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COALITION PROVISIONAL AUTHORITY
BAGHDAD

ACTION MEMO

March 14, 2004

THROUGH: DEPUTY ADMINISTRATOR
FOR: THE ADMINISTRATOR
FROM: E. Scott Castle, General Counsel
SUBJECT: Pending Orders and Regulations

This memorandum forwards for your signature a cable that describes CPA's proposed legislative agenda for the remainder of the occupation. Specifically the attached cable:

- Explains the process by which orders and regulations are drafted and coordinated;
- Explains the principles CPA applies in prioritizing its orders;
- Groups the pending orders and regulations into three categories ("mission critical," "very important" and "important");
- Briefly describes the orders and their current status; and
- Acknowledges the importance of carefully controlling the process whereby orders are coordinated with the Governing Council, in order to ensure continued meaningful review by that body.

Two matters were suggested yesterday as additional subjects of orders: an advisory board for the Prime Minister on reconstruction matters and a mortgage financing facility. The former concept can be incorporated into the Central Government Functions Order, and the latter can be included within the Banking Law and Regulations.

RECOMMENDATION: That the Administrator sign the proposed cable.

Approve: _____ Disapprove: _____ Approve with modification: _____

ATTACHMENTS: Cable

COORDINATION: Legal Advisor to U.K. Special Representative to Iraq/H. Mulvein (ok)

UNCLASSIFIED



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PROG: 14 March 2004
DRAFTED: DPREGENT
AUTHORIZED: LBREMER
CLEARED: SCATTLE, JLECROY, DJONES
EXEC

CPA BAGHDAD
SECDEF WASHDC
SECSTATE WASHDC
SECTREASURY WASH DC
SECCOMMERCE WASH DC
USUN NEW YORK
WHITE HOUSE NSC WASH DC

E.O.: 12958: N/A
TAGS: PREL, PGOV, IZ
SUBJECT: Promulgation of Coalition Provisional Authority
(CPA) Orders During Remainder of Occupation

1. Summary. To date, I have issued 64 orders in my capacity as Administrator of the Coalition Provisional Authority (CPA). Under the laws and usages of war, and consistent with relevant U.N. Security Council Resolutions, including UNSCRs 1483 and 1511 (2003), these orders have the force and effect of law. The Transitional Administrative Law (TAL) recognizes these orders and continues their force and effect until rescinded or amended by duly enacted legislation. We have now completed a comprehensive review of all orders and regulations that CPA intends to promulgate during the remainder of the occupation. These initiatives will lay a proper legal foundation for a stable and free Iraq.

2. The CPA Office of General Counsel (OGC) oversees the drafting and coordination of all orders, regulations and other legal instruments promulgated by CPA.

a. Before any order is drafted, OGC carefully reviews extant Iraqi law to determine whether any revision is necessary and ensure that amendments are as narrowly drafted as possible, consistent with the CPA's obligations under occupation law.

b. Draft orders generally are prepared by subject matter experts either within or in coordination with OGC, although the drafting of certain highly technical orders is accomplished by experts with U.S. executive agencies or other specialized organizations such as the N.Y. Federal Reserve. We are especially appreciative of consistently superb and timely support from the Offices of General Counsel in the Departments of Defense, Treasury and Commerce and the Office of the Legal Adviser, Department of State.

c. The drafting process entails close coordination with the relevant interim Iraqi ministers and their ministry staffs, and often includes sessions with Iraqi academic and business leaders.

d. Once drafted, proposed orders are staffed through an interagency process involving the Departments of Defense, State, Justice, Treasury and Commerce. The Coalition capitals in the United Kingdom and Australia also are provided copies for review and comment, and all commercial law reforms are staffed with the international financial institutions as well. Finally, most draft orders (including all economic and governmental reform orders) are coordinated with the Iraqi Governing Council.

e. Following the U.N.'s withdrawal from Iraq in August 2003, it has proven difficult to consult and coordinate with the U.N. on proposed CPA orders, where required under U.N. Security Council Resolution 1483. Accordingly, we request the assistance of the Department of State and the USUN in establishing a practice that will appropriately include the U.N. in the coordination process, consistent with U.N. Security Council Resolution 1483 and CPA's need to adhere to a firm schedule. In our view, such a practice cannot rely solely upon informal coordination in Iraq with the U.N. Secretary-General's Special Representative, due to the irregularity of his travel to Iraq. Another solution must be developed to ensure the strongest possible legal basis for CPA's commercial and government reform initiatives.

3. We have applied the following principles in prioritizing our efforts:

a. The highest priority is given to orders that create commissions, organizations or offices that will

require time to establish, staff and begin functioning;

- b. The next priority is accorded to those orders that contribute to transparency, honesty and accountability of the Iraqi government;
- c. The third priority includes those orders that contribute to a stable, free market economy and that promote economic reconstruction and the conditions for sustainable development.

4. Consistent with these principles, the pending orders and regulations have been grouped into three categories: mission critical, very important and important.

a. There are 14 mission critical orders currently pending promulgation. Failure to enact these orders during the occupation could jeopardize our efforts to stabilize, reconstruct, and transform Iraq.

- (1) CPA will soon begin drafting an Election Commission Order and a Political Parties Order. It is important that the Commission be established and that it promulgate election regulations by May 31, to ensure integrity and transparency during the campaign as well as fair and free elections that will be recognized as such by the Iraqis and the international community.
- (2) In view of the uncertainty regarding a status of forces agreement or a U.N. Security Council resolution, an order that provides adequate legal protection for military, diplomatic and contractor personnel after the occupation must be in place. In the same vein, a "housekeeping" order is also needed to provide for the transition on 30 June and bring all extant orders and regulations into conformity with the TAL.
- (3) In the national security arena, four orders will be needed. An order establishing the new Ministry of Defence is complete and in final coordination with the Governing Council now. Orders establishing a new Iraqi National intelligence service and regulations governing

the armed forces, including militias, are being drafted.

- (4) In the general governance arena we will reconstitute the Board of Supreme Audit as an independent public agency empowered to enhance the economy, efficiency, effectiveness and credibility of the Iraqi government. A completed draft is in coordination. We will also put in place an Organic Budget Order and Public Procurement Order. They are being designed to install budgeting and procurement mechanisms that are transparent, credible and embrace competition. Drafting is underway on both orders.
- (5) An Interim Governmental Powers Order has been drafted and coordinated, and will be signed this week. This order will clearly articulate the respective roles, authorities and responsibilities of interim Ministers, Governors and other local governing authorities.
- (6) An order is also needed to establish a new visa system as part of a broader border control program. This order is being drafted now by CPA.
- (7) Finally, a regulation is necessary to formally establish the Program Management Office (PMO) and prescribe its composition, authorities and program management and acquisition functions during the occupation (and facilitate its proposed transition to the Department of Defense). The PMO is currently operating without a specific and comprehensive enabling regulation. This regulation has been drafted and is in coordination.

b. Fifteen pending orders have been identified as "very important". These orders will enable Iraq to maintain momentum in its progress toward an open and stable society. Many focus upon economic and commercial reform, while others deal with communications, general governance and judicial reform.

- (1) Drafting is underway on a revision to an earlier Banking Law that will facilitate commercial

banking operations and support true market reforms. Banking Regulations are also being written that set forth detailed guidance to implement the Banking Law.

- (2) Administrative Retail Registration instructions have been completed and are being coordinated with the Iraqi Ministry of Trade. These regulations will provide the procedures for foreign investors to register to do retail business in Iraq pursuant to CPA Order No. 39.
- (3) A Labor Law Order has been drafted and is being coordinated. This will provide greater flexibility for job creation, labor mobility and equal treatment for Iraqis and non-Iraqis.
- (4) A Bankruptcy Law modernizing Iraqi dissolution, liquidation and bankruptcy proceedings has been drafted. Coordination is ongoing.
- (5) A Secured Transactions Order has been drafted and is under coordination. This order will provide for a registry and specific protections for property rights.
- (6) Orders dealing with intellectual property matters including patents, trademarks, trade names and copyrights are being drafted and will soon be coordinated with Iraqi government officials prior to interagency coordination.
- (7) An order dealing with Competition Policy setting forth anti-monopoly rules will be drafted.
- (8) A Pension Reform Order will be drafted to permit private pension funds and update extant pension policies.
- (9) A Central Government Functions Order will create an infrastructure to support the Prime Minister and Council of Ministers. It will include the Iraqi Security Council, the senior governmental body that will establish national security policies and priorities. This order has not been drafted.

- (10) An order establishing an independent commission for licensing and regulating telecommunications, broadcasting and other media has been drafted and coordinated, and is expected to be signed this week.
- (11) An order establishing the Iraqi Broadcasting Network as Iraq's public services broadcaster also has been drafted and coordinated, and is expected to be signed this week.
- (12) A "Whistle Blower" Protection order has been drafted to protect those who come forward with evidence of corruption and official wrongdoing. Coordination is underway.
- (13) A draft revision of the order creating the Iraqi Civil Defense Corps (ICDC) has been completed; the revision would provide for the ICDC's participation in counterinsurgency operations. Coordination is underway.
- (14) An Omnibus Judiciary Order is needed to create the administrative structures to transfer the judicial support functions from the Ministry of Justice to the Judicial Council. This order has not been drafted.

c. Another 28 orders would significantly contribute to establishing a basic legal framework in Iraq. Again, most focus on commercial and economic reforms.

- (1) Four commercial reform initiatives have been drafted and received interagency and international input: Reconstruction Levy Instructions, Consolidation of State Owned Enterprises, Disposition of Military Industrial Company Assets and Personnel, and Iraqi Interim Securities Law. All are being coordinated.
- (2) Five commercial reform initiatives are currently being drafted: an anti-money laundering law, a comprehensive revision of Securities Law, Commercial Agency Regulations, Public Debt Law, Consumer Protection and a comprehensive revision of Iraq's Company Law.

- (3) We have plans to prepare additional orders in the commercial reform arena dealing with Insurance Law, Social Security Law, Transportation Customer Funds, a National Oil Company Law, a Commercial Leasing Law, comprehensive revision of the Tax Law, a Funds Transfer Law and an International Trade Negotiation Law.
- (4) In the national security arena, we have completed a draft revision of the New Iraqi Army Order that authorizes Coalition Forces to exercise command and control of the IAF and permits its use in counterinsurgency operations. Coordination is underway.
- (5) An order establishing the Iraqi Radioactive Source Authority, a regulatory agency to monitor and enforce regulations governing ionizing radiation usage, has been completed. Coordination has not begun.
- (6) Drafting is underway for the Iraqi International Center for Science and Industry, an organization designed to employ Iraqi scientists, technicians and engineers who were employed in WMD programs.
- (7) A weapons registration order has been drafted to register and regulate the importation and possession of weapons by security companies and contractors.
- (8) An order decentralizing the power to appoint and remove academic officials will be drafted.
- (9) A Civil Service Order will be drafted including merit management and an oversight commission.
- (10) An order authorizing covert investigations with judicial oversight is being considered for drafting.
- (11) A traffic code is currently being drafted to ensure that regulation of motor vehicle operations is not a source of graft and corruption for lower level authorities.

5. Although this is a very ambitious plan, I am convinced we will be able to have all of these orders and regulations completed by 30 June. An area of particular concern is the Iraqi Governing Council's ability to absorb this extraordinary legislative agenda. Nonetheless, we recognize that coordination with the Governing Council is necessary to ensure the legal sufficiency and long-term viability of CPA's orders. We will carefully monitor this process and continue to accord the Governing Council an opportunity meaningfully to review and respond to the orders in a prioritized sequence, and at a rate that does not exceed its capacity.

BREMER

PENDING ORDERS AND REGULATIONS

As of 14 Mar 04

Category	Subject	Description	Status
		MISSION CRITICAL	
Political Transition	Election Commission	Establishes a commission that will develop the rules and procedures for conducting fair and free elections.	To be drafted based on TAL.
Political Transition	Political Parties Order	Establishes rules for the establishment, funding and conduct of political parties.	To be drafted based on TAL.
Political Transition	Housekeeping Order	Conforms all other orders and regulations with provision in TAL regarding role of transitional Iraqi government as successor to CPA.	To be drafted based on TAL.
National Security	Order 17	Revise to provide adequate legal protection to diplomatic, military and contractor personnel beyond occupation.	To be drafted.
National Security	Ministry of Defence	Establishes a new Ministry of Defence, which will be wholly separate and distinct from the MoD dissolved under CPA Order Number 2. Transfers the New Iraqi Army established under CPA Order Number 22 to the new MoD and disestablishes the Defense Support Agency created by CPA Order Number 42 (although it does transfer personnel/contractors currently employed/used by DSA to the new MoD). Provides that the interim Minister of Defence will be appointed by the Governing Council with the agreement of the Administrator. Sets out the elements of the MoD and the senior positions.	Draft completed. Coordination underway.
National Security	Iraqi Security Council	Creates the senior governmental body as well as the decision mechanisms used by that body to establish national security policies and priorities.	To be drafted.
General Governance	Board of Supreme Audit	Reconstitutes the Board of Supreme Audit as an independent public agency empowered to enhance the economy, efficiency, effectiveness and credibility of the Iraqi government.	Draft completed. Coordination underway.
Economic and Commercial Law Reform	Organic Budget Law Order	Promulgates the Organic Budget Law, which provides limits on expenditures, exemptions from such limits, and allocations of contingency funds.	Drafting underway.

Economic and Commercial Law Reform	Public Procurement law	Provides a transparent and competitive regime for government procurement.	To be drafted.
National Security	Establishment of the Iraqi National Intelligence Service	Establishes a new intelligence service for Iraq. Director General will be appointed by the head of government for a set term. INIS will provide strategic intelligence to MoI and MoD. Issue of authority to detain individuals is still under discussion	OGA drafting charter.
General Governance	Interim Governmental Powers	Defines respective authorities and responsibilities of Governing Council and interim Ministers, Governors and Deputy Governors, Provincial and Local Councils, Mayors, and Chiefs of Police, and specifically delineates powers that are reserved for centralized execution, and powers that are devolved for localized execution. The order would remain in effect from date of signature until revised or rescinded by the Transitional Administrative Law or legislative enactment of the new Iraqi government.	Draft completed. Pending final coordination with GC.
National Security	Regulation of Armed Forces Within Iraq	Prohibits Armed Forces, to include Resistance Forces (e.g., the Peshmerga and Badr) and private security firms, from operating within Iraq except as provided for in the order. Exceptions include Armed Forces under Coalition control; security firms contracted by Coalition; and private security firms licensed by the MoI with no more than 100 armed employees. Provides that Resistance Forces that propose a transition plan accepted by the CPA by 1 May shall not be deemed to violate the prohibition, if they abide by the plan. Sets forth policies for transitioning Resistance Forces.	Draft under revision.
CPA Administration	Program Management Office	Formally establishes Program Management Office and describes its composition, authorities, and program management, financial management and acquisition functions.	Draft completed. Coordination underway.
General Governance	Revision of visa system	Establishes a new system for control of entry into Iraq by non-Iraqis through new categories of entry visas. This will provide better border control and will constitute an integral part of the broader immigration control policy.	To be drafted.

		VERY IMPORTANT	
General Governance	Central Government Functions Order	Establishes an office to support the Prime Minister and cabinet in developing and coordinating policy and providing administrative support.	To be drafted.
General Governance	Iraqi Communications and Media Commission	Establishes an independent commission responsible for licensing and regulating telecommunications, broadcasting and other media in Iraq.	Submitted for signature.
General Governance	Public Service Broadcasting	Establishes the Iraqi Broadcasting Network as the public service broadcaster for Iraq.	Submitted for signature.
Economic and Commercial Law Reform	Revisions to Banking law	Revises Banking Law promulgated under Order 40 to facilitate commercial banking operations in support of true market reforms.	Drafting underway.
Economic and Commercial Law Reform	Banking Regulations	Provides detailed guidance implementing Banking Law.	Drafting underway.
Economic and Commercial Law Reform	Labor Law	Amends existing law to provide far greater flexibility in job creation, employment conditions and labor mobility, including equal treatment of Iraqis and foreigners.	Coordination underway. Comments due March 16th
Economic and Commercial Law Reform	Retail Registration Regulations	Provides procedures for registry of foreign investors intending to engage in retail business in Iraq.	Draft completed. Coordination with Ministry ongoing.
Economic and Commercial Law Reform	Bankruptcy Law	Amends existing law to modernize dissolution, liquidation and bankruptcy proceedings and creditor rights protection, while preserving aspects of existing law that are functional but unused.	Coordination underway. Interagency comments due March 8th.
Economic and Commercial Law Reform	Secured Transactions Law	Provides for a registry and set of rules to ensure that property rights are protected.	Coordination underway. Comments due March 12th.
Economic and Commercial Law Reform	Intellectual Property Law	Amends existing law to strengthen protection of patents, trademarks, trade names and copyrights.	Drafting underway.
Judicial Reform	Omnibus Judiciary Order	An overarching order dealing with the organization of an independent judiciary, judicial salaries, qualifications and appointments, security and administrative support.	To be drafted.

National Security	Revision to Order No. 28, Iraqi Civil Defense Corps (ICDC)	CJTF-7 proposes expanding ICDC's counterinsurgency roles. Removes limitation on tasking of ICDC and provides that Coalition Forces will task the ICDC and makes other revisions necessary to reflect possible inclusion within MOD.	Draft completed. Coordination underway.
Economic and Commercial Law Reform	Competition Policy Law	Establishes anti-monopoly policies.	To be drafted.
Economic and Commercial Law Reform	Pension Reform Law	Amends existing law to update pension policies and permit private pension funds, deductibility of contributions, and generally updating pension policies.	To be drafted.
General Governance	Whistle Blower Protection	Protects persons who come forward with evidence of corruption and official wrongdoing by providing civil penalties for retaliatory action and permitting criminal sanctions in egregious cases.	Draft completed.

IMPORTANT			
National Security	Revision to Order No. 22, New Iraqi Army (NIA)	CJTF-7 proposes using Iraqi Armed Forces (IAF) (formerly NIA) in counter-insurgency roles, requiring elimination of the prohibition in Order 22 against use of the IAF in internal (law enforcement) roles. Draft revision expands internal operational roles for IAF, provides for operations by IAF under the control of the Coalition Forces, extends legal protections for IAF members when conducting operations and retains Administrator's control of IAF employment.	Draft completed. Coordination underway.
Economic and Commercial Law Reform	Anti-money laundering law	Provides rules and procedures to prevent and counter money laundering activities.	Drafting underway.
Economic and Commercial Law Reform	Reconstruction Levy Instructions	Provides detailed guidance for implementing Reconstruction Levy.	To be submitted to Minister for signature.
Economic and Commercial Law Reform	Insurance law	Provides an insurance regime for Iraq.	Draft expected mid-April
Economic and Commercial Law Reform	Social security Law	Establishes comprehensive social security scheme including unemployment compensation and limited welfare support.	To be drafted.
General Governance	Revision to Order No. 45: Non-Government Organizations (NGO)	Although Order No. 45 has been signed into law, CPA is receiving suggested revision designed to enhance the security of Iraq while facilitating the participation of NGO's in Iraq.	Order under review for possible amendment.
Economic and Commercial Law Reform	Disposition of Military Industrial Company assets and personnel	Authorizes reassignment of employees and assets of military industrial companies to other SOE's.	Draft completed. Coordination underway.
Economic and Commercial Law Reform	Consolidation of State owned enterprises	Provides procedures for consolidation and merger of SOE's into ministries and other SOE's	Coordination underway. Comments due March 9th.
Economic and Commercial Law Reform	Iraqi Interim Securities Law Order	Builds upon existing Iraqi securities law by applying certain aspects of modern securities law to facilitate transition to a market economy. (An entirely new securities law will subsequently be prepared to complete the legal framework for a market economy).	Coordination with Iraqis ongoing.

Economic and Commercial Law Reform	Public Debt Law	Provides rules and procedures for issuance of government bonds.	Drafting underway.
Economic and Commercial Law Reform	Comprehensive Revision Securities Law	Comprehensive revision of securities law to provide the legal framework for a robust and transparent securities market.	Draft being revised by SEC.
Economic and Commercial Law Reform	Transportation Customer Funds	Establishes funds that will be financed through the collection of transportation-related fees, such as sea port charges and air over flight fees.	To be drafted.
Economic and Commercial Law Reform	National Oil Company Law	Creates the Iraqi National Oil Company	To be drafted.
Economic and Commercial Law Reform	Commercial leasing law	Provides procedures to ensure retention of property interests in leasing arrangements. Provides for rights of lessors or leases.	To be drafted.
Economic and Commercial Law Reform	Tax Law	Comprehensive revision of Iraqi tax law.	Research underway.
Economic and Commercial Law Reform	Regulations for Commercial Agency	Implements Order 39 and amendments to Company Law with regard to Commercial Agency.	Drafting underway.
Economic and Commercial Law Reform	Company Law (Comprehensive Revision)	Comprehensive revision of Iraqi company law, designed to facilitate infusion of capital, implement Order No. 39, provide for establishment of foreign-owned corporations and remove unnecessary state controls.	Drafting underway.
Economic and Commercial Law Reform	Consumer Protection	Provides basic rules for protection of consumers.	Initial draft completed by Iraqi attorneys from University of Baghdad. Under review.
Economic and Commercial Law Reform	Funds transfer laws & Regs	Establish rules and procedures including reporting requirements for the transfer of funds into and out of Iraq.	To be drafted.
Economic and Commercial Law Reform	International Trade Negotiation Law	Sets forth procedures for conducting trade talks to include private sector participation.	To be drafted. Ministry of Trade engaged in policy review
National Security	Iraqi Radioactive Source Authority	Establishes a regulatory agency, under the Ministry of Science and Technology for administrative purposes only, to implement, monitor and enforce regulations for beneficial uses of ionizing radiation.	Draft complete.

National Security	Weapons Registration Policy	Creates Iraq-wide weapons control structure based on weapons badge or card. Addresses all persons who wish to possess weapons in Iraq, including Coalition Forces. Indicates which persons require a badge/card to possess a weapon, which do not, provides for revocation or suspension of the card/badge, and describes effect of revocations.	Draft completed. Coordination underway.
National Security	Iraqi International Center for Science and Industry	US and UK will sign an international agreement forming this inter-governmental organization to provide grants for projects that will employ Iraqi scientists, technicians and engineers formerly associated with WMD projects in projects for medical, commercial or other non-WMD related purposes.	Drafting underway
General Governance	Higher Education	Revise existing regulations to streamline and decentralize the appointment and removal policies for university presidents and deans.	To be drafted.
General Governance	Civil Service Law	Establishes a comprehensive civil service structure to include merit management and an oversight commission.	To be drafted.
Judicial Reform	Investigations Order	Authorizes covert investigations under judicial oversight including wiretapping and electronic surveillance. Sets forth standards, procedures and approval authorities.	To be drafted.
Judicial Reform	Traffic Code Order	Creates a new traffic code and court system, including licensing and registration procedures.	Drafting underway.