to the combat activity exclusion. Investigations along with the JA’s advice, assist commanders to decide if payments are appropriate under the CERP. The main concern for both the CERP and the FCA is ensuring payments are not made to Iraqis conducting anti-Coalition activities.

Conclusion

Under the FCA and the CERP, the U.S. Army, primarily through The Judge Advocate General’s Corps, provides payments of U.S. dollars for claims made by many Iraqis. Ultimately, these programs show Iraqis that the Coalition cares about the well-being of the Iraqi people which should help in winning their hearts and minds. With their key jobs in administering the FCC and the CERP, legal personnel here play an important role in rebuilding Iraq.

38. *Id.* para. 3.B.1.

39. *Id.* paras. 3.C.1.D and 3.C.1.E.

40. Use of Commander’s Emergency Response Program Funds to Promote Social and Economic Order Memo, *supra* note 31, para. 3d.

41. Solatia payments are an expression of goodwill by the U.S. government. Under *DA Pam. 27-162*, “these payments are made from a unit’s operation and maintenance funds pursuant to directives established by the appropriate commander of the foreign jurisdiction.” *DA Pam. 27-162, supra* note 19, para. 13-13. Solatia payments have not been authorized for Iraq. Information Paper, CFLCC SJA, subject: Solatia Payments/Compensation for Iraqi Civilians Accidentally Injured/Killed by U.S. Forces during the War (4 Apr. 2003).

42. Use of Commander’s Emergency Response Program Funds to Promote Social and Economic Order Memo, *supra* note 31, para. 3d.

43. AR 27-20, *supra* note 12, para. 10-3a.

44. Use of Commander’s Emergency Response Program Funds to Promote Social and Economic Order Memo, *supra* note 31.

CLE News

1. Resident Course Quotas

Attendance at resident continuing legal education (CLE) courses at The Judge Advocate General's School, U.S. Army (TJAGSA), is restricted to students who have confirmed reservations. Reservations for TJAGSA CLE courses are managed by the Army Training Requirements and Resources System (ATRRS), the Army-wide automated training system. If you do not have a confirmed reservation in ATRRS, you do not have a reservation for a TJAGSA CLE course.

Active duty service members and civilian employees must obtain reservations through their directorates of training or through equivalent agencies. Reservists must obtain reservations through their unit training offices or, if they are non-unit reservists, through the U.S. Army Personnel Center (ARPER-CEN), ATTN: ARPC-OPB, 1 Reserve Way, St. Louis, MO 63132-5200. Army National Guard personnel must request reservations through their unit training offices.

Questions regarding courses should be directed to the Deputy, Academic Department at 1-800-552-3978, dial 1, extension 3304.

When requesting a reservation, please have the following information:

TJAGSA Code—181

Course Name—133d Contract Attorneys Course 5F-F10

Course Number—133d Contract Attorney's Course 5F-F10

Class Number—133d Contract Attorney's Course 5F-F10

To verify a confirmed reservation, ask your training office to provide a screen print of the ATRRS R1 screen, showing by-name reservations.

The Judge Advocate General's School, U.S. Army, is an approved sponsor of CLE courses in all states that require mandatory continuing legal education. These states include: AL, AR, AZ, CA, CO, CT, DE, FL, GA, ID, IN, IA, KS, KY, LA, ME, MN, MS, MO, MT, NV, NH, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, TN, TX, UT, VT, VA, WA, WV, WI, and WY.

2. TJAGSA CLE Course Schedule (August 2003 - September 2005)

Course Title	Dates	ATRRS No.
GENERAL		
52d Graduate Course	18 August 03 - 27 May 04	(5-27-C22)
53d Graduate Course	16 August 04 - 26 May 05	(5-27-C22)
54th Graduate Course	15 August 05 - thru TBD	(5-27-C22)
163d Basic Course	6 - 30 January 04 (Phase I - Ft. Lee) 30 January - 9 April 04 (Phase II - TJAGSA)	(5-27-C20) (5-27-C20)
164th Basic Course	1 - 24 June 04 (Phase I - Ft. Lee) 25 June - 3 September 04 (Phase II - TJAGSA)	(5-27-C20) (5-27-C20)
165th Basic Course	14 September - 8 October 04 (Phase I - Ft. Lee) 8 October - 16 December 04 (Phase II - TJAGSA)	(5-27-C20) (5-27-C20)
166th Basic Course	4 - 28 January 05 (Phase I - Ft. Lee) 28 January - 8 April 05 (Phase II - TJAGSA)	(5-27-C20) (5-27-C20)
167th Basic Course	31 May - June 05 (Phase I - Ft. Lee) 25 June - 1 September 05 (Phase II - TJAGSA)	(5-27-C20) (5-27-C20)
168th Basic Course	13 September - thru TBD (Phase I - Ft. Lee) TBD (Phase II - TJAGSA)	(5-27-C20)

9th Speech Recognition Training	25 October - 5 November 04	(512-27DC4)
13th Court Reporter Course	26 January - 26 March 04	(512-27DC5)
14th Court Reporter Course	26 April - 25 June 04	(512-27DC5)
15th Court Reporter Course	2 August - 1 October 04	(512-27DC5)
16th Court Reporter Course	24 January - 25 March 05	(512-27DC5)
17th Court Reporter Course	25 April - 24 June 05	(512-27DC5)
18th Court Reporter Course	1 August - 5 October 05	(512-27DC5)
4th Court Reporting Symposium	15 -19 November 04	(512-27DC6)
181st Senior Officers Legal Orientation Course	22 - 26 March 04	(5F-F1)
182d Senior Officers Legal Orientation Course	17 - 21 May 04	(5F-F1)
183d Senior Officers Legal Orientation Course	13 - 17 September 04	(5F-F1)
184th Senior Officers Legal Orientation Course	15 - 19 November 04	(5F-F1)
185th Senior Officers Legal Orientation Course	24 - 28 January 05	(5F-F1)
186th Senior Officers Legal Orientation Course	28 March - 1 April 05	(5F-F1)
187th Senior Officers Legal Orientation Course	13 - 17 June 05	(5F-F1)
188th Senior Officers Legal Orientation Course	12 - 16 September 05	(5F-F1)
11th RC General Officers Legal Orientation Course	19 - 21 January 05	(5F-F3)
34th Staff Judge Advocate Course	7 - 11 June 04	(5F-F52)
35th Staff Judge Advocate Course	6 - 10 June 05	(5F-F52)
7th Staff Judge Advocate Team Leadership Course	7 - 9 June 04	(5F-F52-S)
8th Staff Judge Advocate Team Leadership Course	6 - 8 June 05	(5F-F52-S)

2004 Reserve Component Judge Advocate Workshop	19 - 22 April 04	(5F-F56)
2005 Reserve Component Judge Advocate Workshop	11 - 14 April 05	(5F-F56)
2005 JAOAC (Phase II)	2 - 14 January 05	(5F-F55)
35th Methods of Instruction Course	19 - 23 July 04	(5F-F70)
36th Methods of Instruction Course	18 - 22 July 05	(5F-F70)
2004 JAG Annual CLE Workshop	4 - 8 October 04	(5F-JAG)
15th Legal Administrators Course	21 - 25 June 04	(7A-550A1)
16th Legal Administrators Course	20 - 24 June 05	(7A-550A1)
15th Law for Paralegal NCOs Course	29 March - 2 April 04	(512-27D/20/30)
16th Law for Paralegal NCOs Course	28 March - 1 April 05	(512-27D/20/30)
15th Senior Paralegal NCO Management Course	14 - 18 June 04	(512-27D/40/50)
16th Senior Paralegal NCO Management Course	13 - 17 June 05	(512-27D/40/50)
8th Chief Paralegal NCO Course	14 - 18 June 04	(512-27D- CLNCO)
9th Chief Paralegal NCO Course	13 - 17 June 05	(512-27D- CLNCO)
5th 27D BNCOC	12 - 29 October 04	
6th 27D BNCOC	3 - 21 January 05	
7th 27D BNCOC	7 - 25 March 05	
8th 27D BNCOC	16 May - 3 June 05	
9th 27D BNCOC	1 - 19 August 05	
4th 27D ANCOG	25 October - 10 November 04	
5th 27D ANCOG	10 - 28 January 05	
6th 27D ANCOG	25 April - 13 May 05	
7th 27D ANCOG	18 July - 5 August 05	

4th JA Warrant Officer Advanced Course	12 July - 6 August 04	(7A-270A2)
11th JA Warrant Officer Basic Course	31 May - 25 June 04	(7A-270A0)
12th JA Warrant Officer Basic Course	31 May - 24 June 05	(7A-270A0)
JA Professional Recruiting Seminar	14 - 16 July 04	(JARC-181)
JA Professional Recruiting Seminar	13 - 15 July 05	(JARC-181)

ADMINISTRATIVE AND CIVIL LAW

3d Advanced Federal Labor Relations Course	20 - 22 October 04	(5F-F21)
58th Federal Labor Relations Course	18 - 22 October 04	(5F-F22)
54th Legal Assistance Course	10 - 14 May 04	(5F-F23)
55th Legal Assistance Course	1 - 5 November 04	(5F-F23)
56th Legal Assistance Course	16 - 20 May 05	(5F-F23)
2004 USAREUR Legal Assistance CLE	18 - 22 Oct 04	(5F-F23E)
28th Admin Law for Military Installations Course	8 - 12 March 04	(5F-F24)
29th Admin Law for Military Installations Course	14 - 18 March 05	(5F-F24)
2004 USAREUR Administrative Law CLE	13 - 17 September 04	(5F-F24E)
2005 USAREUR Administrative Law CLE	12 - 16 September 05	(5F-F24E)
2004 Federal Income Tax Course (Charlottesville, VA)	29 November - 3 December 04	(5F-F28)
2004 Hawaii Estate Planning Course	20 - 23 January 05	(5F-F27H)
2004 USAREUR Income Tax CLE	13 - 17 December 04	(5F-F28E)
2005 Hawaii Income Tax CLE	11 - 14 January 05	(5F-F28H)

2005 PACOM Income Tax CLE	3 - 7 January 2005	(5F-F28P)
22d Federal Litigation Course	2 - 6 August 04	(5F-F29)
23d Federal Litigation Course	1 - 5 August 05	(5F-F29)
2d Ethics Counselors Course	12 - 16 April 04	(5F-F202)
3d Ethics Counselors Course	18 - 22 April 05	(5F-F202)

CONTRACT AND FISCAL LAW

152d Contract Attorneys Course	23 February - 5 March 04	(5F-F10)
153d Contract Attorneys Course	26 July - 6 August 04	(5F-F10)
154th Contract Attorneys Course	28 February - 11 March 05	(5F-F10)
155th Contract Attorneys Course	25 July - 5 August 05	(5F-F10)
6th Advanced Contract Law (Intellectual Property & Non-FAR Transactions)	15 - 19 March 04	(5F-F103)
5th Contract Litigation Course	21 - 25 March 05	(5F-F102)
2004 Government Contract Law Symposium	7 - 10 December 04	(5F-F11)
68th Fiscal Law Course	26 - 30 April 04	(5F-F12)
69th Fiscal Law Course	3 - 7 May 04	(5F-F12)
70th Fiscal Law Course	25 - 29 October 04	(5F-F12)
71st Fiscal Law Course	25 - 29 April 05	(5F-F12)
72d Fiscal Law Course	2 - 6 May 05	(5F-F12)
13th Comptrollers Accreditation Course (Fort Monmouth)	14 - 17 June 04	(5F-F14)
6th Procurement Fraud Course	1 - 3 June 04	(5F-F101)
2005 USAREUR Contract & Fiscal Law CLE	10 - 14 January 05	(5F-F15E)
2005 Maxwell AFB Fiscal Law Course	7 - 11 February 05	

CRIMINAL LAW

10th Military Justice Managers Course	23 - 27 August 04	(5F-F31)
11th Military Justice Managers Course	22 - 26 August 05	(5F-F31)
47th Military Judge Course	26 April - 14 May 04	(5F-F33)
48th Military Judge Course	25 April - 13 May 05	(5F-F33)
21st Criminal Law Advocacy Course	15 - 26 March 04	(5F-F34)
22d Criminal Law Advocacy Course	13 - 24 September 04	(5F-F34)
23d Criminal Law Advocacy Course	14 - 25 March 05	(5F-F34)
24th Criminal Law Advocacy Course	12 - 23 September 05	(5F-F34)
28th Criminal Law New Developments Course	15 - 18 November 04	(5F-F35)
2005 USAREUR Criminal Law CLE	3 - 7 January 05	(5F-F35E)

INTERNATIONAL AND OPERATIONAL LAW

4th Domestic Operational Law Course	25 - 29 October 04	(5F-F45)
1st Basic Intelligence Law Course (TJAGSA)	28 - 29 June 04	(5F-F41)
2d Basic Intelligence Law Course	27 - 28 June 05	(5F-F41)
1st Advanced Intelligence Law (National Ground Intelligence Center)	30 June - 2 July 04	(5F-F43)
2d Advanced Intelligence Law	29 June - 1 July 04	(5F-F43)
82d Law of War Course	12 - 16 July 04	(5F-F42)
83d Law of War Course	31 January - 4 February 05	(5F-F42)
84th Law of War Course	11 - 15 July 05	(5F-F42)
41st Operational Law Course	23 February - 5 March 04	(5 F-F47)
42d Operational Law Course	9 - 20 August 04	(5F-F47)
43d Operational Law Course	28 February - 11 March 05	(5F-F47)
44th Operational Law Course	8 - 19 August 05	(5F-F47)

3. Civilian-Sponsored CLE Courses

For further information on civilian courses in your area, please contact one of the institutions listed below:

AAJE: American Academy of Judicial Education
P.O. Box 728
University, MS 38677-0728
(662) 915-1225

ABA: American Bar Association
750 North Lake Shore Drive
Chicago, IL 60611
(312) 988-6200

AGACL: Association of Government Attorneys
in Capital Litigation
Arizona Attorney General's Office
ATTN: Jan Dyer
1275 West Washington
Phoenix, AZ 85007
(602) 542-8552

ALIABA: American Law Institute-American Bar
Association
Committee on Continuing Professional
Education
4025 Chestnut Street
Philadelphia, PA 19104-3099
(800) CLE-NEWS or (215) 243-1600

ASLM: American Society of Law and Medicine
Boston University School of Law
765 Commonwealth Avenue
Boston, MA 02215
(617) 262-4990

CCEB: Continuing Education
of the Bar
University of California Extension
2300 Shattuck Avenue
Berkeley, CA 94704
(510) 642-3973

CLA: Computer Law Association, Inc.
3028 Javier Road, Suite 500E
Fairfax, VA 22031
(703) 560-7747

CLESN: CLE Satellite Network
920 Spring Street
Springfield, IL 62704
(217) 525-0744
(800) 521-8662

ESI: Educational Services Institute
5201 Leesburg Pike, Suite 600
Falls Church, VA 22041-3202
(703) 379-2900

FBA: Federal Bar Association
1815 H Street, NW, Suite 408
Washington, DC 20006-3697
(202) 638-0252

FB: Florida Bar
650 Apalachee Parkway
Tallahassee, FL 32399-2300

GICLE: The Institute of Continuing Legal
Education
P.O. Box 1885
Athens, GA 30603
(706) 369-5664

GII: Government Institutes, Inc.
966 Hungerford Drive, Suite 24
Rockville, MD 20850
(301) 251-9250

GWU: Government Contracts Program
The George Washington University
National Law Center
2020 K Street, NW, Room 2107
Washington, DC 20052
(202) 994-5272

IICLE: Illinois Institute for CLE
2395 W. Jefferson Street
Springfield, IL 62702
(217) 787-2080

LRP: LRP Publications
1555 King Street, Suite 200
Alexandria, VA 22314
(703) 684-0510
(800) 727-1227

LSU: Louisiana State University
Center on Continuing Professional
Development
Paul M. Herbert Law Center
Baton Rouge, LA 70803-1000
(504) 388-5837

MLI: Medi-Legal Institute
15301 Ventura Boulevard, Suite 300
Sherman Oaks, CA 91403
(800) 443-0100

NCDA: National College of District Attorneys
University of Houston Law Center
4800 Calhoun Street
Houston, TX 77204-6380
(713) 747-NCDA

VCLE: University of Virginia School of Law
Trial Advocacy Institute
P.O. Box 4468
Charlottesville, VA 22905

NITA: National Institute for Trial Advocacy
1507 Energy Park Drive
St. Paul, MN 55108
(612) 644-0323 in (MN and AK)
(800) 225-6482

NJC: National Judicial College
Judicial College Building
University of Nevada
Reno, NV 89557

NMTLA: New Mexico Trial Lawyers'
Association
P.O. Box 301
Albuquerque, NM 87103
(505) 243-6003

PBI: Pennsylvania Bar Institute
104 South Street
P.O. Box 1027
Harrisburg, PA 17108-1027
(717) 233-5774
(800) 932-4637

PLI: Practicing Law Institute
810 Seventh Avenue
New York, NY 10019
(212) 765-5700

TBA: Tennessee Bar Association
3622 West End Avenue
Nashville, TN 37205
(615) 383-7421

TLS: Tulane Law School
Tulane University CLE
8200 Hampson Avenue, Suite 300
New Orleans, LA 70118
(504) 865-5900

UMLC: University of Miami Law Center
P.O. Box 248087
Coral Gables, FL 33124
(305) 284-4762

UT: The University of Texas School of
Law
Office of Continuing Legal Education
727 East 26th Street
Austin, TX 78705-9968

4. Phase I (Correspondence Phase), RC-JAOAC Deadline

The suspense for submission of all RC-JAOAC Phase I (Correspondence Phase) materials is **NLT 2400, 1 November 2004**, for those judge advocates who desire to attend Phase II (Resident Phase) at TJAGLCS in the year 2005 ("2005 JAOAC"). This requirement includes submission of all JA 151, Fundamentals of Military Writing, exercises.

This requirement is particularly critical for some officers. The 2005 JAOAC will be held in January 2005, and is a prerequisite for most judge advocate captains to be promoted to major.

A judge advocate who is required to retake any subcourse examinations or "re-do" any writing exercises must submit the examination or writing exercise to the Non-Resident Instruction Branch, TJAGLCS, for grading by the same deadline (1 November 2004). If the student receives notice of the need to re-do any examination or exercise after 1 October 2004, the notice will contain a suspense date for completion of the work.

Judge advocates who fail to complete Phase I correspondence courses and writing exercises by 1 November 2004 will not be cleared to attend the 2005 JAOAC. If you have not received written notification of completion of Phase I of JAOAC, you are not eligible to attend the resident phase.

If you have any further questions, contact Lieutenant Colonel JT. Parker, telephone (434) 971-3357, or e-mail JT.Parker@hqda.army.mil.

5. Mandatory Continuing Legal Education Jurisdiction and Reporting Dates

<u>Jurisdiction</u>	<u>Reporting Month</u>
Alabama**	31 December annually
Arizona	15 September annually
Arkansas	30 June annually
California*	1 February annually
Colorado	Anytime within three-year period
Delaware	Period ends 31 December; confirmation required by 1 February if compliance re-

	quired; if attorney is admitted in even-numbered year, period ends in even-numbered year, etc.	North Dakota	31 July annually
		Ohio*	31 January biennially
		Oklahoma**	15 February annually
Florida**	Assigned month triennially	Oregon	Period end 31 December; due 31 January
Georgia	31 January annually	Pennsylvania**	Group 1: 30 April Group 2: 31 August Group 3: 31 December
Idaho	31 December, admission date triennially	Rhode Island	30 June annually
Indiana	31 December annually	South Carolina**	1 January annually
Iowa	1 March annually	Tennessee*	1 March annually
Kansas	30 days after program, hours must be completed in compliance period July 1 to June 30		Minimum credits must be completed by last day of birth month each year
Kentucky	10 August; 30 June is the end of the educational year	Texas	Minimum credits must be completed by last day of birth month each year
Louisiana**	31 January annually	Utah	31 January
Maine**	31 July annually	Vermont	2 July annually
Minnesota	30 August	Virginia	31 October annually
Mississippi**	1 August annually	Washington	31 January triennially
Missouri	31 July annually	West Virginia	31 July biennially
Montana	1 April annually	Wisconsin*	1 February biennially
Nevada	1 March annually	Wyoming	30 January annually
New Hampshire**	1 August annually		
New Mexico	prior to 30 April annually		
New York*	Every two years within thirty days after the attorney's birthday		
North Carolina**	28 February annually		

* Military Exempt

** Military Must Declare Exemption
For addresses and detailed information, see the March 2003 issue of *The Army Lawyer*.

Current Materials of Interest

1. The Judge Advocate General's On-Site Continuing Legal Education Training and Workshop Schedule (2003-2004 Academic Year)

<u>DATE</u>	<u>TRNG SITE/HOST UNIT</u>	<u>GENERAL OFFICER AC/RC</u>	<u>SUBJECT</u>	<u>ACTION OFFICER</u>
8-9 Mar 04	Washington, DC 10th LSO	BG Black BG Pietsch	Criminal Law; Administrative Law	CPT Mike Zito (301) 599-4440 mzito@juno.com
22-23 Mar 04	West Point, NY	TBA	Eastern States Senior JAG Workshop	COL Randall Eng (718) 520-3482 reng@courts.state.ny.us
26-27 Apr 04	Boston, MA 94th RSC	MG Marchand/ BG Arnold	Administrative Law; Contract Law	SSG Neoma Rothrock (978) 796-2143 neoma.rothrock@us.army.mil
16-18 May 04	Kansas City, MO 89th RSC	BG Carey/ BG Pietsch	Criminal Law; International Law	MAJ Anna Swallow (316) 781-1759, est. 1228 anna.swallow@usarc-emh2.army.mil SGM Mary Hayes (816) 836-0005, ext. 267 mary.hayes@usarc-emh2.army.mil
17-18 May 04	Birmingham, AL 81st RSC	BG Wright/ BG Arnold	Criminal Law; International Law	CPT Joseph Copeland (205) 795-1980 joseph.copeland@se.usar.army.mil
	Charlottesville, VA OTJAG	All General Officers scheduled to attend	Spring Worldwide CLE	

* Prospective students may enroll for the on-sites through the Army Training Requirements and Resources System (ATRRS) using the designated Course and Class Number.

2. TJAGSA Materials Available through the Defense Technical Information Center (DTIC)

For a complete listing of TJAGSA Materials Available Through the DTIC, see the September 2002 issue of *The Army Lawyer*.

3. Regulations and Pamphlets

For detailed information, see the September 2003 issue of *The Army Lawyer*.

4. The Legal Automation Army-Wide Systems XXI—JAGCNet

a. The Legal Automation Army-Wide Systems XXI (LAAWS XXI) operates a knowledge management and information service called JAGCNet primarily dedicated to servicing the Army legal community, but also provides for Department of Defense (DOD) access in some cases. Whether you have Army access or DOD-wide access, all users will be able to download the TJAGSA publications that are available through the JAGCNet.

b. Access to the JAGCNet:

(1) Access to JAGCNet is restricted to registered users who have been approved by the LAAWS XXI Office and senior OTJAG staff:

- (a) Active U.S. Army JAG Corps personnel;
- (b) Reserve and National Guard U.S. Army JAG Corps personnel;
- (c) U.S. Army JAG Corps civilian personnel;
- (d) FLEP students;
- (e) Affiliated (that is, U.S. Navy, U.S. Marine Corps, U.S. Air Force, U.S. Coast Guard) DOD personnel assigned to a branch of the U.S. Army JAG Corps; and, other personnel within the DOD legal community.

(2) Requests for exceptions to the access policy should be e-mailed to:

LAAWSXXI@jagc-smtp.army.mil

c. How to logon to JAGCNet:

(a) Using a Web browser (Internet Explorer 4.0 or higher recommended) go to the following site: <http://jagcnet.army.mil>.

(b) Follow the link that reads “Enter JAGCNet.”

(c) If you already have a JAGCNet account, and know your user name and password, select “Enter” from the next menu, then enter your “User Name” and “password” in the appropriate fields.

(d) If you have a JAGCNet account, *but do not know your user name and/or Internet password*, contact your legal administrator or e-mail the LAAWS XXI HelpDesk at LAAWSXXI@jagc-smtp.army.mil.

(e) If you do not have a JAGCNet account, select “Register” from the JAGCNet Intranet menu.

(f) Follow the link “Request a New Account” at the bottom of the page, and fill out the registration form completely. Allow seventy-two hours for your request to process. Once your request is processed, you will receive an e-mail telling you that your request has been approved or denied.

(g) Once granted access to JAGCNet, follow step (c), above.

5. TJAGSA Publications Available Through the LAAWS XXI JAGCNet

For detailed information, see the September 2003 issue of *The Army Lawyer*.

6. TJAGSA Legal Technology Management Office (LTMO)

The Judge Advocate General’s School, United States Army (TJAGSA), continues to improve capabilities for faculty and staff. We have installed new computers throughout the School, all of which are compatible with Microsoft Windows 2000 Professional and Microsoft Office 2000 Professional throughout the School.

The TJAGSA faculty and staff are available through the Internet. Addresses for TJAGSA personnel are available by e-mail at jagsch@hqda.army.mil or by calling the LTMO at (434) 972-6314. Phone numbers and e-mail addresses for TJAGSA personnel are available on TJAGSA Web page at <http://www.jagcnet.army.mil/tjagsa>. Click on “directory” for the listings.

For students who wish to access their office e-mail while attending TJAGSA classes, please ensure that your office e-mail is web browser accessible prior to departing your office. Please bring the address with you when attending classes at TJAGSA. If your office does not have web accessible e-mail, you may establish an account at the Army Portal, <http://ako.us.army.mil>, and then forward your office e-mail to this new account during your stay at the School. Dial-up internet access is available in the TJAGSA billets.

Personnel desiring to call TJAGSA can dial via DSN 934-7115 or, provided the telephone call is for official business only, use our toll free number, (800) 552-3978; the receptionist will connect you with the appropriate department or directorate. For additional information, please contact our Legal Technology Management Office at (434) 972-6264. CW3 Tommy Worthey.

7. The Army Law Library Service

Per *Army Regulation 27-1*, paragraph 12-11, the Army Law Library Service (ALLS) must be notified before any redistribution of ALLS-purchased law library materials. Posting such a notification in the ALLS FORUM of JAGCNet satisfies this regulatory requirement as well as alerting other librarians that excess materials are available.

Point of contact is Mr. Dan Lavering, The Judge Advocate General's School, United States Army, ATTN: JAGS-ADL-L, 600 Massie Road, Charlottesville, Virginia 22903-1781. Telephone DSN: 488-6306, commercial: (434) 972-6306, or e-mail at Daniel.Lavering@hqda.army.mil.

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