

SHADE
Northern Law Center

Legal Services

Belgian Laws and You

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Introduction

BELGIAN LAWS AND YOU

Bonjour et Bienvenue en Belgique! (Hello and welcome to Belgium!)

At the crossroads of Germanic and Latin cultures, Belgium has been a battlefield for famous generals from Caesar to Marlborough to Wellington to Patton. This diverse culture developed over nearly two millennia of occupation by Roman, Spanish, German, Austrian, French, and Dutch forces.

Living in Belgium should be fun and exciting. Here, a different culture, many interesting places to visit, and new people of many nationalities await you. You will experience many differences from our familiar way of life you left in the States. One of the most important differences you may encounter is the Belgian legal system. Fortunately, the everyday rules are not difficult. Taking a few minutes now to review the information here may save you countless headaches and euros later.

We have prepared this pamphlet on selected Belgian legal issues to provide basic information on general legal matters you may face daily. Please take the time to familiarize yourself with its contents now and remember to refer to it later. As American citizen-members of the force, we enjoy the privileges and protections of the North Atlantic Treaty Organization (NATO) Status of Forces Agreement (SOFA). At the same time, we are obligated to observe Belgian laws.

Of necessity the information here is general in nature and not specifically addressed to all situations. Please keep this in mind as you review the pamphlet. Our general treatment may not answer your specific questions. Please contact the Northern Law Center, Legal Assistance Office, DSN 423-4910/4868 or civilian 65.44.4910/4868 to consult a Legal Assistance Attorney or Belgian Legal Advisor.



Chapter One

Family Law

1-1. *Marriage.*

Marriage is essentially a matter of contract and requires the capacity to contract. All military personnel are subject to military regulations when marrying overseas. Military personnel should consult their chain of command or servicing personnel center to ensure applicable regulatory requirements are satisfied.

Whether a person has such capacity depends upon one's personal status. In Belgium, the law of the individual's nation determines personal status. For American citizens, you look to the law of the individual's domicile. The question of where a person is domiciled, however, is not always easily answered—a servicemember's home of record is not necessarily his domicile. Doubts should be resolved with an attorney. For questions pertaining to this matter, call the Legal Assistance Office, SHAPE 4868.

In Belgium, American personnel desiring to marry may wish to consult the Legal Assistance Office to obtain an information paper on the process. The individuals will be required to submit to a medical examination, produce copies of birth certificates, certificates of residence, certificate of legal freedom to marry, parental consent (as appropriate), and other documents. Once all the documents have been compiled, they must be presented to the Civil Status Office in the Belgian town hall where the marriage will occur. Military personnel at SHAPE (or elsewhere in Belgium) are considered to reside in Mons. After the required documents are submitted, there will be a public notice of the pending marriage, the bans, for ten days. Thereafter, a civil ceremony will be held at the town hall. A religious ceremony, though not required, may be held after the civil ceremony.

1-2. *Births.*

Births of Americans in Belgium must be registered with the American Consulate and at the commune in which the birth took place within 15 days of the birth. Failure to register is a violation of Belgian law and could result in a criminal citation and fine.

Late registration can occur only after approval of the Belgian Court of First Instance (Tribunal de Première Instance), which may refuse to allow the registration until a fine is paid. There is no charge for the registration.

Consult the SHAPE Health Clinic Registrar for instructions on how to register a birth.

United States Consulate registration is as important as the Belgian birth registration, because, without it, questions can arise later as to the nationality of the child. Citizenship, however, is not determined by registration; rather, registration is only evidence of citizenship.

1-3. Adoption.

a. No office of the United States Forces may act as an adoption agency or obtain children for adoption. Moreover, Belgian adoption agencies frequently place applicants on waiting lists for several years before granting them custody of a child. Americans in Belgium who wish to adopt will have to locate a child from an individual who wishes to put a child up for adoption.

b. Under Belgian law, the adoption process has two steps:

(1) An adoption contract is executed between the adoptive parents and the adopted child represented by his legal guardian. This is done before a Belgian notary public or Justice of the Peace.

(2) At a subsequently scheduled Juvenile Court hearing, a local Belgian attorney (retained at the individual's expense) must present the adoption contract and related documentation for approval. After the hearing, the Juvenile Court renders a judgment, which the adoptive parents must register and report to civil authorities. A copy of a modified birth certificate will then be issued to the new parents.

c. No adoption is automatic; it is the sovereign prerogative of the court to make the final decision as to the child's best interests.

1-4. Vaccination.

Unless exempted for good medical reasons, every newborn child must be inoculated against poliomyelitis polio before the age of 18 months. Proof of inoculation must be presented to the commune in which the child resides. The failure to do so is a criminal infraction punishable by a maximum of one month of confinement and/or a fine.

1-5. Visa Requirements in Belgium for Family Members.

a. A valid passport is required for any family member (including spouse and children) of a servicemember or of a member of the civilian component in order to enter Belgium legally if the family member is a citizen of any of the following countries: **United States**, Andorra, Argentina, Australia, Austria, Brazil, Brunei, Burkina-Faso, Canada, Chad, Chile, Costa-Rica, Cyprus, Czech Republic, Denmark, Ecuador, Finland, France, Germany, Great-Britain, Greece, Guatemala, Honduras, Hungary, Iceland, Ireland, Israel, Italy, Ivory Coast, Jamaica, Japan, Liechtenstein, Luxembourg, Malaysia, Malawi, Malta, Morocco, Mexico, Monaco, the Netherlands, Nicaragua, Niger, North Ireland and Overseas British territories, Norway, New Zealand, Pakistan, Panama, Paraguay, Poland, Portugal, San Marino, El Salvador, Senegal, Singapore, Slovakia, South Korea, Spain, Sweden, Switzerland, Thailand, Togo, Tunisia, Turkey, United States, Uruguay, Vatican City, or Venezuela.

b. In addition to a valid passport, if the family member is **not** a citizen of one of the above listed countries, then a Belgian visa is also required or entry will be denied. Family members listed as dependents on orders can stay in Belgium with the servicemember for the duration of their tour. Other family members are permitted to stay in Belgium on their tourist passport for 90 days.

c. Contact the Northern Law Center at DSN 423-4868 for regular updates to this list.

1-6. Divorce.

a. Persons living in Belgium may obtain a divorce in a Belgian court.

b. Common consent.

(1) Belgian law will apply if one of the spouses is Belgian (even if the national law does not authorize a divorce).

(2) Provided the State laws of each of the spouses authorize grounds of irretrievable breakdown or the like, a Belgian court may grant a divorce upon both parties' consent. Note, however, that divorce by common consent does not correspond to so-called "no-fault" divorce in the United States. Indeed, divorce by common consent requires the actual agreement of the spouses to the divorce; while in no-fault divorce, one of the spouses may obtain a divorce without the consent of the other.

c. For Cause. Other grounds for divorce in Belgium are adultery, physical mistreatment, serious mental cruelty, and separation for more than 2 years.

d. Considerations. Depending upon individual circumstances, divorcing American citizens may find it better to obtain a divorce in a court in the United States. Before filing for a divorce in Belgium, you should consider consulting the Legal Assistance Division to see a Belgian Legal Advisor.

1-7. Liability Of and For Minors.

a. Capacity of Minors to Contract. Whether or not a minor can enter into a binding contract depends on the law of his or her home State. Even if the minor does not have the capacity to enter into a contract under the law of his home State, the contract may still be binding if the other party to the contract could reasonably assume that the minor had the implicit consent of his guardian to enter into such a contract (e.g., purchase of a book, of a sandwich, or of some clothing).

b. Civil Liability for Minors' Wrongs. As a general rule, parents are liable for the torts of their minor children. Unless they can prove that at the time of the commission of the tort another adult person had the responsibility for the minor's actions (for instance, a teacher or grandparents), the parents will be liable. If another person is responsible, it is that third party's

personal negligence which a court will consider to be the proximate cause of the tort. If your child is involved in an accident of any kind, seek legal assistance immediately.

1-8. *Deaths.*

Deaths must be registered at the local commune. Although failing to do so is not a criminal infraction, the remains can neither be removed from the commune in which the death took place nor be interred until the death has been registered.

Chapter Two

Leases

2-1. *Leases Generally.*

A lease is a contract in which the lessor (owner) puts at the disposal of the lessee (tenant) an item (e.g., house, apartment, car, TV) for a specific period of time and the lessee agrees to make periodic payments (usually rent) for the use of the item. While the parties may agree to other terms and conditions, generally speaking, it is the obligation of the lessor to provide the item in question for the specified period of time. The item must be in a usable condition and must remain so for the duration of the contract. Conversely, the lessee is obligated to make specified payments in a timely manner and use the property in accordance with the terms of the lease. Further, the lessee must protect the condition of the item and return it at the expiration of the lease in the same condition as it was received, minus fair wear and tear.

2-2. *Leasing Quarters.*

a. Selected Features of Belgian Leases.

(1) Duration. Property leases in Belgium normally last for nine years.

(a) The lessee may terminate a lease by giving three months' advance notice to the lessor and payment of an indemnification equal to three, two, or one month of rent depending upon whether the termination occurs in the first, second, or third year of the lease.

(b) The lessor may terminate the lease with six months' advance notice if he or a member of his family wishes to occupy the premises. Lessors desiring to do building work may also end the lease after three years or six years, with six months' advance notice. In addition, the lessor may terminate a lease after three or six years, with six months' advance notice and payment of an indemnification amounting to nine months' rent if the lease is terminated after three years or six months' rent if the lease is terminated after six years.

A lease may also be made for a set period of time up to three years. No termination of the lease may occur except with the consent of both parties.

In most cases, the International Housing Office will assist you with your lease. For specific cases, contact the Legal Assistance Office, Northern Law Center, SHAPE 4868/4910. In negotiating leases, be especially careful about the duration thereof. When entering long-term leases, remember that events may occur which make continued residency impossible (e.g., reassignment, death). When such events occur, you or your family may be forced to break the lease and pay damages to the lessor. Conversely, in the case of year-to-year leases, there is the danger that your landlord will not extend the lease on the existing terms.

(2) Deposit. Most landlords will require from one to three months' rent as a deposit to cover possible damage to the premises during occupancy under the lease. This deposit cannot be used as rent; do not plan on paying the deposit and using it for your last month's rent.

Under Belgian laws governing leaseholds, the tenant, must put a deposit in a bank account in which neither the landlord nor tenant have access (a so-called blocked account). The tenant is entitled to any interest on the account. Once blocked, the only way the tenant can draw upon or close the account is with the signature of the landlord. An alternative to the blocked account is to have a bank issue a letter guaranteeing against damages; in the event of damage to the premises for which the tenant can be held liable, the bank pays the landlord (up to specified limits). To be released from such a guarantee, the lessee must furnish the bank with a release from the landlord. Not every bank offers this service.

(3) Rent Indexing. The Belgian government controls rent indexing. Under no circumstances should you, the tenant, accept a clause without understanding how and when rent can be raised and whether the increase complies with governmental controls. Contact the International Housing Office for specific information on indexing.

(4) Inspection of the Premises. In the first month of the lease, a landlord may conduct an inspection of the contents and condition of the premises. It is this inspection, when matched against the condition of premises and its contents when the lease is terminated, which supports or refutes claims for damages. Tenants should therefore conduct the inspection very carefully. Note such things as cracked tiles, windows, tubs and walls; stained surfaces; scratched floors and chipped furniture. Under Belgian law, there is a legal presumption that, in the absence of an inspection, buildings under lease were received by tenants in the same condition as when the tenants vacated them. If, however the landlord presents adequate evidence to the contrary, the presumption fails. In most cases a representative of the International Housing Office will conduct the inspection in quarters rented on the economy.

(5) Sweeping Chimneys. Most leases require the tenant to sweep the chimneys annually. Even if the lease is silent on this point, however, see that the chimney is swept annually. Chimneys, if used solely as exhaust for central heating units, can become a fire hazard when dirty. Keep a receipt which, in the event of fire, will help verify that you exercised due care. Belgian law requires that central heating systems be maintained annually.

(6) Charges. Leases of apartments usually have a provision dealing with charges. These charges may be paid monthly or periodically and cover the cost of a number of services common to all tenants of a building (e.g., concierge, garbage removal, cleaning hall-ways). The payment can be significant and subject to periodic change. Each tenant should understand fully what services are covered and whether the charge is subject to change without consent.

b. Terminating Your Lease. Terminating a lease legally in Belgium is more complicated than in the United States. As a general rule, the tenant customarily notifies the landlord on the first calendar day of the month before the month the tenant intends to terminate. For example, to terminate on 1 November, you must notify your landlord no later than 1 October. If you don't notify by the first of the month, the notice will be deemed to be effective only from 1 November,

meaning you will owe the landlord rent for the month of November. Tenants anticipating orders requiring a move in November, therefore, should be prepared to notify the landlord by 1 October even though they have not received orders by that date. If you fail to do so, and you notify late (e.g., on 3 October), you could be liable for an extra month's rent. For matters of proof, you should give written notice by Belgian registered mail.

Tenants who intend to notify the landlord without orders in hand have to balance the risk of early termination against late termination. In other words, because there are limits to the temporary living allowances (TLA) available upon reassignment from SHAPE (10 days for American servicemembers), tenants may find themselves staying in a hotel without government reimbursement if they terminate their leases too early. That means they pay money out-of-pocket to stay in a hotel when they could have paid their landlord less money out-of-pocket (i.e., an extra month's rent) to stay in their rented accommodations. The best way to balance TLA entitlements and termination dates is to discuss the problem with the landlord. Let the landlord know about the TLA problem and ask if you can extend your lease—at the last minute, if necessary—until ten days before the departure date listed on the orders.

You should, for your own protection, specify in the lease that it shall terminate upon reassignment, death of a family member, finding more adequate premises, or other factors that may cause you to want to end your lease. To cover all contingencies, of course, you may negotiate a lease granting the right to terminate at any time for any reason. The chances of finding a landlord who will accept such a lease in Belgium, however, are poor. At a minimum, insist upon a lease that terminates upon reassignment (even within Belgium) or death of a member of the family. Our usual SHAPE lease has such a provision.

c. Registering Your Lease. Belgian law provides that all written leases should be registered. When registered, the private lease contract becomes a matter of public record, protecting the interest of the lessee upon sale by the lessor. Unrecorded leases are not binding upon new owners of the premises, meaning a lease could be terminated suddenly upon the landlord's sale of the property. To protect your self interest, you should register the lease (*droit d'enregistrement*). This expense may be reimbursable if you receive a move-in housing allowance (MIHA). Be sure to check with the International Housing Office or Finance for specific information.

d. Rent Refunds. Rents in Belgium are typically paid in advance. Tenants who vacate the leased residence before the end of the month normally will not receive a partial rent rebate even though the landlord rents the property to someone else. You may, of course, occupy the premises until the end of the month. If you quit the premises, however, your right to occupy under the lease is extinguished and a refund is not normally available.

Chapter Three

OTHER CONTRACTUAL MATTERS

3-1. *Basic Principles—Your Contracts.*

A contract is a legally enforceable agreement between two or more competent parties to do or to refrain from doing something. ***Forewarned is forearmed: Under Belgian law, oral contracts are binding and enforceable to a much greater extent than under American law. Exercise the utmost caution before making any oral undertaking with a Belgian businessman or contractor.***

Each contracting party expects the other to fulfill his contractual obligations. Although this is certainly similar to American legal principles, actual enforcement of contracts in Belgium is not. More specifically, if one party does not honor his obligations, the other may not void the contract, but must seek enforcement through civil suit. Only after a judge decides that one party cannot fulfill his contractual obligation may he authorize cancellation of the contract and allow damages to compensate the innocent party for any resulting loss.

In general, the validity of a contract does not depend upon the use of any particular form or document. In certain cases, even an oral contract is valid. Be aware, however, that proving its existence, and more particularly its terms, will be very difficult—perhaps impossible—without some writing agreement setting out the agreement. Once a writing evidencing the contract has been shown to exist, testimony varying the written terms of that document will seldom be admitted.

In contractual matters, ignorance of the laws, the language, or the meaning of words is seldom an excuse for nonperformance. A rule of thumb should be that one should not agree to the terms of a proposed contract, much less sign it, when there is the slightest doubt as to the exact nature of the obligations involved. Resolve all doubts with legal counsel prior to signing or agreeing to a contract. Individuals eligible for legal assistance may have the contract reviewed at the Legal Assistance Division, Northern Law Center on SHAPE.

3-2. *Sales Contracts.*

Although there are too many and too varied types of sales contracts to cover here, be aware that your signature on an order form is legally binding. You may have a right to cancel within seven days in exceptional circumstances. You should consult legal counsel as soon as possible if you require assistance.

3-3. *Leasing Personal Property.*

a. Penalty Clause. You can lease virtually anything in Belgium (e.g., TV, car, furniture, electrical appliances). The lease terms often vary as much as the nature of the items themselves. You should, however, pay particular attention to the duration of the lease and the conditions under which you may cancel the contract. It is quite common, for example, to find a "penalty clause" which becomes effective should you cancel the lease short of the full duration. Be certain you understand, therefore, the nature of the penalty, if any, before signing a lease. Furthermore, insist that your lease allows cancellation before the scheduled termination date, if you are transferred.

b. Option To Purchase. Some commercial firms lease property and also grant the lessee an option to buy (e.g., automobile lease). Periodic payments under these leases are usually applied to purchase price, but the lessee must take steps to exercise the option. In such a case, be aware of the date by which you must make your election.

3-4. *Cancellation of Sales Contracts.*

No party may cancel a sales contract without the agreement of the other contracting party.

3-5. *Remedy for Defective Merchandise.*

All sellers must deliver what they promise. Unless a written guarantee covers the item sold, once you, the buyer, pay the purchase price and accept delivery, the seller is not responsible for any noticeable defect. Remember the maxim "*Caveat emptor.*" Buyers must beware in Belgium even more so than in the United States.

3-6. *Binding Effect of Purchase and Service Orders.*

A purchase or service order is fully binding upon the buyer and, after acceptance by the seller, is also fully binding upon the seller. Because the seller usually prepares such orders and uses pre-printed forms, the buyer is often disadvantaged by their terms. Often the forms stipulate that the buyer will pay punitive damages if he does not complete performance or that the seller is exculpated for failure to perform (i.e., undue delay or delivery, no matching color). Read and understand each form before signing.

3-7. *Repossession and Turnback of Property.*

Some sales contracts have a provision that the seller (or financing agent) retains a lien over any property until a buyer pays in full. Such property may neither be sold nor exported without the financier's or seller's consent. Sale or exportation before consent or completion of performance (i.e., full payment) is a criminal infraction.

3-8. *Independent Contractors.*

When contracting with an independent contractor (e.g., TV repairman, garage, plumber, electrician), request an estimate (*devis*) before ordering the work. Although very few contractors will commit themselves in advance (because they do not know exactly how much time will be spent on the work), the estimate may serve as a foundation for a civil suit over an exaggerated bill.

As for any dispute about the performance of a contract (e.g., inflated bill, unsatisfactory work), the only remedy except amicable settlement between the parties is through civil suit (Trade Court or Justice of the Peace).

Unless otherwise stated in the contract or purchase order, there is no specific time requirement for the delivery of an item or the performance of a service by an independent contractor.

Normally, the keeper of an item to be repaired is responsible for its loss, unless he can prove that the loss is due to someone else's negligent act or the contract exculpates him from such responsibility.

Like finance companies, an independent contractor has a lien over the items placed in his workshop for the payment of his fees.

3-9. *Insurance Contracts.*

By its nature, an insurance contract is nothing more than a wager. You bet that a specified event will occur, and the insurance company bets that it will not. If you lose the bet (i.e., the event does not occur), you forfeit the premium; the company does not refund it. If you win the bet and a loss occurs, the insurance company must compensate or indemnify you (and/or third parties). As always, pay particular attention to matters which are excluded from coverage. You should also know the duration of the contract and reasons for cancellation. Covered below are several types of insurance policies:

a. Fire Insurance.

(1) Occupant's Responsibilities. Although Belgian law does not require you to have fire insurance, the great majority of leases require the tenant to insure the premises against loss

or damage due to fire. Indeed, in the absence of other proof, Belgian law presumes that the occupant-tenant of a building is responsible for damage by fire.

(2) Amount of Coverage. Whether furnished or unfurnished, quarters should be insured against loss. When choosing the amount of coverage, remember these two very important things:

(a) First, any insurance you buy for fire or water damage to the premises usually covers only the landlord's property; you must buy additional insurance to cover the replacement of your property within the premises.

(b) Second, and often more important, you should purchase insurance in an amount sufficient to reconstruct the property, rather than merely an amount equal to its market value. When a loss occurs, the landlord will expect you, the tenant, to replace the home exactly as it was, for example, to replace the burnished wood floors, the antique fireplaces, or whatever. The cost to replace can be substantially higher than the market value of the premises. Failure to insure for the replacement value has the disastrous consequence of leaving the tenant uninsured for the difference between replacement and market value that can often be several hundred thousand euros. The problem can be compounded further if the home has appreciated in value since the date of initial coverage.

Consider this cautionary tale of an American family living near SHAPE who underinsured the rental house they were living in. They purchased insurance based on the market value, 50,000 euros, and not the replacement value of their house, 100,000 euros. When a loss occurred in their home due to fire, they breathed a sigh of relief when the appraisers told them that the fire caused only 25,000 euros worth of damage. They assumed that their insurance would cover the loss completely since they had a policy-limit of 50,000 euros and a loss of only 25,000 euros. The insurance company disagreed, however. Even though the family had a 50,000 euro policy-limit, the insurance company would pay only a fraction of that amount to cover the loss. Because the family only insured one-half (50,000 euros) of the 100,000-euro replacement cost of the home, the company would pay for only half of the fire damage—25,000 euros. The family paid the additional 25,000 euros out of their own pocket to repair the house.

(3) Combination Policies. Fire insurance policies are very often combined with other types of insurance coverage (e.g., damage caused by water, storm, explosion, theft, glass breakage). The policies can differ significantly from one company to another. Pay close attention to the extent of the coverage and excluded risks. Seek the advice of an attorney if you do not understand what the policy says.

b. Vehicle Insurance.

(1) Compulsory Insurance. Every vehicle owner must have unlimited coverage against damage or injury to third parties. Members of the insured's family living under the same roof are considered third parties only if the insured entered an extended insurance contract ("R.C. plus" = "Civil Liability plus"). Such additional insurance became mandatory for all contracts on 1 January 1989, and usually costs an additional three percent above the standard premium.

(2) Duration. Belgian vehicle insurance policies usually cover a one-year term. To stop or cancel your insurance contract, you must send a registered letter to the insurance company at least three months before the end of the coverage period. Failure to do so will result in automatic renewal.

(3) Combination Policies. You may purchase coverage in addition to third-party liability insurance (e.g., collision, comprehensive, and legal aid). Belgian companies calculate the premium for collision coverage using the book value of the car. For minor damage, the insurance company will reimburse for necessary repairs. Should the cost of repairs exceed the book value of the vehicle at the time of the accident, the insurance company has the right to total the vehicle and pay only the book value. When taking out collision coverage on an older vehicle, remember that its value may be lower than its replacement cost. If a vehicle is financed, the financing agreement may require collision coverage without regard to the age of the vehicle. Note that collision coverage does not have to be written by the same company which writes the policy for third-party liability coverage.

c. Personal Liability. Under both Belgian and American law, courts may order persons to compensate others for personal injury or property damage caused by that person's negligence. Negligence is defined as failure to use the degree of care that a reasonable and prudent person would display under the circumstances. In the past, for example, courts have found the following to be negligent:

- (1) Driving while intoxicated;
- (2) Driving with bad tires;
- (3) Driving without a valid driver's license; and

(4) Driving a vehicle which has not passed or could not pass the *Contrôle Technique* inspection.

d. Head of Household Policies.

(1) Family Insurance. Family insurance is a cheap form of comprehensive coverage indemnifying third parties for damage or injury that a member or servant or pet of a household causes.

(2) Employees. Persons employing domestic servants must insure those servants against injuries which occur as a result of employment. The scope of coverage includes, but is not limited to, in-home accidents and accidents occurring while en route to or departing from the home.

e. Recommendations Regarding Insurance.

(1) You should not sign any contract with an insurance company which refuses to furnish a full and complete text of the policy before you sign the agreement.

(2) For your own protection, ensure that the following clauses are included in any insurance contract:

(a) Automatic termination of the policy upon departure from Belgium, with reimbursement of a partial premium for unused insurance. Such reimbursement should be without any withholding or extra charge for administrative costs.

(b) Automatic termination of the policy in case of a change in the risk covered (e.g., sale of the car in case of automobile insurance, or change of residence in case of fire insurance).

(3) Whenever possible, purchase coverage on your residence from the same insurer who covers the landlord.

3-10. *Some Final Considerations.*

a. Currency Fluctuations. Virtually all contractual arrangements made in Belgium require payment in euros. In the absence of a contract provision to the contrary, any devaluation of the dollar vis-à-vis euro will not be cause for modification or cancellation of the contract.

b. Signing Contracts. Signing contracts in an unknown language is foolhardy. If the party with whom you deal is reputable, but unable to furnish a copy of the contract in English, that seller will wait while you seek adequate legal counsel. If the seller refuses to wait, take your business elsewhere!

Chapter Four

FISCAL MATTERS

4-1. *Customs and Value-Added Tax (VAT).*

a. Household Goods and Personal Effects.

(1) Initial Importation. The NATO SOFA allows members of a force and its civilian component duty-free importation of household goods and personal effects, provided that the member or his dependents import those articles pursuant to their initial arrival in Belgium. Were a dependent to arrive later than that of the member (e.g., under non-concurrent travel orders), those items brought or shipped by the dependent also enter duty free.

(2) Later Import. While stationed in Belgium, members of a force or civilian component may import items from another country. Whether this will be duty-free or not depends upon the ultimate exportation of the items from Belgium and certain formalities. Address specific questions to the SHAPE Inspection des Douanes, Building 210, Room 113 (065-31-6676/4951).

(3) Local Purchases. While stationed in Belgium, members of a force or civilian component may purchase some items on the local economy without paying the value-added tax (VAT). The SHAPE VAT Office (Building 210, Room 102, SHAPE 5142) maintains a list of VAT-free items that may be purchased. You should visit this office before your purchase to avoid paying the VAT. VAT-free purchases are only for personal use. VAT-free purchases must be exported from Belgium when you leave; you may not sell these items without paying the VAT. The table on the next page shows some items and their status regarding VAT.

Nature of Goods	Exempt from VAT	Not Exempt from VAT
Bicycle & motorcycle < 50CC	Yes	
Cameras	Yes	
Carpets (any price)	Yes (provided they do not become fixtures, see A.R. I. art. 20)	
Crockery, glassware, cutlery	Yes	
Curtains	Yes (provided they do not become fixtures, see A.R. I. art. 20)	
Do-it-yourself tools and equipment (e.g., lawnmower, high-pressure cleaner, drill, saw)		No
Garden furniture	Yes	
Kitchen appliances	Only refrigerator, cooker, dishwasher, washing machine	
Light fittings	Yes	
Musical instruments		No
Personal computer	Yes	
Pianos and organs	Yes	
Radio and compact-disc players (including for cars), televisions, videos, hi-fi systems	Yes	
Tablecloths	Yes	
Telephone/telefax		No

b. Privately-Owned Vehicle (POV). The NATO SOFA, Article XI, expressly authorizes members of a force or civilian component to import POVs duty-free into Belgium on a temporary basis. As with household goods and personal effects, the duty-free exemption is temporary, meaning that it is contingent upon your ultimate exportation of the vehicle. Consequently, should you dispose of a POV imported under this provision, you can expect to pay duty, depending upon the type of importation document covering the POV and the status of the person to whom the POV is given, traded, or sold. Before transferring ownership of any POV which entered Belgium free of customs duties, consult the SHAPE Vehicle Registration Office (SHAPE 4148). SHAPE members may also, under some circumstances purchase new cars exempt from VAT. Again, consult the SHAPE Vehicle Registration Office for details.

c. Returning Residents.

(1) Nonsensitive Items. Persons who temporarily reside in Belgium, like other residents, may import items (limited by number or value) on a duty-free basis. Limitations depend upon the origin of the items in question. Items from countries in the European Union (EU) receive a preference. For returning residents 15 years of age or older, the value of items admitted duty-free cannot in the aggregate exceed 180 euros if from non-EU countries, or 390 euros if from EU countries. The EU countries are Belgium, Denmark, France, Germany, Greece, Holland, Ireland, Italy, Luxembourg, Portugal, Spain, and the United Kingdom of Great Britain Northern Ireland, Austria, Finland, and Sweden.

(2) Sensitive Items. These items may be imported duty free by every individual over 15 years of age upon re-entry into Belgium only up to the indicated quantities:

Selected Items	From EEC Countries	From non-EEC Countries
Tobacco Products		
Cigarettes	800 pieces	200 pieces
Cigarillos	400 pieces	100 pieces
Cigars	200 pieces	50 pieces
Pipe tobacco	1 kilogram	250 grams
Alcoholic Beverages		
Distilled/spirituous beverages exceeding an alcoholic degree of 22%	10 liters	1 bottle (.7 -1 liter)
Distilled/spirituous beverages with an alcoholic degree of 22% or less, sparkling wines and liquor	20 liters	2 liters
Wines (still)	90 liters	2 liters
Beer	110 liters	2 liters
Perfumes and Toilet Water		
Perfume	95 cc/ml	60 cc/ml
Toilet Water	0.375 liter	0.250 liter
Coffees and Tea		
Coffee	500 grams	
Coffee extract	200 grams	
Tea	100 grams	

4-2. Value-Added Tax (VAT).

Except for some local purchases (*see* paragraph 4-1(a)(3) above), purchases of goods and services in Belgium are subject to VAT. The amount of VAT depends upon the item or service. As a general rule, luxury items (e.g., jewelry) are taxed at 21% of their value, while more essential items such as cereal and milk are taxed at 6% of their value. For the percentage applicable to the merchandise in question, ask the merchant or a customs official.

4-3. Road Tax.

The NATO SOFA has no exemption from road taxes, but an agreement between SHAPE and the Belgian Government exempts members of SHAPE from the road tax on one vehicle if it is properly registered. All other vehicles are taxed regardless of registration. Such tax, if due, is based upon the CV (horsepower) rating of the vehicle.

4-4. Local Taxes.

The NATO Status of Forces Agreement exempts US military and civilian personnel from Belgian income taxes. The same treaty exempts personal property of US personnel (such as radios, televisions, and satellite dishes) from taxation. If you receive a tax statement from the ---- (Belgian Internal Revenue Service), the *Directeur des Radio/Television Redevances* (Radio and Television Tax Office), or the *Deputation Permanente du Conseil Provincial du Hainaut* (Satellite Tax Office) requesting that you pay taxes, you should visit the Central Inprocessing Facility and request that a tax-exemption letter be prepared for you. This letter will remind the relevant office that under the NATO Status of Forces Agreement, American servicemembers are exempt from these taxes.

On the other hand, US personnel are obligated to pay certain county and municipal fees for services. A few examples of these include fees for *Enlevement des Immondices* (garbage pickup), *Tri de Dechets / Recyclage* (fee for processing recycled waste) and *Egouttage* (sewage/wastewater removal). If you have any questions regarding whether you are obligated to pay a fee, contact the Northern Law Center for advice. Above all, do not simply ignore bills that arrive in the mail. Failure to address the issue could lead to fines and penalties as well as seizure of your personal property by a court bailiff.

Chapter Five

ADMINISTRATIVE MATTERS

5-1. Privately Owned Vehicles (POV).

Once again, status has a considerable effect on rules and regulations which apply to POVs. Persons at SHAPE have certain privileges not available to other American personnel. Most of these provisions apply to SHAPE members only.

a. Registration. Every SHAPE member must present an application accompanied by proof of membership at SHAPE, proof of vehicle ownership, and proof of valid insurance to register the POV at SHAPE.

b. Customs Documents. Under the NATO SOFA and SHAPE-Belgium agreements, members of SHAPE may import their vehicles for personal use into Belgium without paying import duties (*see* paragraph 4-1(b) above). Contact the SHAPE Customs Office (SHAPE 4951 or 4394) for the most current details.

c. Driver's License. To operate a SHAPE-registered vehicle, the operator must be in possession of a SHAPE Driver's license. Such licenses, however, are currently stamped valid only in Belgium. Therefore, individuals wishing to drive in other European countries must also get a Belgian or International Driver's license.

Two US/Belgian agreements govern SHAPE driver's licenses for SHAPE members and their families. One agreement (an exchange of notes between the United States and Belgium) allows American citizens temporarily residing in Belgium to drive with a license issued by any State. The term "temporarily residing" is, however, somewhat restrictive. Persons residing in Belgium who possess Belgian identity cards are not temporary residents if they have been in the country at least six (6) months per year, but 3 months at a time. Insofar as all members of the civilian component of SHAPE and all dependents must possess a Belgian identity card, temporary-resident status might be said to terminate after six months in Belgium. Failure to obtain a SHAPE driver's license, therefore, might result in the challenge of an American license by police authorities.

Permanent residents (those not covered by the SOFA) should obtain a SHAPE or Belgian license. Pursuant to the Geneva Conventions (to which both the United States and Belgium are signatories), individuals may obtain a Belgian license by presenting a valid American license at the appropriate town hall (*maison communale*), paying the appropriate fee, and passing a test.

In the event that members of SHAPE or family members do not possess a valid State license, they must undergo driver training before the Belgian Government will issue them licenses. Such training includes both written and on-the-road testing.

Members of SHAPE wishing to drive in other countries may obtain an International Operator's permit, available at the Transportation Division Driver Testing Office or any office of the Royal Automobile Club of Belgium. Applicants should present a valid driver's license and a passport-size photograph. Be aware that the International Operator's permit is in effect a translation merely of your own driver's license—you must have a valid driver's license from some State, American or foreign, to be issued an International license.

d. POV Technical Inspection. Effective 1 May 2003, all SHAPE registered vehicles more than 4 years old must pass Controle Technique annually. In order to determine the age of your vehicle look at the registration document and you will find the date the vehicle was first registered. If you have difficulty understanding your registration document, bring it to the Registration Office for assistance.

A technical inspection must also precede the sale of any used car in Belgium, including SHAPE-registered vehicles. The seller is responsible for conducting the inspection, which is valid for two months. When buying a used car, pay nothing until a current certificate showing successful completion of technical inspection is produced.

Any POV which has undergone substantial modification or alteration or has undergone repairs to the chassis, steering, brakes or suspension by reason of a traffic accident must be inspected prior to being operated on public roads. In the event that your vehicle requires such repair, be sure to conduct the inspection before operating the vehicle. Failure to do so subjects the owner to a substantial fine.

e. Safety Equipment. All POVs now registered under the Belgian or SHAPE system must have the following safety equipment:

- (1) Warning triangle;
- (2) First-aid kit;
- (3) Seat belts;
- (4) Fire extinguisher marked "Benor."

f. POV Export. Whether the export of the POV is to another European country or the United States, the POV owner must clear the SHAPE VRO. The SHAPE license plate may be retained until the owner registers the car elsewhere, at which time the owner must destroy the SHAPE plates and return the registration certificate (*carte grise*) to the SHAPE VRO. At the border (in case of export by land) or through shipping agencies (in case of export by sea or air), the owner must also clear with the customs officials. Failure to clear either VRO or customs will result in a substantial penalty.

g. POV Theft or Destruction in Belgium. When SHAPE members have their POVs stolen or destroyed, they may be responsible for customs duties. The rationale behind this seemingly harsh rule is that there is little or no proof that the owner did not export the POV from Belgium.

The lack of proof gives rise to suspicion and possible demand for payment of customs duties. Naturally, in cases of destruction by force or accident, however, the remains of the POV would be available to show that its value is essentially zero, which could result in no assessment of duties. Conversely, in the case of a reported theft, there is no proof that the POV was removed from Belgium. In that case, liability for duties can be avoided only if the theft is promptly reported to the gendarmes. At the same time, the insurance company should be notified and supplied with a copy of the complaint (*plainte*) made in conjunction with the Belgian Police.

h. Sale of POV as Junk. The sale in Belgium of a POV as junk requires the clearance of the customs document, the Benelux 4, and the return of the vehicle registration (*carte grise*).

i. International Identification Symbol. International law requires that POVs operated in countries other than the country of registration bear a symbol on the back of the POV showing the country of registration. For Belgium the symbol is a black "B" on a white oval disc. However, current SHAPE plates have a "B" affixed, so no additional sticker is required. Should you wish to drive outside Belgium after your POV has been delivered from the United States but before you SHAPE plates have been issued, you must affix a decal or sticker bearing the letters "USA" to the rear of your vehicle.

5-2. Accident Reporting.

The Judge Advocate, Northern Law Center serves as liaison between the United States Representative for Belgium (Commander, USAG Benelux) and the Belgian judicial authorities. In that capacity, the Judge Advocate makes requests for waiver of criminal jurisdiction for all accidents involving American personnel in Belgium. Accordingly, the Office of the Judge Advocate must be aware of any and all accidents. In addition to any reporting requirements set forth by SHAPE, any American person attached to SHAPE must file Form 550-50-A-R with the NATO SOFA Branch Civil and International Law Division, Northern Law Center (Building 318, SHAPE). Failure to notify the Judge Advocate may result in the Belgian authorities investigating the accident, which sometimes works to the detriment of those involved. Refer any questions on this matter to the Chief, Civil and International Law Division, or Chief, NATO SOFA Branch, the Northern Law Center (telephone SHAPE 4604).

5-3. Identification Documents.

a. Military Personnel. While stationed in Belgium and subject to the NATO SOFA, military personnel must have a valid United States military identification card. This identification card must be presented to host-country authorities upon demand. Military regulations require that servicemembers possess a pass, border-crossing document, or similar military document to cross any international border. Within Europe (not including the United Kingdom of Great Britain and Northern Ireland), your military identification card is often sufficient. At a minimum a United States passport (and perhaps a visa) is required to travel to a non-NATO country. (A passport is also required to enter the United Kingdom of Great Britain and Northern Ireland when in a leave status.) Refer questions to the servicing Military Personnel Officer.

b. Family Members and DoD Civilians. In addition to possessing a passport, all dependents and DoD civilians must obtain a Belgian Identification Card (*Carte d'Identité d'Etranger*) while residing in Belgium. This card is normally valid for one year; there are exceptions, however, which may result in a card being valid for two, three, or five years. Americans at NATO who are supported by the United States Embassy should seek renewals through the Embassy. Americans at SHAPE may seek renewals from the Belgian Police at SHAPE. All personnel must surrender their Belgian identification card immediately before departure from Belgium. Each sponsor is responsible to surrender cards that family members hold. The cost of the card may be reimbursed when settling the Permanent Change of Station move as a miscellaneous dependent expense. Contact Finance for more information.

5-4. Change of Residence.

Under some circumstances, American civilian component personnel or military family member who change their place of residence in Belgium must notify the Belgian Police at SHAPE and the local commune of that change. Here are three situations requiring some action or notification.

a. When an American civilian component personnel or military family member holds a Belgian identification card, every change of residence must be shown on the card. The failure to have a card showing a current address can result in a fine ranging up to 250 euros in accordance with Belgian law.

b. When an American civilian component personnel or military family member holds a Belgian identification card and moves from one local municipality or city to another within Belgium, they must notify the local municipality or city and request that their name be removed from the local registry. This must be done within eight days of the change, or the American civilian component personnel or military family member may be subject to a fine in accordance with Belgian law. The old municipality or city will then instruct the American civilian component personnel or military family member to notify the gaining municipality or city of the change. On occasion, the municipality or city will notify the gaining municipality or city of the change of residence. In addition, if the American civilian component personnel or military family member fails to notify the losing municipality or city of the change, he may be subject to the payment of several residential fees such as garbage fees and certain utility charges. On occasion, the municipality or city will hire a property bailiff to collect from the American civilian component personnel or military family member payment of delinquent fees and taxes. The American civilian component personnel or military family member will be liable for the bailiff's fees as well, and they can be quite expensive. Failure to pay these fees could result in the bailiff forcibly inventorying and levying the property of American civilian component personnel or military family member. For information on this subject, contact the Northern Law Center at SHAPE 4868.

c. Belgian POV Registration (*carte grise*): Each Belgian vehicle registration must show the current address of the owner. In the event that a vehicle's owner changes residence without obtaining a corrected registration card, that owner may be liable for a fine of 125 euros. A corrected registration card is not necessary only when the address shown on the *carte grise* is

SHAPE or NATO, which is normally the case for vehicle registration of military personnel. In that instance, the member's official address continues to be SHAPE or NATO without regard to the actual place of residence.

5-5. Rationed or Controlled Items.

All rationed items, such as alcohol, tobacco, and gasoline, are for the personal use of the person or the family entitled to the ration. The sale or gift of such items can result in the suspension or revocation of privileges, the imposition of a fine, and/or other criminal punishment.

5-6. Commissary and PX Purchases.

a. Army regulations and USAREUR Regulation 632-10 cover commissary purchases. The sale or gift of purchases to persons not entitled to commissary privileges is prohibited with but few exceptions. An exception is allowed when persons not authorized to make purchases consume the items in the home of the authorized patron. In the case of military personnel, a violation of any of the regulations may result in disciplinary action under the Uniform Code of Military Justice, as well as suspension or revocation of privileges. Violations by DoD civilians could subject them to disciplinary action authorized under pertinent Civil Service regulations and Civilian Misconduct regulations (USAREUR 27-9), such as the suspension or revocation of the privilege. All personnel may be subject to Belgian criminal prosecution.

b. Army Regulation 60-20 and USAREUR Supplement 1 specifically authorize Post Exchange patrons to give, as bona fide gifts, PX purchases to anyone authorized PX privileges and to persons not authorized PX privileges, provided that such persons reside in the US. No regulation authorizes the gift of PX purchases to Belgian nationals. Gifts to local nationals may result in criminal prosecution by the Belgian or American governments.

5-7. Being a Good Neighbor.

Each community has its own laws, customs, and unwritten rules which may sometimes appear strange or irrational to a foreigner, but which are in fact well-founded and adapted to the conditions of the life of the community they govern. Some of the more common rules in Belgium are:

- a. No noise after 2200 hours. After 2200 hours, all persons should lower the volume of any radio or television. If a party is planned, notify neighbors in advance.
- b. Cut the thistles before the flowering season.
- c. Keep dogs under control; be sure to acquire adequate family insurance coverage for the damage they can cause if loose.

d. Never be afraid of the language barrier. Belgians appreciate your efforts to speak French or Flemish, even if you are a far from fluent linguist.

5-8. *Liability for Animals.*

Owners of animals are responsible for the damage that their animals do. As is the rule for children, the owner remains responsible for his pet's actions unless he can prove that at the time the damage occurred the animal was under the control of another person (e.g., dog trainer, kennel helper). Negligence of the victim, however, exculpates the animal owner or keeper.

5-9. *Organ Donation.*

In Belgium, the organs of individuals who die are automatically available as donations for persons needing transplants unless the potential donor files a written protest in the community in which he or she is registered. All persons registered in a community for at least six months, including civilian employees and family members of servicemembers and civilian employees stationed in Belgium, are viewed as potential organ donors. Servicemembers on active duty in Belgium are not potential donors, because they are not registered in a community. To file an objection to the automatic donation of your organs, you must complete a form (available in the SHIPPS building) and file it in the community in which you are registered. Parents may file objection forms on behalf of their minor children. SHAPE members registered in the Mons area may file objection forms with the SHAPE Police at room 109, Building 210 (SHIPPS Building).

5-10. *Civilian Misconduct.*

a. USAREUR Reg 27-9, *Misconduct by Civilians* (21 May 2002), establishes policy and procedures for taking administrative action for misconduct by civilians eligible to receive individual logistic support and by other persons seeking access to facilities operated by the United States.

b. Civilians receive individual logistic support on condition of good behavior. Individual logistic support may be suspended or revoked when civilians commit misconduct.

c. The Commander in Chief, USAREUR, has delegated authority to the Civilian Misconduct Action Authority (CMAA) to determine appropriate administrative action. (In peacetime, Belgian authorities exercise exclusive criminal jurisdiction over American civilians in Belgium for criminal offenses. *See* paragraph 7-2 below.)

d. The Deputy to the Commander, USAG Benelux, is the CMAA for Belgium.

e. The CMAA reviews such civilian misconduct matters as shoplifting, fighting, any conduct which violates Belgian law, the United States Code, or the rules, regulations, and directives of military authorities to determine what, if any, administrative action is appropriate under the circumstances.

f. The CMAA has broad discretion and may decide to take no administrative action or impose administrative suspension or revocation of specific privileges. For example, privileges to the Post Exchange, Commissary, or other facilities may be suspended for abuse or other misconduct in these facilities. In serious cases, the CMAA may seek withdrawal of command sponsorship and early return of family members.

g. Before imposing adverse administrative measures such as suspension or revocation of privileges, the CMAA will notify the accused individual of the intended administrative action; summarize the facts on which the action is based; afford the accused individual an opportunity to examine the file; and provide the accused offender an opportunity to respond orally or in writing to the CMAA within three workdays. Oral counseling or letters of warning may be given without advance notice.

Chapter Six

BELGIAN COURTS

The Belgian court system is in many respects not dissimilar to our own. It consists of administrative courts, judicial courts, and military courts. In this chapter, we focus on the judicial courts because you will more likely have contact with them than you will with the administrative courts.

6-1. Organization.

a. The highest Belgian court is the Supreme Court (*Cour de Cassation*). Although it does not exercise constitutional control over the laws that the Parliament passes, it is roughly equivalent to the United States Supreme Court. The Belgian Supreme Court does not try cases; it reviews judgments of lower courts for legal errors.

The Supreme Court has three chambers, each including two sections. The first chamber hears civilian and commercial cases; the second hears criminal cases; and the third hears labor matters.

b. The Belgian judicial system is further divided into five geographic areas: Brussels, Antwerp, Gent, Liège, and Mons. Each geographic area has one Court of Appeal (*Cour d'Appel*) and one Labor Court of Appeal (*Cour du Travail*). Unlike our Federal Courts of Appeal, the Belgian appeals courts retry cases *de novo*; that is, they rehear and consider cases in their entirety that the lower courts have already tried. Each such Court has civil, criminal, and youth chambers. The Labor Court of Appeals (*Cour du Travail*) hears only appeals of judgments rendered by lower labor courts.

c. The jurisdictional area of each Court of Appeals is, in turn, divided into a number of lesser judicial districts, that division depending on the size and population of the area covered. Belgium has 26 such districts, each with one Court of First Instance (*Tribunal de Premiere Instance*), one Labor Court (*Tribunal du Travail*) for labor disputes, and one Trade Court (*Tribunal de Commerce*) for commercial disputes. In addition, an Arrondissement Court (*Tribunal d'Arrondissement*), composed of the Presidents of the First Instance Court, Labor Court, and Trade Court, decides which court will hear cases which do not fit precisely within the competence of any one court.

The Court of First Instance has one or more civil chambers, correctional chambers, and youth chambers. Each Chamber serves as an appellate court for judgments rendered by Justices of the Peace (*Justice de Paix*) and Police Courts (*Tribunal de Police*). It hears cases *de novo*.

d. Each judicial district is further divided into several cantons, that division again depending upon the size and population of the district. Each judicial canton has one Justice of the Peace (*Justice de Paix*). Some, depending on population, possess their own Police Court

(*Tribunal de Police*); others have a single Judge who hears both civilian and minor criminal matters.

6-2. Court Jurisdiction.

a. Criminal Matters.

(1) Police Court: This court has jurisdiction over minor criminal offenses which are punishable by a maximum sentence of 7 days confinement and a 125 euro fine. It has special jurisdiction for all traffic violations. Decisions heard in a police court must be appealed to the Correctional Court, a chamber of the Court of First Instance. Trials in this court are without jury and involve trial by a single judge.

(2) Correctional Court: This court has jurisdiction over criminal offenses which are punishable by a maximum sentence of 5 years confinement (in exceptional cases, 10 years). An appeal from a decision rendered by this court must be taken before the Court of Appeal. Trials in this court are also without jury; either a single judge or a panel of three judges, depending upon the nature of the offense to be tried, will decide issues of both fact and law.

(3) Court of Assizes: This court has non-permanent special jurisdiction for the trial of criminal offenses punishable by more than 5 years confinement. This is the only Belgian court with a jury. Only matters of law—not fact—are subject to appeal from these courts, and then, only to the Supreme Court.

(4) Supreme Court: the highest appellate court in Belgium. It reviews only questions concerning the application of the law; it does not retry cases on the facts.

b. Civil Matters.

(1) Justice of the Peace: This justice has jurisdiction over civil disputes for which the amount in litigation does not exceed 1,850 euros, or involving matters such as disputes between lessors and lessees, farm leases, and ownership of property, without regard to the amount of money involved.

(2) Court of First Instance: This court has primary jurisdiction over civil disputes which are outside the competence of the Justice of the Peace and has appellate jurisdiction over cases tried by the Justice of the Peace.

(3) Court of Appeal: This court hears appeals from the decisions that the Court of First Instance renders.

(4) Supreme Court: As the supreme appellate court, it is the highest and final level of appeal from decisions rendered by lower courts in Belgium.

c. Selected Other Courts.

(1) Labor Court and Labor Court of Appeal: These courts exercise exclusive jurisdiction in all cases involving disputes between employees and employers, and other labor problems, such as disputes over social security rights and obligations such as workmen's compensation and unemployment compensation.

(2) Commercial Courts: These courts exercise jurisdiction in cases involving disputes between or against tradesmen in matters relating to their businesses when the amount in controversy exceeds 1,850 euros, or in matters such as bankruptcy. Appellate jurisdiction over these courts rests with the Court of Appeal.

(3) Youth Courts: These special chambers of the Court of First Instance exercise exclusive jurisdiction for criminal matters involving children, Belgian or foreign, who were under the age of 18 at the time of the offense. (In cases involving minor children between 16 and 18, however, the Youth Court may refer the case to an appropriate adult criminal court). In the exercise of such jurisdiction, the Youth Court imposes only appropriate corrective measures, not criminal sanctions. In making its decision, the Court considers the gravity of the offense, the age of the minor, and all the circumstances surrounding the case.

The Youth Court is also competent to handle matters related to the protection of minors (e.g., abandoned children, mistreated children, and adoption).

d. Belgian/United States criminal jurisdiction over American military and civilian personnel.

(1) The North Atlantic Treaty Organization (NATO) Status of Forces Agreement (SOFA) defines the legal status of American military personnel serving or stationed in Belgium. If an American servicemember commits a criminal offense, it will fall into one of these categories:

(a) ***Exclusive American Jurisdiction***—any violation of the Uniform Code of Military Justice but not Belgian law (e.g., absence without leave, disobeying a lawful order).

(b) ***Exclusive Belgian Jurisdiction***—any violation of Belgian law but not the Uniform Code of Military Justice (e.g., most traffic or parking offenses, violation of Belgian hunting laws).

(c) ***Concurrent United States/Belgian Jurisdiction***—any violation of the Uniform Code of Military Justice and Belgian law (e.g., assault, rape, murder, theft, drunken driving). In these cases, either Belgium or the United States will have the primary right to exercise jurisdiction depending on the facts of the case. In principle, the primary right belongs to Belgian authorities; by exception, it belongs to the United States when the offense occurred in the performance of official duty or when it involves or affects only American personnel or property of the United States.

(2) The nation with exclusive jurisdiction may take disciplinary action without regard to the other nation. Many incidents, however, fall in the concurrent United States/Belgian jurisdiction category. In such cases, the United States attempts to maximize jurisdiction. We request Belgian authorities waive jurisdiction in favor of the United States. When granted, the United States may process the case.

(3) Specific United States procedures implementing the NATO SOFA criminal jurisdiction provisions are in AR 27-50, *Status of Forces Policies, Procedures, and Information*, and USAREUR Reg 550-50, *Exercise of Foreign Criminal Jurisdiction over American Personnel*. The Northern Law Center coordinates jurisdiction determinations with Belgian authorities.

(4) American civilians are subject to primary Belgian jurisdiction for criminal offenses. The United States, however, may take administrative action up to employment termination for civilian employees and loss of individual logistic support for family members. (See paragraph 5-10 for a discussion of the Civilian Misconduct Action Authority.)

6-3. Court Procedures.

Belgian procedure differs greatly from that in an American court. Normally, a claim for civil damages resulting from a breach of law (for instance, a traffic accident with injuries or property damage occurs and the driver is cited for a violation of the Belgian traffic code) is joined with a criminal action maintained by the public prosecutor (*Ministère Public*) in a criminal court. Such a claim may, however, be pursued separately in a purely civil procedure before a civil court. As in the United States, the claimant in a civil action bears the burden of proof. Any allegation by either the plaintiff or the defendant must be supported by evidence presented before the court. Unlike the time-hallowed rule of American courts, hearsay is admissible. Further, certain types of evidence, including notarized instruments, official documents, and other types of written documents, are accorded special weight.

6-4. Police Reports (*Procès Verbal*).

Belgian gendarmes or police officers are under a duty to make written reports (called *Procès verbaux*) pertaining to any incident in which they are called. Since a *procès verbal* (PV) is made for every action taken by the gendarmes or police officers in regard to an incident or accident, there may be many PV in a case.

After an investigating officer writes a PV, a copy goes to the local King's Prosecutor as the judicial authority. A copy also goes to the SHAPE National Representative of the Belgian Police (RNPF), if applicable. The RNPF then summarizes the PV and sends it to the Northern Law Center.

The King's Prosecutor advises the Judge Advocate of the alleged offense. The Judge Advocate responds by announcing the position of the United States Government (exclusive Belgian jurisdiction, concurrent Belgian/United States jurisdiction, primary right of jurisdiction

to the United States or to Belgian authorities) and, when appropriate, requests the King's Prosecutor to waive jurisdiction.

The King's Prosecutor determines whether or not a waiver of jurisdiction will be granted and advises the RNPF thereof. Upon request, the King's Prosecutor may provide a copy of the PV to the Northern Law Center.

In court proceedings, a PV is evidence of what was said to the attending police officer. It is also considered evidence of what the police authority observed personally (i.e., what he saw, heard, felt, etc.). The court considers the PV a written statement by one, who by virtue of his training and status as a police officer is a privileged witness, and, therefore, the court affords greater weight to the PV than it gives to the written statement of a non-privileged witness. Of course, the content of a PV may be contradicted by any means of proof.

6-5. *Default Judgments.*

In criminal and civil cases, if a party fails to appear at the hearing, a court will issue a default judgment (*judgment par default*) upon the request of the party present. A default judgment is valid and enforceable unless the defendant seeks recourse through normal appellate procedure or through the special appellate procedure of opposition. If the opposition procedure is invoked, which entails a rehearing of the case by the same court, the court will fix a date for the rehearing and issue summonses to the parties. If the opposing party again does not appear, the first default judgment will be affirmed. The affirmation of the first default judgment may, however, still be appealed to a higher court.

6-6. *Execution of Judgments.*

Judgments are executed under the Belgian code of criminal or civil procedure. If the judgment orders the defendant to pay a specific amount of money and he fails to do so, the plaintiff in civil cases, or the public prosecutor in criminal cases, may request that the bailiff execute the judgment by taking and selling the personal property of the defendant. To do so, however, the judgment must be final or be declared subject to execution. The plaintiff is required to furnish the bailiff a certified copy of the judgment with a certificate from the clerk of the court showing that the judgment is final or subject to execution. While, as a rule, the bailiff may attach all of the personal property of the debtor to satisfy a judgment, certain goods such as clothes and household necessities are specifically exempted. The list of that exempt property is enumerated in the Belgian Code of civil procedure. In addition, execution of the judgment may be levied upon claims the debtor may have against third parties. Attachment and garnishment of salaries, wages and pensions, however, is permissible only to a limited degree. Payments due to a member of the American Forces from the United States Government, including salaries, are subject to limited garnishment while such payments are still within the control of the United States Government provided proper procedures are followed.

6-7. *Attachment Orders (Saisies Conservatoires).*

a. A writ of attachment may be ordered by the court pending litigation of the basic dispute. Sometimes it is issued even before a formal summons is issued to the defendant. The alleged debtor may file an objection, but this does not automatically stay or delay the execution of the writ.

b. In civil matters, Belgian law allows a writ of attachment before a complaint has been filed and a judgment rendered. To obtain an attachment, the alleged creditor must produce prima facie evidence that:

(1) He has a valid monetary claim against the debtor.

(2) There is a danger that, without a writ of attachment, execution upon a future judgment may be frustrated or made substantially more difficult if this special procedure is not permitted. Accordingly, American personnel nearing their date of departure from Belgium may find their property levied despite their good-faith intention to satisfy the judgment through less burdensome means.

(3) The claim is for a sum certain.

6-8. *Service of Court Process.*

Civil court procedures start by a bailiff delivering a writ of summons (*citation*) to appear. The bailiff serves a copy of the original act or complaint on the defendant either in person (*signification a personne*) or at his domicile or residence. In some cases, the bailiff may leave a copy of the order in the defendant's mail box. Individuals who do not have a domicile or residence in Belgium receive a copy of the act by registered mail at the foreign domicile (*pli judiciaire*).

6-9. *Court Costs.*

Belgian law, both in civil and criminal cases, determines court costs. They never include attorney's fees. In civil cases, however, a prevailing party may request that the court grant compensation for attorney's fees and other costs (*indemnites de procedure*), but such amounts barely cover the attorney's fees. Attorney's fees and court costs in any particular case are highly variable—depending upon the witnesses, translators, tests, etc., requested by both parties and the court. The more witnesses, tests, or translators required, the higher the cost to the parties.

6-10. Attorney Representation.

a. Criminal Procedure. Before a Police Court, an accused may be represented by an attorney without having to appear personally except when accused of more serious crimes (e.g., hit and run, involuntary homicide).

Before a Correctional Court (*Tribunal Correctionnel*), an accused must normally make a personal appearance even if represented by an attorney. In certain instances justified by extenuating circumstances such as illness or onerous travel costs, an accused may be represented by an attorney without having to make a personal appearance, but only with the special permission of the court.

Before the Court of Assizes (*Cour d'Assises*), the personal appearance of the accused and representation by an attorney is mandatory. If the accused does not retain counsel of his own choice, the court will appoint one at the accused's expense.

b. Civil Procedure. Before all civil courts, parties may argue their case personally. Those unfamiliar with Belgian court proceedings and the French or Flemish languages should almost always be represented by counsel. Those unable to employ an attorney may institute or defend a suit *in forma pauperis* by filing a request with the *Bureau d'Assistance Judiciaire* of the court having jurisdiction in the case and show that they are unable to pay attorney fees by producing a certified document obtained from the *maison communale* of the community in which they reside.

6-11. Attorney Fees.

Unlike practice in American civil courts, Belgian attorneys cannot charge fees contingent on the successful outcome of the case. Generally speaking, attorney fees are based on the assessed value of the litigated matter and on the specific difficulties inherent in the procedures employed. As a matter of general practice, attorneys stipulate fee arrangements before handling a case, but there is no fee schedule. While attorney fees are normally due only after completion of the services, an attorney is entitled to request an advance payment of a reasonable portion of the fees and expenses to be charged. Individuals believing an attorney's fee is excessive, may register a complaint with the President of the Bar Association to which the attorney belongs. The President will then decide the amount the client must pay.

6-12. English-speaking Attorneys.

Belgian attorneys are licensed as attorneys and are members of Bar Associations. They may appear before all courts except the Supreme Court where only attorneys specially licensed are admitted. You may obtain a list of qualified English-speaking Belgian attorneys from the Legal Assistance Office at Northern Law Center.

Chapter Seven

BELGIAN CRIMINAL LAW & PROCEDURE

7-1. Belgian Criminal Law & You.

As an American citizen residing in Belgium, you may be subject to both United States law and Belgian criminal law. Exactly how the respective legal systems interact and apply to you is a function of the law of treaties and more specifically the NATO SOFA.

The SOFA divides American personnel assigned to Belgium with the Armed Forces into three categories. It applies different rules to each category, with the category to which you belong determining the applicable law. The three categories are:

- members of the force (i.e., members of the uniformed services),
- members of the civilian component (i.e., civilian employees of DoD, DA, DAF, DN),
and
- dependent (i.e., spouse and children of the above categories, provided such family members reside with and rely upon the member for support).

7-2. Belgian Criminal Code Applied to You.

a. Criminal prosecution of members of the Force.

(1) Article VII of the SOFA explains which country, the sending or receiving State (or both), may prosecute a member of a force. (With respect to American citizens, the United States is the sending State; and Belgium is the receiving State.) Military and civilian personnel who violate only Belgian law are tried in Belgian courts almost exclusively. Similarly, military personnel violating the Uniform Code of Military Justice are tried by courts-martial except in very limited circumstances.

(2) Offenses that violate both Belgian law and the Uniform Code of Military Justice may be tried in either Belgian or American courts. Rules of priority determine which system will apply. In such cases, based upon the nature of the offense involved, either the sending State or the receiving State has a prior right, or right of refusal, as it were, to exercise criminal jurisdiction. The receiving State generally has priority. There is an exception when a member of the force commits the offense in the performance of his military duty or the offense involves only members of the same NATO force, and not those of another or local nationals. For example, if an American servicemember assaults another American servicemember, the United States (the sending State) has the prior right of jurisdiction since the offense involves only American servicemembers. In contrast, if the victim is a Belgian citizen, the Belgian Government would have the prior right. In either case, however, should the country having priority waive its right, the other country would have jurisdiction. As a practical matter, the

majority of cases involve offenses in which Belgium has the primary right to exercise jurisdiction, yet waives that right. In cases where there are civil damages, however, the Belgian authorities usually will retain jurisdiction until the damages have been settled.

b. Criminal prosecution of members of the civilian component and family members. In most cases, members of the civilian component and American family members are tried in Belgian courts.

7-3. Rules of Detention and Arrest by Belgian Authorities.

The Belgian authorities may detain persons in the interest of insuring the public peace and order (e.g., protecting an accused or another person pending a preliminary investigation, assuring the presence of an accused). They may detain an individual for 24 hours without issuing an arrest order (*mandat d'arrêt*).

After that, they must seek specific authorization for detention through an arrest order. A Judge of Instruction (*Juge d'Instruction*) may issue an arrest order authorizing confinement for a maximum of five days only if the punishment for the offense allows confinement in excess of one year and the authorities demonstrate "good cause" for the order. Furthermore, during the five days of confinement pursuant to the arrest order, a court, the *Chambre du Conseil*, must review the order and decide whether further confinement is necessary. If necessary, the court may extend the arrest on a month-to-month basis. Decisions of the *Chambre du Conseil* are subject to appeal.

7-4. Individual Rights.

a. Right to Remain Silent. Whether merely detained or formally arrested in Belgium, an individual has an absolute right to remain silent. Conversely, an individual questioned as a witness does not have this right. As in the US, the right to remain silent exists throughout detention, arrest, and criminal proceedings. Unlike in the US, however, there is no formal requirement of the authorities to advise individuals of this right. Any statement made to Belgian investigative police or judicial authorities may be used against the accused or may be released to the United States Government upon request and used against the accused.

b. Right to Counsel. Under Belgian law, a person does not have a right to counsel until he or she appears before a Judge of Instruction after being apprehended, detained, or arrested. The real possibility exists, therefore, that a person might be apprehended or detained for 24 hours (or longer) before having the right to consult with an attorney. Because a Judge of Instruction must issue an arrest order to detain a suspect beyond 24 hours and will usually interview the suspect before making that decision, the suspect may (but not always) seek counsel within 24 hours. After that point, a person has the right to consult with and be represented by Belgian counsel, unless, by special decision, the Judge of Instruction directs an arrested individual to be held incommunicado. Incommunicado confinement may not exceed three days nor be ordered except for the purposes of the investigation (that is, to prevent a suspect from communicating with other suspects or from obstructing justice).

7-5. Searches.

a. Of the Person. Belgian police authorities can search a person whenever they reasonably suspect he possesses any weapon, instrument, and/or fruits of a crime. A limited search of the person (colloquially called a frisk or pat-down) must be predicated upon reasonable suspicion that that person has committed or is about to commit a crime. With regard to suspected criminal acts, unless authorized by an order from a court, there may be no search inside a person's body by examining bodily cavities or withdrawing bodily fluids against his will. Such searches include blood tests, stomach pumping, and the like. Note that special rules apply to blood tests directed as a result of a violation of the Belgian traffic code such as suspected drunken driving whether or not an accident is involved (*see* para 7-6 below).

Customs officials possess significantly broader discretion. Customs violations are not considered ordinary crimes, but violations of fiscal laws. Customs officials are therefore not bound by the rules and procedures that govern the acts of the Police Officers. Customs officials, for example, can order a person to disrobe and can conduct a body search against the person's will and without any court order. While the incidence of such searches is quite infrequent and intrusive searches are usually performed by X-ray, you should be aware of this virtually unlimited authority.

b. Of Personal Property. Personal property is protected from unlawful or arbitrary search. Probable cause, however, as that term applies under American criminal law, is not a formal requirement of Belgian law. Thus, in certain circumstances, your car, luggage, clothes, and similar items can be searched without a warrant and against your will.

c. Of Your Residence. An official having a search warrant (*mandat de perquisition*) issued by a Belgian Judge of Instruction may search an individual's quarters. Usually, searches must be conducted between 5 a.m. and 9 p.m. There are instances, however, when homes are subject to search without a warrant or outside the normal time. These include when: (1) a person inside the quarters consents; (2) there is call for help from the premises; (3) there is a fire in the premises; (4) there is flooding of the premises; (5) there is a crime being committed on the premises; or (6) police authorities are in hot pursuit of a suspect believed to be on the premises.

7-6. Alcohol-Abuse Test and the Belgian Traffic Code.

a. Driving in Belgium with a blood alcohol concentration of 0.5 grams of alcohol per liter of blood or greater (or 0.22 mg/l breath alcohol or greater) is prohibited.

b. Current penalties:

(1) Drivers caught while driving with breath alcohol 0.22 mg/l but less than 0.35 mg/l face immediate suspension of driving for three hours and a fine of 125 to 2,500 euros.

(2) Drivers caught with a breath alcohol level of 0.35 mg/l or above (or who refuse the breath test or drive during a suspension period) face immediate suspension of driving for 6

hours, a fine of 1,00 to 10,000 euros and imprisonment for two to six weeks. Repeat offenders face double fines and prison terms.

c. When stopped, you must submit to a preliminary breath test. If the results are 0.22 mg/l or more, a breath-analyzer test will be administered. You can request a second breath test. If the result differs from the first, a third test is given. If the third test differs with both the first and second ones, you will take a blood test. You may demand a blood test if your breath test is at least 0.35 mg/l , but you will pay for the test if the result exceeds this limit.

7-7. Trial Safeguards.

The NATO SOFA provides many trial guarantees which afford American citizens protections we enjoy under the federal Constitution. These include the right to a prompt and speedy trial; the right to be informed in advance of trial of the specific charge or charges; the right to confront witnesses; the right to compulsory process to obtain witnesses in defense; the right to a competent interpreter when the accused considers it necessary; and the right to legal representation.

a. Legal Counsel. For servicemembers, members of the civilian component, and dependents, the United States Government may hire a Belgian attorney to protect your legal rights and interests in these cases:

(1) When the act for which you were charged occurred while performing an official duty,

(2) Where the normally imposed sentence includes confinement, whether or not such sentence is suspended,

(3) Where an appeal is made from proceedings in which there appears to have been a denial of your substantial rights, or

(4) Where the case, although not within the criteria established above, is considered to have a significant impact upon the relations of the United States Forces with the Belgian government or is considered to involve a particular United States interest.

Of course, in any case, you may retain counsel of your own choice at your personal expense.

If your case fits the criteria above and you desire the United States to hire a Belgian attorney to represent you, call or visit the Northern Law Center for assistance.

b. American Trial Observer. Whenever a member of a uniformed service, a DoD civilian or dependent, is tried in a Belgian criminal court, an official Trial Observer will attend the trial to observe it for its conformity with United States constitutional and NATO SOFA safeguards. The Trial Observer does not act as a member of the defense nor does he interject himself into the

defense or trial proceedings. The Trial Observer will, when necessary, advise the retained defense counsel of your rights under applicable treaties and agreements.

7-8. *Trial in Absentia.*

Under Belgian law it is possible to be tried *in absentia*, that is, you may be tried even though neither you nor your representative are in court. If this happens, the court's judgment is enforceable and may be executed. Representation by your counsel alone is possible in some Belgian courts but not all. Some courts, however, may grant exceptions based upon special circumstances. Serious crimes are tried before a high court where one may never appear by counsel alone. Should you suspect that you may be tried *in absentia*, contact the Northern Law Center immediately.

7-9. *Confinement.*

Whether confinement is adjudged depends upon the circumstances of each case. There have been several cases in which confinement was adjudged against an American citizen but the confinement was suspended. An individual found guilty of a serious crime, however, will likely be sentenced to serve confinement in a Belgian facility. In such cases, American military or consular authorities will visit the individual at least monthly.

7-10. *Transactional Fines.*

a. Belgian law authorizes the city police (*Police Communale*) to impose on-the-spot fines for minor violations of the Belgian Traffic Code. No one under 18 may be fined and anyone may refuse to pay. Refusal to pay a transactional fine, however, will most likely result in the case in a Police Court for resolution. Further, in cases of violations by non-residents of Belgium, the Gendarme or police may impound the vehicle for refusal to pay. If you decide to resolve the case by payment, you have 48 hours in which to obtain special fiscal stamps from a Belgian post office, affix them on the citation, and mail the citation to the address indicated.

b. For violation of any Belgian penal law, whether the Traffic Code or not, the King's Prosecutor (*Procureur du Roi*) may propose a settlement in the case by the imposition of a transactional fine. Such settlement usually will not be offered if there are personal injuries or civil damages which have not been paid.

7-11. *Belgian Traffic Code.*

The Traffic Code is a penal statute. As such, violations of it are criminal infractions, whether the infraction is as minor as a parking ticket or as serious as leaving the scene of an accident). Being a penal statute, any violation of the Traffic Code subjects a person accused of an infraction to the Belgian criminal-justice system.

a. Procedures In Accidents.

(1) The first driver upon the scene of an accident is obliged to stop and render assistance, including first aid. All vehicles must contain a first-aid kit and a fire extinguisher. If the accident caused no physical injuries, vehicles obstructing traffic must be moved off the roadway. Before doing so, however, it is prudent to mark clearly the position of the vehicles. Keeping a piece of chalk in the first-aid kit is prudent. If the accident caused physical injuries, no vehicle should be moved until the Belgian police authorities direct such movement.

(2) You should never leave the scene of an accident in which you are even remotely involved. Individuals in an accident should obtain all pertinent information concerning it, including the names of everyone involved, names of insurance companies, insurance policy numbers, license numbers, makes of the vehicles, accurate location of the vehicles, and place of the accident.

(3) A Word of Caution: Even in the most minor accidents, never try to settle with the other party or parties involved, particularly if there is any property damage. The lack of a police investigation could leave you in an awkward position if a lawsuit is instituted.

(4) Good Samaritan Law: Under Belgian law, you commit a criminal infraction if you do not stop to render assistance to an injured person. You should assist only commensurate with your abilities. Injuries resulting from assistance rendered in excess of your qualifications and ability, or rendered negligently, may be the subject of a civil suit.

b. Basic Traffic Rules.

(1) The speed limit in towns, cities, and incorporated communities is 50 kilometers per hour (km/h) unless otherwise indicated; on the Autoroutes and other four-lane roads, the speed limit is 120km/h unless otherwise indicated; and on all other roads the speed limit is 90km/h unless otherwise indicated. Maximum punishment for speeding: confinement for 1 month and/or a fine of 2,500 euros.

(2) At an intersection, the right of way belongs to the driver coming from the right unless otherwise indicated. Maximum punishment: confinement for 1 month and/or a fine of 2,500 euros.

(3) Public buses have the right to cut into traffic when departing a bus stop. Maximum punishment: 1 month confinement and/or a fine of 2,500 euros.

(4) No vehicle may be operated on public roads unless the driver has a valid driver's license. Maximum punishment: 6 months confinement and/or a fine of 2,500 euros.

(5) No change of direction or traffic lane is permissible unless the road is clear from traffic in front and in the rear. Maximum punishment: 1 month confinement and/or a fine of 2,500 euros.

(6) On the Autoroute, you may stop along the road side only in case of a vehicle breakdown. Maximum punishment: 1 month confinement and/or a fine of 2,500 euros.

(7) Use of turn signals is mandatory for any change of direction or for any lane change. Mere use of the signal does not, of course, authorize the maneuver; the road must be clear from traffic in both the front and in the rear. Maximum punishment: 1 month confinement and/or a fine of 2,500 euros.

(8) Use of seat belts is mandatory. Maximum punishment: 1 month confinement and/or a fine of 2,500 euros.

(9) Vehicles parked on streets at night must have parking lights lit, except in parking lots. Maximum punishment: 1 month confinement and/or a fine of 2,500 euros .

(10) Fleeing the scene of an accident is one of the most serious violations possible. The requirement to stay extends to all persons involved, be they drivers, passengers, or witnesses (even though not occupants of the cars involved). Maximum punishment: if no injuries occur, six months confinement and/or a fine of 5,000 euros; if injuries or death occurs, confinement of 2 years and fine of 25,000 euros.

(11) A vehicle must always keep to the right side of the road. Maximum punishment: 1 month confinement and/or a fine of 2,500 euros.

(12) A vehicle must always have tire tread of at least 1.6 millimeter in depth over the entire surface area of the tire. Maximum punishment: one month confinement and/or a fine of 2,500 euros.

(13) Drunk driving or driving while intoxicated. Maximum punishment: loss of drivers' license (up to five years), six months confinement, and/or a fine of 10,000 euros.

c. Liability in automobile accidents.

(1) The driver is responsible for damages caused by his negligence.

(2) An individual is also responsible for damages which a vehicle under his control causes (e.g., explosion of a parked vehicle).

(3) An owner who lends a vehicle to a third person, who negligently causes damage, may be similarly liable if the owner was negligent in lending the vehicle if the owner had reason to know the driver was drunk, under age, or without a license.

(4) Insurance is a requirement in Belgium. For the types of insurance coverage available *see* paragraph 3-9(b), vehicle insurance.

7-12. What to Expect if You Violate Belgian Law.

a. If you are an American servicemember in the SHAPE community and have violated Belgian law, what happens if the Belgian authorities prosecute?

(1) A Belgian court bailiff will serve you with a summons giving the court date. The bailiff contacts military personnel through the Northern Law Center. If you are a civilian or family member, the bailiff will come to your residence and hand you or a member of your household the original summons. If no one is home, you will find a notice in French, Dutch, or German telling you to go to the Central Office of Bailiffs (*Bureau Central des Huissiers de Justice*) at the town hall (*hôtel de ville*) or to the police station (*Commissariat de Police*) for the summons. Follow the instructions carefully. If you do not pick up the summons and go to the hearing, the court can rule against you.

(2) If your insurance policy includes a legal assistance insurance contract, your insurance company will provide you an attorney for the hearing, in the circumstances provided by the policy.

(3) Depending on the seriousness of the offense, you may or may not have to attend the trial. In police court, an attorney may usually represent you without your presence. Consult your insurance company and attorney. In correctional court, you will have to be present, even though an attorney represents you. If you do not comply, the court can rule against you by default.

(4) The Belgian court will provide you an interpreter at the hearing. If the translator is not present at the hearing, notify the court and the judge will postpone the hearing. You must provide translations of any documents you give to the court. Police court judgments not involving civil interests are rendered immediately after the plea has been entered. More complex police court judgments and correctional court decisions will take longer. In this case, the judge will tell you the date the judgment will be pronounced. The bailiff will serve the judgment in the same way that you were served initially. You must appeal within 15 days beginning the day following the date on which the bailiff served the judgment.

b. If you have any question on Belgian criminal procedures, or if you are uncertain how to pay any fines, contact the Northern Law Center for assistance.

Chapter Eight

Retirees

8-1. Retiring in Belgium.

a. The conditions for a stay in Belgium mostly vary according to the personal status (nationality) of the retiree or spouse.

(1) If the retiree or the retiree's spouse is a Belgian national, no authorization is required; the retiree just has to register in the Commune of residence.

(2) If the retiree or the retiree's spouse is a citizen of a European Union Member Country, no authorization is needed provided that one of the spouses has a job or can show means of subsistence sufficient enough not to become dependent upon Belgian Social Security. This is done at the time of registration in the Commune of residence.

(3) In all other cases, the retiree must obtain an authorization or visa to stay in Belgium. The authorization must be requested from a Belgian Consulate in the country of origin. In exceptional cases only, as determined by the Belgian Ministry of Interior, the request may be presented to the Ministry of Interior through the Mayor of the Commune of residence.

b. When Authorized to Remain in Belgium:

(1) A retiree is no longer covered by the NATO SOFA and, therefore, is no longer treated as a member of the Force or of the civilian component. This means that retirees do not enjoy any SHAPE privileges such as the purchase of tax free cars, exemption from road tax, tax-free gasoline, access to the SHAPE shopping center and to the rationed items store, SHAPE driving license, or SHAPE license plates.

(2) A retiree is fully subject to Belgian taxes, except income tax on military retirement pay in accordance with the US-Belgian Tax Treaty.

c. Subject to conditions and limitations imposed by United States regulations, a retiree staying in Belgium remains entitled to legal assistance and to medical care.

8-2. Retiree Council.

An officially established Retiree Council provides regular communication with the USAG Benelux Commander, and a recognized Association of Retired Members of the Armed Forces provides participation opportunities for retired members in local community affairs. Details are available from the Retirement Services Office (SHAPE 4575).

Chapter Nine

Getting Legal Assistance

There are many agencies and organizations at SHAPE that can assist you. We encourage you to try those organizations for non-legal problems; if you are having a problem with your pay, check with your command or finance before seeking legal assistance. Often your chain of command is the best place to start, and they can help you get the best assistance quickly. When you need legal advice, however, do not hesitate to contact the Legal Assistance Office, Northern Law Center, SHAPE 4868. This chapter discusses legal assistance services available in Belgium.

9-1. *Functions.*

The Legal Assistance Office:

- a. Furnishes legal assistance and advice to all service personnel, DoD civilians, their family members, and other eligible individuals concerning American and Belgian laws, and civil and legal problems in accordance with AR 27-3.
- b. Directs the community Preventive Law Program, including participating in the soldier readiness program and pre-deployment exercises.
- c. Directs community Income Tax Assistance services.
- d. Provides information on Belgian law practices and procedures, including preparing and updating USAG Benelux Pamphlet 27-3, *Belgian Laws And You*.

9-2. *Generally.*

- a. Legal Assistance attorneys assist eligible clients with their personal civil legal affairs. Services are provided in such matters as family law, wills and estate, adoption, landlord-tenant problems, the preparation and execution of legal documents (e.g., notarizations, powers of attorney), Federal and State income taxes, consumer protection, and most other matters of a civil legal nature.
- b. Representation often takes the form of preparing correspondence in negotiating with other parties. A Legal Assistance attorney cannot represent a client before an American or Belgian court. Once a matter is before a court, the client usually must retain a civilian attorney. A Legal Assistance attorney, however, can provide valuable advice as well as referral to civilian attorneys in Belgium and in the United States.
- c. Authorized Legal Assistance clients in Belgium include servicemembers and their family members, civilian employees of the United States Government who are American citizens

and their family members, some civilian contractor personnel, retirees and their family members, and widows of retired soldiers or soldiers who died on active duty.

d. A Legal Assistance attorney cannot advise a client about private income-producing activities.

e. Personnel facing actual or potential charges under non-judicial punishment (i.e., an Article 15, UCMJ) or before a court-martial should consult defense counsel at the supporting USATDS office at Kleber Kaserne, Kaiserslautern, Germany (DSN 483-8165/8853). In cases involving criminal charges brought by United States or foreign civil authorities, Legal Assistance attorneys may explain the procedure and assist the client obtain civilian counsel.

f. Appointments are usually required for attorney consultations. Notarizations, certified copies and powers of attorney are normally available on a walk-in basis.

9-3. *Specific Services:* Eligible clients may obtain advice/assistance on these matters from Legal Assistance (among others):

a. Family Law: general advice on the legal and practical meaning of divorce, legal separation, annulment, custody, paternity, and nonsupport of family members. Please note that both parties to a domestic relation problem cannot be represented by legal assistance attorneys from the same office. In the event both parties require legal assistance, referral of one party to another legal assistance office is often required.

b. Wills and Estates: general advice and preparation of wills, advance medical care directives, anatomical gifts.

c. Adoption and Name Change: adoption and name change normally require a court decree in the United States (or Belgium). Legal assistance attorneys can advise clients as to procedures and assist in retaining counsel in the United States (or Belgium).

d. Indebtedness: many servicemembers facing creditor collection actions should contact a Legal Assistance attorney for assistance.

e. Landlord-Tenant Relations: local housing offices are usually the first stop for resolving difficulties with local landlords. Occasionally however, legal advice becomes necessary and Belgian legal advisors are available at the Northern Law Center to assist.

f. Notarial Services: all judge advocates and DA civilian attorneys have the general powers of a notary public. Unit adjutants also have authority to notarize documents.

(1) A notary public may administer oaths, authenticate documents, acknowledge signatures, and perform similar services which expedite the handling of legal affairs.

(2) Individuals desiring notarial services should remember:

- (a) Do not sign any papers until in the presence of the notary;
- (b) Do not make any changes in the documents until in the presence of the notary;
- (c) Documents cannot be notarized unless the person whose signature is to be notarized appears in person before the notary;
- (d) Notaries will not notarize a blank document;
- (e) Read before signing; and
- (f) Bring identification documents.

(3) True Copy: individuals desiring a true copy of a document must present the original and the copy so the notary can compare the documents. A true copy is not the same as a certified copy.

(4) Certified Copy: AR 27-55, para 3-4a(2), prohibits notaries from certifying copies of official records, except as specifically authorized. AR 27-55, para 4-5, authorizes certifying copies in these situations:

- (a) The original document is neither a public record nor a publicly recorded document;
- (b) The notary is a designated official in an Army agency, and the agency prepared or held the document for public review; or
- (c) The certified copy will be used for military or federal administrative purposes (e.g., the Immigration and Naturalization Service, the VA). This exception requires that the certification state its specific, limited purpose (for instance, “Certified Copy for DFAS”).
- (d) Individuals desiring certified copies for other than federal administrative purposes must obtain a properly certified copy from the custodian of the record.

g. Powers of Attorney: soldiers often use a power of attorney to authorize a spouse or other trustworthy relative or friend to act for them in the soldier’s absence. The Legal Assistance Division can prepare powers of attorney, usually without an appointment.

h. Taxation. The Tax Center offers preparation and electronic filing of federal and most state income-tax returns.

(1) Federal income tax regulations give overseas taxpayers an automatic 60-day extension for filing federal income tax returns. Returns filed between 15 April and 15 June must be accompanied by a signed statement that the taxpayer was overseas on the regular 15 April due date. Taxpayers owing federal income tax after 15 April will owe interest on the unpaid income

tax from 15 April until the tax is paid. We encourage taxpayers in this situation to file before the 15 April deadline to avoid paying interest.

(2) State income taxes apply to United States Forces members, based on the State of domicile. Most States do not have an automatic extension of filing provision but are generous in granting extensions to servicemembers stationed overseas who request extensions before the filing deadline. State and Federal income tax advice is available from Legal Assistance attorneys. Eligible clients may obtain most Federal and many State income-tax forms from Northern Law Center.

(3) International agreements, including the NATO SOFA, generally exclude the personal property of American servicemembers from host-nation personal-property taxes.

(4) United States Government instrumentalities are exempt from Belgian value added tax (VAT), but individual American servicemembers who make purchases in the Belgian economy are not excluded except in limited circumstances. For example, American servicemembers may purchase furniture, radios, videocassette recorders, compact disc players, without paying the VAT by obtaining a tax statement from the Belgian Customs Office at SHAPE (Building 210, Room 102) before the purchase. List prices on AAFES items are already VAT exempt.

(5) The official United States pay of military members and DoD civilian employees stationed in Belgium is not subject to Belgian income tax. Income derived from the following sources, however, is subject to Belgian taxation:

- (a) Full or part-time employment on the local economy;
- (b) Self-employment, even if goods or services are provided only to American personnel; and
- (c) American employers in Belgium (other than the United States Government, one of its agencies or instrumentalities, or an American contractor with NATO SOFA status).

9-4. *Lawsuits in American Courts.* American citizens in Europe are subject to court summons from State and Federal courts in the United States. Under the Soldiers' and Sailors' Civil Relief Act, a military member has a right to delay a case if military service materially affects the soldier's ability to appear in court. The military member is not exempt from a lawsuit nor is a delay guaranteed. An American civilian in Europe also may request a delay, but there is no law requiring a court to honor the request even if Government service or a sponsor's assignment materially affects the ability to appear in court. Anyone who receives a summons from an American court should contact a Legal Assistance attorney immediately. Although the Legal Assistance attorney will not be able to represent the individual before an American court, he may provide advice on court jurisdiction, the merits of the case, prepare a request for delay, and assist with referral to a civilian attorney.

9-5. *Lawsuits in European Courts.*

a. Personnel stationed in Europe and their family members are subject to host-nation civil and criminal laws and may be brought before a host-country court. Although host-country courts provide a fair means of settling disputes, the procedures are very different from the American system. In Belgium, a civil lawsuit may be combined with a criminal proceeding. Any American individual receiving a Belgian court document should contact the Northern Law Center for assistance.

b. Legal Assistance attorneys cannot appear in Belgian courts, but they may help the client understand the process, settle a matter before it goes to court, or refer the client to a Belgian attorney. The client usually must pay for the Belgian counsel. In limited situations, however, the United States Government will pay attorney fees, as when the soldier or employee is being sued in a case resulting from official duty performance, or when the United States Government decides it has substantial interest in the outcome of litigation.

