

A Short History of Civilian Claims in War

Compensation for Civilians is Essential

Offering monetary payments to foreign civilians harmed by US military operations is a long-established practice. Military and civilian leadership understand that providing fair just and equitable compensation builds the good will of the local population and helps the military achieve its mission objectives in a timely manner.

The Foreign Claims Act

A civilian claims system became a part of military operations when Congress passed legislation in 1918 allowing compensation for civilians harmed in France. Due to the geographical limitation of the 1918 Act, Congress passed the Foreign Claims Act (FCA) during WWII. The purpose of the FCA, announced in its first paragraph, is to promote and maintain friendly relations through prompt payments. The War Department offered support for the legislation. In fact, the War Department successfully convinced Congress to amend the FCA when \$1,000 proved too small an amount per claim and was defeating the announced purposes of the law. The Acting Secretary of the Navy wrote a letter to Congress: "Experience in connection with the presence of our armed forces in foreign countries has demonstrated that the failure to pay promptly for damages done to native residents by members of our forces is one of the principal sources of irritation which adds considerable difficulty to the maintenance of cordial relations with foreign people." In the same letter, the Secretary also claimed that "reasonable sums" were required. The US military uses foreign claims commissioners adjudicate claims under the FCA in all major combat engagements.

The Combat Exclusion of the Foreign Claims Act.

The FCA created an excellent system for the military to adjudicate claims for harm caused by a non-combat act, a negligent act, or a wrongful act. However, the law's "combat exclusion" forbids compensation for harm resulting directly or indirectly from a combat act. This leaves a gap in the law which is consistently cited as a major impediment in the military's objective to win hearts and minds. Further, the restriction regularly causes political difficulties for the military. Judge Advocates at the Military Assistance Command, Vietnam (MACV) regularly voiced complaints about the difficulties posed by the combat exclusion. The situation in current military operations is no different. The 2005 US Army JAG Corps Operational Law Handbook reads: "The combat-related claims exclusion often directly interferes with...obtaining and maintaining the support of the local populace." The FCA is an effective tool, but with the combat exclusion an extensive gap exists leaving many civilians harmed by US military operations with little hope of redress.

The Solution

Ad-hoc and condolence-based regulatory programs continue to fall short of their stated goals. Without a claims program that offers "prompt payment" and "reasonable sums" for a large portion of the harm that occurs in a combat zone, the US military will be unable to effectively promote and maintain friendly relations with the local populace. The Civilian Claims Act (CCA) will create a permanent, effective civilian claims system.



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