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From: (b)(6) (O-6)

Sent: Saturday, January 03, 2004 1:58 PM

To: (b)(6) (O-6)

Cc: (b)(6) (GS-14)

Subject: FW: Commentary from Yale Center for the Study of Globalization

(b)(6)

As we discussed. Enjoy!

Cheers

(b)(6)

-----Original Message-----

From: (b)(6) (O-6)

Sent: Saturday, January 03, 2004 12:34 PM

To: (b)(6)

(b)(6)

Cc: Krohn, Charles A. (SES); (b)(6) (GS-12)

Subject: Commentary from Yale Center for the Study of Globalization

Gents-

Food for thought as we move to hire private security for some of our activities.

Cheers

(b)(6)

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The Straits Times INTERACTIVE

JAN 3, 2004

Controls needed to rein in private military firms

BY RAENETTE TALJAARD

NEW HAVEN (Connecticut) - The instability of post-war Iraq has turned private military services into a booming cottage industry. The coalition authorities have awarded private companies contracts to provide a plethora of security services, like protecting oil sites and training Iraqi security forces - a special priority for the Bush administration if it is to pull United States troops out by next summer.

Private military companies (PMCs) have also found a lucrative market in post-war Afghanistan. However, this widening use of private military organisations presents new practical and ethical challenges that have to be addressed before they get out of control.

1/3/2004



01164

The PMCs' visibly important role in the world's 'hot spots' lends weight to the notion that the nation-state is losing its jealously guarded monopoly on the use of force - or, in some cases, voluntarily relegating it to the private sector.

Private companies are coming to the fore, adopting the role of more than modern-day mercenaries.

BATTLEFIELD BUSINESS

THE companies the US and its allies have hired - like Kroll, Armor, Control Risks, Rubicon and Global Risk - boast of a whole range of specialisations and hail from a range of countries but, together, they provide all the services normally carried out by national military forces, including intelligence, military training, logistics and security.

In addition to becoming an integral part of the machinery of war, they are emerging as cogs in the infrastructure of peace. US-allied military officials and civilians in Iraq and Afghanistan are quickly becoming familiar with the 'brand services' provided by companies.

But the battlefield is not merely another arena for business, and the profit motive may distort security strategy decisions. The expansion of services performed by civilian entities raises several concerns: the lack of transparency and oversight common to their operations; the performance of companies motivated by profit, not national foreign policy or security interest; and revolving-door-style nepotism and conflicts of interest. All these are concerns that grow ever more urgent as mega-corporation-style military companies diversify even further.

The PMC boom is partly a legacy of the military downsizing that followed the end of the Cold War. But the boom is also self-sustaining; the very existence of PMCs is boosting demand for their services. Not only has it arguably become more cost effective to outsource certain military tasks to the private sector, but the insertion of PMC expertise - even in offering training and/or strategic advice - also often changes the relationship between two parties in a conflict situation. This creates pressures for both parties to have a PMC's services on their side.

The countries most actively supplying PMCs to the world market include South Africa, the US and Britain, with varying levels of regulation of their activities. While South Africa is trying to tackle the PMC growth industry, the US and Britain are turning increasingly to PMCs with no accountability or lacking strict regulatory regimes.

This dangerous trend could pose a serious threat to international peace and security. Given that the bulk of conflicts in the modern era are occurring within states and often involve non-state actors, it is clear that the world can ill afford to allow additional private actors to join conflict situations - especially when accountability and legal restrictions on their behaviour are relatively weak or even non-existent.

NEW MEASURES

NEW regulations and protocols are needed to control the activities of PMCs, as recent South African experience in Iraq shows. South Africa has been in the forefront in drafting new regulations - partly owing to the notoriety of Executive Outcomes, the mercenary company staffed by former South African soldiers that played a key role in conflicts in Angola and Sierra Leone.

New national legislation in South Africa has aimed to distinguish carefully between providing foreign military assistance and participating in mercenary activity.

The Regulation of Foreign Military Assistance Act, passed in July 1998, did not use the more limited, traditional definition of 'mercenary' used in international conventions. Instead, it defined mercenary activity as 'direct participation as a combatant in armed conflict for private gain'. Engagement in such activity - including recruitment, training or financing - is not only prohibited within South Africa but applies to South Africans acting outside of the country as well.

While such legislation is a major step forward in both intent and word, the Iraq conflict has demonstrated the difficulty of enforcing these new regulations.

A South African firm named Meteoric Tactical Solutions is currently providing protection services in Iraq and training new Iraqi police and security forces. Erinys, a joint South African-British company, has received a multi-million-dollar contract to protect Iraq's oil industry.

Neither company has yet received formal approval from South Africa's National Conventional Arms Control Committee; Erinys failed to apply at all. Yet, their operations are still under way.

If national legislation has proven inadequate to the task, can international law be applied to private companies?

The answer is yes, but doing so will require renewed political commitment - including enforcing existing international norms and creating new ones.

POOR REGULATION

PAST attempts by the United Nations to regulate mercenary companies have been weak. The International Convention against the Recruitment, Use, Financing and Training of Mercenaries took more than a decade to enter into force. Even then, it relied on a deficient definition of mercenary, had no monitoring mechanism, and was ratified by only a minimal number of countries.

These international efforts are hardly up to the task in an era where powerful governments actively encourage the emergence of security companies that would, in any event, fall outside the Convention's definitional remit.

PMCs should not be banned, but they must be controlled through a complementary regime of domestic and international law to ensure that their services can never be extended into participation in active combat situations.

At the national level, states will need to tighten regulatory provisions in domestic law and enhance enforcement. At the regional and international level, states must work together to align their legal norms and to share information so that PMCs are discouraged from 'shopping around' for less onerous regulatory regimes.

The UN will have to update the Mercenary Convention through additional protocols that bring greater definitional clarity and create a permanent monitoring and enforcement structure modelled on the UN Conventional Arms register. A new register for PMCs will help sift the 'good guys' from the 'bad guys', rein in PMCs that aid terrorist networks, and shape debates on the policy

questions arising from the increased privatisation of security.

This new national and international regulatory framework for modern-day mercenary activity would provide a new tool for promoting and protecting human rights. At the very least, addressing these issues will make how the international community responds to conflict situations more transparent.

• **The writer, a member of the South African Parliament, is currently a Yale World Fellow.
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British go-ahead for arms exports to Iraqi security firms



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Story from AFP

Tuesday, 14-Oct-2003
9:41AM PDTCopyright 2003 by Agence France-Presse
(via ClariNet)

LONDON, Oct 14 (AFP) - Britain has given the go-ahead for the export of light weapons including assault rifles, machine guns and pistols to private security firms operating in Iraq, the Foreign Office announced Tuesday.

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The arms were to be used only by firms contracted to provide "close protection for employees of the Coalition Provisional Authority (CPA)," Junior Foreign Office minister Bill Rammell told the House of Commons.

An arms embargo on Iraq remained in force, although it did not apply to arms to protect the US-led authority, the official said.

Eight people were killed in a bomb blast Sunday at a Baghdad hotel that houses US security staff and members of the US-backed interim Iraqi Governing Council.

The dead included Iraqi security staff and civilians, but no one inside the hotel itself was hurt.

cm/da/gk

Iraq-Britain-arms



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Use of private security firms in Iraq draws concerns

By Borzou Daragahi

THE WASHINGTON TIMES

KIRKUSH, Iraq — The use by the Pentagon of more than a dozen private **security** companies to guard key installations and train a new Iraqi army has helped extend U.S. military resources but raised concern among some active-duty soldiers and civilian U.S. officials.

That trend was on display recently here in northeastern **Iraq**, where the U.S. authority proudly displayed a battalion-size set of recruits it hopes will form the core of a new pro-American Iraqi army.

The camouflage-clad recruits — young and middle-aged, Kurdish, Arab and Turkoman — marched in formation, launched ambushes and fired their weapons for a group of visiting reporters.

But their training was being handled not by U.S. forces but a group of gray-suited

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specialists under contract from the Vinnell Corp., a subsidiary of American defense giant Northrop Grumman. Vinnell, in turn, has subcontracted most of the Kirkush training to MPRI, an Alexandria firm that helped train the new Croatian and Bosnian armies.

"The Iraqi army is such an essential component for the future of **Iraq** in terms of avoiding civil war," said Rex Wempen, a Baghdad-based **security** consultant and former Special Forces member. "It shows how embedded the [private military contractors, or PMCs] are in the thinking of the Department of Defense that they would use them to train that army."

At a time when the overstretched U.S. military is struggling to persuade other nations to send troops to help secure **Iraq**, PMCs can relieve some of the pressure on American forces.

"If you're going to keep the number of troops down, this is the way to do it," said Mr. Wempen. "The expense is the same or more. But politically it's much less expensive."

Staffed by ex-military personnel, the private **firms** are playing an increasingly visible role in **Iraq**:

- Armed employees of Custer Battles, a Fairfax firm, guard Baghdad airport, manning the type of checkpoints often operated by American soldiers.

- Erinys, a British company with offices in the Middle East and South Africa, guards the oil fields.

- Global Risk, a British firm offering "risk management" advice, has the contract to provide armed protection for the Coalition Provisional Authority, the U.S.-led power.

- DynCorp of Reston has been hired to help train **Iraq's** police. Much of the work is conducted by former soldiers who retain high **security** clearances, said an **Iraq**-based former U.S. military official who requested anonymity.

Western **security** officials in **Iraq** say the companies generally do not engage in combat operations as they do in Colombia and other countries, but occasionally they are used for a specific task, such as quietly snatching a suspected Saddam Hussein loyalist.

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Coalition and U.S. military officials say the contractors have the flexibility to do some things quickly that the armed forces simply can't.

"They could be got here quickly," said British Brig. Jonathon Riley. "The U.S. or Britain didn't have to deploy another combat brigade to take this task."

Contractors also can cast a wider net in hiring, helping to internationalize the forces in **Iraq** even as U.S. attempts to attract more foreign troops stall.

"We're trying to get more international participation here and the contractors can hire internationally," said U.S. Army Staff Sgt. Johnny Monds, one of the coalition soldiers in Kirkush.

But many coalition soldiers are squeamish about the private contractors and say they hope their role will be temporary.

"This is a very touchy issue," said a high-level coalition military official who opposes expanded use of private soldiers in **Iraq**. "There's a lot of pressure to use these contractors. Some oppose it. Some support it."

Some soldiers said privately that the soldiers-for-hire walk around with their weapons in full view as if they belong to a coalition army. They worry that the private-sector soldiers might not be constrained by the same rules of engagement and that any rogues among them who kill or hurt Iraqis could bring reprisals on all foreign forces.

"What are the rules of engagement [for the PMCs]?" asked one coalition military official in Baghdad. "Are they civilians or are they military? I don't know who they are, and I don't want to go anywhere near them."

The Coalition Provisional Authority did not respond to several formal requests for information about private military activities in **Iraq**. The coalition military commander in **Iraq**, U.S. Lt. Gen. Ricardo Sanchez, responding to a question at a press conference several weeks ago, said he did not know of any plans to use contractors to perform **security** functions for the military.

On the ground, however, the private soldiers are occasionally finding themselves in firefights with Iraqis.

Richard Galustian of Pilgrims, a contractor that provides **security** for many Western media outlets, described one incident in which his firm's **security** officials opened fire on a group of suspected bandits along the road from Baghdad to the Jordanian border. "Certainly at least one or two people were hit," he said.

A former Special Forces member now in Baghdad said military contractors guarding ministries on behalf of coalition authorities have killed Iraqis who were trying to loot or attack the buildings.

"It's **Iraq**," he said. "You're accountable to nobody. But I guess ultimately you're accountable to the U.S. military for what happens."



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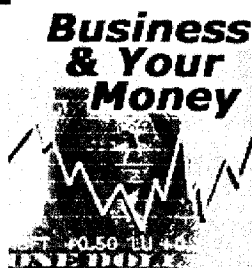
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Firms face danger, expenses in Iraq

U.S. companies deal with death, close calls

By PAUL RICHTER
Los Angeles Times

Posted: Dec. 28, 2003

Washington - For the businessmen who flocked to a government conference this month to learn how they might bid on **Iraq** contracts, the word from some who had been on the ground was sobering.

A hush fell over the crowd when a Halliburton official showed a slide of a dented silver belt buckle. The buckle, he said, had saved a company truck driver's life by deflecting an attacker's bullet fired during one of 132 insurgent attacks on Halliburton workers.

Lawyer Timothy B. Mills deepened the gloom when he told how a Baghdad clerk's decision to give him a room in the back of the Palestine Hotel, instead of the room-with-a-view in the front, saved his life in a rocket attack.

"This is part and parcel of doing business in **Iraq**," Mills warned the group.

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For businessmen here and abroad, the good news is that the U.S. government is planning to pour \$18.6 billion into rebuilding **Iraq's** infrastructure. The bad news is that the influx of money is expected to make **Iraq** even more dangerous.

U.S. and corporate officials fear that the thousands of additional workers expected to fan out across **Iraq** in the coming months to build utilities, ministries, schools and hospitals will prove irresistible targets for insurgents. As it puts the finishing touches on the bidding process, the Pentagon worries that the high **security** costs and high risks will scare off small **firms** and entrepreneurs and slow the reconstruction effort.

Until now, most of the estimated 12,000 contract employees in **Iraq** have been concentrated in a few areas and mostly shielded behind U.S. troops, barbed wire and concrete barriers. In the months ahead, as their numbers increase several fold, private contractors would move into remote areas far from military protection.

"Everybody's worried about this **security** issue," said Robert Fardi, vice president of Amira Group, which is expanding its business in **Iraq** but struggling with partners who are unwilling to enter the country. "There are still lots of people who want to take the risk. But it's frightening, absolutely frightening."

In the immediate aftermath of the U.S.-led invasion in March, insurgents did not have contractors at the top of their hit list. But that changed as rebels sought less-protected targets and tried to hobble the coalition by striking groups that work with the military.

In hundreds of attacks on contract employees, several dozen personnel have been killed or wounded, U.S. officials and contractors estimate.

San Diego's Titan Corp., which provides thousands of translators to the military in **Iraq**, already has lost 13 employees who have been killed in attacks since July.

Halliburton's Kellogg, Brown & Root unit says that two of its employees, and six subcontract employees, have been killed.

Protecting themselves

Authorities are urging newly arriving contractors to fortify themselves in costly, heavily armed base camps with secure communications to ensure they can summon help if they come under attack.

Pentagon officials recommend that they be guarded around the clock, encircled with multiple lines of defense, and shielded by 10-foot concrete blast barriers.

The sites, Pentagon officials say, should be separated from roads with a 50-foot safety perimeter to protect from suicide bomb attack. Inside the perimeter, they recommend constructing multiple concentric defense lines, so that contractors can repel attackers who clear away barriers with one vehicle, then send in a second to penetrate the site.

Attorney Mills, who works with several companies doing business in **Iraq**, says there are about 100 such camps in **Iraq** today, but predicts that the number could grow to as many as 500.

Despite such protections, insurgents can lob mortar shells into such modern Fort Apaches, or pick off individual workers in sniper attacks.

One U.S. contractor, who spoke on condition of anonymity, said his company realized belatedly that it was a mistake to allow employees to go outside during lunchtime to use the bathroom. One sniper invariably rained fire on the camp during the bathroom breaks.

Once outside fortified bases, contractors face tough protection choices on the roads, where most attacks occur.

The large sport utility vehicle, with its bulk, wide field of vision and off-road capabilities, is the vehicle of choice for Western contractors in **Iraq**. But insurgents can easily identify them; they often drive up next to the behemoths and open fire.

Vehicle options

Some contractors shun armored vehicles, bodyguards and body armor. Instead, they try to avoid attention by driving in the battered sedans common among Iraqis, dressed in casual Western clothes that Iraqis might wear. Some male contractors have grown beards and mustaches favored by Iraqi men. Some female contractors, when traveling the roads, have taken to wearing the head scarves commonly worn by Iraqi women.

In any case, authorities strongly recommend wearing goggles to shield eyes from flying glass after windshields are shattered by roadside bombs, which are the most frequent means of attack.

Contractors also face tough choices when they hire armed **security** teams, which are now a must. They can choose former U.S. or British troops, at perhaps \$1,000 a day, or Iraqi guards at perhaps one-tenth that price.

The Iraqi guards can be valuable, especially if they're from an important local tribe, and represent the protection of the tribe's leader. But their loyalty and diligence is often questionable; and they may even carry off some of the equipment they're hired to protect, military officials acknowledge.

Paying for security

U.S. officials have acknowledged that the precautions are going to be a major part of contractors' costs, and have told contractors they can build the costs into their bids. Jack Wheelock, head of the **Iraq** infrastructure project for the U.S. Agency for International Development, estimated that **security** could add up to 8% in contracts, and the cost of secure bases as much as 6%.

But some experts believe the figures will be much higher - in some cases totaling 25% of a contract's value.

For the biggest contractors, such as Halliburton and Bechtel, which have huge financial resources and long experience in dangerous areas, the costs are bearable. That may not be the case for smaller, less experienced businesses.

Business people say the fears of many companies to take part may cause serious damage to the reconstruction effort.

"When you think of the costs, the risks, the headaches, it's a lot to ask of a company," said a senior official of one important contracting concern, who spoke on condition of anonymity because of a company policy against discussing **security**. "For a lot of companies, it's clearly going to be too much."

From the Dec. 29, 2003 editions of the Milwaukee Journal Sentinel

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Gen
should know about this & copy over
slides.

Kuads will hire private security FIRMS.

11/5/5

FOR FAI briefing to CJTF

Don ROR's briefing report & give to other folks

DIABOL IS

BRINGING

AND

DIABOL is briefing CJTF-7 FAI & then will go to San Diego.

Other audience is Brig. ELM (policy) FAI

① DIABOL is going to say military must provide security to convoys.

② CONTRACTORS will be issued weapons.

③ CONTRACTORS will hire security co's. As they travel the CONTRACTORS need to have individual weapons for trip.

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& ALSO

Col Bell said

- ① For Global - GPS supplied to KBR from Rock Island
- Under hand receipt. KBR has property accountability system.
- ② we didn't supply guns to Blackwater
- ③ Sometimes we have provided CONTRACTORS end use CERTS. If asked -
they can use that how they want - may help an individual
get a gun from U.S.
- ④ Sometimes CONTRACTORS have purchased and we have permitted
shipping on military aircraft.
- ⑤ We don't tell people they have to buy guns in U.S.
that's up to the CONTRACTOR
- ⑥ The CONTRACTORS can buy guns here or anywhere that's their
business
- ⑦ CONTRACTS do NOT address use of force - that has been handled
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DEPARTMENT OF THE ARMY
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REPLY TO
ATTENTION OF

19 JUN 2003

Colonel [REDACTED]
Army Contracting Agency Southern Region Headquarters
1309 Anderson Way, Southwest
Building 130
Fort McPherson, Georgia 30330

Dear Colonel [REDACTED]

The Deputy Secretary of Defense has designated the Secretary of the Army as the Department of Defense Executive Agent for support of the Office of Reconstruction and Humanitarian Assistance, now the Coalition Provisional Authority, with responsibility to provide such administrative, logistics, and contracting support as required for humanitarian relief and reconstruction for the people of Iraq.

I hereby appoint you to serve as the Head of Contracting Activity (HCA) for the Coalition Provisional Authority, solely for the purposes of providing contracting support to the Coalition Provisional Authority. The authority of a HCA is significant and its successful exercise is critical to the mission of the Coalition Provisional Authority and the United States Army as a whole.

Federal law, the Federal Acquisition Regulation, the Department of Defense Federal Acquisition Regulation Supplement, and the Army Federal Acquisition Regulation Supplement, are the principal authorities that define your role as the HCA. Furthermore, I may delegate other specific authority to you from time-to-time.

There are many contracting responsibilities and authorities associated with service as a HCA. Some of the more important ones, in this instance, include:

- a. Reporting directly to the Assistant Secretary of the Army (Acquisition, Logistics and Technology). You will receive operational/mission guidance and support from the Deputy Assistant Secretary of the Army (Policy and Procurement).
- b. Ensuring that all contract actions comply with the law and acquisition regulations.



c. Ensuring the appropriate placement of each contracting office within your organizational structure and ensuring that each office is adequately structured and staffed.

d. Ensuring that sufficiently trained personnel and other resources are provided to properly carry out the contracting function. In this area, please keep in mind the Department of the Army's policy to enhance the representation of highly qualified minorities and women in the work force.

e. Ensuring that only properly warranted contracting officers execute contracting actions.

f. Streamlining acquisitions to ensure effective and economic contracting with a high degree of competition. Avoid unduly restrictive requirements, unnecessarily vague or overly detailed specifications or statements of work, and inadequate or untimely procurement planning and preparation. Encourage the development and application of innovative contracting.

g. Approving procurement decisions as necessary, and authorizing waivers or exceptions to policy that are within your authority to approve.

h. Resolving disagreements between contracting offices and other functional elements.

i. Limiting the development and publication of local contracting policies and procedures, unless you find them essential to accomplishing the acquisition mission. Any such policies or procedures will not restrict or duplicate Department of the Army level or higher acquisition or contracting publications, unless appropriate advance approval is obtained.

j. Ensuring that your organization complies with any statutory and regulatory socio-economic requirements that apply in your overseas environment.

k. Performing periodic oversight and review of all of your contracting offices within the Coalition Provisional Authority to ensure compliance with all law, regulation, and policy in the acquisition and contracting area.

l. Providing briefings, as required, to the Assistant Secretary of the Army (Acquisition, Logistics and Technology) and the Deputy Assistant Secretary of the Army (Policy and Procurement) to keep them informed on the status of significant contracting programs, initiatives, and issues under your purview.

m. Appointing the Principal Assistant Responsible for Contracting (PARC). The PARC is the senior staff official responsible for oversight and administration of the contracting functions within your activity. He acts as your senior staff official for the many duties that you may delegate as HCA. As such, the PARC must be an experienced individual whose qualifications include:

(1) A comprehensive procurement background, and a technical knowledge of the acquisition process.

(2) Management experience and ability.


(3) Satisfaction of the requirements specified in the Defense Acquisition Workforce Improvement Act for Senior Contracting Officials and for certification at Acquisition Career Level III.

In addition, the PARC must be collocated with the headquarters of the contracting activity and have direct access to you on all matters within the HCA purview. You are the only official to whom the organizational element headed by the PARC should report.

n. Complying with Memorandum(s) of Agreement and Memorandum(s) of Understanding specific to your mission execution within the Coalition Provincial Authority.

I have every confidence that you will execute your authority and responsibility in such a manner to ensure the success of the critical mission and responsibilities of the Coalition Provisional Authority and the U.S. Army. My staff and I stand ready to provide whatever support you may need for this important mission.

Sincerely,


Claude M. Bolton, Jr.
Assistant Secretary of the Army
(Acquisition, Logistics and Technology)

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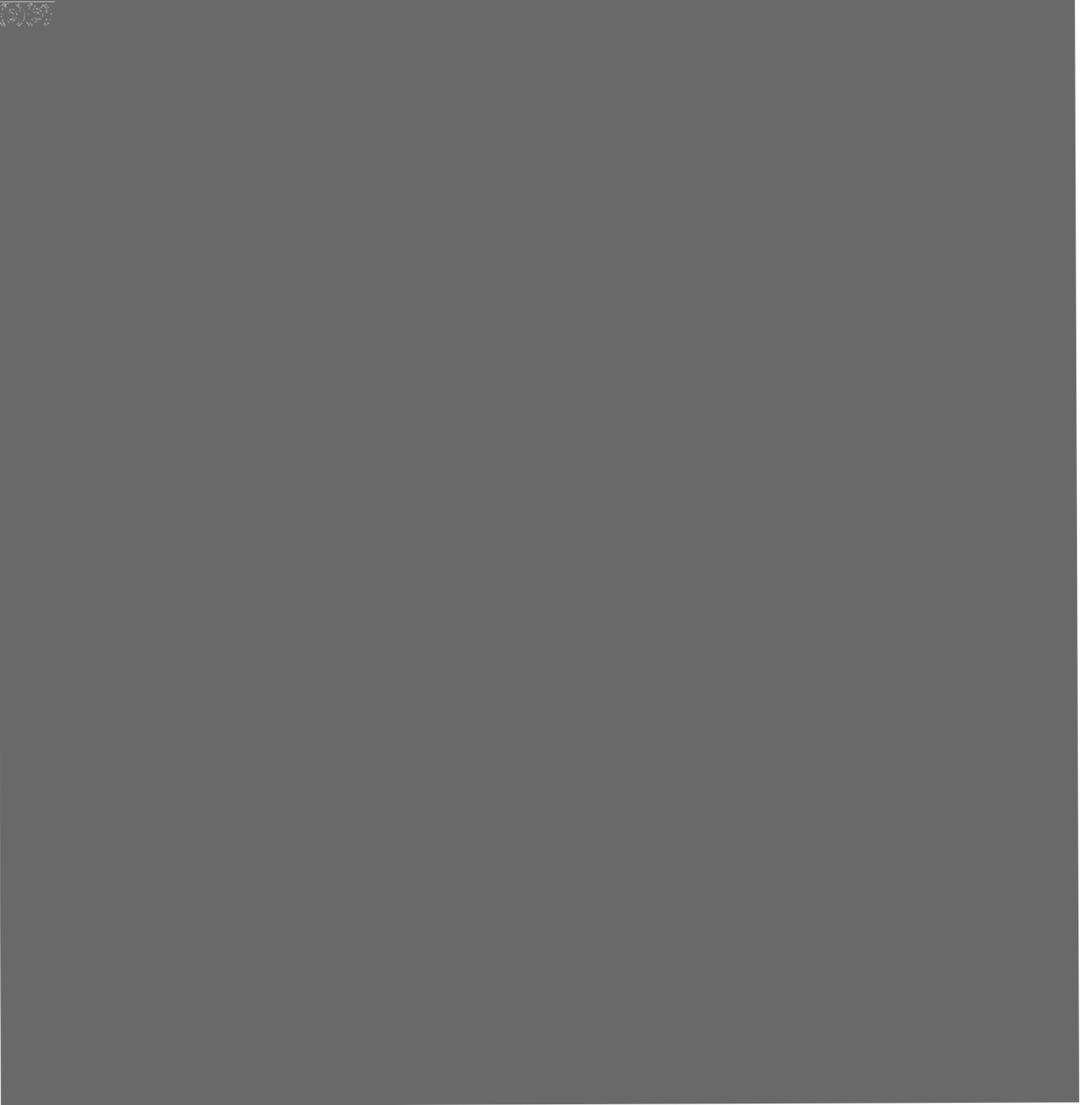


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The Military Extraterritorial Jurisdiction Act :The Continuing Problem of Criminal Jurisdiction over Civilians Accompanying the Armed Forces Abroad—Problem Solved?

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Introduction

The problem of American civilians who commit crimes while accompanying the Armed Forces abroad has long plagued the United States government. America's federal criminal jurisdiction generally ends at the nation's borders, and so it is left to host nation countries to use their own laws to prosecute Americans who commit crimes while accompanying our armed forces. In many cases, however, these countries decline prosecution of crimes committed by American civilians, even very serious ones. This is especially true if the crime is committed only against another American or American property.² It seems that, in most instances, the host nation decides not to expend resources to prosecute crimes that do not affect any of its citizens. While the U.S. government often asserts some administrative sanction against the person committing the crime—such as barring them from American military installations—more often than not, the perpetrators receive no real punishment.

United States v. Gatlin

This problem was recently highlighted in *United States v. Gatlin*,³ a case decided by the United States Court of Appeals for the Second Circuit. In *Gatlin*, the civilian defendant was

charged with sexually abusing his teenaged step-child, the daughter of his soldier wife, while living in military housing in Germany.⁴ However, the allegations did not come to light until the defendant, his wife, and step-daughter returned to the United States where the stepdaughter revealed that she was pregnant with his child.⁵ The defendant was charged with sexual abuse of a minor⁶ and plead guilty, but before the plea was accepted, he moved to dismiss the indictment for lack of jurisdiction.⁷

The district court ruled that it had jurisdiction to try the defendant, finding that the American military housing area in Germany where the acts occurred was within the "special maritime and territorial jurisdiction of the United States," as defined in § 7 of Title 18.⁸ The Court of Appeals reversed, holding that it was clear from the legislative history that Congress intended § 7(3) to apply exclusively to the territorial United States, and therefore the overseas military housing area was not within the special maritime and territorial jurisdiction.⁹ Accordingly, § 2243(a) did not apply to the defendant's acts and the district court lacked jurisdiction to try him.¹⁰

In his opinion, Judge José Cabranes of the Second Circuit traced the history of criminal prosecutions of civilians accompanying the military overseas. He noted that various commen-

1. The author is the Chief Counsel of the Subcommittee on Crime of the Committee on the Judiciary of the U.S. House of Representatives. In that capacity he was one of the drafters of and played a key role during the drafting of the House version of The Military Extraterritorial Jurisdiction Act of 2000, H.R. 3380, 106th Cong. (2000) (enacted into law as 18 U.S.C. §§ 3261-3267 (2000)), and the amendment process of the bill as it passed through the House. He also was the staff person principally responsible for drafting of the House Committee on the Judiciary's report on House Bill 3380, H.R. REP. NO. 106-778, pt. 1 (2000). As such, the author wishes to note that any similarity between the language of the House Report and this article is unintended, although perhaps unavoidable.

2. Richard Roesler, *Civilians in Military World Often Elude Prosecution*, STARS & STRIPES, Apr. 10, 2000, at 3. In his report, Roesler notes recent incidents of rape, arson, drug trafficking, assaults, and burglaries that went unpunished when the host nation declined to prosecute.

3. 216 F.3d 207 (2d Cir. 2000).

4. *Id.* at 209-10.

5. *Id.*

6. 18 U.S.C. § 2243(a) (Supp. IV 1999).

7. 216 F.3d at 210.

8. Section 7(3) of Title 18 defines the "special maritime and territorial jurisdiction of the United States" to include:

any lands reserved or acquired for the use of the United States, and under the exclusive or concurrent jurisdiction thereof, or any place purchased or otherwise acquired by the United States by consent of the legislature of the state in which the same shall be, for the erection of a fort, magazine, arsenal, dockyard, or other needful building.

18 U.S.C. § 7(3) (2000).

9. 216 F.3d at 220.

tators "have urged Congress for over four decades to close the jurisdictional gap by extending the jurisdiction of Article III courts to cover offenses committed on military installations abroad and elsewhere by civilians accompanying the armed forces."¹¹ He emphasized that the inaction by Congress could hardly be blamed on a lack of awareness of the jurisdictional issue; therefore the court's decision to overturn the defendant's conviction was "only the latest consequence of Congress's failure to close the jurisdictional gap."¹² Because of the significance of this problem, Judge Cabranes took "the unusual step of directing the Clerk of the Court to forward a copy of [the] opinion to the Chairmen of the Senate and House Armed Services and Judiciary Committees."¹³

The Congressional Response

Coincidentally, at the same time *Gatlin* was making its way through the courts, Congress was working to close the jurisdictional gap that had set *Gatlin* free. On 22 November 2000, the President signed into law Senate Bill 768, the Military Extraterritorial Jurisdiction Act of 2000 (MEJA or Act).¹⁴ The Act creates a new federal crime which makes punishable conduct outside the United States that would constitute a felony under federal law if engaged in within the special maritime and territorial jurisdiction of the United States.¹⁵ The new criminal pro-

vision applies only to two groups of people: persons employed by or accompanying the armed forces outside of the United States, and persons who are members of the armed forces.¹⁶ The punishment for committing the new crime is that which would have been imposed under federal law had the crime been committed in the United States.¹⁷

The MEJA was first introduced by Senator Jeff Sessions (Republican-Alabama) on 13 April 1999 as Senate Bill 768.¹⁸ Although the Senate did not hold hearings on the bill, it considered it on the floor of the Senate on 1 July 1999, where it was slightly amended¹⁹ and passed by unanimous consent.²⁰

After the bill passed the Senate, the Departments of Justice and Defense raised concerns about aspects of the bill.²¹ In response to these concerns, Representative Saxby Chambliss (Republican-Georgia) rewrote the legislation, together with Representative Bill McCollum (Republican-Florida), the Chairman of the House Subcommittee on Crime, and introduced it in the House on 16 November 1999 as a separate bill.²² The House Committee on the Judiciary, through its Subcommittee on Crime, held a hearing on that bill, House Bill 3380, on 30 March 2000, at which representatives of the Departments of Defense and Justice testified in support of the House bill.²³ House Bill 3380 was then substantially amended during debates in the Subcommittee on Crime and the full Judiciary

10. *Id.*

11. *Id.* at 221-22 (citing several articles, including: Thomas G. Becker, *Justice on the Far Side of the World: The Continuing Problem of Misconduct by Civilians Accompanying the Armed Forces in Foreign Countries*, 18 HASTINGS INT'L & COMP. L. REV. 277 (1995); Peter D. Ehrenhaft, *Policing Civilians Accompanying the United States Armed Forces Overseas: Can United States Commissioners Fill the Jurisdictional Gap?*, 36 GEO. WASH. L. REV. 273 (1967); Robinson O. Everett & Laurent R. Hourcle, *Crime Without Punishment - Ex-Servicemen, Civilian Employees and Dependents*, 13 A.F. L. REV. 184 (1971); Susan S. Gibson, *Lack of Extraterritorial Jurisdiction over Civilians: A New Look at an Old Problem*, 148 MIL. L. REV. 114 (1995); Gregory A. McClelland, *The Problem of Jurisdiction over Civilians Accompanying the Forces Overseas - Still with Us*, 117 MIL. L. REV. 153 (1987)).

12. *Id.* at 222-23. Judge Cabranes also noted that numerous bills to close the gap had been introduced in Congress over the last forty years, but none of them had become law. For a representative sample of the bills that have been introduced for this purpose, see S. 2083, 104th Cong. (1996); H.R. 5808, 102d Cong. (1992); S. 147, 101st Cong. (1989); H.R. 255, 99th Cong. (1985); H.R. 763, 95th Cong. (1977); S. 1, 94th Cong. (1975); S. 2007, 90th Cong. (1967).

13. 216 F.3d at 223.

14. 18 U.S.C. §§ 3261-3267 (2000).

15. *Id.* § 3261(a).

16. *Id.*

17. *Id.*

18. S. 768, 106th Cong. (1999).

19. 146 CONG. REC. S8197 (daily ed. July 1, 1999) (statement of Senator Leahy).

20. *Id.*

21. Letter from Judith A. Miller, General Counsel, Department of Defense, to Sen. John W. Warner, Chairman, Committee on Armed Services, United States Senate (Sept. 3, 1999); Letter from Robert Rabin, Assistant Attorney General for Legislative Affairs, Department of Justice, to Rep. Henry J. Hyde, Chairman, Committee on the Judiciary, U.S. House of Representatives (Oct. 13, 1999) (both letters on file with the Subcommittee on Crime). The letters expressed the respective views of those departments on Senate Bill 768 in the form it was first passed by the Senate. In those letters, both departments opposed enactment of the provision that would have extended court-martial jurisdiction over civilians.

22. H.R. 3380, 106th Cong. (1999).

Committee²⁴ and passed by the House by voice vote on 25 July 2000.²⁵ By agreement among Senator Sessions, Representative Chambliss, and Representative McCollum (who oversaw the amendment process of the legislation), instead of sending House Bill 3380 to the Senate, the House substituted the text of the bill as passed by the House (that is, as it had been revised by the House Judiciary Committee) for the text of Senate Bill 768. The House passed the revised Senate bill and sent it back to the Senate.²⁶

On 25 October 2000, the Senate voted on the amended version of Senate Bill 768 and once again passed the bill by unanimous consent.²⁷ The President signed the bill into law on 22 November 2000.²⁸

The Military Extraterritorial Jurisdiction Act of 2000

The MEJA enacted new chapter 212 to Title 18 of the United States Code, entitled "Military Extraterritorial Jurisdiction." The new chapter consists of seven sections, each of which is discussed below.

Section 3261. Criminal Offenses Committed by Certain Members of the Armed Forces and by Persons Employed by or Accompanying the Armed Forces Outside the United States

Section 3261 is the heart of the new chapter, and states the new offense created by the Act. It creates a new federal crime

involving conduct engaged in outside the United States by members of the armed forces or by persons employed by or accompanying the armed forces abroad that would be a felony if committed within the United States.²⁹ While the language of the Act uses the jurisdictional phrase "if committed within the special maritime and territorial jurisdiction of the United States," the House Report on House Bill 3380 states that conduct that would be a federal crime regardless of where it takes place in the United States, such as the drug crimes in Title 21, also falls within the scope of § 3261.³⁰

As discussed above, prosecutions for violations of the MEJA may be brought only against persons who fall within two broad categories, both defined in the statute: (1) persons who are employed by or accompanying the armed forces outside the United States; or (2) persons who are members of the armed forces and subject to the Uniform Code of Military Justice (UCMJ) at the time the conduct occurs.³¹ The maximum punishment for the crime is determined by cross referencing the maximum punishment provided for in the federal statute that makes the same conduct an offense if committed in the United States.³²

In some cases, conduct may violate both § 3261 and another federal statute having extraterritorial application. In such cases, according to the House Report, the government may proceed under either statute.³³ The House Report also noted that:

it may be helpful in charging violations of § 3261 for prosecutors to make some reference

23. *Military Extraterritorial Jurisdiction Act of 1999: Hearings on H.R. 3380 Before the Subcomm. on Crime of the House Comm. on the Judiciary*, 106th Cong. 9 (2000) [hereinafter *Hearings*].

24. See H.R. REP. NO. 106-778, pt. 1 (2000); see also 146 CONG. REC. H6930-32 (daily ed. July 25, 2000) (prepared statement of Rep. Bill McCollum introduced into the record during the House debate on H.R. 3380).

25. 146 CONG. REC. H6932 (daily ed. July 25, 2000). The Clinton Administration reiterated its support for the amended bill. See Office of Management and Budget, Statement of Administration Policy on H.R. 3380 (July 25, 2000), at <http://www.whitehouse.gov> (OMB, legislative, sap, 06-2).

26. 146 CONG. REC. H6940 (daily ed. July 25, 2000); see also 146 CONG. REC. H6931-32 (prepared statement of Rep. McCollum).

27. 146 CONG. REC. S11184 (daily ed. Oct. 26, 2000). The author of the original Senate bill and the ranking minority member of the Senate Committee on the Judiciary also noted their agreement with the analysis of the bill contained in the House Report and stated that the report reflected the intentions of the Senate. *Id.* at S11183 (statements of Sen. Sessions and Sen. Leahy).

28. The Military Extraterritorial Jurisdiction Act of 2000, Pub. L. No. 106-523, 114 Stat. 2488.

29. 18 U.S.C. § 3261(a) (2000).

30. H.R. REP. NO. 106-778, at 14-15 & n.27 (2000).

31. 18 U.S.C. § 3261(a).

32. *Id.* The House Report on House Bill 3380 provides an example of how the maximum punishment under § 3261 would be determined:

If a person described in subsection (a) were to engage in conduct outside the United States that would violate section 2242 of title 18 (relating to sexual abuse) were it to have occurred on Federal property within the United States, that conduct will violate new section 3261 and may be punished by a United States court in the same manner provided for in section 2242. The offense to be charged, however, is a violation of section 3261, not section 2242. Section 2242 only determines the maximum punishment that may be imposed for the violation of section 3261. A violation of section 2242 would not be charged.

H.R. REP. NO. 106-778, at 15.

to the statute that would have been violated had the act occurred within the United States, so as to put the defendant on notice of the elements of the crime that the government will attempt to prove and the maximum punishment that may be imposed for the violation of section 3261.³⁴

Section 3261(b) limits prosecutions under the MEJA if a foreign government, in accordance with jurisdiction recognized by the United States, has prosecuted or is prosecuting the suspect for the conduct that constitutes the offense, unless the Attorney General or Deputy Attorney General, or a person acting in either of those capacities, approves otherwise.³⁵ In short, this provision allows the United States a "second bite at the apple" in order to prosecute the defendant a second time, presumably when it believes that the punishment meted out by the host nation is insufficient.

Subsection 3261(c) recognizes and maintains the possible concurrent jurisdiction of courts-martial, or other military courts, commissions, or tribunals in appropriate cases.³⁶ This is an important provision, but should be distinguished from subsection (d), which prohibits prosecutions under § 3261 of members of the armed forces.³⁷ Whereas § 3261(c) provides for concurrent jurisdiction over civilians in limited circumstances, § 3261(d) confers exclusive jurisdiction to the military over

members of the armed forces, unless the person is no longer subject to the UCMJ or is alleged to be the codefendant of one or more civilians.³⁸ Because properly discharged service members may not be recalled to duty, the government was, prior to enactment of the MEJA, powerless to prosecute them under the UCMJ or federal law, for acts they committed outside the United States, a problem that has plagued the military for some time.³⁹ Section 3261(d) cures this jurisdictional defect, enabling the government to prosecute soldiers who commit crimes but are discharged before their conduct is discovered. It may also allow the government to prosecute a person who commits a crime while in federal service as a member of a reserve component but then returns to civilian life and is no longer subject to the UCMJ.⁴⁰

As noted above, the limitation on prosecution of military members of subsection (d) also does not apply if the military member is charged for the offense together with at least one other person who is not subject to the UCMJ.⁴¹ According to the House Report, the provision "is designed to allow the Government to try the military member together with a non-military co-defendant in a United States Court."⁴² In such a case, concurrent jurisdiction would exist to try the person under either the UCMJ or the MEJA.

33. *Id.* at 15 n.28 (citing *United States v. Batchelder*, 442 U.S. 114 (1979)).

34. *Id.* at 15 n.29.

35. 18 U.S.C. § 3261(b). The House Report notes that in most instances, this recognition will occur through a status of forces agreement entered into by the United States and the host nation. H.R. REP. NO. 106-778, at 16.

36. 18 U.S.C. § 3261(c). The concurrent jurisdiction referred to in § 3261(c) is "with respect to offenders or offenses that by statute or by the law of war may be tried by a court-martial, military commission, provost court, or other military tribunal." See, e.g., UCMJ arts. 2(a) (7) -(12), 18 (2000).

37. 18 U.S.C. § 3261(d).

38. *Id.*; see UCMJ art. 2(c). Under current law, persons entitled to receive retired pay (generally paid only to those who served for twenty years or more on active duty) may be recalled to active duty for the purpose of being tried for an offense under the UCMJ after they are discharged. Retired members of a reserve component who are receiving hospitalization from an armed force also may be recalled to active duty and tried by court-martial. UCMJ art. 2(a)(4) and (5). But generally, once properly discharged, service members are no longer subject to courts-martial jurisdiction. MANUAL FOR COURTS MARTIAL, UNITED STATES, R.C.M. 202(a) discussion (2000) [hereinafter MCM].

39. See, e.g., *Toth v. Quarles*, 350 U.S. 11 (1955); *Smith v. Vanderbush*, 47 M.J. 59 (1997). See also Everett & Hourcle, *supra* note 11; Note, *Jurisdictional Problems Related to the Prosecution of Former Servicemen for Violations of the Law of War*, 56 VA. L. REV. 947 (1970).

40. Members of the military who serve in one of the reserve components are subject to the UCMJ only when serving in a federal duty status. See UCMJ arts. 2(a)(1), 2(a)(3), 2(d). In order to use the UCMJ to prosecute members of the Reserves or National Guard who commit illegal acts abroad while in federal service, the member must be called to active duty. *Id.* art. 2(d)(1). The language of § 3261(d) permits federal prosecution of military members when they "cease[] to be subject to" the UCMJ. According to the House Report, this section of the Act now "gives the government concurrent jurisdiction with the military over members of the reserve components who commit crimes overseas." H.R. REP. NO. 106-778, at 11 n.23. Of course, because reservists remain subject to recall for crimes committed while in federal service, some may view the language of the statute as barring a prosecution under § 3261, yet this interpretation does not appear to be the position of the drafters of the Act, as reflected in the report.

41. 18 U.S.C. § 3261(d)(2).

42. H.R. REP. NO. 106-778, at 16.

Section 3262. Arrest and Commitment

This section of the MEJA authorizes Department of Defense (DOD) personnel serving in law enforcement positions to arrest and detain persons who are suspected of violating § 3261.⁴³ While military police and criminal investigators do arrest and detain civilians who commit crimes and infractions (such as traffic violations) on military property, this authority is limited and the arrested individuals are promptly turned over to local civilian authorities.⁴⁴ Section 3262 broadens military authorities' power to arrest and hold civilians who commit crimes while accompanying the armed forces abroad. To exercise this power, the DOD law enforcement personnel must be designated and given authority by the Secretary of Defense.⁴⁵ The section also requires a normal probable cause determination for making arrests, that is, probable cause exists to believe that a person has violated § 3261(a).⁴⁶ Once arrested, military officials must deliver the person arrested to the custody of civilian law enforcement authorities of the United States as soon as practicable, unless doing so would require removal to the United States without prior order from a federal magistrate or the Secretary of Defense in accordance with § 3264, or if the person is to be tried under the UCMJ.⁴⁷

Section 3263. Delivery to Authorities of Foreign Countries

In the event that a host nation chooses to use its own laws to prosecute a person for acts that also violate § 3261, American military officials must deliver the accused to the custody of "appropriate authorities of [the] foreign country" pursuant to section 3263.⁴⁸ Delivery to foreign authorities is not automatic, however. Appropriate foreign officials, as determined by the Secretary of Defense, in consultation with the Secretary of State, must first request that the accused be delivered to them.⁴⁹

Additionally, the accused may only be handed over if delivery is authorized by a treaty or other international agreement to which the United States is a party.⁵⁰ In most cases, this will be a status of forces agreement.

Sections 3264 and 3265. Overview

The MEJA contains an unusual and complex pair of sections, one that limits the power of the government to return a defendant to the United States until certain conditions have been met, and another that requires some of the initial proceedings in a case under the Act to be held before the defendant is returned to the United States. These provisions were added during House deliberations on House Bill 3380, principally to address the concerns of the American Civil Liberties Union (ACLU) and the Federal Education Association (FEA), the union that represents teachers in DOD schools.⁵¹ At the hearing on House Bill 3380, the FEA representative expressed concern that the bill, as it was introduced, would have allowed the Government to forcibly return a person to the United States based solely on an allegation, before any real investigation into the merits, with the potential that an innocent defendant might have to bear the expensive costs of returning to a far away duty station if charges were later dismissed.⁵²

In response to these concerns, Representative McCollum offered an amendment to the bill that added two new sections. The first limits the power of military and civil law enforcement authorities to forcibly return a defendant to the United States. The second provides for some of the initial proceedings in the criminal case to occur prior to the defendant being returned to the United States and affords the defendant some control over whether and when he is returned.

43. 18 U.S.C. § 3262.

44. See Matthew J. Gilligan, *Opening the Gates?: An Analysis of the Military Law Enforcement Authority Over Civilian Lawbreakers On and Off the Federal Installation*, 161 MIL. L. REV. 1, 18 (1999). See also U.S. DEP'T OF ARMY, REG. 190-30, MILITARY POLICE INVESTIGATIONS, para. 4-8 (1 June 1978); U.S. DEP'T OF ARMY, REG. 195-2, CRIMINAL INVESTIGATIVE ACTIVITIES, para. 3.21 (30 Oct. 1985).

45. *Id.* § 3262(a).

46. *Id.*

47. *Id.* § 3262(b). See *infra* notes 49 through 63 and accompanying text.

48. *Id.* § 3263.

49. *Id.* § 3263(a)(1) and (b).

50. *Id.* § 3263(a)(2).

51. *Hearings, supra* note 23, at 27-31 (statement of Jan Mohr, President, Federal Education Association).

52. *Id.* In light of the responsive changes to the bill, both the ACLU and the FEA supported the passage of House Bill 3380. Letter from Mary Elizabeth Teasley, Director of Government Relations, National Education Association, and Rachel King, Legislative Counsel, American Civil Liberties Union, to Rep. Bill McCollum, Chairman, Subcommittee on Crime, U.S. House of Representatives, and Rep. Bobby Scott, Ranking Minority Member, Subcommittee on Crime, U.S. House of Representatives (July 12, 2000) (on file with the Subcommittee on Crime).

Section 3264. Limitation on Removal

Section 3264 addresses the due process concerns of the ACLU and the FEA by limiting the power of military and civil law enforcement officials to remove a person arrested for or charged with a violation of § 3261 from the country in which they are arrested or found.⁵³ According to the House Report, the phrase "arrested for or charged with" was used "to make it clear that the limitation applies to situations where the person has been arrested and also where the person has not been arrested but has been charged by indictment or the filing of an information."⁵⁴

Section 3264(a) sets forth the general limitation that a person arrested or charged with a violation of § 3261 may not be forcibly returned to the United States or taken to any foreign country other than a country in which the person is believed to have committed the crime or crimes for which they have been arrested or charged.⁵⁵ This provision means that once American authorities arrest a person for a violation of § 3261, whether based on a citizen's complaint or after an information or indictment is returned against the person, the defendant must be held in the country in which he was arrested or in the country in which the crime is believed to have been committed. If a person commits a crime in one country and then flees that country, military authorities have the option of returning him to the country in which the crime was committed.⁵⁶

Section 3264(b) establishes five exceptions to the general limitation on forced removals. The first two exceptions relate to pretrial detention proceedings in federal courts.⁵⁷ Sections 3264(b)(1) and (2) allow a federal magistrate judge to order

removal of a defendant to the United States to appear at a detention hearing⁵⁸ or to be detained pending trial.⁵⁹ For the latter to occur, the defendant must waive physical presence at the detention hearing, as the magistrate judges are in the United States.⁶⁰

The third exception to § 3264(a) allows removal to the United States to allow the defendant's presence, unless waived, at a preliminary examination held pursuant to the Federal Rules of Criminal Procedure (FRCP).⁶¹ While a defendant is not entitled to such a hearing if an indictment is returned or information filed against him, the Act requires that if such a hearing is to take place it must occur within the time limits set forth in the rules, and the defendant must be removed to the United States in time to attend the hearing.⁶²

Finally, § 3264(b) contains two additional catch-all exceptions to the Act's limitation on forced removal of a defendant to the United States. First, a federal magistrate judge has blanket authority to order a defendant's removal at any time.⁶³ The House Report notes that while "removal of a person for a reason other than [those discussed above] would be rare, paragraph (b)(4) grants judges the discretion to order such removal."⁶⁴ Second, DOD officials may remove the defendant from the place where he or she is arrested if the Secretary of Defense determines that removal is required by military necessity.⁶⁵ As explained in the House Report, this authority is to be used sparingly, such as "in situations where the person is arrested in an 'immature theater' or in such other place where it is not reasonable to expect that the initial proceedings required by section 3265 can be carried out."⁶⁶ Thus, under this authority, a defendant may be transferred to a place other than where the crime was committed or where the person was arrested, but only to the

53. 18 U.S.C. § 3264(a); H.R. REP. NO. 106-778, at 17 (2000).

54. H.R. REP. NO. 106-778, at 17.

55. 18 U.S.C. § 3264(a).

56. *Id.*

57. See 18 U.S.C. § 3142. Sections 3142(e) and (f) are the federal equivalent to the military's pretrial confinement rules. See MCM, *supra* note 38, R.C.M. 305.

58. 18 U.S.C. § 3264(b)(1). If a Federal magistrate orders a defendant removed pursuant to this subsection, the MEJA requires that he be returned to the United States in time for the detention hearing. H.R. REP. NO. 106-778, at 17.

59. 18 U.S.C. § 3264(b)(2). Subsection (b)(2) requires prompt removal of the defendant to the United States in order to serve the detention. A defendant ordered into pretrial detention may not be held by military authorities. H.R. REP. NO. 106-778, at 17.

60. See *infra* notes 64-79 and accompanying text.

61. See FED. R. CRIM. P. 5, 5.1.

62. 18 U.S.C. § 3264(b)(3); H.R. REP. NO. 106-778, at 17.

63. 18 U.S.C. § 3264(b)(4).

64. H.R. REP. NO. 106-778, at 18 (2000).

65. 18 U.S.C. § 3264(b)(5). The Secretary of Defense may delegate his authority to make this determination as necessary. See 10 U.S.C. § 113(b) (2000).

66. H.R. REP. NO. 106-778, at 18.

"nearest United States military installation outside the United States that is adequate to detain the person and facilitate the initial proceedings described in section 3265."⁶⁷

Section 3265. Initial Proceedings

Section 3265 is the second provision added to the bill by the McCollum amendment, and is intended to harmonize the extra-territorial arrest authority of § 3262 with the preliminary proceedings procedures of the FRCP.⁶⁸ It governs the initial appearance under FRCP 5 of a person arrested for or charged with a violation of § 3261 and not delivered to foreign authorities for prosecution.⁶⁹ Section 3265(a)(1) requires that the initial appearance be conducted by a federal magistrate judge, and allows the magistrate judge to conduct the initial appearance of the defendant before the court by telephone "or such other means that enables voice communication among the participants"⁷⁰ Although these procedures are not required by the statute, and the judge retains the discretion to order the defendant's return to the United States,⁷¹ as a practical matter most initial appearances under the Act will probably occur by this means. Given the perfunctory nature of the initial appearance, there would be little benefit to the judge requiring the defendant to be physically present. Congress clearly expected that this provision would be used routinely. As the House Report states, "in the vast majority of cases, the initial appearance of a person arrested or charged under section 3261 will be conducted by

telephone or other appropriate means so that the defendant may remain in the country where he or she was arrested or was found."⁷² The report also notes that while the appearance may be conducted by telephone, the preferred means is by video teleconference or similar means whenever possible.⁷³

Section 3265(b) governs any detention hearing held under § 3142(f) of Title 18. As with the initial appearance, detention hearings must be conducted by federal magistrate judges.⁷⁴ If a detention hearing is held, the judge may also conduct this hearing by telephone or such other means that allow all parties to participate and to be heard by all other participants.⁷⁵ Unlike the initial appearance, however, the detention hearing may only be conducted in this manner if requested by the defendant.⁷⁶ The act treats this hearing differently from the initial appearance because defendants have the right to testify and present witnesses and other information and to confront witnesses against them at detention hearings; rights that have constitutional dimensions.⁷⁷ Therefore, if the defendant does not request that the hearing be conducted by electronic means, he must be returned to the United States in time for the hearing.⁷⁸ Even if the defendant requests that the hearing be conducted in this manner, the judge retains the discretion to deny the request.⁷⁹

Section 3265(c), which provides for the appointment of military counsel to represent defendants accused of violating § 3261 during the initial proceedings described in the Act, is sure

67. 18 U.S.C. § 3264(b)(5). The House Report also provides that "[w]hile new section 3264(b)(5) states that the installation must be adequate to 'facilitate the initial appearance described in section 3265(a),' as a practical matter, it should also be adequate to facilitate the proceedings described in 3265(b)." H.R. REP. NO. 106-778, at 19 n.36.

68. See FED. R. CRIM. P. 3-5.1.

69. 18 U.S.C. § 3265(a)(1).

70. *Id.* § 3265(a)(1)(A) and (B).

71. See *supra* notes 61-62 and accompanying text.

72. H.R. REP. NO. 106-778, at 19.

73. *Id.*

74. 18 U.S.C. § 3265(b)(1).

75. *Id.* § 3265(b)(2).

76. *Id.*

77. See, e.g., *United States v. Smith*, 79 F.3d 1208 (D.C. Cir. 1996). Of course, if the defendant chooses to remain in the foreign country, he will effectively waive his right to be physically present before the judge. H.R. REP. NO. 106-778, at 20.

78. H.R. REP. NO. 106-778, at 20.

79. *Id.* The House Report suggests several factors that the judge should consider in making this decision:

whether the Government opposes the defendant's request (to include considerations based on military exigencies or special circumstances bearing on the issue), the likelihood from information presented at the initial appearance that the defendant will be ordered detained, and whether the parties intend to present live witness testimony at the hearing and the place of residence of any witnesses.

Id. at 20. It is clear from the report that this is not intended to be an exhaustive list of the factors that the judge should consider.

to cause some concern in military circles. The terms of the MEJA provide for the appointment of "qualified military counsel" to defendants "entitled to have counsel appointed for purposes of such a proceeding."⁸⁰ Such appointments, however, should be limited only to cases in which the defendant is financially unable to retain counsel, or if no qualified civilian counsel is available in the country where the initial proceeding will be held.⁸¹ The judge may appoint only those members of the military designated for that purpose by the Secretary of Defense.⁸² Neither the Act or the House Report state which officers must be so designated (except that they must be judge advocates) or how the fact of their designation is to be made known to the non-military magistrate judge. Clearly, this issue will have to be addressed in the implementing regulations for the Act, and perhaps also in regulations relating to military law in general. Representation by appointed military counsel is limited to only the initial proceedings described in § 3265, and then only if the defendant is not removed to the United States for those proceedings.⁸³

Section 3266. Regulations

Section 3266 of the Act requires the Secretary of Defense to prescribe regulations governing the apprehension, detention, delivery, and removal of persons under the MEJA.⁸⁴ The regulations are also to provide for the facilitation of the initial proceedings prescribed in § 3265.⁸⁵ Additionally, the regulations require that, to the fullest extent practicable, notice be given to those civilians subject to the statute who are not U.S. nationals, that they are potentially subject to the criminal jurisdiction of the United States.⁸⁶

The Act requires the Secretary of Defense to consult with the Secretary of State and the Attorney General in developing the regulations required by § 3266.⁸⁷ As an indication that Congress intends to use its oversight power to monitor the way in which the military implements the Act, it took the unusual step of requiring the Secretary of Defense to submit a report containing the proposed regulations, and such other information as the Secretary may determine appropriate, to the House and Senate Committees on the Judiciary.⁸⁸

Section 3267. Definitions

Section 3267 defines several key words and phrases used throughout the new chapter. Most important among them are the phrases "employed by the Armed Forces outside the United States" and "accompanying the Armed Forces outside the United States." The act defines the former to mean a DOD civilian employee, including a nonappropriated fund instrumentality employee, a DOD contractor or subcontractor of any level, or an employee of such contractor or subcontractor.⁸⁹ It specifically excludes from this definition persons who are nationals of the country in which the crime is believed to have been committed or persons ordinarily resident there.⁹⁰ The phrase "accompanying the Armed Forces outside the United States" is defined as persons who are dependents of and reside with military members, DOD civilian employees or NAF employees, or DOD contractors and subcontractors or their employees outside the United States.⁹¹ As with the prior definition, this term also does not include persons who are nationals of the country in which the crime is believed to have been committed or persons ordinarily resident there.⁹² Finally, the House

80. 18 U.S.C. § 3265(c)(1). Qualified military counsel are those who have graduated from an accredited law school or are members of the bar of a federal court or the highest court of a state that are certified by their respective Judge Advocate Generals as competent to perform the required duties. *Id.* § 3265(c)(2).

81. H.R. REP. NO. 106-778, at 21-22.

82. *Id.*

83. *Id.*

84. 18 U.S.C. § 3266(a).

85. *Id.*

86. *Id.* § 3266(b). Failure to provide this notice does not defeat the jurisdiction of the United States over the person or provide a defense to any proceeding arising under the MEJA. *Id.* § 3266(b)(2).

87. *Id.* § 3266(a) and (b).

88. *Id.* § 3266(c). In fact, the Act prohibits the regulations from taking effect until ninety days have passed from the date the report is submitted to those committees, and any amendments to the regulations also must first be submitted to the committees before they may take effect.

89. 18 U.S.C. § 3267(1)(A) and (B).

90. *Id.* § 3267(1)(C).

91. *Id.* § 3267(2)(A) and (B).

92. *Id.* § 3267(2)(C).

Report also makes it clear that juveniles are included within this term.⁹³

Issues Not Addressed in the Act

As thorough as the MEJA is, there are several issues that it does not address, but which must be examined in order to properly implement the statute. While most of these gray areas likely will be addressed through regulations or memorandums of agreement between the Departments of Defense and Justice, some may require further congressional action.

The Military's Role After a Defendant is Arrested

One gray area involves what role the military will play once a person is arrested for a suspected violation of the MEJA. Will military authorities contact a U.S. Attorney directly and present the evidence they have collected so far, or will officials at the Justice Department in Washington take on that responsibility? Will military officials continue to investigate the case and collect evidence against the defendant after the initial arrest? While the Act does authorize military officials to arrest and detain a civilian who may have violated § 3261, it is silent as to whether military officials are to investigate the case any further. The Act clearly indicates a preference that civilian authorities take charge of the defendant at the earliest possible time, and so it seems reasonable that Congress did not intend military authorities to actively investigate cases. If so, it is also unlikely that Congress intended that the military have any role in making the decision as to when and where a case would be presented to a U.S. Attorney for prosecution. The likely resolution of this issue is that the military will communicate the fact of an arrest under the act to the Department of Justice (DOJ) in Washington. The DOJ will then conduct any further investigation (or at least take the lead in a joint investigation with military criminal investigators), and will decide if and where to proceed against the defendant.

Assignment of a Case to a United States Attorney

Another related gray area is how to determine which U.S. Attorney's office will handle the prosecution of a case under the act. Usually, law enforcement authorities in the judicial district where the crime occurred approach the U.S. Attorney there with evidence of the crime and ask for an indictment of the person suspected of committing the crime. It is unclear under the

MEJA which U.S. Attorney is responsible for proceeding against alleged offenders. If one U.S. Attorney declines to seek an indictment, could DOJ officials approach other U.S. Attorneys until they find one who is willing to indict? As discussed below, determining where the initial proceedings will take place in advance of any prosecution could solve this problem, but until that occurs, the DOJ will have to develop some internal protocol to decide this question.

Venue for the Initial Proceedings of a Case Under the MEJA

The most significant issue left open by the Act is how Federal magistrate judges will be appointed to preside over the initial proceedings that are required for prosecutions under the Act. As discussed above, the drafters of the Act envisioned that most often, proceedings will occur before the defendant is returned to the United States, yet the Act does not specify the venue for these proceedings. The FRCP provide that venue for the "prosecution" of an offense is to be the district in which the offense is committed.⁹⁴ For offenses that are not committed in any judicial district, however, § 3238 of Title 18 determines the place of trial for the offense.⁹⁵ However, judges might not construe § 3238 to apply to the initial proceedings under the Act because the statute, by its terms, only determines the place of trial and nothing else. Unlike FRCP 18, the statute does not speak in terms of the "prosecution" of the offense.

Even if a court did look to the statute for guidance, its application could lead to conflicting decisions as to the jurisdiction in which the proceedings will be conducted. Under the MEJA, initial proceedings will often occur after the person is arrested but before the person is brought to the United States and, in many cases, also before any indictment is filed. Under § 3238, in such a case, venue would lie only in the District of Columbia. The government may, however, bring the defendant to the United States for trial at a place other than the District of Columbia (as there is no airport actually in that judicial district). In that circumstance, venue for trial would lie in the district to which the defendant was actually brought, that is, where the airplane first lands in the United States. Thus, applying the Federal venue statute to the Act might result in two different districts having jurisdiction over different portions of the case; clearly an unsatisfactory result.

In order to avoid this confusion, the government could simply use its best guess as to where the defendant might enter the United States and seek out a magistrate in that district to preside over the initial proceedings. Even so, no rule or statute specif-

93. H.R. REP. NO. 106-778, at 21-22. If the person committing the crime is a juvenile, however, the federal juvenile delinquency procedures apply. See 18 U.S.C. §§ 5031-5042 (2000).

94. FED. R. CRIM. P. 18.

95. 18 U.S.C. § 3238. This section provides that venue for trial lies in the place where the defendant is "arrested or first brought." If the person is not arrested or brought, then an indictment or information is to be filed in the district of the offender's last known residence. And if that is not known, then venue lies in the District of Columbia. *Id.*

ically authorizes a magistrate there to preside over those proceedings, and some magistrates may be reluctant to act without being able to rely on at least some authority. And, of course, if the government guessed wrong, the result might again be that a judge in one district would conduct the initial proceedings and a judge in another district would preside over the defendant's trial.

While this gray area is certainly not a fatal defect to prosecutions under the Act, the issue could be addressed by revising FRCP 18, or by promulgating a new rule that would apply to prosecutions brought under the Act. Because Congress generally allows the Judicial Conference of the United States and its various rules committees to propose changes in the several sets of rules of procedure, Congress could, instead, amend the statutory venue provision to address the unique procedures under the Act. For example, since prosecutions under this Act are not likely to be common, a single district could be established for all such prosecutions. Another approach could be that one of several districts would be identified for this purpose, and assigned based on where the alleged crime occurred (for exam-

ple, the Southern District of New York for crimes in Europe, the Southern District of Florida for crimes in Central and South America, and the District of Hawaii for crimes occurring in the Pacific rim countries).⁹⁶

Conclusion

The Military Extraterritorial Jurisdiction Act of 2000 is a significant development in America criminal law. It closes a jurisdictional gap in the law that has been a concern to DOD and DOJ officials for decades. By doing so, it will help the military instill confidence in its personnel and their families that the government is doing all it can to protect them when it sends them abroad in defense of the nation's interests. The passage of the Act will also build trust with our allies who will know that America can now more effectively police the actions of its personnel who are deployed to a foreign country. And, most importantly, the Act will help to ensure that justice is done whenever a member of our military or a person accompanying it abroad commits a crime.

96. The House Report on House Bill 3380 noted that the:

committee expects that the Department of Justice will develop a procedure for initiating proceedings under chapter 212, which will include some means for selecting the federal judicial district in which such proceedings will be commenced. The bill does not require, nor does it prohibit, that the initial proceedings of all cases brought under chapter 212 be held in the same judicial district. The committee notes that venue for the trial of a violation of section 3261 is governed by section 3238 of title 18. Nothing in the bill changes that. The committee also notes that, in some cases, initial proceedings under section 3265 may be conducted by a judge who does not sit in the judicial district in which a trial of the person arrested or charged may take place. That fact has no bearing on the determination of venue under section 3238.

H.R. REP. NO. 106-778, at 20.

RULES FOR THE USE OF FORCE BY COALITION CONTRACTORS IN IRAQ

NOTHING IN THESE RULES LIMITS YOUR INHERENT RIGHT TO TAKE ACTION NECESSARY TO DEFEND YOURSELF.

1. **CONTRACTORS:** Are noncombatants and may not defend Coalition military supplies or facilities while hostilities continue.

2. **CONTRACTED SECURITY FORCES:** Cooperate with Coalition and Iraqi Security Forces and comply with theater force protection policies. Do not avoid or run Coalition or Iraqi Security Force checkpoints. If authorized to carry weapons, do not aim them at Coalition or Iraqi Security Forces.

3. **USE OF DEADLY FORCE:** Deadly force is that force, which one reasonably believes will cause death or serious bodily harm. You may use **NECESSARY FORCE**, up to and including deadly force, against persons in the following circumstances:

- a. In self-defense;
- b. In defense of persons as specified in your contract;
- c. To prevent life threatening offenses against civilians.
- d. In defense of Coalition-approved property specified in your contract;

4. **GRADUATED FORCE:** You should use graduated force where possible. The following are some techniques you can use if their use will not unnecessarily endanger you or others.

- a. **SHOUT:** verbal warnings to HALT in native language.
(KIFF- ARMIK = STOP OR I'LL SHOOT)
(ERMY SE-LA-HACK = DROP YOUR WEAPON)
- b. **SHOVE:** physically restrain, block access, or detain.
- c. **SHOW:** your weapon and demonstrate intent to use it.
- d. **SHOOT:** to remove the threat only where necessary.

UNCLASSIFIED

31 December 2003

RULES FOR THE USE OF FORCE BY COALITION CONTRACTORS IN IRAQ

NOTHING IN THESE RULES LIMITS YOUR INHERENT RIGHT TO TAKE ACTION NECESSARY TO DEFEND YOURSELF.

5. **IF YOU MUST FIRE YOUR WEAPON:**

- (1) Fire only aimed shots.
- (2) Fire with due regard for the safety of innocent bystanders.
- (3) Immediately report incident and request assistance.

6. **CIVILIANS:** Treat Civilians with Dignity and Respect.

- a. Make every effort to avoid civilian casualties.
- b. You may stop, detain, search, and disarm civilian persons if required for your safety or if specified in your contract.
- c. Civilians will be treated humanely.
- d. Detained civilians will be turned over to the Iraqi Police or Coalition Forces as soon as possible.

7. **WEAPONS POSSESSION AND USE:** Possession and use of weapons must be authorized by U.S.CENTCOM and must be specified in your contract.

- a. You must carry proof of weapons authorization.
- b. You will maintain a current weapons training record.
- c. You may not join Coalition Forces in combat operations.
- d. You must follow Coalition weapons condition rules for loading and clearing.

UNCLASSIFIED

31 December 2003

(b)(6) (GS-14)

From: (b)(6) LTC, DoD OGC
Sent: Thursday, December 18, 2003 4:38 AM
To: (b)(6) (GS-14)
Subject: RE: ARMING CIVILIAN GOVERNMENT EMPLOYEES

(b)(6); (b)(7)(C); (b)(7)(D); 18 USC § 1350

-----Original Message-----

From: (b)(6) (GS-14) (b)(6)
Sent: Wednesday, December 17, 2003 03:20
To: (b)(6) LTC, DoD OGC
Cc: (b)(6) (O-6)
Subject: ARMING CIVILIAN GOVERNMENT EMPLOYEES

(b)(6); (b)(7)(C); (b)(7)(D); 18 USC § 1350

VR

(b)(6)

12/18/2003

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REPLY TO
ATTENTION OF

HEADQUARTERS
COMBINED JOINT TASK FORCE SEVEN
BAGHDAD, IRAQ
APO AE 09303

CJTF7-CG

23 July 2003

MEMORANDUM FOR SEE DISTRIBUTION

SUBJECT: CJTF-7 GENERAL ORDER NUMBER 1 -- Prohibited Activities for U.S. Department of Defense Personnel Present With Combined Joint Task Force Seven (CJTF-7) in Iraq

1. **PURPOSE:** To identify and proscribe conduct that is prejudicial to the maintenance of good order and discipline in Iraq.
2. **AUTHORITY:** Title 10, United States Code, Section 164(c) and the Uniform Code of Military Justice (UCMJ), Title 10, United States Code, Sections 801-940.
3. **APPLICABILITY:** This General Order is applicable to all United States military personnel while present in Iraq, as well as to all civilians serving with, employed by, or accompanying the Armed Forces of the United States while present in Iraq, *except for* personnel assigned to Defense Attaché Offices, United States Marine Corps Security Detachments, sensitive intelligence and counterintelligence activities that are conducted under the direction and control of the Chief of Mission/Chief of Station, and United States Government agencies and departments other than the Department of Defense and its subordinate military departments. This General Order is expressly applicable to all United States military personnel assigned or attached to, or serving with, the Coalition Provisional Authority. USCENCOM General Order 1A, 19 December 2000, enclosed, remains applicable in the USCENCOM Area of Operational Responsibility (AOR).
4. **STATEMENT OF MILITARY PURPOSE AND NECESSITY:** Current operations place United States Armed Forces in countries where local customs prohibit or restrict certain activities that are generally permissible in western societies. Restrictions upon these activities are essential to preserving U.S. / local relations and combined operations of U.S. and friendly forces. In addition, the high operational tempo combined with hazardous duty faced by U.S. forces under arms in the region makes it prudent to restrict certain activities in order to maintain good order and discipline and ensure optimum readiness.


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CJTF7-CG

SUBJECT: CJTF-7 GENERAL ORDER NUMBER 1 -- Prohibited Activities for U.S. Department of Defense Personnel Present With Combined Joint Task Force Seven (CJTF-7) in Iraq

5. PROHIBITED ACTIVITIES: Introduction, possession, sale, transfer, manufacture or consumption of any alcoholic beverage.
6. PUNITIVE ORDER: Paragraph 5 of this General Order is punitive. Persons subject to the Uniform Code of Military Justice may be punished under the Code. Civilians serving with, employed by, or accompanying the Armed Forces of the United States in the CJTF-7 Area of Operations may face criminal prosecution or adverse administrative action for violation of this General Order.
7. UNIT COMMANDER RESPONSIBILITY: Commanders and leaders will ensure that all personnel are briefed on the prohibitions and requirements of this General Order. Copies of this General Order will be prominently displayed in areas where personnel gather, such as unit bulletin boards and dining facilities.
8. CONFISCATION OF OFFENDING ARTICLES: Items determined to violate this General Order may be considered contraband and may be confiscated by command or law enforcement authorities. Before destruction of contraband, commanders or law enforcement personnel will coordinate with their servicing Judge Advocate.
9. EFFECTIVE DATE: This General Order is effective immediately and will remain in effect until rescinded. Military customs and other pre-clearance officials will enforce this General Order in their inspections of personnel and equipment prior to departure from the CJTF-7 Area of Operations and return to home station.
10. WAIVER AUTHORITY: Authority to grant exceptions to Paragraph 5 is delegated to Division Commanders and to the CJTF-7 Deputy Commanding General. Blanket waivers are not authorized.

Encl


RICARDO S. SANCHEZ
Lieutenant General, U.S. Army
Commanding

DISTRIBUTION:

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DEC 19 2000

CCJA

GENERAL ORDER NUMBER 1A (GO-1A)*

TITLE: Prohibited Activities for U.S. Department of Defense Personnel Present Within the United States Central Command (USCENTCOM) AOR.

PURPOSE: To identify conduct that is prejudicial to the maintenance of good order and discipline of all forces in the USCENTCOM AOR.

AUTHORITY: Title 10, United States Code, Section 164(c) and the Uniform Code of Military Justice (UCMJ), Title 10, United States Code, Sections 801-940.

APPLICABILITY: This General Order is applicable to all United States military personnel, and to civilians serving with, employed by, or accompanying the Armed Forces of the United States, while present in the USCENTCOM AOR *except for* personnel assigned to: Defense Attaché Offices; United States Marine Corps Security Detachments; sensitive intelligence and counterintelligence activities that are conducted under the direction and control of the Chief of Mission/Chief of Station; or other United States Government agencies and departments.

1. STATEMENT OF MILITARY PURPOSE AND NECESSITY: Current operations and deployments place United States Armed Forces into USCENTCOM AOR countries where local laws and customs prohibit or restrict certain activities which are generally permissible in western societies. Restrictions upon these activities are essential to preserving U.S. / host nation relations and combined operations of U.S. and friendly forces. In addition, the high operational tempo combined with often-hazardous duty faced by U.S. forces in the region makes it prudent to restrict certain activities in order to maintain good order and discipline and ensure optimum readiness.

2. PROHIBITED ACTIVITIES:

a. Purchase, possession, use or sale of privately owned firearms, ammunition, explosives, or the introduction of these items into the USCENTCOM AOR.

b. Entrance into a Mosque or other site of Islamic religious significance by non-Moslems unless directed to do so by military authorities, required by military necessity, or as part of an official tour conducted with the approval of military authorities and the host nation. This provision may be made more restrictive by Commanders when the local security situation warrants.

c. Introduction, possession, sale, transfer, manufacture or consumption of any alcoholic beverage within the countries of Kuwait and Saudi Arabia. In all other countries of the USCENTCOM AOR, U.S. military and civilian personnel will conform to their respective component restrictions on alcohol, and follow appropriate department in respecting host-nation laws and customs. Because of the high operational tempo and the various threats faced by U.S. forces in the region, it is prudent to exercise active control over certain activities in order to maintain good order and discipline and ensure optimum readiness. Accordingly, in all locations where alcohol is not prohibited by this General Order, Commanders and unit chiefs are directed to exercise discretion and good judgment in promulgating and enforcing appropriate guidelines and restrictions, regularly reviewed to ensure they are commensurate with current or foreseen operations and threats.

d. Introduction, purchase, possession, use, sale, transfer, manufacture, or consumption of any controlled substances, or drug paraphernalia. Prescription drugs must be accompanied by the original prescription label of the prescribing medical facility or authority.

e. Introduction, possession, transfer, sale, creation or display of any pornographic or sexually explicit photograph, video tapes, movie, drawing, book, magazine, or similar representations. The prohibitions contained in

* This General Order supercedes General Order Number 1, dated 7 November 1996.

this subparagraph shall not apply to AFRTS broadcasts and commercial videotapes distributed and/or displayed through AAFES or MWR outlets located within the USCENTCOM AOR. This prohibition shall also not apply within the areas exclusively under the jurisdiction of the United States, such as aboard United States Government vessels and aircraft.

f. Gambling of any kind, including sports pools, lotteries and raffles, unless permitted by host-nation laws and applicable service or component regulations.

g. Removing, possessing, selling, defacing or destroying archeological artifacts or national treasures.

h. Selling, bartering or exchanging any currency other than at the official host-nation exchange rate.

i. Adopting as pets or mascots, caring for, or feeding any type of domestic or wild animal.

j. Proselytizing of any religion, faith or practice.

k. Taking or retaining individual souvenirs or trophies, except as noted below:

(1) Private or public property may be seized during exercises or operations only on order of the Commander, when based on military necessity. Such property will be collected, processed, secured and stored for later return to the lawful owner. The wrongful taking of private property, even temporarily, is a violation of Article 121, Uniform Code of Military Justice.

(2) Public property seized by U.S. Armed Forces is the property of the United States. The wrongful retention of such property is a violation of Article 108, Uniform Code of Military Justice.

(3) No weapon, munitions, or military article of equipment obtained or acquired by any means other than official issue may be retained for personal use or shipped out of the USCENTCOM AOR for personal retention or control.

(4) This prohibition does not preclude the lawful acquisition of souvenirs that can be legally imported into the United States.

3. **PUNITIVE ORDER:** Paragraph 2 of this General Order is punitive. Persons subject to the UCMJ may be punished thereunder. Civilians serving with, employed by, or accompanying the Armed Forces of the United States in the USCENTCOM AOR may face criminal prosecution or adverse administrative action for violation of this General Order.

4. **INDIVIDUAL DUTY:** All persons, military and civilian, subject to this General Order are charged with the individual duty to become familiar with and respect the laws, regulations, and customs of their host nation insofar as they do not interfere with the execution of their official duties. Acts of disrespect or violations of host nation laws, regulations and customs may be punished under applicable criminal statutes and administrative regulations.

5. **UNIT COMMANDER RESPONSIBILITY:** Commanders, Security Assistance Office Chiefs, and military and civilian supervisors are charged with ensuring that ALL PERSONNEL are briefed on the prohibitions and requirements of this GENERAL ORDER. Commanders and supervisors are expected to exercise discretion and good judgment in enforcing this General Order. Component Commanders may further restrict their forces as they deem necessary.

6. **CONFISCATION OF OFFENDING ARTICLES:** Items determined to violate this General Order may be considered contraband and may be confiscated by command or law enforcement authorities if found in the USCENTCOM AOR. Before destruction of contraband, Commanders or law enforcement personnel will coordinate with their servicing judge advocate.

7. **EFFECTIVE DATE:** This General Order is effective immediately. Individuals or commanders may arrange for safekeeping of personal firearms with their unit's military law enforcement activity. Military customs and other pre-

clearance officials will enforce this General Order in their inspections of personnel and equipment prior to departure to the AOR and return to CONUS.

8. EXPIRATION: This General Order will expire when rescinded by the Commander in Chief, U.S. Central Command, or higher authority. Although this General Order is published during peacetime conditions, it will remain in effect in the event of hostilities or armed conflict. Should such conditions prevail, this General order may be supplemented by additional guidance.

9. WAIVER AUTHORITY: Authority to waive or modify the prohibitions of Paragraph 2 of this General Order is delegated to the Deputy Commander in Chief, USCENTCOM.

//ORIGINAL SIGNED//
TOMMY R. FRANKS
General, U.S. Army
Commander in Chief

NOTE: The original of this document is maintained at USCENTCOM/CCJA.

DISTRIBUTION:

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TO RUEASRT/COMUSARCENT-CDRUSATHIRD FORT MCPHERSON GA

RHRMDAB/COMUSNAVCENT

RUEOBBA/COMUSCENTAF SHAW AFB SC

RUEOEEE/CJTF SWA//CC//

RUEHDI/USLO DJIBOUTI DJ//USDR-DJ//

RUEHEG/USOMC CAIRO EG//USDR-EG//

RUEHAE/USLO ASMARA ER//USDR-ER//

RUCJICS/COMSOCCENT MACDILL AFB FL

RUEHDS/USDAO ADDIS ABABA ET//USDR-ET//

RUEHAM/AMMAN JO//USDR-JO//

RUEHNR/KUSLO NAIROBI KE//USDR-KE//

RUEHEK/USDAO BISHKEK KG//USDR-KG//

RUEHKU/OMC-K KUWAIT KU//USDR-KU//

RUEHTA/USDAO ALMATY KZ//USDR-KZ//

RUEHMS/USOMC MUSCAT MU//USDR-MU//

RUEHIL/ODRP ISLAMABAD PK//USDR-PK//

RUEHDO/USLO DOHA QA//USDR-QA//

RUEORYD/CHUSMTM RIYADH SA//USDR-SA//

RUEHNR/KUSLO NAIROBI KE//USDR-SE//

RUEHAD/USLO ABU DHABI TC//USDR-TC//

RUEHDB/USDAO DUSHANBE TI//USDR-TI//

RUEHAH/USDAO ASHGABAT TX//USDR-TX//

RUEHNT/USDAO TASHKENT UZ//USDR-UZ//

RUEHYN/USDAO SANAA YM//USDR-YM//

RUEHMK/AMEMBASSY MANAMA

RUHEHMS/COMUSMARCENT CAMP H M SMITH HI

RUCJMSC/MARCENT LNO MACDILL AFB FL

RHSDAAA/COMJF SOCC EF

RUEPVAA/COMJSOC FT BRAGG NC

INFO RUEKJCS/CJCS WASHINGTON DC

RUCJACC/USCINCCENT MACDILL AFB FL//SUPR//

BT

UNCLAS

SUBJ:AMENDMENT TO GENERAL ORDER NUMBER 1A AND AMENDMENT TO PARTIAL
WAIVER//

MSGID/GENADMIN/USCINCCENT//

REF/A/GENERAL ORDER NUMBER 1A DTD 19 DEC 00//

REB/B/PARTIAL WAIVER OF GENERAL ORDER NUMBER 1A DTD 11 APR 01//

NARR/RECENT EVENTS AND INCREASED OPERATIONS TEMPO IN SUPPORT OF

OPERATION ENDURING FREEDOM REQUIRES ADDITIONAL USCINCCENT

DISSEMINATION OF GUIDANCE ON POSSESSION AND CONSUMPTION OF

ALCOHOLIC BEVERAGES WITHIN THE COUNTRIES OF KUWAIT, SAUDI ARABIA,

PAKISTAN AND AFGHANISTAN.//

RMKS/1. EFFECTIVE 30 NOVEMBER 2001, REFERENCE (A), IS AMENDED AS

FOLLOWS: THE FIRST SENTENCE OF SUBPARAGRAPH 2.C. IS AMENDED TO

READ: "INTRODUCTION, POSSESSION, SALE, TRANSFER, MANUFACTURE OR

PAGE 02 RUCJACC7827 UNCLAS

CONSUMPTION OF ANY ALCOHOLIC BEVERAGE WITHIN THE COUNTRIES OF KUWAIT, SAUDI ARABIA, PAKISTAN AND AFGHANISTAN."

2. EFFECTIVE 30 NOVEMBER 2001, REFERENCE (B) IS AMENDED AS FOLLOWS: THE FIRST SENTENCE OF SUBPARAGRAPH 1.A. IS AMENDED TO READ: "DOD PERSONNEL TRAVELLING WITH OR ON BEHALF OF USCENCOM OR A USCENCOM COMPONENT COMMAND MAY, WHILE PRESENT IN A NON-OPERATIONAL STATUS IN KUWAIT, SAUDI ARABIA, PAKISTAN AND AFGHANISTAN, POSSESS AND CONSUME ALCOHOLIC BEVERAGES IN CERTAIN LIMITED SITUATIONS, AS FOLLOWS:"

3. IN LIGHT OF OPERATION ENDURING FREEDOM, ALL COMMANDERS AND UNIT CHIEFS, IN ALL LOCATIONS WHERE ALCOHOL IS NOT PROHIBITED ARE ENCOURAGED TO REVIEW LOCAL GUIDELINES.

4. THIS MESSAGE SHOULD BE FURTHER DISSEMINATED TO SUBORDINATE COMMANDERS, AGENCIES AND OFFICES, AS APPROPRIATE.//

BT

#7827

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* UNCLASSIFIED *

COALITION PROVISIONAL AUTHORITY ORDER NUMBER 3 (REVISED)

WEAPONS CONTROL

Pursuant to my authority as Administrator of the Coalition Provisional Authority (CPA), and under the laws and usages of war, and consistent with relevant U.N. Security Council resolutions, including Resolution 1483 (2003),

Recognizing that weapons control is necessary in order to ensure a secure environment for the people of Iraq and to promote public order and safety,

I hereby promulgate the following:

Section 1 Definitions

- 1) "Coalition Forces" includes any and all personnel, including contractors, from Coalition Member States under the command or direction of the Coalition Provisional Authority or the Coalition Force Commander,
- 2) "Criminal Proceedings Law" means Criminal Proceedings Law No. 23 of 1971, as amended, including amendments contained in CPA Memorandum Number 3, Criminal Procedures, CPA/MEM/18 June 2003/03.
- 3) "Firearms" mean automatic (7.62mm (.308 caliber) and under) and non-automatic rifles, shotguns and pistols for personal use, and associated ammunition. **Such firearms are subject to licensing by the Ministry of Interior.** Firearms do not include weapons rendered permanently inoperable, replicas, antiques or ceremonial weapons.
- 4) "Iraqi security forces" include any and all Iraqi personnel from the Iraqi Police Service, Iraqi Civil Defense Corps, Facilities Protection Service, Iraqi Border and Customs Police or any organization whose mission includes physical security that may be established by the CPA or under Iraqi law subsequent to the signing of this Order.
- 5) "Iraqi Weapons Code 1992" means the Law of Arms No. (13) of 1992, as amended by Law No. (15) of 2000.
- 6) "Military Weapons" are any weapons systems, ammunition or explosives or explosive devices of any type designed for use by any military forces but not including "Firearms" as defined in this Order. Military Weapons do not include weapons rendered permanently inoperable, replicas, antiques or ceremonial weapons. Military Weapons include "Special Category Weapons."

- 7) "Penal Code" means the Penal Code Law No. (111) of 1969, as amended, including Law (1) 2002 and CPA Order Number 7, Penal Code, CPA/ORD/9 June 2003/07.
- 8) "Public places" mean state-owned property, places of worship, holy sites, hospitals, schools, gathering places such as town squares and parks, streets and such other places that may be designated by the CPA,
- 9) "Special Category Weapons" are any explosives, improvised explosives or incendiary devices, grenades, rockets, shells or mines and any means of discharging such items, crew-served weapons of any kind, and Man Portable Air Defense Systems of any kind.

Section 2

Relation to Existing Law

- 1) Article 6.2 of the Iraqi Weapons Code 1992 is hereby amended to suspend the exemption set out therein for employees of the governmental and social sector.
- 2) Article 8.2 of the Iraqi Weapons Code 1992, concerning licensing requirements, is amended to allow possession of no more than 50 rounds of ammunition for any licensed firearm.
- 3) In all other respects, including the penalties provisions (with the exception of the death penalty) the Iraqi Weapons Code 1992 remains in effect unless specifically inconsistent with this Order, in which event this order will take precedence.
- 4) CPA/ORD/23 May 2003/03 is superceded by this Order.

Section 3

Authorized Possession and Use of Firearms and Military Weapons

- 1) The ~~following individuals are~~ authorized to possess and use ~~issued~~ Firearms and Military Weapons, including Special Category Weapons:
 - a) Coalition Forces,
 - b) Iraqi security forces, and
 - c) groups and individuals who have been authorized to carry weapons in the course of their duties by the CPA or Commander, Coalition Forces or their duly authorized delegates.

- 2) Private security firms ~~may be licensed by the Ministry of the Interior to possess and use licensed Firearms~~ and Military Weapons, excluding Special Category Weapons, in the course of their duties, including in public places.
- 3) Individuals may be authorized to possess Firearms for personal use by obtaining authorization from the Ministry of Interior, as described in Section 5 of this Order.

Section 4 General Prohibitions

- 1) Unauthorized possession, transport, distribution, or use of Firearms or Military Weapons, including Special Category Weapons, is prohibited.
- 2) ~~Other than as provided for in Section 3, no person shall possess or use any Firearms or Military Weapons, including Special Category Weapons, in public places.~~
- 3) Other than by Coalition Forces and duly authorized Iraqi security forces whose duty position requires the carrying of concealed weapons in the course of their duties, the carrying of concealed weapons is prohibited.
- 4) All sales of Firearms and Military Weapons are prohibited, except as authorized by the CPA.

Section 5 Weapons Authorization and Licensing

Individuals not otherwise authorized to possess or use Firearms or Military Weapons by this or any other CPA instrument may apply for weapons authorization. The licensing requirements for weapons set forth in the Iraqi Weapons Code 1992 and administered by the Ministry of Interior remain in effect. Firearms for personal use located in homes or places of business under rescinded Order Number 3 (CPA/ORD/23 May 2003/03) are subject to these licensing provisions. The Ministry of Interior shall issue procedures and establish timelines for licensing such Firearms. Possession of ~~unlicensed Firearms~~ in one's home or place of business for personal use, as permitted under rescinded Order Number 3, will continue to be authorized until the new procedures for licensing such Firearms become effective in accordance with a Public Notice to that effect.

Section 6

Penalties

- 1) Firearms or Military Weapons, including Special Category Weapons, possession or use of which is unauthorized, are subject to confiscation by Coalition Forces and other relevant authorities.
- 2) Any person in violation of this Order may be detained, arrested, and prosecuted. If convicted, all lawful punishments may be adjudged, and the following terms of imprisonment will apply:
 - a. For the conviction of unauthorized possession, transport, distribution, sale, or use of a Military Weapon, excluding Special Category Weapons, a minimum term of imprisonment of 6 months and maximum term of imprisonment of life imprisonment.
 - b. For the conviction of possession, transport, distribution, sale, or use of a Special Category Weapon, a minimum term of imprisonment of 15 years, unless the proviso at paragraph 3 applies, and maximum term of imprisonment of life imprisonment. Where a person may be convicted of another offense relating to the use of a Special Category Weapon, the mandatory minimum term of imprisonment of 15 years, unless the proviso at paragraph 3 applies, shall also be applied to that conviction.
- 3) The mandatory minimum term of imprisonment of 15 years is subject to the proviso that in exceptional circumstances relating to the offender or the offense, the punishment may be reduced. The transport, distribution, sale or use of a Special Category Weapon shall never constitute exceptional circumstances.
- 4) Except as provided in paragraphs 2 and 3 of this Section, sentences for convictions of offenses under this Order or the Iraqi Weapons Code 1992 and which involve Military Weapons, including Special Category Weapons, may not be reduced as a result of mitigating excuse pursuant to paragraph 130 of the Penal Code. Persons convicted of committing these offenses shall not be eligible for Conditional Discharge as set forth in paragraph 331 of the Criminal Proceedings Law.
- 5) For the purposes of this Order, sentences of life imprisonment shall mean the remaining natural life of the person.
- 6) Authorized officials of the CPA or Coalition Forces may grant a certificate of immunity from prosecution for offenses under this Order or the Iraqi Weapons Code 1992 to a person who provides information that leads to the apprehension and conviction of persons in relation to whom information is sought by the CPA and


Coalition Forces, or that results in the prevention of a significant crime against public security, the CPA or Coalition Forces.

Section 7
Administrative Instructions

The interim Minister of the Interior, in consultation with the CPA Director of Interior Policy, may issue such Administrative Instructions as are necessary to carry out this Order.

Section 8
Entry into Force

This Order shall enter into force on the date of signature.

 11/8/03

L. Paul Bremer, Administrator
Coalition Provisional Authority



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[search](#)[TITLE 18](#) > [PART II](#) > [CHAPTER 212](#) > [Sec. 3261](#).[Next](#)**Sec. 3261. - Criminal offenses committed by certain members of the Armed Forces and by persons employed by or accompanying the Armed Forces outside the United States****(a)**

Whoever engages in conduct outside the United States that would constitute an offense punishable by imprisonment for more than 1 year if the conduct had been engaged in within the special maritime and territorial jurisdiction of the United States -

(1)

while employed by or accompanying the Armed Forces outside the United States; or

(2)

while a member of the Armed Forces subject to chapter [47](#) of title [10](#) (the Uniform Code of Military Justice),

shall be punished as provided for that offense.

(b)

No prosecution may be commenced against a person under this section if a foreign government, in accordance with jurisdiction recognized by the United States, has prosecuted or is prosecuting such person for the conduct constituting such offense, except upon the approval of the Attorney General or the Deputy Attorney General (or a person acting in either such capacity), which function of approval may not be delegated.

(c)

Nothing in this chapter may be construed to deprive a court-martial, military commission, provost court, or other

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military tribunal of concurrent jurisdiction with respect to offenders or offenses that by statute or by the law of war may be tried by a court-martial, military commission, provost court, or other military tribunal.

(d)

No prosecution may be commenced against a member of the Armed Forces subject to chapter 47 of title 10 (the Uniform Code of Military Justice) under this section unless -

(1)

such member ceases to be subject to such chapter;
or

(2)

an indictment or information charges that the member committed the offense with one or more other defendants, at least one of whom is not subject to such chapter

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[search](#)[TITLE 18](#) > [PART II](#) > [CHAPTER 212](#) > [Sec. 3262](#).[Prev](#) | [Next](#)**Sec. 3262. - Arrest and commitment****(a)**

The Secretary of Defense may designate and authorize any person serving in a law enforcement position in the Department of Defense to arrest, in accordance with applicable international agreements, outside the United States any person described in section 3261(a) if there is probable cause to believe that such person violated section 3261(a).

(b)

Except as provided in sections 3263 and 3264, a person arrested under subsection (a) shall be delivered as soon as practicable to the custody of civilian law enforcement authorities of the United States for removal to the United States for judicial proceedings in relation to conduct referred to in such subsection unless such person has had charges brought against him or her under chapter 47 of title 10 for such conduct

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[search](#)[TITLE 18](#) > [PART II](#) > [CHAPTER 212](#) > [Sec. 3263](#).[Prev](#) | [Next](#)**Sec. 3263. - Delivery to authorities of foreign countries****(a)**

Any person designated and authorized under section 3262(a) may deliver a person described in section 3261(a) to the appropriate authorities of a foreign country in which such person is alleged to have violated section 3261(a) if -

(1)

appropriate authorities of that country request the delivery of the person to such country for trial for such conduct as an offense under the laws of that country; and

(2)

the delivery of such person to that country is authorized by a treaty or other international agreement to which the United States is a party.

(b)

The Secretary of Defense, in consultation with the Secretary of State, shall determine which officials of a foreign country constitute appropriate authorities for purposes of this section

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[TITLE 18](#) > [PART II](#) > [CHAPTER 212](#) > [Sec. 3264](#).[Prev](#) | [Next](#)**Sec. 3264. - Limitation on removal****(a)**

Except as provided in subsection (b), and except for a person delivered to authorities of a foreign country under section 3263, a person arrested for or charged with a violation of section 3261(a) shall not be removed -

(1)

to the United States; or

(2)

to any foreign country other than a country in which such person is believed to have violated section 3261(a).

(b)

The limitation in subsection (a) does not apply if -

(1)

a Federal magistrate judge orders the person to be removed to the United States to be present at a detention hearing held pursuant to section 3142(f);

(2)

a Federal magistrate judge orders the detention of the person before trial pursuant to section 3142(e), in which case the person shall be promptly removed to the United States for purposes of such detention;

(3)

the person is entitled to, and does not waive, a preliminary examination under the Federal Rules of Criminal Procedure, in which case the person shall be removed to the United States in time for such examination;

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(4)

a Federal magistrate judge otherwise orders the person to be removed to the United States; or

(5)

the Secretary of Defense determines that military necessity requires that the limitations in subsection (a) be waived, in which case the person shall be removed to the nearest United States military installation outside the United States adequate to detain the person and to facilitate the initial appearance described in section 3265 (a)

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[TITLE 18](#) > [PART II](#) > [CHAPTER 212](#) > [Sec. 3265](#).[Prev](#) | [Next](#)**Sec. 3265. - Initial proceedings****(a)****(1)**

In the case of any person arrested for or charged with a violation of section 3261(a) who is not delivered to authorities of a foreign country under section 3263, the initial appearance of that person under the Federal Rules of Criminal Procedure -

(A)

shall be conducted by a Federal magistrate judge;
and

(B)

may be carried out by telephony or such other means that enables voice communication among the participants, including any counsel representing the person.

(2)

In conducting the initial appearance, the Federal magistrate judge shall also determine whether there is probable cause to believe that an offense under section 3261(a) was committed and that the person committed it.

(3)

If the Federal magistrate judge determines that probable cause exists that the person committed an offense under section 3261(a), and if no motion is made seeking the person's detention before trial, the Federal magistrate judge shall also determine at the initial appearance the conditions of the person's release before trial under chapter 207 of this title.

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(b)

In the case of any person described in subsection (a), any detention hearing of that person under section 3142(f) -

(1)

shall be conducted by a Federal magistrate judge; and

(2)

at the request of the person, may be carried out by telephony or such other means that enables voice communication among the participants, including any counsel representing the person.

(c)**(1)**

If any initial proceeding under this section with respect to any such person is conducted while the person is outside the United States, and the person is entitled to have counsel appointed for purposes of such proceeding, the Federal magistrate judge may appoint as such counsel for purposes of such hearing a qualified military counsel.

(2)

For purposes of this subsection, the term "qualified military counsel" means a judge advocate made available by the Secretary of Defense for purposes of such proceedings, who -

(A)

is a graduate of an accredited law school or is a member of the bar of a Federal court or of the highest court of a State; and

(B)

is certified as competent to perform such duties by the Judge Advocate General of the armed force of which he is a member

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US CODE COLLECTION

[search](#)[TITLE 18](#) > [PART II](#) > [CHAPTER 212](#) > [Sec. 3267](#).[Prev](#)**Sec. 3267. - Definitions**

As used in this chapter:

(1)

The term "employed by the Armed Forces outside the United States" means -

(A)

employed as a civilian employee of the Department of Defense (including a nonappropriated fund instrumentality of the Department), as a Department of Defense contractor (including a subcontractor at any tier), or as an employee of a Department of Defense contractor (including a subcontractor at any tier);

(B)

present or residing outside the United States in connection with such employment; and

(C)

not a national of or ordinarily resident in the host nation.

(2)

The term "accompanying the Armed Forces outside the United States" means -

(A)

a dependent of -

(I)

a member of the Armed Forces;

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(ii)

a civilian employee of the Department of Defense (including a nonappropriated fund instrumentality of the Department); or

(iii)

a Department of Defense contractor (including a subcontractor at any tier) or an employee of a Department of Defense contractor (including a subcontractor at any tier);

(B)

residing with such member, civilian employee, contractor, or contractor employee outside the United States; and

(C)

not a national of or ordinarily resident in the host nation.

(3)

The term "Armed Forces" has the meaning given the term "armed forces" in section 101(a)(4) of title 10.

(4)

The terms "Judge Advocate General" and "judge advocate" have the meanings given such terms in section 801 of title 10

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(GS-14)

From: (b)(6) (O-6)
Sent: Saturday, December 20, 2003 9:20 AM
To: (b)(6) (GS-14)
Subject: FW: Answer: Contractor security question - for internal planning purposes only



Security for
Contractors.ppt (...
FYI

-----Original Message-----

From: (b)(6) LTC, DoD OGC
Sent: Friday, December 19, 2003 11:06 PM
To: (b)(6) (O-6)
Subject: FW: Answer: Contractor security question - for internal planning purposes only

Here are CENTCOM inputs. (b)(6)

-----Original Message-----

From: (b)(6)
Sent: Friday, December 19, 2003 12:49
To: (b)(6) LTC, DoD OGC
Subject: FW: Answer: Contractor security question - for internal planning purposes only

(b)(6)

I haven't had a chance to review - hope this is responsive.

(b)(6)

-----Original Message-----

From: (b)(6) CDR (b)(6)
Sent: Thursday, December 18, 2003 10:13 AM
To: (b)(6)
Cc: (b)(6)
Subject: FW: Answer: Contractor security question - for internal planning purposes only

(b)(5); (b)(6); (b)(3):10 USC § 130b

(b)(6)

-----Original Message-----

From: (b)(6)
Sent: Wednesday, December 17, 2003 2:50 PM
To: (b)(6)
Subject: Answer: Contractor security question - for internal planning purposes only

(b)(6)

(b)(5); (b)(6); (b)(3):10 USC § 130b

(b)(5); (b)(3); (b)(1) ISC; (b)(6); (b)(7)(C)



<<Security for Contractors.ppt>>

(b)(6)

Attorney/Advisor
US Army LOGCAP, and
U.S. Army Field Support Command
Rock Island, IL

(b)(6) DSN (b)(6)

(c) (b)(6)

Sir,

(b)(5); (b)(3); (b)(1) ISC; (b)(6); (b)(7)(C)



(b)(6) (GS-14)

From: (b)(6)
Sent: Wednesday, December 17, 2003 8:41 PM
To: (b)(6) (GS-14); (b)(6)
Cc: (b)(6)
Subject: RE: Answer: Arming KBR employees

Mr. (b)(6)

Please share the e-mails within Government if you believe it will assist our efforts in Iraq.

(b)(6)
Attorney/Advisor
US Army LOGCAP, and
U.S. Army Field Support Command
Rock Island, IL

DSN (b)(6)

(c) (b)(6)

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Contractor on the Battlefield Resource Library: NEW ADDRESS
<http://www.osc.army.mil/others/Gca/battle2.htm>

-----Original Message-----

From: (b)(6) (GS-14) [mailto:(b)(6)]
Sent: Wednesday, December 17, 2003 1:37 AM
To: (b)(6)
Cc: (b)(6)
Subject: FW: Answer: Arming KBR employees

Mr. (b)(6)

VR
(b)(6)

-----Original Message-----

From: [REDACTED] (O-6)
Sent: Wednesday, December 17, 2003 7:56 AM
To: [REDACTED] (GS-14)
Subject: FW: Answer: Arming KBR employees

FYI

-----Original Message-----

From: [REDACTED] [mailto:[REDACTED]]
Sent: Wednesday, December 17, 2003 12:35 AM
Subject: FW: Answer: Arming KBR employees

[REDACTED]

[REDACTED]
Attorney/Advisor
US Army LOGCAP, and
U.S. Army Field Support Command
Rock Island, IL

[REDACTED] DSN [REDACTED]

(c) [REDACTED]

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<http://www.osc.army.mil/others/Gca/battle2.htm>

-----Original Message-----

From: [REDACTED] (LTC) [mailto:[REDACTED]]
Sent: Tuesday, December 16, 2003 2:06 PM
To: [REDACTED]
Cc: [REDACTED]
Subject: RE: Answer: Arming KBR employees

[REDACTED]

[REDACTED]

(b)(6); (b)(7)(C); 10 USC § 1346

(b)(6)

-----Original Message-----

From: (b)(6) [mailto:(b)(6)]

Sent: Tue 12/16/2003 10:46 PM

To: (b)(6)

Cc:

Subject: Answer: Arming KBR employees

(b)(6)

(b)(6); (b)(7)(C); 10 USC § 1346

(b)(7)(C)
Attorney/Advisor
US Army LOGCAP, and
U.S. Army Field Support Command
Rock Island, IL

DSN (b)(7)(C)

(c) (b)(7)(C)

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<http://www.osc.army.mil/others/Gca/battle2.htm>
<<http://www.osc.army.mil/others/Gca/battlefield.doc>>

-----Original Message-----

From: (b)(7)(C)
Sent: Monday, December 15, 2003 7:24 AM
To: (b)(7)(C)
Subject: FW: Arming KBR employees

-----Original Message-----

From: (b)(7)(C) (LTC) [mailto:(b)(7)(C)]
Sent: Sunday, December 14, 2003 3:55 PM
To: (b)(7)(C)
Cc: (b)(7)(C)
Subject: Arming KBR employees
Mary,

(b)(7)(C)

LTC, US Army

Contracting Officer

Commander, DCMA-Northern Iraq

Deputy Commander, DCMA-Iraq

PH: [REDACTED] DSN (CPA): (b)(6)

DSN (Victory Main) (b)(6)

CELL: (b)(6)

[REDACTED] (GS-14)

From: [REDACTED] (O-6)
Sent: Wednesday, December 17, 2003 8:54 AM
To: [REDACTED] (GS-14)
Subject: FW: Contractor security question

(b)(6) here is a POC for security issues (CENTCOM POC) [REDACTED]

-----Original Message-----

From: (b)(6) LTC, DoD OGC
Sent: Wednesday, December 17, 2003 12:30 AM
To: (b)(6)
Cc: [REDACTED] (O-6)
Subject: FW: Contractor security question

Good Afternoon [REDACTED] - Hope all is well. Would you mind taking a look at this? [REDACTED] sent it to Col (b)(6) but Capt [REDACTED] thought we should get CENTCOM input too. Thanks, [REDACTED]

-----Original Message-----

From: [REDACTED] (O-6) [mailto:(b)(6)]
Sent: Friday, December 12, 2003 12:47
To: Castle, Edwin S. (SES-2 General Counsel); (b)(6) LTC, DoD OGC; [REDACTED] Mr, DoD OGC
Cc: [REDACTED] (GS-14); (b)(6) (O-4)
Subject: Contractor security question

(b)(6)

(b)(5); (b)(6); (b)(3):10 USC § 130b

Attached slides set out what we plan to provide to Adm Nash tomorrow. If you get a chance, would appreciate any suggestions you have or any policy you know of that we may not - although we did a lot of research.

Thanks!

12/17/2003

[REDACTED] (GS-14)

From: (b)(6) (O-6)

Sent: Friday, December 12, 2003 9:44 PM

To: (b)(6) (GS-14)

Subject: hold off on Briefing PMO on Contractor Security

OGC wants us to coordinate with CENTCOM and CJTF-7. (b)(6)

12/13/2003

[REDACTED] (GS-14)

From: (b)(6) (O-6)

Sent: Friday, December 12, 2003 8:47 PM

To: Castle, Edwin S. (SES-2 General Counsel); [REDACTED] LTC, DoD OGC; [REDACTED]
DoD OGC

Cc: (b)(6) (GS-14); [REDACTED] (O-4)

Subject: Contractor security question

(b)(6)

(b)(5); (b)(6); (b)(3):10 USC § 130b

Attached slides set out what we plan to provide to Adm Nash tomorrow. If you get a chance, would appreciate any suggestions you have or any policy you know of that we may not – although we did a lot of research.

Thanks!

(b)(6)

12/13/2003

(b)(6)

(GS-14)

From: (b)(6) (O-6)
Sent: Monday, December 08, 2003 12:28 PM
To: (b)(6) (GS-14)
Subject: FW: force protection for KBR (FOUO)

(b)(6); (b)(6); (b)(6); USC § 1336

-----Original Message-----

From: (b)(6) [mailto:(b)(6)]
Sent: Monday, December 08, 2003 11:44 AM
To: (b)(6)

Castle, Edwin S.

(SES-2 General Counsel);

(b)(6)

Cc: (b)(6)
Subject: force protection for KBR (FOUO)

ALL:

(b)(6); (b)(6); (b)(6); USC § 1336

v/r,

(b)(6)

[REDACTED] (GS-14)

From: [REDACTED] (O-6)

Sent: Sunday, December 07, 2003 11:03 AM

To: [REDACTED] (GS-14)

(b)(5)

[REDACTED]

12/7/2003

[REDACTED]

914-822-7338

(b)(6) (GS-14)

From: Crawford Darrell E. (SES)
Sent: Friday, December 12, 2003 9:05 AM
To: (b)(6) (O-4); (b)(6) (GS-14)
Cc: (b)(6) Smith Jr., William F. SES)
Subject: FW: Policy on Firearms

(b)(6)

As discussed. Please research and provide recommendation. I'd like to include this in tomorrow's security briefing to the Admiral.

Thanks,

(b)(6)

Chief of Staff
Program Management Office
Office: DSN (b)(6) (Com (b)(6))
Desk: (b)(6)
Cell: (b)(6)

-----Original Message-----

From: (b)(6) CAPT, OSD
Sent: Thursday, December 11, 2003 11:55 PM
To: Crawford Darrell E. (SES)
Cc: (b)(6) (O-3); Smith Jr., William F. SES)
Subject: Policy on Firearms

(b)(6)

One of the many questions we are getting from proposers is on firearms. As indicated in the attached, our RFPs indicate to offerors that they are responsible for their own security while working on these construction projects in theater. Many are interpreting this to mean they must be able to protect themselves with organic personnel or hire security providers. The question is; how do we deal with arming these personnel providing security.

See attached for more details. My guess is this has already been run to ground with existing contractors, and there are policies/procedures in place - but we just don't know about them. As contractors may rely on the answer we give, we need to be sure and give them the right answer.

Please pass this action on to whomever is the appropriate person to provide the CPA/CJTF answer.

Thanks,

(b)(6)

CAPT, CEC, U.S. Navy
Program Manager
Program Management Office
Coalition Provisional Authority

12/17/2003

Sir,

Here is the crux of the issue regarding security for our contractors in Theater.

We are telling offerors that they are responsible for their own security while working on these construction projects in theater. This means they must be able to protect themselves with organic personnel or hire security providers. The question is; how do we deal with arming these personnel providing security.

Currently Coalition Provisional Authority order number 3 (revised November 2003), Section 3 states "The following individuals are authorized to possess and use issued firearms and military weapons, including special category weapons.

1. Coalition Forces (which by definition in Section 1 Para 1 includes contractors),
2. Iraqi security forces,
3. Groups authorized by CPA, or the Commander Coalition Forces, or their duly authorized delegates,
4. Private Security firms licensed by the Ministry of the Interior.

Two questions need to be answered for the offerors;

1. For these contracts which approval authority will govern, CPA, Commander Coalition Forces, or Ministry of the Interior?
2. Section 3 , paragraph 1 of CPA order number 3 uses the term "issued firearms" Is there an existing process to issue firearms by the governing authority (e.g. CPA) or will the governing authority allow weapons to be brought into the country for this purpose?

We think it is smarter to issue them and have them registered and controlled centrally rather than trying to import weapons across borders and them flowing around the country. Whatever process is decided we just want to be able to explain it succinctly to the firms proposing on these contracts.