



Baghdad University  
Museum and Internet  
Café rebuilt with  
emergency funding

1<sup>st</sup> Combat Camera Squadron (John L. Houghton, Jr.)

# The Commander's Emergency Response Program

By MARK S. MARTINS

**W**ith the rapid and synchronized operations to reach Baghdad and Kabul now history, U.S. joint task forces in Iraq and Afghanistan are in what John Keegan calls “the small change of soldiering.”<sup>1</sup> The metaphor is apt. For some commanders, such unorthodox operations do not fulfill a warrior’s calling. Yet these

dangerous missions can exceed conventional battles in terms of time, life, blood, and national treasure.

Remaining hostile elements are smaller and more difficult to identify and defang. The time span of conflict now depends on how long it will take to grow Iraqi and Afghan institutions of self-government and security, while potential battlefields extend to wherever the Fedayeen, the Taliban, or al Qaeda may be hiding. The current phase must be about winning the hearts and minds of the Iraqi and Afghan people. As

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# Report Documentation Page

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stated in Joint Publication 3-0, *Doctrine for Joint Operations*, military combat operations must give way to “civilian dominance as the threat wanes and civil infrastructures are reestablished.”

The Commander’s Emergency Response Program (CERP) is helping to win trust and promote civil infrastructures in Iraq and Afghanistan. It provides U.S. Governmental appropriations directly to operational and tactical forces, enabling them to meet emergency needs of civilians. But the undisciplined use of CERP funds could

### **in seizing funds, coalition forces were safeguarding movable Iraqi government property rather than personal property of Iraqi citizens**

cause Congress to end them. Such a fate is worth averting because the program’s success proves that small sums spent intelligently by joint force commanders can yield great benefits.

#### **CERP Origins**

CERP originated as a stabilizing tool that commanders could use to benefit the Iraqi people. Initial resources came from millions of dollars of ill-gotten Ba’athist Party cash discovered by U.S. forces. This loot, along with the other regime assets, funded a variety of emergency projects.

Handling of recovered assets was well documented and subject to law. Treasury Department officials determined the authenticity of all seized negotiable instruments. A Presidential memorandum required the Department of Defense (DOD) to prescribe procedures governing use, accounting, and auditing of seized funds in consultation with the Departments of Treasury and State and the Office of Management and Budget (OMB). DOD and OMB further determined that seized funds were not “miscellaneous receipts” of the United States because they were not “for the Government” within the meaning of Federal appropriations law.

Meanwhile, commanders and senior policymakers ensured that seizure, control, and disposition of former re-

gime property complied with international law. Specifically, U.S. Central Command (CENTCOM) announced that in seizing the funds, coalition forces were safeguarding movable Iraqi government property rather than personal property of its citizens.

A vacuum of civil institutions developed overnight in Iraq, as did a multitude of emergency needs. Clearing destroyed vehicles, bulldozing garbage, distributing rations, rehabilitating jails and police stations, tending to urgent medical needs, and repairing roofs, wells, and sewers became the business of U.S. forces.

Military manpower, services, and supplies provided early humanitarian and civic assistance in Iraq. Judge advocates advised that DOD funds could lawfully be spent on certain emergency

relief and reconstruction projects because coalition forces had assumed responsibility as an occupying force. Yet uncertainty over legality, combined with conservative fiscal procedures, inhibited direct expenditure of service component operations and maintenance (O&M) funds to purchase goods or services locally for humanitarian requirements.

Available seized regime cash and urgent humanitarian needs compelled the coalition commander to establish, in a May 7, 2003, fragmentary order (FRAGO), a “Brigade Commander’s Discretionary Recovery Program to Directly Benefit the Iraqi People.” Unit and DOD comptrollers and finance officers, coordinating with the DOD Office of Reconstruction and Humanitarian Assistance, developed procedures to account for, secure, control, and pay out seized Iraqi cash and to keep it separate from appropriated funds.

In June, the Coalition Provisional Authority (CPA) gave the program its current name, linked it to governing law and authorities relating to Iraqi property, and articulated its purpose. The CPA administrator, Ambassador L. Paul Bremer, having authority over “certain state- or regime-owned property in Iraq,” redelegated some of his authority to the commander of coalition forces in a June 16 memo authorizing him “to take all actions necessary to operate a Commanders’

Emergency Response Program.” The memo stated:

*This Program will enable commanders to respond to urgent humanitarian relief and reconstruction requirements within their areas of responsibility, by carrying out programs that will immediately assist the Iraqi people and support the reconstruction of Iraq.*

The memo also set a limit on expenditure of seized funds under CERP and dictated spending ceilings and transactional caps for commanders at different levels.

#### **FRAGO 89**

Commander, Combined Joint Task Force 7 (CJTF-7), implemented CERP on June 19 by issuing FRAGO 89, which outlined permissible reconstruction projects, issued implementing tasks, and stated expenditure limits. It also announced that seized Iraqi assets were the source of CERP funding.

FRAGO 89 made clear that expenditures could include purchase of goods and services from local Iraqis. It also defined permissible reconstruction assistance as:

*the building, repair, reconstitution, and reestablishment of the social and material infrastructure in Iraq. This includes but is not limited to: water and sanitation infrastructure, food production and distribution, healthcare, education, telecommunications, projects in furtherance of economic, financial, management improvements, transportation, and initiatives which further restore the rule of law and effective governance, irrigation systems installation or restoration, day laborers to perform civic cleaning, purchase or repair of civic support vehicles, and repairs to civic or cultural facilities.*

Subordinate commanders were to appoint trained and certified project purchasing officers, who were to document each purchase and follow purchase order procedures. They could use standard forms to document purchases up to \$100,000. For purchases over \$10,000, they were to inform the first O-7/O-8 level commander in advance, obtain three competitive bids, identify a project manager, and pay for services





Ambassador Paul Bremer meeting with congressional delegates on rebuilding Iraq

1<sup>st</sup> Combat Camera Squadron (Verlin Lew Collins)

as progress occurred. FRAGO 89 forbade mixing CERP funds with appropriated funds and required purchasing officers to maintain separate document registers.

Unit finance detachments were to train individuals other than purchasing officers as pay agents for drawing, safeguarding, and paying for purchases. Using finance standing operating procedures ensured security of the funds, to include coordinating for military police or tactical maneuver units to provide point, route, or area security. Pay agents were to draw funds only as needed.

FRAGO 89 prohibited expenditures for seven categories:

- direct or indirect benefit of CJTF-7 forces, to include coalition forces
- entertaining Iraqi population
- weapons buy-back or rewards programs
- buying firearms, ammunition, or removing unexploded ordnance
- duplicating services available through municipal governments
- supporting individuals or private businesses (exceptions possible, such as repairing damage caused by coalition forces)
- salaries for the civil work force, pensions, or emergency civil service worker payments.

Commanders were to coordinate all projects with the CPA regional offices, government support teams, and civil affairs elements. They were cau-

tioned that “Iraqi seized assets used for this program are not unlimited” and that they should “work to ensure reasonable prices are paid for goods/

### thousands in Baghdad received a daily wage to clean streets, alleys, buildings, and public spaces

services received, and projects are constructed to a modest, functional standard.”

Units were to report weekly to higher headquarters with the dates, locations, amounts spent, and descriptions of CERP projects. The initial amounts allocated ranged from \$200,000 for colonel-level commanders to \$500,000 for commanders at the brigadier/major general level, and could be replenished after CPA review.

CJTF-7 issued two fragmentary orders modifying the CERP. The first relaxed the restriction in FRAGO 89 on reward payments. The second permitted delegation of approval authority for reward payments to battalion-squadron command level.

### CERP Impact in Iraq

From early June to mid-October 2003, Iraqis benefited from the seized

funds entrusted to commanders. More than 11,000 projects were completed, resulting in the purchase of \$78.6 million in goods and services, mostly from local sources.

Thousands in Baghdad received a daily wage to clean streets, alleys, buildings, and public spaces, far exceeding what U.S. forces alone could do. Iraqis repaired and installed hundreds of small generators in municipal buildings—many confiscated from abandoned Ba’athist buildings and villas—enabling communities to resume basic functions despite slow progress on the electrical grid. Hundreds of air conditioners were installed, providing relief from high temperatures, cooling hot tempers, and permitting clear thinking on problems of self-governance. Dozens of jails and police stations were repaired, facilitating public order and creating more secure and humane conditions for detainees.

Similar projects were under way throughout the country. Over \$6 million was spent on 999 water and sewage repair projects, providing clean water supplies and preventing the spread of dysentery, cholera, and other diseases. Bridge, road, and other reconstruction projects numbered 1,758 during the first 18 weeks of CERP and put nearly \$13 million into nascent markets for building materials and labor. Over \$1 million was spent on 188 projects that distributed humanitarian relief to places nongovernmental and international relief organizations could not reach. Another \$450,000 enabled displaced Iraqis to go home and paid for transporting supplies and equipment. Expenditures to get governing councils, town officials, judges, and investigators operating totaled \$4.7 million in 742 projects.

A dramatic CERP use occurred in northern Iraq, where 101<sup>st</sup> Airborne Division partnered with the civilian population. The division undertook over 3,600 CERP projects costing more than \$28 million. It refurbished more than 400 schools and employed thousands of locals. The school projects complemented work by nongovernmental organizations and the CPA, enabling many children to return to class.

The CERP of the 101<sup>st</sup> was front-page news in an October 30, 2003 story in *The Washington Post* featuring the pediatric wing of a hospital near the Iraq-Syria border:

*Within a week, a Humvee pulled up with the first installment of \$9,600 in cash to fix the wing. Within four more weeks, the building was rebuilt and refurbished, complete with fuzzy blankets in primary colors and Mickey and Minnie Mouse decorations. "It happened so fast I almost couldn't believe it," said [Kifah Mohammad] Kato, director of the Sinjar General Hospital.*

The article contrasted the streamlined procedures for spending former regime cash with the delays plaguing funds handled by the U.S. Agency for International Development (USAID). It also recorded concerns over abuse, as commanders could purchase goods or services with minimal competitive bidding or market research. The article added that in addition to hospital refurbishment, a humanitarian expenditure, CERP had been used for "projects such as hiring a civil defense corps . . . and fixing an oil refinery and a sulfur plant."

Commanders and judge advocates throughout Iraq justified these security-oriented and infrastructural investments as permissible under CERP because they supported humanitarian needs. These indirectly humanitarian expenditures were spent on recruiting, training, outfitting, and deploying police, facility security guards, and civil defense corps units. Additional millions were spent on construction or repairs to industrial plants. Moreover, in September and October, the average CERP project cost jumped from about \$4,000 to over \$17,000, reflecting commanders' efforts to address the security and infrastructural causes of Iraqi hardships and immediate needs.

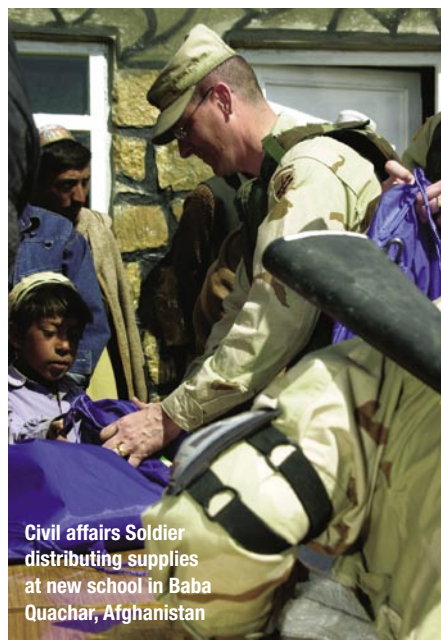
Although legal interpretations of the June 16 memorandum and FRAGO 89 help reconcile humanitarian purposes with security and industrial infrastructure expenditures, CERP is an emergency response program, not a fund for investments in security forces and industrial capacity. Moreover, Congress had already appropri-

ated nearly \$2.5 billion within the Iraq Relief and Reconstruction Fund that included rule of law and governance among its purposes. In the same legislation, Congress provided over half a billion dollars to the Natural Resources Risk Remediation Fund to repair oil facilities and related infrastructure and to preserve a distribution capability.

Despite the duplication of security force and industrial capacity projects with funds administered outside

### officers related CERP to a stabilization tool no less essential to victory than the world's finest military equipment

the military command structure, Ambassador Bremer decided to reinforce CERP, given the slow pace of nonmilitary reconstruction. Eventually, the CPA Program Review Board recommended providing additional millions in seized assets.



Civil affairs Soldier distributing supplies at new school in Baba Quachar, Afghanistan

55<sup>th</sup> Signal Company Combat Camera (Jeremy Colvin)

### Funding CERP with U.S. Appropriations

While CERP was attracting attention for early achievements, it was running out of money as commanders spent seized cash at faster rates. It be-

came clear that the amount CPA programmed would not last beyond 2003.

On September 17, just before funds from seized assets ran out, President George W. Bush sent Congress a request for \$87 billion of emergency supplemental funding. More than \$20 billion was for reconstruction in Iraq and Afghanistan. Congress considered on this legislation quickly. By the time the administration was prepared to request a specific amount for CERP, the

House and Senate versions of the supplemental appropriations bill were almost ready to be sent to the joint conference charged with reconciling differences. In October, before the start of the conference, the administration included a draft provision in the House bill authorizing up to \$180 million of O&M funds. Increasing requests by commanders in Afghanistan for funding to undertake such projects resulted in a provision authorizing CERP for both countries.

Senate Appropriations Committee staffers identified the CERP provision in the House version of the bill as one not included in the President's original request. Concerned about diversion of O&M funding from its purpose, and aware that billions of dollars elsewhere in the legislation were being granted for humanitarian and reconstruction needs in Iraq and Afghanistan, the committee requested more information on CERP and on how the provision would be implemented.

Joint Staff members outlined the Bremer memo and FRAGO 89 guidance to Senate staffers on October 22. Officers with experience in Iraq described representative projects and related CERP to a stabilization tool no less essential to victory than the world's finest military equipment provided by Congress. When spent well, the funding convinced Iraqis of coalition commitment to their well-being, increased the flow of intelligence to U.S. forces, and improved security and economic conditions.

Regarding why O&M should be the source of funding, the Joint Staff explained that commanders were familiar with its use, accountability, and man-



agement. The Joint Staff also described the training of both ordering officers and pay agents, their separate functions, and the procedures for securing cash, obtaining maximum results from purchases, documenting transactions, and investigating irregularities.

Senate staffers were cautious about the administration request that O&M funding be available for use "notwith-

### **a commander typically does have substantial influence over millions of dollars in appropriated funds**

standing any other provision of law." The Joint Staff replied that this phrase was essential to keeping CERP flexible, responsive, and unencumbered by procedures associated with procurement, payment of claims, or other actions that involve the expenditure of appropriated funds.

After the briefing, the Senate receded to the House version of the CERP provision, which amended the administration's request by adding a quarterly reporting requirement. Following debate on the legislation, Section 1110 of the bill that Congress passed gave commanders the authority to continue CERP with appropriated funds:

*During the current fiscal year, from funds made available in this Act to the Department of Defense for operation and maintenance, not to exceed \$180,000,000 may be used, notwithstanding any other provision of law, to fund the Commander's Emergency Response Program, established by the Administrator of the Coalition Provisional Authority for the purpose of enabling military commanders in Iraq to respond to urgent humanitarian relief and reconstruction requirements within their areas of responsibility by carrying out programs that will immediately assist the Iraqi people, and to establish and fund a similar program to assist the people of Afghanistan: Provided, that the Secretary of Defense shall provide quarterly reports, beginning on January 15, 2004, to the congressional defense committees regarding the source of funds and the allocation and use of funds made available pursuant to the authority in this section.*

The President signed the bill into law on November 6, 2003, which allowed Federal appropriations to fund CERP projects in Iraq and Afghanistan for the first time.

Then Under Secretary of Defense Dov Zakheim issued guidance on using appropriated CERP funds on November 25. Recognizing "a very powerful tool for the military commanders in carrying out their current security and stabilization mission," he expressed the Department's intent that appropriated CERP funding "preserve the same flexibility and responsiveness . . . maintained with the original CERP that was funded with seized Iraqi assets." The guidance also tasked CENTCOM and the Department of the Army to develop operating procedures for use of the funds.

When the Iraqi Interim Government assumed authority from CPA on June 28, 2004, the original source of CERP-seized Iraqi assets was no longer available. Congress and the President renewed their support for CERP in the DOD Appropriations Act in August, authorizing an additional \$300 million for operations and maintenance in FY05. The Consolidated Appropriations Act, which the President signed into law December 8, 2004, raised the amount to \$500 million. Also during the latter half of 2004, military commanders issued minor administrative changes to the CERP program.

### **Significance of CERP**

Hailed for its contributions to stabilizing Iraq, CERP in Section 1110 became a significant development in the law and a potentially transforming influence on military operations. The potential impact of this provision is best appreciated against the background of restrictions historically imposed on a commander's ability to spend public funds.

Under normal circumstances, a commander in Baghdad, Mosul, or Kandahar has no discretionary funds to apply toward his mission. He and his troops have the finest equipment in the world without having to make decisions about paying for it. Funds for these capital expenditures and for their

fielding to tactical units come from Congress programmatically or in other procurement appropriations.

Unless a commander's prior assignments included a tour with a higher headquarters involved in researching, developing, testing, or evaluating military equipment, he will have no role in spending these additional billions. So long as forces are well equipped and weapons development incorporates lessons from the field, commanders are satisfied to leave management of weapons and equipment programs to others.

Troops patrolling streets and raiding terrorist hideouts are paid with military personnel appropriations within a well-maintained apparatus. A commander has no direct function other than through promotions, evaluation reports, and other personnel decisions that impact earnings. Also, centrally managed contracts typically furnish most necessities once the tactical situation permits base camps.

A commander typically does have substantial influence over millions of dollars in appropriated funds within a service component's O&M account. The command's supply and maintenance personnel order materiel and other items required for day-to-day activities with these moneys.

Although most of the O&M funds are expended through charging accounts maintained within closed supply and distribution systems, government-wide commercial purchase card holders can make small buys on the open economy before deployment. Following deployment, trips by purchase card holders to and from developed countries might enable a few commercially purchased supplies to reach the force.

Forces can spend O&M funds locally in Afghanistan and Iraq only through ordering officers and pay agents. Local purchases for unit needs—ice, fans, cleaning supplies, office products, and even pack animals to support movement in difficult terrain—are representative uses of these procedures.



Military engineer and Iraqi contractors discussing reconstruction, Fallujah

U.S. Marine Corps Forces Pacific (Theresa M. Medina)

According to the comptroller general, the criterion for spending O&M funds is whether an expense is essential or nonessential to executing the object of the appropriation (here, those expenses necessary for the O&M of the various military departments). The Alexander decision, issued in reply to an inquiry by Congressman Bill Alexander, applied the doctrine of Federal appropriations law, that to be “necessary and incidental,” an expenditure must:

- be reasonably related to the purposes for which the appropriation was made
- not be prohibited by law
- not fall specifically within the scope of some other category of appropriation.

Applying this doctrine to military expenditures connected with joint exercises in Honduras, the comptroller general held that expenses for civic and humanitarian assistance and for training Honduran forces charged to DOD O&M funds violated U.S. Code, volume 31, section 1301—the “purpose” statute. Although stopping short of a violation, the Alexander decision criticized Department justifications that O&M funds could be used for building base camps, runways, and other projects benefiting the Honduran military.

Though subsequent legislation superseded parts of the Alexander ruling,

the decision casts a shadow over tactical unit expenditures. Without CERP, a commander in Iraq would not have authority to pay Iraqis for garbage cleanup, purchase generators for emergencies, or acquire local supplies and labor to make jails humane and secure. U.S. forces could only undertake water and sewage repair projects after receiving approval at higher headquarters, with coordination at the Joint Staff, the Office of the Secretary of Defense, and the Defense Security Cooperation Agency. Training or equipping Iraqi security forces and using U.S. equipment or items purchased with O&M funds to resource this effort would be off-limits under the Alexander ruling. This is security assistance that Congress funds with appropriations for foreign operations. Congress intends that military units not undertake development or infrastructure construction projects that are typically funded by the State Department and USAID.

By authorizing and funding a program for discretionary humanitarian projects of commanders, Congress has acknowledged the need for tools such as CERP to conduct stability operations. Authority to use a certain amount of O&M funds “notwithstanding any

other provision of law” is indispensable to ensuring CERP remains effective.

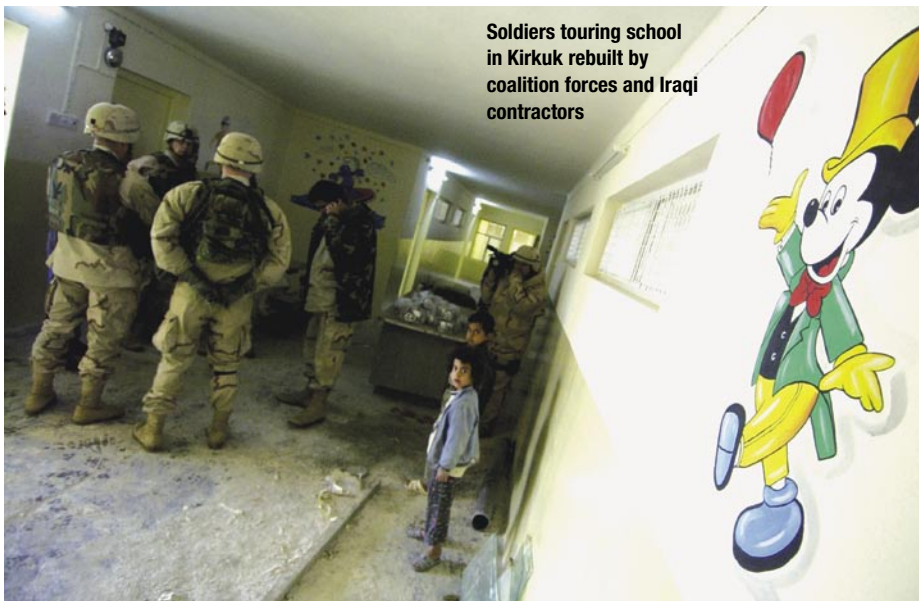
## Challenges

Using the planning and decision-making process, built on joint intelligence preparation of the battlefield, is key to selecting CERP projects. Ordering generators and copper wiring from Ba’athists could set off a spree of burglaries while financing attacks on U.S. troops. Ignoring a tip from a townsman that Fedayeen mortars collapsed the roof of a school may cost the chance to help children return to their studies or information from grateful parents on the location of explosive devices or the organization of hostile cells.

Coordinated project planning is essential. Neighborhoods suffering collateral damage from fires should be high priorities for immediate reconstruction. Opportunities to stretch CERP funds or enhance their impact should be seized by using them in tandem with bulldozers, backhoes, and other engineer assets. Ground maneuver forces should secure areas of newly completed projects. Public affairs messages should be timed to make the most of good news stories while avoiding any suggestion that loyalty can simply be purchased—a notion revolting to regional sensibilities.

CERP efforts must complement projects and programs of other U.S. Government organizations, nongovernmental organizations, and local and national efforts. Programs initiated by commanders on a decentralized basis could disrupt a central, nationwide program to train, equip, and pay security personnel. Military-sponsored medical and dental care should emphasize indigenous capability and coordinate with humanitarian relief organizations and USAID to improve follow-on care. Construction projects should balance rapid responsiveness with quality. The longer view of organizations whose mission is reconstruction and nationbuilding must temper the allure of headline-grabbing victories. Also, commanders must be careful that perceptions that they are providers do not stunt the growth of local institutions and authorities.

Although Congress intended Section 1110 to preserve CERP as a re-



Soldiers touring school in Kirkuk rebuilt by coalition forces and Iraqi contractors

1<sup>st</sup> Combat Camera Squadron (Jeffrey A. Wolfe)

sponsive program, the use of appropriated funds creates complications that do not arise with seized funds. CERP funds are not for cash rewards to civilians for information on terrorists or arms caches because DOD already has a rewards program. Also, funding CERP with Government appropriations inhibits commanders from making outlays that could be perceived as compensating combat-related damage to civilians or property.

The quarterly reporting requirement will cause greater scrutiny of security-oriented and infrastructural investments. In the November 2003 supplemental, Congress provided \$3.24 billion for security and law enforce-

### quarterly reporting will cause greater scrutiny of security-oriented and infrastructural investments

ment in Iraq, \$1.32 billion for justice and public safety infrastructure, \$5.56 billion for the electric sector, \$1.89 billion for oil infrastructure, and \$370 million for roads, bridges, and construction and related appropriations. Given congressional concerns on tapping O&M accounts for reconstruction projects when enormous sums were already appropriated, reports that the

military is using CERP to recruit, train, equip, and pay security forces could threaten the program.

In sum, the challenge CERP presents to commanders is coordinating its projects with individuals, teams, and organizations pursuing the common objective. This will yield maximum effects per dollar. Keeping expenditures focused on urgent humanitarian needs rather than infrastructure and security force investments will capture hearts and minds.

The impact of the Commander's Emergency Response Program will be profound if commanders surmount the challenges to it. Effectiveness requires

DOD and Congress to resist encumbering the program with purpose-based fiscal prohibitions. An example would be any policy statement that to pay a reward, or purchase a policeman's uniform, or build a dam is an improper use. The positive impact of CERP will continue to stem from commanders being able to make judgments quickly about how best to benefit Afghans and Iraqis. They will make these calls based partly on information from troops patrolling affected communities.

Commanders need freedom of action for the program to retain its responsiveness. The legal rule in Section 1110 that O&M funds may be used "notwithstanding any other provision of law" is sound. That a commander's purposes could overlap other appropriations should not inhibit his response to urgent local needs. Some overlap is inevitable. What distinguishes CERP is that commanders spend funds based on local information. The only purpose-based legal prohibition should be that which is against the use of public funds for personal enrichment.

The program should become part of organic authorizing legislation and be codified in Title 10, Code of Military Law. With permanent legislation, U.S. Joint Forces Command could ensure that joint force commanders are educated in the use of these funds. Joint exercises and simulations, service component pre-command courses, and the National Defense University could incorporate CERP into training, leader development, and school curriculums, providing long-term assurance that use of funds will be disciplined. While no system of control can eliminate every poor project choice, joint force commanders of every service will continue to demonstrate that the optimal system is one that encourages initiative and relies on their judgment.

Unorthodox modern operations are challenging the Government to provide new mechanisms within the law no less than they are challenging joint forces to adapt new technologies, weapons, and organization. CERP promises to be one answer to the legal challenge. As such, it is no "small change" of joint soldiering. **JFQ**

#### NOTE

<sup>1</sup> John Keegan, *The Face of Battle* (New York: Vintage Books, 1976), 14.