



## BACKGROUNDER: A Short History of Civilian Claims in War: The Foreign Claims Act

### *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*

Civilian claims 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 is to “promote and maintain friendly relations through the prompt payment of meritorious claims.”<sup>1</sup> The War Department offered support for the legislation and successfully convinced Congress to amend the FCA when 1,000 USD per claim proved too small to fulfill the law’s purpose. 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.<sup>2</sup>

### *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, negligent, or wrongful acts. 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 to gain support from the population. 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 within the legal boundaries of combat with little hope of proper recognition for their losses.

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<sup>1</sup> Military Claims Act, U.S. Code 10 (2009), § 2734.

<sup>2</sup> Senate Committee on Foreign Relations, The Mutual Security Act of 1956, 84th Cong., 2d sess., 1956, S. Rep. 2273, 9-10.

*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 U.S. military will be unable to effectively promote and maintain friendly relations with the local populace. The United States must create a more permanent and effective civilian claims system.

For success stories and additional information:

Marla Keenan  
+1 202 558 0342  
marlab@civicworldwide.org  
www.civicworldwide.org

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Campaign for Innocent Victims in Conflict works on behalf of war victims by advocating that warring parties recognize and help the civilians they harm. CIVIC supports the principle that it is never acceptable for a warring party to ignore civilian suffering. In 2005, CIVIC’s founder Marla Ruzicka was killed in Iraq by a suicide bomb while advocating for families of victims. CIVIC honors her legacy and strives to sustain her vision.

1210 18th Street NW, 4th Floor  
Washington, DC 20036

Phone: +1 202 558 6958  
Fax: +1 623 321 7076  
Email: [info@civicworldwide.org](mailto:info@civicworldwide.org)  
Web: [www.civicworldwide.org](http://www.civicworldwide.org)

