

4 June 2003

**TO:** L. Paul Bremer, Administrator  
Coalition Provisional Authority

**FROM:** Office of General Counsel *aw*

**SUBJECT:** Status of Foreign Missions in Iraq

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*LAWS?*

*oh 4/6/03*

There are a number of foreign embassies and diplomatic premises in Iraq, and diplomatic personnel have started to return. This memorandum clarifies the status of these premises and persons.

BACKGROUND:

• **Status of Diplomatic Premises in Iraq**

The CPA does not have the power to confer diplomatic status upon individuals and premises. However, the CPA is bound by the Geneva Convention IV (1949) and the 1907 Hague Regulations, and generally must respect the laws in force in Iraq on April 16, 2003 (*see* CPA/REG/2003/01). Thus, the CPA, relying upon Coalition Forces, is obligated to take all measures in its power to restore and ensure, insofar as possible, public order and safety in Iraq. As such, the Coalition Provisional Authority is generally obligated to protect diplomatic premises, insofar as the current security environment permits. There is, however, no obligation to protect diplomatic facilities beyond the general obligation to restore, and ensure as far as possible, public order and safety. Where necessary, the CPA or Coalition Forces may enter diplomatic premises to restore law and order or for other security reasons.

Previous U.S. Central Command guidance provided that CENTCOM is obligated to respect the inviolability of diplomatic facilities. Given the political implications of any entry into current or former diplomatic premises, the CPA should advise CFLCC of premises formerly or currently used by the diplomatic community, and request that, to the extent practicable, local commanders notify the CPA Administrator of any intention to enter such premises prior to entry or immediately thereafter in the case of exigent circumstances.

treated with all courtesy and must be permitted such freedom of action as it is possible to allow, with due regard to the necessities of war;" the same treatment is accorded to "consular personnel of neutral States, except those who are enemy nationals." Dep't of the Army, FM 27-10, The Law of Land Warfare par. 549, at 192 (1956). Diplomats seeking to enter Iraq would need to present exequaturs or credentials to a future legitimate sovereign in order to have diplomatic privileges and immunities. Thus, diplomats who enter Iraq now do so without diplomatic privileges and immunities. ✓

To the extent that any neutral diplomats remained in country throughout the armed conflict, or are returning to the country after having been accredited and being temporarily absent, the status of their diplomatic privileges and immunities is unclear. Consistent with Department of Defense policy guidance issued on May 8, 2003, the CPA has no absolute obligation to honor diplomatic immunities of any diplomatic or consular officials who may have remained in Iraq during, or entered subsequent to, hostilities. The privileges of these neutral diplomats could be limited to the extent dictated by the occupant's military necessities, and the occupying power may ask them to leave.

Consistent with Department of Defense Policy guidance issued on May 8, 2003, the CPA cannot provide normal diplomatic services, nor will normal diplomatic activities in Iraq be supported at this time. Pursuant to the law of military occupation, the CPA reserves the right to expel any foreign government official, regardless of diplomatic privilege afforded by the former regime, should that person's presence in Iraq be considered detrimental to the public order and safety. ||

Given the political implications of detaining, arresting or expelling members of the diplomatic community, local commanders should notify the CPA Administrator prior to any such action or immediately thereafter in the case of exigent circumstances. ✓

RECOMMENDATION: That the Administrator:

- Issue the attached notice to foreign government offices, advising the members of those offices that we cannot ensure their security or extend privileges and immunities.
- Request that relevant CPA and Coalition Forces elements (Director, Civil Affairs Policy; Director, Security Affairs; International Coordination Council; C-1, C-2 and C-4) work together to establish an appropriate

- Issue the enclosed Memorandum, requesting that the Commander of Coalition Forces instruct local commanders to notify the CPA Administrator, insofar as practicable, of any intention to a) enter current or former diplomatic premises; or b) detain, arrest or expel any person who claims diplomatic status, or is connected to a foreign government office. In the case of exigent circumstances, such notification may take place immediately after the action.

**COORDINATED:**

Director, Civil Affairs Policy

Director, Security Affairs