November 29, 2004

RE: TRIA Applicability to U.S. Military Bases Abroad

Dear Mr. S:

This is in response to your request for an interpretation of the Terrorism Risk Insurance Act[1] (TRIA) as applied to United States military bases abroad. We conclude, as explained below, that TRIA does not extend to an act of terrorism on a United States military base abroad.

First, we determine that a United States military base abroad does not constitute the "premises of a[ny] United States mission," as that phrase is used in TRIA sections 102(1) (the definition of "act of terrorism") and 102(5) (the definition of "insured loss"). Consequently, any act of violence giving rise to property damage, personal injury or death on such a military base could not be certified as an "act of terrorism" as defined by section 102(1) of TRIA, nor could it result in an "insured loss" as defined by TRIA section 102(5).

In reaching this conclusion, we rely chiefly upon the meaning of "premises of the mission" in Article 1 of the Vienna Convention on Diplomatic Relations, which defines that phrase as "the buildings or parts of buildings and the land ancillary thereto, irrespective of ownership, used for the purposes of the mission including the residence of the head of the mission."[2] This is a relatively narrow definition that contemplates the offices where official diplomatic business is conducted and the residence of the head of the diplomatic mission as the "premises of the mission". As a general matter, military personnel deployed on military bases abroad are not part of the diplomatic mission of the United States and thus the buildings and ancillary land they occupy are not part of the "premises of a United States mission".[3] We have consulted with representatives of the Office of the Legal Advisor at the Department of State, as well as the Office of the General Counsel at the Department of Defense, who concur with this view.

Next we address whether a United States military base abroad could be considered a "territory or possession" of the United States under TRIA section 102(14), which provides that the term "State" means "any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, each of the United States Virgin Islands, and any territory or possession of the United States." Legally, this is the more difficult question, because "the word 'state' … can contain many meanings"[4] and similar

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[1] Pub. L. No. 107-297, 116 Stat. 2322, 15 USC § 6701 (hereafter "TRIA").
[2] Vienna Convention on Diplomatic Relations and Optional Protocol on Disputes, April 18, 1961, 23 U.S.T. 3227, TIAS 7502, *passim*.
[3] Since military personnel on military bases are not "the people sent by one state to another" as diplomatic representatives within the meaning of the Vienna Convention, the military bases housing such military personnel cannot be considered to be "the premises of any United States mission" under TRIA.
[4] National Mutual Insurance Co. v. Tidewater Transfer Co., 337 U.S. 582, 587 (1949).

ambiguities exist with the terms "territory" and "possession".[5] Construction of these terms not only requires a consideration of the words themselves, but also how they are used to effectuate the purpose, character and aim of the law in which they appear.[6]

There are authorities applying the terms "territory" and "possession" differently to military bases in a number of different statutes, some of which conclude that a United States military base abroad is a United States territory or possession, and some of which conclude such a base is not.[7] In each instance, the determination of whether the base in question is a territory or possession rests upon the particular language and purpose of the statute being reviewed.

We conclude that the drafters of TRIA did not intend the terms "territory or possession" to have an expansive meaning. The territorial limitations of TRIA as set out in sections 102(1)(A), 102(5)(A) and (B), and 102(15) are specific and limited, and we find no indication, either in the language of the Act itself nor in its legislative history, that Congress intended to expand the geographical scope of TRIA outside the United States through the definition of "State."[8] The purpose of TRIA is to ensure property and casualty insurance availability for terrorism risk within the United States, and to a small group of other specified interests. Any expansion upon these limited interests would be inconsistent with the purpose of TRIA. For this reason, we determine that United States military bases abroad are not "territories or possessions" for purposes of TRIA section 102(14).

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This response addresses the application of the Act and regulations to the specific situation set forth in your request, as you have represented the facts to Treasury. If there is a change in any of the facts or assumptions presented, and such facts or assumptions are material to a conclusion presented in this response, then you may not rely on that

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[5] *See* Construction of State Reporting Requirements in Section 404 of the Personal Responsibility and Work Opportunity Reconciliation Act, 1998 OLC LEXIS 4 (1998).

[6] *See* Puerto Rico v. Shell Co. (P.R.) Ltd., 302 U.S. 253, 258 (1937).

[7] *See, e.g.*, *Friedrich v. Friedrich*, 983 F.2d 1396, 1401 (6th Cir. 1993) (Interpreting the International Child Abduction Remedies Act, court holds "[a]s a threshold matter, a United States military base is not sovereign territory of the United States. The military base in Bad Aibling is on land which belongs to Germany and which the United States Armed Services occupy only at the pleasure of the German government."); *U.S. v. King Features Entertainment, Inc.*, 843 F.2d 391, 398 (9th Cir. 1988) (Contract to show cartoons on U.S. military bases does not necessarily include foreign bases because "[o]bjectively, United States 'territories,' described in Title 48 of the United States Code, are commonly known to include Guam, the Virgin Islands, and American Samoa," but not obviously anything else). Customs Duties-Goods Brought into United States Naval Station at Guantanamo Bay, Cuba, 35 Op. Atty. Gen. 536 (1929) (Tarrif law does not apply to Guantanamo Bay base because it is not a "possession" of the United States). *Compare with*, *Vermilya-Brown Co. v. Connell*, 335 U.S. 377, 390 (1948) ; Installation of Slot Machines on U.S.Naval Base at Guantanamo Bay, 6 Op. Atty. Gen. 236, 1982 OLC Lexis 58 (March 29, 1982) (the Anti-Slot Machine Act applies to the United States Naval Base at Guantanamo Bay as United States territory).

[8] The Conference Report states that "the legislation only applies to U.S. risks, including domestic air carriers and flag vessels, U.S. territorial seas and continental shelf, and U.S. missions." H.R. Rep. No. 107-779, at 23 (2002).

conclusion generally or as support for any proposed or subsequent activity. This response is provided by the Terrorism Risk Insurance Program as a means of stating its current interpretation of the Act and regulations. The program may revise or revoke this interpretation upon its own initiative or upon the enactment of amendments to the Act or regulations.

Sincerely yours,

Jeffrey Bragg
Executive Director
Terrorism Risk Insurance Program