

**LAW AND
MILITARY
OPERATIONS
IN HAITI
1994-1995**



**LESSONS
LEARNED
FOR
JUDGE
ADVOCATES**

**Center for Law and Military Operations
The Judge Advocate General's School
United States Army
Charlottesville, Virginia**

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The purpose of the Center is to examine legal issues that arise during all phases of military operations and to devise training strategies for addressing those issues. It seeks to fulfill this purpose in five ways. First, it is the central repository within The Judge Advocate General's Corps for memoranda, lessons learned, and after-action materials pertaining to legal support for deployed forces. Second, it serves as the Secretariat for the Inter-Service Committee on International Legal Education, which coordinates legal training provided by the separate military services to foreign countries under several statutory programs. Third, it supports judge advocates in the field by disseminating key lessons learned, by building a database of legal issues encountered by previously deployed judge advocates, by creating guides to successful operational law training and evaluation, and by recommending refinements to doctrine for legal operations. Fourth, it integrates lessons learned from deployments into the curriculum of all relevant courses, workshops, orientations, and seminars held at The Judge Advocate General's School. Fifth, with The Judge Advocate General's School, it sponsors conferences and symposia on topics of interest to operational lawyers.

The Director of the Center also serves as Chief, International and Operational Law Division, Office of The Judge Advocate General. The Deputy Director heads the main office in Charlottesville, where the Center forms an important part of The Judge Advocate General's School and represents the Corps' growing commitment to excellence in operational law.

The contents of this report are not to be construed as official positions, policies, or decisions of the Department of the Army or The Judge Advocate General. The Center welcomes and solicits suggestions and contributions of relevant operational law materials from the field. Please call 934-7115, ext. 339 (DSN) or (804) 972-6339 (commercial); send electronic mail to martinsm@otjag.army.mil; post a message to Major Mark Martins on the Legal Automation Army-Wide Systems (LAAWS) electronic bulletin board service (BBS); or write Major Martins, Center for Law and Military Operations, The Judge Advocate General's School, 600 Massie Road, Charlottesville, Virginia, 22903-1781.

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CENTER FOR LAW AND MILITARY OPERATIONS

11 DECEMBER 1995

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CENTER FOR LAW AND MILITARY OPERATIONS

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Summary

With this report, the Center for Law and Military Operations identifies lessons learned for judge advocates from United States military operations in Haiti during 1994 and 1995. The report focuses on providing guidance and practical considerations within the sphere of control of judge advocates who may be deployed. The Center prepared the report based on after action reports submitted by judge advocate sections involved in the operation, on materials gathered during a three-day conference attended by participants, on interviews of individual judge advocates who deployed, and on other sources. The Center finds that the Corps delivered legal services well in every functional area, and that doctrine for legal operations is fundamentally sound. Among other suggestions, the Center recommends that judge advocates help develop situational training on rules of engagement, make frequent use of technical channels, step forward to ensure operational funds are not expended for unauthorized purposes, acquire and study legal references pertaining to fiscal law, and keep a log of all significant actions.

ERRATA

1. In note 123, the word "number" should not appear.
2. In note 174, the phrase "it is true" should be removed.
3. On page 58, line 14, replace "divers" with "diverse."
4. On page 68, line 17, replace "three" with "four."
5. On page 79, line 9, replace "broadcast" with the word "broadcasted."
6. On page 81, line 11, the semi-colon should be replaced with a comma.
7. Note 289, should read; See Interview with Admiral Paul David Miller, United States Atlantic Command, in Charlottesville, Virginia. (May 18, 1995).
8. On page 151, line 6, replace the phrase "to resemble" with "they were determined to be."
9. In note 555, replace the phone number (202) 512-1356 with (202) 512-2250. Also, replace the phrase "or sending to the Government" with "or sending a fax to the Government."
10. On page 173, line 4, replace "perform" with "performed."
11. On page 255, line 31, the letter "s" should be removed.
12. On page 261, line 29, the word "ex" should be removed.
13. On page 267, line 33, replace "nay" with "may."
14. On page 328, line 23, replace "restraints" with the word "restaurants."
15. On page 370, line 4, replace "loss" with "lots."
16. On page 408, line 2, replace "Exhume" with "resume."
17. On page 411, line 8, replace "Solders" with "Soldiers."

LAW AND MILITARY OPERATIONS IN HAITI, 1994-95: LESSONS LEARNED FOR JUDGE ADVOCATES

I. Introduction

United States military operations in the Republic of Haiti in 1994 and 1995 represented a comprehensive and stunningly successful application of law to fluid and challenging circumstances. Many Americans will recall the tense beginning, when a large combat force entered Haiti peacefully on terms negotiated in the 11th hour by duly empowered civilian representatives of the United States. Many Americans also will recall how these operations soon achieved the ouster of a dictator, the return to power of an elected Haitian president, and the removal of a threat to regional peace and security.¹ These aspects of the Haiti deployment not only reaffirmed the rule of law,² they also held a symbolic and political importance that aroused great popular interest.

Yet other significant applications of law took place day-to-day, at the individual and unit level. Infantry privates balanced initiative with restraint under the rules of engagement while confronting potentially hostile

¹ See *infra* notes 140-142 and accompanying text.

² In this report, "law" and the "rule of law" refer to notions of justice generally taken for granted today among western developed nations but not necessarily found in underdeveloped countries, such as Haiti. Hereinafter "law," when used outside the context of a specific rule or statute, will connote any or all of three meanings: an autonomous body of rules, independent from (though influenced by) religion, morality, and other social norms; a vehicle for ordering society and resolving disputes; something which regulates the conduct of governments as well as of individuals. See RUDOLPH B. SCHLESINGER, *COMPARATIVE LAW: CASES, TEXT, MATERIALS* 80 (Supp. 1994 to 5th ed.). "Rule of law" will connote the notion of a "law-governed" state or community, which in addition to institutional arrangements—such as judicial review of legislative acts or civilian control of the military—demands "a disposition to take law seriously, a concern with process and with following forms, as much as with substantive results." *Id.* at 77. In finding that the Haiti intervention reaffirmed the rule of law, this report directly contradicts the view that respect for laws will cripple future military operations. See, e.g., Ralph Peters, *After the Revolution*, *PARAMETERS*, Summer 1995, at 7, 13 ("Attempts to bring our wonderful, comfortable, painstakingly humane laws and rules to bear on broken countries drunk with blood and anarchy constitute the ass end of imperialism.").

Haitians. Supply clerks distributed food and other items that had been purchased strictly in accordance with acquisition and appropriations laws. Military policemen treated Haitian detainees pursuant both to internal rules and to standards derived from international treaties. Investigating officers performed their duties thoroughly and fairly in gathering evidence about incidents of alleged misconduct. Soldiers, sailors, airmen, and marines remained undistracted by personal concerns, enjoying a sense of security provided by statutory programs of life insurance and legal assistance. With very few exceptions, these men and women in uniform also scrupulously followed orders given by their chain of command, justifying a disciplinary system acknowledged by Congress and the courts to be essential to mission accomplishment. Although policy and operational concerns also held sway when appropriate, law governed or influenced these and countless other examples of individual and unit conduct.

For their contributions to this thorough application of law during military operations in Haiti, attorneys of all services shared in the remarkable success of those operations. This report recounts successes of judge advocates who participated. More important, however, it seeks to capture knowledge gained by those judge advocates so that future deploying attorneys and soldiers may learn without having to receive hard lessons from experience. Personal experience will inevitably teach its own lessons; careful study of recent history, however, will enable the operational lawyers of tomorrow to stand on the shoulders of their predecessors.³

³ The team of judge advocates that reviewed legal support provided during Operations Desert Shield and Desert Storm stated the need for capturing lessons learned in strong terms:

If [Desert Storm and this report] teach anything to the Army legal community, let it be to confirm the need for a continuing system of gathering, analyzing, and storing in retrievable form, the activities, accomplishments, shortcomings, and lessons learned of the JAGC in peace and throughout the operational continuum.

Some of what follows will seem blindingly obvious. Other portions will trigger questions deserving of detailed answers. Is there a systemic response that can fix this problem? Which office should be the proponent for resolving that issue? This narrative cannot fully answer these and other important questions. In pursuing the approach of the *Desert Storm Assessment Team Report*⁴ and *The Army Lessons Learned Program*,⁵ this report neither avoids restating basic principles nor proposes final solutions. The simplest lessons are often the most important to reinforce. Also, the time lag required to complete an exhaustive analysis can frustrate universal dissemination of these crucial, if simple, lessons.

A goal of the Center for Law and Military Operations⁶ over the medium term is to develop and make available to judge advocates in the field a database of operational legal issues.⁷ Such a database would permit research of the entire range of issues arising in a specific operation; alternatively, it would permit research of specific legal issues arising across a series of operations. At present, CLAMO's automated database contains

See UNITED STATES ARMY LEGAL SERVICES AGENCY, DESERT STORM ASSESSMENT TEAM'S REPORT TO THE JUDGE ADVOCATE GENERAL OF THE ARMY at Intro-4 (22 Apr. 1992) (copy on file with CLAMO) [hereinafter DSAT REPORT]; see also *id.* at Oral History Program-4 ("TJAG should establish, with quality resources, a JAGC version of the Center for Army Lessons Learned (CALL) to capture lessons learned from contingency operations like [Desert Storm].").

⁴ See *id.* Frequent references to the *Desert Storm Assessment Team Report* are not intended to imply that the Persian Gulf conflict is ideal as a model for the types of military operations judge advocates are likely to see. Surely it is not. These references merely acknowledge that many aspects of legal support are constant throughout the operational continuum and that the last comprehensive collection and examination of lessons learned dealt with that conflict.

⁵ See DEP'T OF ARMY, REG. 11-33, ARMY LESSONS LEARNED PROGRAM: SYSTEM DEVELOPMENT AND APPLICATION (10 Oct. 1989) [hereinafter AR 11-33].

⁶ Hereinafter referred to in text and notes as either "CLAMO" or "the Center."

⁷ See Major Mark S. Martins, *Responding to the Challenge of an Enhanced OPLAW Mission: CLAMO Moves Forward with a Full-Time Staff*, ARMY L, Aug. 1995, at 3, 7 & n. 45.

659 issues identified by the Desert Storm Assessment Team⁸ and 48 issues thus far identified by the Center itself pertaining to legal support for operations in Haiti. Just as law reporters and modern databases have facilitated the development of traditional bodies of law, the CLAMO database seeks to facilitate the emergence and sharper definition of operational law.⁹

A goal of the Center over the longer term is to serve as a focal point within a document imaging and retrieval system presently being planned for judge advocate community. The Center would scan opinions, memoranda, standard operating procedures, declassified operations plan annexes, as well as useful forms, cards, and training aids. It would then upload these electronic files into the system, categorize them,¹⁰ and

⁸With the help of automation specialists at the Office of The Judge Advocate General and at The Judge Advocate General's School, CLAMO recently imported the entire DSAT database—developed by DSAT using Enable software—into Microsoft Access, a software now widely used in The Judge Advocate General's Corps.

⁹Operational law is "that body of domestic, foreign, and international law that impacts specifically upon the activities of U.S. forces in war and operations other than war." *See* INT'L & OPERATIONAL L. DEP'T, THE JUDGE ADVOCATE GENERAL'S SCHOOL, UNITED STATES ARMY, OPERATIONAL LAW HANDBOOK at 1-1(4th ed. 1995) [hereinafter OP. LAW HANDBOOK]. *See also* DEP'T OF ARMY, FIELD MANUAL 27-100, LEGAL OPERATIONS at para. 1-9g (3 Sept. 1991) [hereinafter FM 27-100] ("Operational law is the application of domestic, international, and foreign law to the planning for, training for, deployment of, and employment of United States military forces.").

Development of a useful database will require refinements in the system by which after-action reports of legal support to military operations are written and submitted, *see* Memorandum, The Judge Advocate General of the Army, DAJA-IO, to Command and Staff Judge Advocates, subject: After Action Reporting Policy—Policy Memorandum 95-5, para. 3b(4) (3 Oct. 1994) (tasking the senior judge advocate to produce a report for the JAG Corps and specifying no particular format for lessons learned), as well as stable development of the subcategories constituting operational law. *See, e.g.*, WEST'S MILITARY JUSTICE DIGEST (1995) (employing the system of "key numbers" and "digest topics" within the area of military justice). Specifically, CLAMO itself should prepare reports for Corps-wide dissemination, establish subcategories of issues, and guide the orderly evolution of additional subcategories. *See infra* note 80.

¹⁰The categories would be those developed according to the process described in note 9, *supra*.

replicate them to other servers on a wide area network that would include legal offices at installations around the globe.¹¹

In issuing this report, the Center has the worthy but more modest aim of summarizing two to four useful lessons learned from the Haiti deployment in each functional area of operational law. According to United States Army doctrine, the mission of the Judge Advocate General's Corps is to support the battlefield commander by providing professional legal services as far forward as possible at all echelons of command throughout the operational continuum.¹² In surveying a wide variety of lessons learned, the report permits an overall assessment of whether the legal services provided—and the method of delivery—support Army doctrine for conducting operations other than war.¹³ In short, CLAMO

¹¹ See generally Lieutenant Colonel Robert Van Hooser, *Regimental Technology Plan*, at Section IX, in THE JUDGE ADVOCATE GENERAL'S SCHOOL, DESKBOOK FOR PLENARY SESSIONS OF THE 1995 JAG CLE at 105, 113 (1-6 Oct. 1995) (describing the plan for work product retrieval (WPR) within the Judge Advocate General's Corps Wide Area Network (JAGC WAN)) (copy on file with CLAMO).

¹² See FM 27-100, *supra* note 9, at para. 1-4 (3 Sept. 1991).

¹³ See DEP'T OF ARMY, FIELD MANUAL 100-5, OPERATIONS at 13-4 to 13-8 (14 June 1993) (listing noncombatant evacuation operations, civil disturbance operations, humanitarian assistance, disaster relief, security assistance, nation assistance or peace building, counterdrug operations, counterterrorism operations, peacekeeping, peace enforcement, shows of force, attacks, raids, and support for insurgencies or counterinsurgencies), Glossary-6 (defining operations other than war as "military activities during peacetime and conflict that do not necessarily involve armed clashes between two organized forces") [hereinafter FM 100-5]; JOINT CHIEFS OF STAFF PUBLICATION 3-0, DOCTRINE FOR JOINT OPERATIONS I-3 to I-4 (9 Sept. 1993). The term "operations other than war" is relatively young.

Yet even as this report was being prepared, the Army strongly indicated that the term itself will drop out of usage, although the missions described by the term will remain a focus of doctrinal development. See Memorandum, Commander, United States Army Training and Doctrine Command to 35 Senior Addressees within the Command, subject: Commander TRADOC's Philosophy on the Term "Operations Other Than War" (2 Nov. 1992) (copy on file with CLAMO) ("As U.S. military forces became increasingly involved in worldwide operations following the breakup of the Soviet Union, the U.S. Army coined the term "OOTW" to provide an overarching concept for our doctrine as we entered a new historical period for the U.S. Army. The term "OOTW" has served us well to provide increased visibility for new types of operations over the past several years. . . We have reached a point in our post-cold war doctrinal development so we can now speak with more precision about Army operations in peacekeeping, humanitarian

finds that in the context of Haiti, the Corps delivered legal services well in every functional area, and that doctrine for legal operations is fundamentally sound.

The Center's methodology is straightforward. Gather and read all available after action reports from legal offices world-wide that supported the mission. Examine input made by judge advocates to unit after action reports collected by the Center for Army Lessons Learned.¹⁴ Study the videotapes of briefings and subsequent discussions conducted at The Judge Advocate General's School by those who provided legal support before and during the operations.¹⁵ Review submissions on legal issues made to the Joint Uniform

assistance, . . . and other specific missions. Since "OOTW" has served its purpose, we should begin to retire the term, while maintaining and enlarging the vital lessons learned in specific areas."). Because this report was in final draft form when the shift in official terminology occurred, it continues to use the overarching term "operations other than war" when discussing this diverse class of operations.

As used here, doctrine is "the authoritative guide to how [land forces] fight wars and conduct operations other than war." See FM 100-5, *supra*, at v. Doctrine seeks to build on collective knowledge within the military, to reflect wisdom that has been gained in past operations, and to incorporate informed reasoning about how new technologies may best be used and new threats may best be resisted. See generally MAJOR PAUL H. HERBERT, COMBAT STUDIES INSTITUTE, LEAVENWORTH PAPER NO. 16, DECIDING WHAT HAS TO BE DONE: GENERAL WILLIAM E. DEPUY AND THE 1976 EDITION OF FM 100-5, OPERATIONS 3-9 (1988) (describing the function of doctrine in an army and charting the modern practice of publishing doctrine in manuals).

¹⁴ See AR 11-33, *supra* note 5, at para. 1-5 (establishing the Center for Army Lessons Learned, at Fort Leavenworth, Kansas, as the focal point for the Army Lessons Learned System). The various products of the Center for Army Lessons Learned frequently contain information of value to deploying judge advocates, as is reflected by the frequent references to them in this report. Obtain a listing and copies of these products by dialing DSN 552-2255/3035 or (913) 684-2266/3035, faxing a request to DSN 552-9564 or (913) 684-9564, or e-mailing a request to call@leav-emh.army.mil.

¹⁵ See Memorandum, Assistant Judge Advocate General for Military Law and Operations, DAJA-ZD, to Staff Judge Advocate, XVIII Airborne Corps and Fort Bragg and other addressees, subject: After Action Report for Operation Uphold Democracy (2 Feb. 1995) (directing that the conference take place). The conference was held and videotaped at Charlottesville between 8 and 10 May 1995. This report at several points cites to remarks made at this conference, the videotapes of which are on file with CLAMO.

Lessons Learned System.¹⁶ Personally interview a representative sample of judge advocate personnel involved in the operations, and solicit additional documents and materials from them. Execute searches on commercial legal and news databases to confirm factual matters, such as dates and places, and to probe alternative perspectives of mission performance. Consult authoritative legal and doctrinal sources to determine whether field solutions differ from textbook solutions. Write the narrative report. Certify the most illuminating issues for entry into the database. Without claiming that this methodology is exhaustive, the remarkable recurrence of issues across the wide variety of sources gives the Center confidence it has identified all significant lessons learned.

This is a report of key lessons, not a history of judge advocate participation in the Haiti deployment. Nevertheless, full appreciation of any legal or practical issue requires some knowledge of the historical setting which gave rise to that issue. Accordingly, Part II of this report briefly describes the situation in Haiti prior to recent United States involvement, recounts how United States forces and coalition partners executed operations in Haiti, and outlines the organization within which judge advocates supported those operations. Part III then summarizes lessons learned according to functional areas.

II. The Military Operations and Their Context

A. Situation Before the Military Operation.

A flood of migrants departing Haiti for foreign shores in unseaworthy vessels furnished the immediate cause for recent United States and international involvement in this poor Caribbean country.¹⁷

¹⁶ See DEP'T OF DEFENSE, TRAINING AND PERFORMANCE DATA CENTER, JOINT UNIFORM LESSONS LEARNED SYSTEM (JULLS), VERSION 3.10 USER'S MANUAL (1990).

¹⁷ President William Clinton, Address Broadcast Live to the Nation (Sept. 15, 1994), reprinted in WASH. POST, Sept. 16, 1994, at A31 ("Three hundred thousand more Haitians, 5

Increasing despair and perceptions of personal danger among growing numbers of Haitians, however, reflected deeper causes that combined in 1994 to precipitate the flood of migrants. Haiti's history of political instability, brutal repression, and economic hardship records these deeper causes.¹⁸

Haiti was the first Caribbean state to achieve independence, which occurred in 1804 after ex-slave Toussaint l'Ouverture's rebellion brought an end to French rule. Since that time, the country has never enjoyed a prolonged period of internal calm without outside intervention and has never developed institutions capable of sustained democratic government. Between 1915 and 1934, the United States occupied Haiti to quell disorder and protect strategic interests along the Windward Passage, the strait between Cuba and Haiti that leads to the Panama Canal. In 1920, the United States launched Operation Uplift, an ambitious program involving construction of roads, bridges, a dam, electrical and communications systems, hospitals, civic buildings, parks, and sanitation facilities.¹⁹ Until 1934, when the last United States forces left, Haitians enjoyed the benefits of these investments in infrastructure.

Soon thereafter, however, turmoil returned, and a series of dictators used the army—which had been established and armed by United States marines early in the occupation—to put down political opponents. The most repressive of these was Francois “Papa Doc” Duvalier, who gained power in 1957, ruled for 14 years, and then left

percent of their entire population, are in hiding in their own country. If we don't act, they could be the next wave of refugees at our door.”)

¹⁸ Unless otherwise noted, the next 12 paragraphs of the text—which overview Haitian history, the events leading up to international intervention, and various demographic, geographic, and economic factors are based upon DEP'T OF STATE, COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES FOR 1993 at 467-74 (1994); *The United Nations and the Situation in Haiti*, U.N. Dep't of Public Information, DPI/1668 (1995) [hereinafter *Situation in Haiti*]; THE DORLING KINDERSLEY WORLD REFERENCE ATLAS 258-59 (Ian Castello-Cortes ed., 1994) [hereinafter *KINDERSLEY*]; *Mission to Haiti: Chronology*, N.Y. TIMES, Oct. 16, 1994, at 18 [hereinafter *Haiti Chronology*]; UNITED STATES ARMY COMBINED ARMS CENTER, CENTER FOR ARMY LESSONS LEARNED, NEWSLETTER NO. 94-3, HAITI (Jul. 1994) [hereinafter *CALL NEWSLETTER 94-3*].

¹⁹ See Francis Maclean, *Haiti Replays Its Tragic Drama of 1915*, NEWSDAY, Sept. 29, 1994, at A41.

control over the government in 1971 to his son, Jean-Claude “Baby Doc” Duvalier. Although the latter Duvalier’s rule occasioned some liberalization of the government, Haiti had taken no significant steps toward democracy when he fled into exile in 1986 during an uprising. The army chief at the time, Lieutenant General Henri Namphy assumed power, but despite the enactment in 1987 of a democratic constitution, Haiti experienced a series of coups that prevented its implementation.

Then on December 16, 1990, in a presidential election deemed by observers to have been free and peaceful, the Reverend Jean-Bertrand Aristide captured an overwhelming majority of votes. Immediately after assuming office on February 7, 1991, the new, populist President announced a major reorganization of the army. The wealthy businessmen who had controlled Haitian politics since the Baby Doc years felt threatened by President Aristide and his followers, and they supported a violent military coup led by Lieutenant General Raoul Cedras on 30 September 1991. They also approved the installation of Joseph Nerette, a supreme court justice, as provisional president. More than three years would pass before this latest and most disturbing military coup could be undone.

In 1993, the junta rebuffed a series of diplomatic efforts to restore Aristide to power. On 16 June, the United Nations Security Council declared an oil and arms embargo on Haiti.²⁰ On 3 July at

²⁰ S.C. Res. 841, U.N. SCOR, 48th Sess., S/RES/841 (1993). Between 16 June 1994 and 30 January 1995, the Security Council would eventually adopt 14 resolutions directly relating to the situation in Haiti, and over this time period, the President of the Security Council would issue nine statements pertaining to Haiti:

<i>1993 Activity</i>		<i>1994 Activity</i>	
S.C. Res. 841	16 June 1993	S.C. Res. 905	23 Mar. 1994
S.C. Res. 861	27 Aug. 1993	S.C. Res. 917	6 May 1994
S.C. Res. 862	31 Aug. 1993	Pres. Statement	11 May 1994
Pres. Statement	17 Sept. 1993	S.C. Res. 933	30 June 1994

Governors Island, New York, General Cedras and President Aristide signed an agreement calling for Cedras to resign and Aristide to return by 30 October. *Appendix A* reprints this agreement. Pursuant to the Governors Island plan for the return of Aristide, about 200 lightly armed United States troops arrived in Port-au-Prince, Haiti's capital city, on 11 October. The ship carrying the soldiers, the *U.S.S. Harlan County*, turned around that day and left Haitian waters after a small group of gunmen demonstrated in the harbor. In response to this episode and to two days of violence instigated by the same group of gunmen, the United Nations on 13 October declared renewed sanctions against Haiti.²¹ The next day, assassins killed Justice Minister Guy Malary, an Aristide supporter, and two days later still, a group of international human rights monitors felt compelled to leave the country. On 19 October, the United Nations embargo on arms, military and police supplies, and oil shipments began, with United States and Canadian naval vessels and aircraft enforcing the embargo. The United States also froze assets and revoked visas of junta members. At the end of 1993, the scheduled return of Aristide had not occurred.

During the first half of 1994, a steadily growing number of Haitians boarded boats and set out for the United States. Even as the international community was imposing ever-tighter trade sanctions against the de facto Haitian leaders,²² those leaders presided over an

S.C. Res. 867	23 Sept. 1993	Pres. Statement	12 July 1994
Pres. Statement	11 Oct. 1993	S.C. Res. 940	31 July 1994
S.C. Res. 873	13 Oct. 1993	Pres. Statement	30 Aug. 1994
S.C. Res. 875	16 Oct. 1993	S.C. Res. 944	29 Sept. 1994
Pres. Statement	25 Oct. 1993	S.C. Res. 948	15 Oct. 1994
Pres. Statement	30 Oct. 1993	S.C. Res. 964	29 Nov. 1994
Pres. Statement	15 Nov. 1993	<i>1995 Activity</i>	
Pres. Statement	10 Jan. 1993	S.C. Res. 975	30 Jan. 1995

See Situation in Haiti, supra note 18.

²¹ S.C. Res. 873, U.N. SCOR, 48th Sess., S/RES/873 (1993).

²² S.C. Res. 917, U.N. SCOR, 49th Sess., S/RES/917 (1994).

increase in politically motivated intimidation and repression against Aristide supporters. The first instrument of repression was the Haitian armed forces, or Forces Armees d'Haiti (FAd'H), which had constitutional responsibility for public security and law enforcement and which included a police force. The second was a group of paramilitary personnel in civilian clothes known as "attaches." The third was a group of provincial section chiefs known as "Tons Tons Macoutes," whom military regulations declared to be adjuncts to the FAd'H. The fourth, known as the Revolutionary Front for Advancement and Progress of Haiti (FRAPH), was a group that had emerged in 1993 and that since that time had opened offices in most towns and villages and infiltrated poorer neighborhoods.

On 8 May 1994, President Clinton announced that the United States would not refuse entry to Haitian boat people without hearing their claims for asylum.²³ Haitian migrants would be permitted to claim asylum aboard United States vessels or in other countries. On 29 June, in response to the growing number of migrants, the United States opened a processing center at Guantanamo Bay naval base in Cuba. On 5 July, the still rising flood of Haitian boat people impelled a change in United States policy: Haitian migrants would be returned to Haiti or taken to "safe havens" at Guantanamo Bay, Cuba, in Panama, and elsewhere. Two days later, the United States announced that the *U.S.S. Wasp*, with

²³ This was a shift in United States policy. In May of 1992, Executive Order 12807 had directed the Coast Guard to intercept on the high seas vessels illegally transporting passengers from Haiti to the United States and to return those passengers to Haiti without first determining whether they might qualify as refugees. Policy had been determinative in this matter, despite the fact that a binding treaty provision, *see* United Nations Convention Relating to the Status of Refugees, July 28, 1951, art. 33.1, 19 U.S.T. 6259, 189 U.N.T.S. 137, and a section of the Immigration and Nationality Act of 1952, *see* 8 U.S.C. §1253(h), prohibit the United States from expelling or returning a refugee to a country in which his life or freedom would be threatened on account of race, religion, nationality, membership in a particular social group, or political opinion. The Supreme Court ruled on 21 June 1993 that neither the treaty provision nor the statutory section provided a judicial remedy for the Coast Guard's return of Haitians intercepted on the high seas. *See Sale v. Haitian Centers Council, Inc.*, 125 L.Ed. 128 (1993).

1,800 marines on board, would sail into the waters off Haiti and practice drills required for invasion.

On 31 July 1994 the United Nations Security Council cleared the way for an invasion. In Resolution 940, it voted 12 to 0—with two abstentions—to authorize member states

to form a multinational force under unified command and control and, in this framework, to use all necessary means to facilitate the departure from Haiti of the military leadership, consistent with the Governors Island Agreement, the prompt return of the legitimately elected President and the restoration of the legitimate authorities of the Government of Haiti, and to establish and maintain a secure and stable environment that will permit implementation of the Governors Island agreement²⁴

Appendix B reprints the entire text of this resolution. The month of August resulted only in further tension, as Father Jean-Marie Vincent, an Aristide loyalist and prominent Catholic priest, was murdered by gunmen in Port-au-Prince.

In September of 1994, Haiti captured the full attention of the United States and the world. President Clinton stated in a nationally televised address on 15 September that the United States would use military force to oust the Cedras regime from power. On 17 September, in a final attempt to persuade the junta to step down without massive bloodshed, President Clinton dispatched a team consisting of former President Jimmy Carter, General Colin L. Powell, and Senator Sam Nunn to Haiti. On 18 September, in the very hour that paratroopers from the 82d Airborne Division were flying toward designated drop zones within Haiti,²⁵ the junta blinked. The Haitian military leaders

²⁴ S.C. Res. 940, U.N. SCOR, 49th Sess., S/RES/940 (1994).

agreed to step down when the Parliament passed an amnesty law or on 15 October, whichever came first. *Appendix C* reprints the terms of their agreement, which was signed by President Carter and Emile Jonassaint, the military-appointed president of Haiti.

Far from trusting the restoration of President Aristide to another promise by the junta, United States forces entered Haiti in large numbers beginning 19 September. These troops led the United States contingent of the multinational force that had been formed pursuant to Security Council Resolution 940. This was D-Day of Operation Uphold Democracy.

B. Operation Uphold Democracy

The Haiti encountered by soldiers and marines participating in Uphold Democracy was a country of about 6.5 million people inhabiting a landmass about the size of the state of Maryland.²⁶ The population was predominantly rural, roman catholic, black, French Creole-speaking, and extremely poor, Haiti having earned the distinction of being the poorest country in the western hemisphere.²⁷ Although a few Haitians descended from Europeans rather than African slaves, and although many of the former were affluent, social tensions focused on class rather than race.

One-third of the Haitian landscape had suffered serious soil erosion as result of generations of indifference to ecological problems. Most Haitians could not afford health care, and in rural areas, sick persons often sought help from voodoo priests. The masses lived

²⁵ See *infra* note 74, and accompanying text.

²⁶ NATIONAL GEOGRAPHIC SOCIETY, NATIONAL GEOGRAPHIC ATLAS OF THE WORLD 120 (6th ed. 1990).

²⁷ See KINDERSLEY *supra* note 18, at 258-59 (noting that in remote villages, most houses are made of earth and have no windows).

without running water or proper sanitation, and AIDS was among the many diseases afflicting them. Paved roads were rare, and ferries from Port-au-Prince provided the main transportation to the southern peninsula of the country. Coffee exports, light manufacturing, and tourism, which had been among the few bright spots in the Haiti economy, all had come close to collapse as a result of the embargoes imposed following the coup.²⁸

Operation Uphold Democracy was the most decisive in a series of military operations to support United States policy aims in Haiti. In October of 1993, in the wake of General Cedras' failure to comply with the terms of the Governors Island accord, United States Atlantic Command (USACOM)²⁹ formed Joint Task Force (JTF) 120 and gave

²⁸ Two sources report that trafficking of illicit drugs, however, was on the increase. See CALL NEWSLETTER 94-3, *supra* note 18, at II-8 to II-9 (noting that Haiti's many social and economic ills make it well-suited as a cocaine trans-shipment point); KINDERSLEY *supra* note 18, at 259 ("The military makes large profits from the transportation of narcotics to the USA.")

²⁹ United States Atlantic Command (USACOM) is one of the unified combatant commands around which worldwide projection of United States military power is organized. A unified command is "a military command which has broad continuing missions and which is composed of forces from two or more military departments." 10 U.S.C. § 161(c)(1). The President, acting through the Secretary of Defense and with the advice and assistance of the Chairman of the Joint Chiefs of Staff (JCS), establishes unified commands, *see* 10 U.S.C. § 161(a), of which there are presently nine:

United States Atlantic Command	USACOM	Norfolk, VA
United States European Command	USEUCOM	Stuttgart, FRG
United States Pacific Command	USPACOM	Camp Smith, HI
United States Southern Command	USSOUTHCOM	Quarry Heights, Panama
United States Central Command	USCENTCOM	MacDill AFB, FL
United States Transportation Command	USTRANSCOM	Scott AFB, IL
United States Special Operations Command	USSOCOM	MacDill AFB, FL
United States Space Command	USSPACECOM	Peterson AFB, CO
United States Strategic Command	USSTRATCOM	Offut AFB, NE

See DEP'T OF DEFENSE, DEFENSE ALMANAC '94, Issue 5, at 11 (1994). More than seven major pieces of legislation over the past forty-six years have molded the defense organization of the United States, DEP'T OF DEFENSE, ARMED FORCES STAFF COLLEGE PUBLICATION 1, THE JOINT STAFF OFFICER'S GUIDE 32 (1993) [hereinafter AFSC PUB. 1], but the definition of a unified command has not changed since Congress passed the National Security Act of 1947. *See id.* at 42.

it the mission to protect and evacuate American citizens and key Haitian nationals.³⁰ Built around a United States Navy Cruiser-Destroyer group, this Joint Task Force provided off-shore protection and evacuation support and also directed United Nations maritime embargo operations around Haiti. In June of 1994, USACOM formed JTF-160 to address the flood of Haitian migrants, which in turn had resulted from the worsening situation on the island and President Clinton's decision to suspend direct repatriation. This second JTF, though activated aboard a hospital ship in Kingston, Jamaica, soon moved to Naval Station Guantanamo Bay, where it established safe havens for roughly 15,000 Haitians.³¹

The third and fourth JTF's corresponded to two separate plans for ending the junta's reign in Haiti. A plan for forced entry into Haiti

The purpose of the National Security Act of 1947 was to incorporate into law the lessons World War II had taught about the hazards of parochialism among the military services and thus "provide for the effective strategic direction of the armed forces and for their operation under unified control and for their integration into an efficient team of land, naval, and air forces." *See id.* The most recent significant development in the trend toward a unified command structure occurred in 1986, when Congress designated the Chairman, JCS the principal military adviser to the President, transferred duties of the corporate JCS to the Chairman, specified that the operational chain of command shall run from the President to the Secretary of Defense directly to the combatant commanders, and authorized the President to communicate with the combatant commanders through the Chairman. *See* Dep't of Defense Reorganization (Goldwater-Nichols) Act of 1986, Pub. L. No. 99-433, 100 Stat. 1012-17 (codified at 10 U.S.C. §§ 161-66 (1988)); *see also* DEP'T OF DEFENSE, DIRECTIVE 5100.1, FUNCTIONS OF THE DEP'T OF DEFENSE AND ITS MAJOR COMPONENTS (25 Sept. 1987) (exercising the President's authority by directing that the Chairman "function[] within the chain of command by transmitting communications to the commanders of the combatant commands from the President and the Secretary of Defense"). *See generally* AFSC PUB. 1 at 32-45.

³⁰ The Secretary of Defense as well as the commanders in chief (CINCs) of unified commands may establish joint task forces. *See, e.g.,* FM 100-5, *supra* note 13, at 4-4. A joint task force consists of elements of two or more services operating under a single commander. It performs missions having specific limited objectives or missions of short duration. *See id.* Because Haiti is within the geographic area of responsibility (AOR) of USACOM, the CINC of USACOM was the establishing authority for JTF 120.

³¹ The safe havens also housed some 30,000 Cubans. *See* Rear Admiral Thomas R. Wilson, *Joint Intelligence and Uphold Democracy*, JOINT FORCE QUARTERLY, Spring 1995, at 54, 55.

would be executed, if appropriate, by Combined JTF-180 (CJTF-180),³² under the command of Lieutenant General Henry H. Shelton, Commander of XVIIIth Airborne Corps.³³ The 82d Airborne Division would be the divisional element leading the assault, and about 1800 marines would participate by conducting an amphibious landing in Cap Haitien.³⁴ A plan for semi-permissive entry would be executed, if appropriate, by Combined JTF-190 (CJTF-190), under the command of Major General David C. Meade, Commander of 10th Mountain Division.³⁵ One infantry brigade would seize control of Port-au-Prince while another would air assault separate elements into Cap Haitien and Jeremie, cities on the northern and southern claws of the Haitien landmass.³⁶ During the summer of 1994, as the political situation worsened, the staff of USACOM and the staffs of component commands of all services feverishly refined these two alternative plans for the same operation. The codename for the forced entry was Uphold Democracy; the codename for the semi-permissive entry was Maintain Democracy.³⁷

³² A combined task force "involves the military forces of two or more nations acting together in common purpose." See FM 100-5, *supra* note 13, at 5-1. The lines of command for combined task forces created pursuant to formal, stable alliance relationships between nations will generally follow principles predetermined by the alliance agreement. The lines of command for combined task forces arising from a temporary coalition follow no set principles and are negotiated on an ad hoc basis. The delicacy of coalition operations—arising from differences in goals, culture, military doctrine and training, equipment, and language—almost guarantee that the President and the State Department will remain involved in setting guidelines for a combined task force that includes United States forces. See *generally id.* at 5-1 to 5-5.

³³ See Wilson, *supra* note 31, at 55.

³⁴ Telephone Interview with Lieutenant Colonel Carl Woods, Office of the Staff Judge Advocate, USACOM and Supreme Allied Command, Atlantic, (Aug. 24, 1995) [hereinafter Woods Interview].

³⁵ See Memorandum, Major Bradley P. Stai, Chief, Civil Law, Office of the Staff Judge Advocate, XVIIIth Airborne Corps and Fort Bragg, AFZA-JA-CV, to Staff Judge Advocate, subject: After Action Report (AAR)—Operation Uphold Democracy, at 20 (2 Feb. 1995) (copy on file with CLAMO) [hereinafter Stai Memorandum].

³⁶ Headquarters, 10th Mountain Division (Light Infantry), Combined JTF Haiti Operation Plan 2380, para. 3a (16 Aug. 1994) (copy of declassified extract on file with CLAMO) [hereinafter OPLAN 2380].

³⁷ See Stai Memorandum, *supra* note 35, at 1, 18. A fifth joint task force would also deploy in support of the Haiti intervention. This was JTF 188, a joint special operations task force, designated by CINCUSACOM on 13 September 1994, and comprising about 2200

Yet the Uphold Democracy that occurred was actually a blend of the two alternative plans, and both CJTF-180 and CJTF-190 had pieces of the resulting operation.³⁸ When former President Carter announced that General Cedras and his de facto regime had agreed to step down, the plan for forced entry was already underway. The Commander-in-Chief of USACOM, Admiral Paul D. Miller, quickly halted the forced entry, organized CJTF-190 as a subordinate command to CJTF-180, and ordered a semi-permissive entry.³⁹ General Shelton, at the headquarters of CJTF-180, promptly recalled the 82d Airborne Division to Fort Bragg and directed CJTF-190 to land at Port-au-Prince airport.⁴⁰

personnel from elements of USSOCOM. These USSOCOM forces included elements of the 75th Ranger Regiment, the 160th Special Operations Aviation Regiment, the United States Army Special Operations Command, the United States Air Force Special Operations Command, and the Naval Special Warfare Command. They deployed on the *U.S.S. America*, and their equipment included standard light weapons, high mobility multipurpose wheeled vehicles (HMMWVs), CH-47 Chinook helicopters, several variants of the UH-60 Blackhawk helicopter, and light observation helicopters. The *U.S.S. America*, with JTF 188 operating from it, was positioned in the joint operations area near the coast of Haiti until it was ordered back to the United States on 19 October 1995. See generally Headquarters, United States Atlantic Command, Briefing Viewgraphs (8 May 1995) (copies deposited with CLAMO during conference mentioned in note 15, *supra*) [hereinafter USACOM Briefing Viewgraphs].

³⁸ Headquarters, Joint Task Force 180, Briefing Viewgraphs (8 May 1995) (depicting "Planning Flexibility" and describing the resulting plan variously as "2375" and "2380 'Plus'") (copy on file with CLAMO) [hereinafter JTF 180 Viewgraphs].

³⁹ Woods Interview, *supra* note 34.

⁴⁰ Telephone Interview with Major Kyle D. Smith, Operational Law Attorney, XVIIIth Airborne Corps and Fort Bragg (Sept. 5, 1995) [hereinafter Smith Interview]. The CJTF-180 Commander's intent for the hybrid mission was as follows:

The purpose of this operation is to expand the security operations and set conditions for decisive civil-military operations (CMO). We will deter violence and promote stability by creating a highly visible force presence of mobile and stationary security operations. We must set objectives that result in steady progress and measurable success in the eyes of the Haitian people, enlist the cooperation of the FAd'H, police, and civilians without sacrificing our neutrality or authority. The assistance provided to NGOs and PVOs to establish essential services must be balanced against potential mission creep. Success is defined as the freedom of action for multi-national forces to transition from expansion of initial security operations to decisive CMO.

Two brigades of the 10th Mountain Division—one aviation and one infantry—began executing this modified plan on 19 September from the *U.S.S. Eisenhower*, where Army infantry and helicopters had been loaded onto the aircraft carrier. By nightfall of 19 September, about 2,000 soldiers were on the ground near Port-au-Prince.⁴¹

The next day, 20 September, another 3,000 soldiers from the 10th Mountain Division deployed in Port-au-Prince while about 1,800 marines launched an amphibious landing into Cap Haitien from the *U.S.S. Wasp*.⁴² This was D + 1, the end of which found nearly 7,000 United States soldiers and marines ashore, having suffered no casualties. By 21 September, D + 2, the number was over 10,000.⁴³ Within days, this number had swelled to more than 15,000, including two battalions from 3d Special Forces Group. Close to 21,000 United States soldiers and marines were in Haiti on 4 October, when the first group of soldiers from the other coalition nations arrived.⁴⁴ *Figure 1* depicts the deployment of forces into Haiti.

JTF 180 Viewgraphs, *supra* note 38 (depicting “2380 ‘Plus’ Intent”).

⁴¹ *A ‘Cordial’ Reception as Americans Take Control; Peacekeeping Troops Met No Resistance—and Some Cheers—As They Took Haitian Ports and Airfields, But Risks Remain High*, ORLANDO SENTINEL, Sept. 20, 1994, at A1 (citing Lieutenant General Shelton).

⁴² See Julian Beltrame, *U.S. Troops Watch as Haitians Beaten; At Least One Killed*, THE MONTREAL GAZETTE, Sept. 21, 1994, at A1 (citing spokesman Colonel Barry Willy).

⁴³ See Douglas Farah, *U.S. Warns Haitian Leaders on Abuses; GI Patrols Stepped Up to Stop Civilian Beatings*, WASH. POST, Sept. 21, 1994, at A1 (citing Lieutenant General Shelton).

⁴⁴ See Chris Black, *US Troops Storm Haiti Militia Headquarters; Crowd Cheers Arrest of FRAPH Members*, BOSTON GLOBE, Oct. 4, 1994, at 1 (citing Lieutenant General Shelton). Other nations’ coalition forces—which would eventually number about 3600 personnel from 32 different countries—formed a diverse group. During 1994, contributions came from Argentina (2 ships, 100 police), Bangladesh (1000 military, 100 police), Belgium (30 police), Benin (25-30 personnel), Netherlands (20 police), Costa Rica (20 civilian specialists), Bolivia (100 police), United Kingdom (12 ships, 12 trainers), Israel (30 police), Panama (60 police, 120 civilian specialists), and 12 nations of the Caribbean Community (CARICOM) (266 military, 90 police). See JTF 180 Briefing Viewgraphs, *supra* note 38 (depicting “Forming the Coalition”).

INITIAL DEPLOYMENT OF FORCES

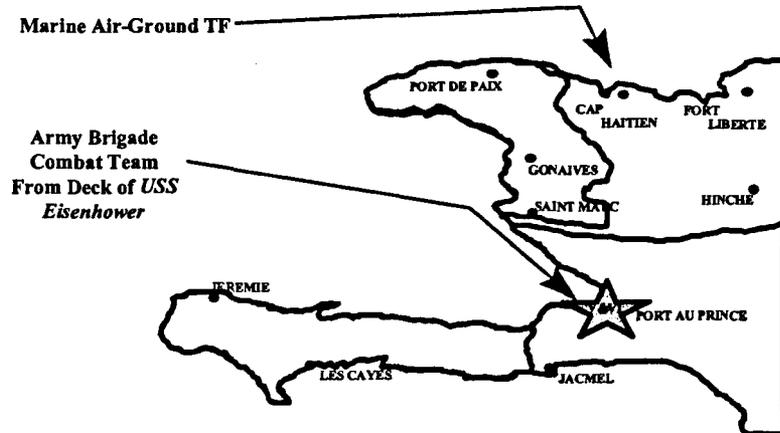


Figure 1

Cedras soon resigned and left the country, and President Aristide returned.⁴⁵ On or about 6 October, the marines departed Cap Haitien to be replaced by the second infantry brigade from the 10th Mountain Division.⁴⁶ On 24 October, CJTF 180 stood down, handing command of the multinational force in Haiti (MNF) to the commander of CJTF-190.⁴⁷ By January 1995, the role of the 10th Mountain Division within this MNF would be replaced by the 25th Infantry Division,⁴⁸ and by the

⁴⁵ See *Haiti Chronology*, *supra* note 18, at 18 (reporting that Cedras resigned on 10 October 1994 and that President Aristide returned on 15 October).

⁴⁶ Interview with Captain E.J. O'Brien, former Trial Counsel for the 2d Brigade Combat Team, in Charlottesville, VA (Aug. 25, 1995) [hereinafter O'Brien Interview].

⁴⁷ *Id.*

⁴⁸ See Memorandum, Staff Judge Advocate, Multinational Force Haiti, MNF-SJA, to MNF Historian, subject: Unit Historian After Action Review, para. 3s (recording that transition occurred on 14 January 1995) [hereinafter MNF Historian Memorandum].

end of March 1995 the MNF itself would eventually be replaced by a peacekeeping force, the United Nations Mission in Haiti (UNMIH).⁴⁹ Reflecting broad international support for the deployment, some 32 nations would eventually contribute forces to either MNF or UNMIH.⁵⁰ Also, most of the migrants in safe havens at Guantanamo Bay would eventually return to Haiti.⁵¹

Yet Uphold Democracy did not unfold without tense moments. Compelled by the terms of the Carter-Jonassaint agreement to co-exist with the Haitian police force,⁵² newly arrived United States troops concerned themselves with maintaining essential civic order rather than with policing crimes committed by Haitians against Haitians. After 20 September, when police who were loyal to the Cedras regime brutally beat pro-Aristide demonstrators in the streets of Port-au-Prince, the maintenance of civic order demanded that United States troops intervene to stop violent crimes.⁵³

Tension would escalate further before it subsided. On 25 September a Marine Corps lieutenant opened fire and shot a threatening

⁴⁹ See *id.* The UNMIH was initially conceived in August of 1993, see S.C. Res. 862, U.N. SCOR, 48th Sess., U.N. Doc. S/RES/862 (1993), and it was a contingent of UNMIH that was aboard the *U.S.S. Harlan County* when that ship turned around on 11 October 1993. See *Statement By the President*, U.N. SCOR, 48th Sess., 3289th mtg., U.N. Doc. S/26567.

⁵⁰ See, e.g., President William Clinton, Remarks at United Nations Transition Ceremony (Mar. 31, 1995), reprinted at *Appendix D*.

⁵¹ Telephone Interview with Captain Daniel J. Cowhig, former judge advocate assigned to JTF 160 at Guantanamo Bay, Cuba, (Aug. 28, 1995) (stating that by early 1995, only about 700 Haitian migrants remained at Guantanamo Bay) [hereinafter Cowhig Interview]; Telephone Interview with Captain Jeffrey Pederson, former judge advocates assigned to JTF Safe Haven in Panama (Aug. 24, 1995) [hereinafter Pederson Interview] (stating that soon after the start of the Haiti intervention the command shelved plans for "Operation Distant Haven," which would have established a camp in Belize for Haitians).

⁵² See *infra Appendix C*, para. 2 ("To implement this agreement, the Haitian military and police forces will work in close cooperation with the U.S. Military Mission. This cooperation, conducted with mutual respect, will last during the transitional period required for insuring vital institutions of the country.").

⁵³ See part III.A.1 *infra*.

policeman, initiating a barrage of fire—from members of 2d platoon, E Company, 2d Battalion, 2d Brigade, 2d Marine Division—that left 10 Haitian security men dead in Cap Haitien.⁵⁴ This incident emboldened Aristide supporters and intimidated the police forces. On 30 September, in Port-au-Prince, six Haitian demonstrators died and about a dozen received injuries at the hands of gunmen loyal to the junta.⁵⁵ Months later, even after violent confrontations had indeed subsided and a stable environment had been achieved, assassins killed Mireille Durocher Bertin, a political opponent of President Aristide.⁵⁶

The assassination, occurring just days before the MNF transferred responsibilities to UNMIH, served to remind all outside parties that Haiti's problems could not be solved overnight. Nevertheless, despite these tense episodes, President Clinton justly termed Operation Uphold Democracy a "remarkable success" during a ceremony on 31 March marking the transfer of responsibilities to the United Nations. *Appendix D* reprints the text of his speech as well as those of Secretary-General Boutros-Ghali and President Aristide.⁵⁷

⁵⁴ See Tom Rhodes & Ian Brodie, *Americans Admit They Fired First*, THE TIMES, Sept. 26, 1994, at 1.

⁵⁵ See T.J. Milling, *The Haiti Crisis; Haiti March Against Regime Turns Deadly; Confrontation Leaves 6 Slain*, HOUSTON CHRONICLE, Oct. 1, 1994, at A1.

⁵⁶ See Kathy Lewis, *Clinton Visit Heralds Haiti Democracy; U.S. Troops Thanked as U.N. Takes Over*, DALLAS MORNING NEWS, Apr. 1, 1995, at 1A.

⁵⁷ Although the combat forces it deployed to Haiti consisted mostly of light infantry, the United States also deployed a small mechanized infantry force as insurance against a the sort of emergency that arose in Mogadishu, Somalia on 3 and 4 October 1993, when mechanized infantry perhaps could have averted the tragedy that befell some of the 18 soldiers who were killed by forces of Mohammed Farah Aideed. See, e.g., Rick Atkinson, *Night of a Thousand Casualties: Battle Triggered the U.S. Decision to Withdraw from Somalia*, WASH. POST., Jan. 31, 1994, at A1, A11 (quoting Major General William F. Garrison's urgent request on the evening of 3 October for "some tanks and some APCs" and describing Major General Thomas M. Montgomery's subsequent attempts to borrow armored and mechanized forces from Pakistani, Malaysian, and Italian forces). This force consisted of a mechanized infantry company from the 24th Infantry Division (Mechanized), which deployed from Fort Stewart, Georgia. See generally Telephone Interview with COL Waldo W. Brooks, Staff Judge Advocate, 24th Infantry Division (Mech) & Fort Stewart (27 Oct. 1995) (identifying the unit as B Company, 3-15th Infantry, a company equipped with M2 Bradley Infantry Fighting Vehicles).

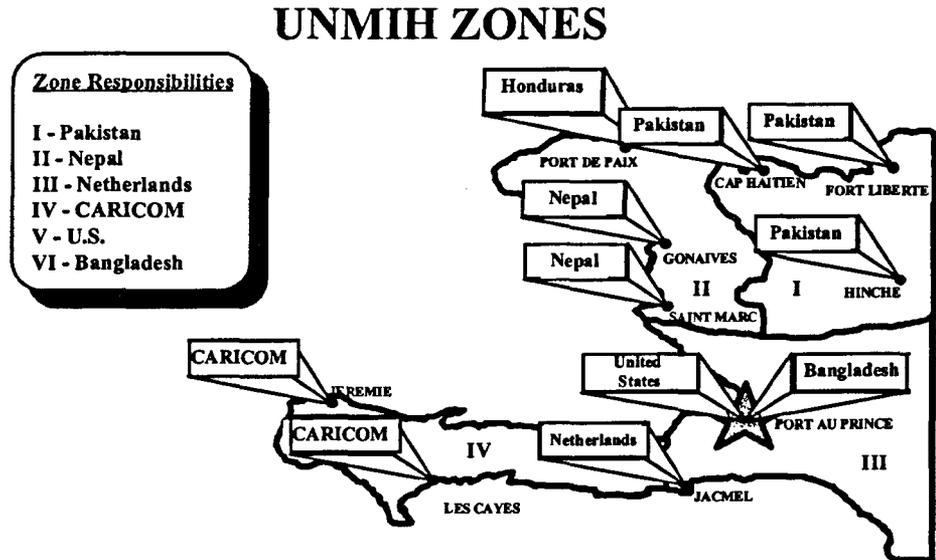


Figure 2

C. United Nations Mission in Haiti

The force that continued the international presence in Haiti on 31 March 1995 consisted of about 6,000 military personnel from 33 countries, including about 2,400 from the United States.⁵⁸ United States Army Major General Joseph Kinzer commanded this United Nations force, which had the mission of maintaining the stable and

⁵⁸ See USACOM Briefing Viewgraphs, *supra* note 37. As of April 1995, the breakdown of personnel was as follows:

United States	2400	Canada	474
Caricom	275	Honduras	120
Bangladesh	1050	Pakistan	850
Guatemala	121	India	120
Nepal	410	Argentina	15
Netherlands	150	Surinam	36

See Headquarters, Multinational Force Haiti and 25th Infantry Division (Light), Briefing Viewgraphs (9 May 1995) (copies deposited with CLAMO during the conference mentioned in note 15, *supra*) [hereinafter 25th ID Briefing Viewgraphs].

secure environment that had been established by the MNF.⁵⁹ In such an environment, the international community hoped that Haitians could begin to establish a lasting democracy. *Figure 2* depicts the regions of Haiti into which UNMIH forces deployed.

About 1300 soldiers from the 25th Infantry Division stayed in Haiti and either donned the blue berets of the UNMIH or participated in bilateral programs authorized under United States security assistance laws.⁶⁰ These included medical, logistics, military police, aviation, and infantry personnel. About 600 soldiers from United States Army Special Operations Command, including 550 special forces soldiers and 50 members of psychological operations units, also contributed to the international presence after the 31 March transfer.⁶¹ Another 400 personnel of all services, including United States Navy engineers and medical personnel, rounded out the American contingent.⁶²

In June of 1995, soldiers from the 2d Armored Cavalry Regiment out of Fort Polk replaced the remaining members of the 25th Infantry Division, who returned to their home in Schofield Barracks, Hawaii.⁶³ Then in September of 1995, a smaller number of soldiers from the 101st Airborne Division (Air Assault), replaced the 2d Armored

⁵⁹ The most important criterion to be fulfilled prior to completion of the MNF-UNMIH transition was the adoption of a Security Council resolution that declared a "stable and secure environment" in Haiti. See USACOM Briefing Viewgraphs, *supra* note 37.

⁶⁰ See USACOM Briefing Viewgraphs, *supra* note 37.

⁶¹ See *id.*

⁶² See *id.*

⁶³ See Major Mark Ackerman, *Legal Support to Current Operations in Haiti*, ARMY LAW., Aug. 1995, at 41 n.118.

Cavalry Regiment soldiers.⁶⁴ Numbers of United States soldiers in Haiti continue to drop, in fulfillment of the scheduled February 1996 departure date for all remaining United States forces.⁶⁵ Major milestones during the UNMIH presence included the June 1995 parliamentary elections, which occurred peacefully and fairly but with organizational difficulties, and will include the December 1995 presidential election.⁶⁶ Throughout the UNMIH presence, efforts to create a professional civilian police force built upon groundwork laid during Uphold Democracy.⁶⁷

Other programs begun during Uphold Democracy also continued, such as those to establish a functioning judicial system. Spearheaded by a team of judicial mentors, attached to the United States Embassy and consisting of 18 attorneys with broad judicial, administrative, and practical experience, these efforts sought to make both short and longer-term contributions to the Haitian legal infrastructure.⁶⁸ This project complemented other civic work being done by eight United Nations agencies and hundreds of private voluntary organizations in the country.⁶⁹

⁶⁴ Telephone Interview with Lieutenant Colonel Daniel Bolger, Commander of 1st Battalion, 327th Infantry Regiment, 101st Airborne Division (Air Assault) (Jul. 26, 1995). Mention of specific units in the text is intended merely to provide some flavor of the variety of units that participated. The other units—both active and reserve component—that contributed soldiers, sailors, airmen, or marines are too numerous to list here. It is a function of the task organization principle that the Haiti intervention involved so many different units.

⁶⁵ Telephone Interview with Major William Hudson, Senior UNMIH Staff Legal Officer, (Sept. 8, 1995) [hereinafter Hudson Interview].

⁶⁶ *See id.*

⁶⁷ *See id.*

⁶⁸ *See* Memorandum, Lieutenant Colonel Philip A. Savoie to Brigadier General Walter B. Huffman, subject: Interim Report, Haitian Judicial Mentorship Program (7 Apr. 1995) (copy on file with CLAMO) [hereinafter Savoie Memorandum]. Lieutenant Colonel Savoie was the Center Judge Advocate of Fitzsimons Army Medical Center, Aurora, Colorado, when he served as judicial mentor in Haiti on a temporary duty status. *See generally* part III.H.3, *infra*.

⁶⁹ *See* part III.G.3 and *Appendix S, infra*.

D. Judge Advocate Support

Uphold Democracy and subsequent operations in Haiti profited from heavy judge advocate support. The peak number of judge advocates in the area of operations at any one time was 23. The peak total number of legal personnel, officer and enlisted, was 32. Altogether, 54 different judge advocates and 39 different legal noncommissioned officers and specialists deployed to Haiti for some period between September 1994 and September 1995. Among these were representatives of each military service, and of the active as well as reserve components. *Appendix E* lists these personnel. Another 29 judge advocates in key staff positions did considerable work on Haiti issues, and some of these officers traveled to Haiti in furtherance of that work. *Appendix F* lists these judge advocates.

Other legal personnel deployed to the field in support of operations in Haiti. These included participants in JTF-160, who deployed to Guantanamo Bay Cuba, and in JTF-Safe Haven, who deployed to Panama. These operations accommodated or prepared to accommodate Haitian boat people who left their country in the summer of 1994, as the junta clung to power. Altogether, 8 different judge advocates and 4 different legal specialists deployed to camps in Cuba or Panama.⁷⁰ A much larger number of judge advocates supported the various Haiti operations less directly—by pulling shifts in emergency operations centers at installations where soldiers were deploying, by rendering predeployment legal assistance, or by assisting with other numerous and diverse legal issues generated by the deployment.⁷¹

⁷⁰ These are conservative estimates based on Cowhig and Pederson Interviews, *supra* note 51, which also are the bases for the other information in this paragraph pertaining to JTFs 160 and Safe Haven.

⁷¹ Contrast these numbers with the number deployed to Desert Storm:

JA presence in SWA built from 46 on 3 Sep 90 to about 270 by G Day. There were 92 other RC JA's on active duty around the world at the same time, 33 serving as individuals and 59 as members of units. Ultimately, 12 JAG Detachments (or JAGSOs) were called; of these, 5 deployed. There were

From January to June of 1994, individual operational lawyers on key staffs actively participated in planning the operations that would unfold.⁷² An Army judge advocate at XVIIIth Airborne Corps received access to the classified forced entry plan, as did a counterpart in the 82d Airborne Division. An air force judge advocate on the 12th Air Force staff similarly involved himself in the planning process. Two judge advocates at United States Atlantic Command—one Navy and the other Marine Corps—contributed to the forced entry plan, as well as to the maritime interdiction operations that had been underway since October of 1993. An operational lawyer in the 10th Mountain Division contributed to the development of that unit's plans for both the forced and semi-permissive entries. Members of the coordinating staff group⁷³ especially welcomed judge advocate involvement in writing rules of engagement, general orders, foreign claims procedures, and procedures for seizing property.

On D-Day, two judge advocates were among the soldiers in military aircraft sweeping toward Haiti. Ninety minutes before the

approximately 18 non-civil affairs units called with organic JA's. Five were deployed.

Dep't of Army, Office of The Judge Advocate General, The Judge Advocate General After Action Report: Operation Desert Shield & Operation Desert Storm at I-I-2 (1991) (copy on file with CLAMO).

⁷² The information in this paragraph is based on the following sources: Stai Memorandum, *supra* note 35; Major Bradley P. Stai, Chief, Civil Law, Office of the Staff Judge Advocate, XVIIIth Airborne Corps, Remarks Before the Haiti After Action Review Conference in Charlottesville, VA (May 8, 1995) (videotape on file with CLAMO); Woods Interview, *supra* note 34; Telephone Interview with Captain Darryl Wishard, Operational Law Judge Advocate, 10th Mountain Division (Light Infantry) (Aug. 3, 1995) [hereinafter Wishard Interview].

⁷³ The coordinating staff group consists of the commander's principal staff assistants, each concerned with a broad field of interest. A large joint staff organization, for instance, will typically have a coordinating staff that includes a J-1 (Personnel), J-2 (Intelligence), J-3 (Operations), J-4 (Logistics), J-5 (Plans), J-6 (Communications-Electronics), and J-7 (Civil-Military Operations). See, e.g., DEP'T OF ARMY, FIELD MANUAL 101-5, STAFF ORGANIZATIONS AND OPERATIONS 2-1, 2-2 & 2-13 (25 May 1984). The Staff Judge Advocate is a member of the commander's special and personal staffs. See *id.* at 2-9.

scheduled parachute assault was to begin, these attorneys—one aboard a C-141 with the XVIIIth Airborne Corps Assault Command Post (ACP) and the other aboard an EC-135, with the airborne command and control element—were diverted from their destinations.⁷⁴ When the two CJTF's then executed their entry into Haiti unopposed, judge advocates deployed to the area of operations according to the organization depicted in *Figures 3 and 4*. Although they were certainly crucial to the operation, legal specialists and junior noncommissioned officers are not included in any of the following *Figures*, but one or more supported each of the brigade elements depicted.

Figure 3—CJTF-180 Legal Organization (D+1)

Staff Judge Advocate	COL
Deputy Staff Judge Advocate	CDR
Operations Law Judge Advocate	MAJ
Contract Law Judge Advocate	MAJ
1st COSCOM Judge Advocate	CPT
16th MP Brigade Judge Advocate	CPT
Joint Interrogation Facility Judge Advocate	CPT
20th Engineer Brigade Judge Advocate	CPT
3d Special Forces Group Judge Advocate	CPT

⁷⁴ See Smith Interview, *supra* note 40.

Figure 4—CJTF-190 Legal Organization (D+4)

Staff Judge Advocate	LTC
Deputy Staff Judge Advocate	MAJ
Operations Law Judge Advocate	CPT
Claims Judge Advocate	CPT
Criminal Law Judge Advocate	CPT
Legal Assistance Judge Advocate	CPT
Chief Legal NCO	MSG
Claims NCO	SSG
Legal NCO	SGT
1st Brigade Legal Adviser	CPT
2d Brigade Legal Adviser	CPT

These initial legal support structures were larger than what is contemplated in Judge Advocate General's Corps doctrine, but they were fully consistent with evolving Army doctrine.⁷⁵ They were also certainly appropriate given the multifaceted nature of the operations. Within five weeks, in early October 1994, legal support in Haiti corresponded to the organization at *Figure 5*. By the end of January 1995, when the 25th Infantry Division had replaced the 10th Mountain Division in the MNF, organization for legal support resembled *Figure 6*. After 31 March, when the MNF transferred functions to UNMIH, judge advocate support corresponded to *Figure 7*.

⁷⁵ See FM 27-100, *supra* note 9, at para. 7-4; DEP'T OF ARMY, FIELD MANUAL 71-100-2, INFANTRY DIVISION OPERATIONS, TACTICS, TECHNIQUES, AND PROCEDURES 2-83 (1993) ("The SJA is a critical element in the assault CP during the early stages of the deployment.").

Figure 5—MNF Legal Organization (D+35)

Staff Judge Advocate	LTC
Deputy Staff Judge Advocate	MAJ
Operations Law Judge Advocate	CPT
Claims Judge Advocate	CPT
Criminal Law Judge Advocate	CPT
Legal Assistance Judge Advocate	CPT
Chief Legal NCO	MSG
Claims NCO	SSG
Legal NCO	SGT
1st Brigade Legal Adviser	CPT
2d Brigade Legal Adviser	CPT
Joint Logistics Support Command Judge Adv	Civ
16th MP Brigade Judge Advocate	CPT
Joint Interrogation Facility Judge Advocate	CPT
20th Engineer Brigade Judge Advocate	CPT
3d Special Forces Group Judge Advocate	CPT

Figure 6—MNF Legal Organization (D+120)

Staff Judge Advocate	COL
Deputy Staff Judge Advocate	MAJ
Operations/Admin Law Judge Advocate	CPT
Claims/Legal Asst Judge Advocate	CPT
Defense Counsel	CPT
Chief Legal NCO	SSG
1st Brigade Legal Adviser	CPT
2d Brigade Legal Adviser	CPT
Joint Logistics Support Command Judge Adv	LTC
3d Special Forces Group Judge Advocate	CPT

Figure 7—UNMIH Legal Organization (D+210)

UNMIH Legal Adviser	MAJ
Deputy UNMIH Legal Adviser (Canadian)	MAJ
UNMIH Legal NCO	SSG
United States Forces Haiti Judge Advocate	CPT
United States Forces Haiti Legal NCO	SSG

III. Lessons Learned

A few terms and distinctions from the military art may help readers understand the purpose and scope of this part of the report. According to *The Army Lessons Learned Program*, an “observation” is “raw information from any source which has not been refined through analysis.”⁷⁶ A “lesson learned” is “validated knowledge and experience derived from observations and historical study of military training, exercises, and . . . operations.”⁷⁷ An “issue” is “a category of lessons learned that requires action by the subject matter proponent to change, develop, resolve, or refine doctrine, training, organization, material, and leadership development or exercise design.”⁷⁸ Although these definitions may seem over-technical, they do convey important distinctions. Put simply, *observations* are raw data, *lessons learned* are confirmed observations that have undergone analysis and are worthy of dissemination, and *issues* are those lessons learned that lend themselves to some systemic action or resolution and that should therefore be made the responsibility of a proponent.

Besides issues, another category of lessons learned merits attention. “Combat relevant lessons learned” are “[c]onclusions derived from analysis of observations obtained from military operations

⁷⁶ See AR 11-33, *supra* note 5, at 10.

⁷⁷ *Id.*

⁷⁸ *Id.*

and training exercises that are useful to commanders in preparing their units for combat by identifying successful doctrine, tactics, techniques, and procedures or problems thereto.”⁷⁹ In nontechnical terms, these are lessons learned that give commanders useful “how to” guidance or that highlight practical considerations bearing on their decisions. Although the categories overlap, combat relevant lessons learned differ from issues in that the consumers of the former are commanders, while the consumers of the latter are proponent offices or agencies.

This part of the report records more than raw information (observations) and defers most discussion of lessons learned requiring systemic action by proponent offices (issues).⁸⁰ It provides for the

CATEGORIES OF LESSONS LEARNED

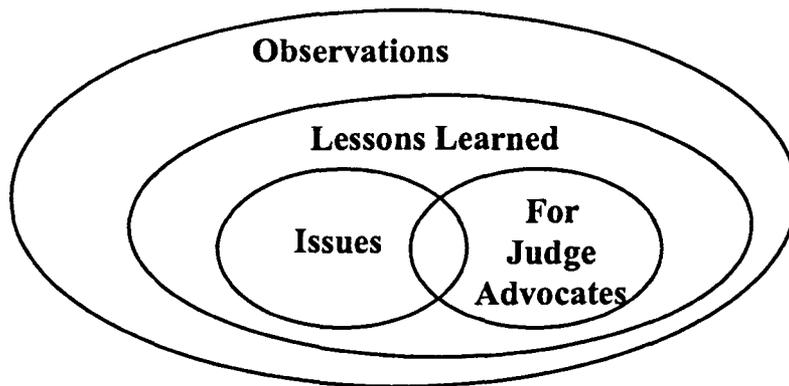


Figure 8

⁷⁹ *Id.*

⁸⁰ Again, following the commendable lead of the *Desert Storm Assessment Team Report*, the key document guiding Corps-wide action will be the database, which will identify issues, proponents, and systemic resolutions. See DSAT REPORT, *supra* note 3, at Introduction-6. Note 9, *supra* discusses the CLAMO database.

judge advocate what combat relevant lessons learned provide for the commander: useful guidance and practical considerations that can help get the mission accomplished. See *Figure 8*.

It is important to note that combat relevant lessons learned—and the analogous category of lessons learned for judge advocates—are not restricted to the tactical level of military operations. Although military doctrine distinguishes between the tactical, operational, and strategic levels,⁸¹ it also acknowledges that these levels “are defined more by the consequences of their outcome than . . . by the echelon of involvement”⁸² This means that while a judge advocate on the joint staff may deal more often with operational concerns than may the deployed judge advocate captain,⁸³ the captain may also occasionally deal with problems, decisions, and legal rules that have operational or strategic implications for present and future deployments.

An example is the trial defense counsel who represents clients receiving vastly different treatment for violations of a general order because the joint task force commander is the convening authority for one but not the other.⁸⁴ Although this particular judge advocate’s daily concerns are mostly at the tactical level, he or she is wrestling with a principle—unity of command—that cuts across operational and strategic levels.⁸⁵ Any attempt to catalogue useful lessons learned must

⁸¹ See FM 100-5, *supra* note 13, at 1-3, ch. 6, glossary -8 (defining “tactics” as “the art and science of employing available means to win battles and engagements”), glossary-6 (defining the “operational art” as “the employment of military forces to attain strategic goals through the design, organization, integration, and execution of battles and engagements into campaigns and major operations”) & glossary-8 (defining strategy as “the art and science of employing the armed forces and other elements of national power during peace, conflict, and war to secure national security objectives”).

⁸² See *id.* at 1-3.

⁸³ See, e.g., *infra* note 314 (discussing guidance provided by judge advocates on the joint staff with respect to a sensitive diplomatic matter with potential to influence relations with the United Nations).

⁸⁴ See *infra* note 362.

⁸⁵ See *infra* subpart III.I.1.

focus on the problems, rules, and procedures that deployed and supporting judge advocates actually face, not on an abstract distinction between levels of warfare.⁸⁶

It is also important to note that this report—usefully but perhaps somewhat artificially—organizes the lessons learned according to discrete topics or subdisciplines rather than to chronological sequence. As a result, readers might conclude that issues which arose late in the deployment were considered and resolved identically to those which arose early on, when the area of operations was still fluid and the fate of the mission uncertain. In the words of one judge advocate who arrived in Haiti on 19 September 1994,

[t]here is a[n] . . . impact on legal operations when, for the first three weeks of the operation, everybody (lawyers included) are eating nothing but MREs, fighting for scarce water supplies, scrounging for a place to sleep, not having electricity, digging slit trenches, wearing full battle dress (flak vests, Kevlar, and locked and loaded weapons), and otherwise concerned with survival while trying to also provide legal services.⁸⁷

Readers must read the lessons in this report with this important truth in mind. Issues arising in a fairly well-developed and mature theater will benefit from the infrastructure—logistical, administrative, operational, and legal—created earlier. Moreover, they may not have the same capacity to ruin the entire mission if handled poorly.⁸⁸

⁸⁶ See Major Mark S. Martins, *Rules of Engagement for Land Forces: A Matter of Training, Not Lawyering*, 143 MIL L. REV. 1, n.274 (1994) (discussing the unhelpfulness of the strategic-operational-tactical distinction in the context of rules of engagement).

⁸⁷ See Facsimile Message, Staff Judge Advocate, 10th Mountain Division and Fort Drum, AFZS-JA, to Deputy Director, Center for Law and Military Operations, subject: Draft Lessons Learned--Haiti (13 Oct. 1995) (copy on file with CLAMO).

⁸⁸ An example of an early problem for the MNF resolved through judge advocate efforts was that of persuading commanders from disparate units of CJTF 190 to share their scarce water

A. Rules of Engagement⁸⁹

Nowhere during military operations in Haiti were legal considerations more visible than in the area of rules of engagement (ROE). In operations other than war, some of the hardest yet most important questions involve “who can shoot at what, with which weapons, when, and where?”⁹⁰ Both tentativeness and its opposite—

supplies with soldiers not in their units. This was scarcely a “legal” problem, but judge advocates assertively and correctly got involved, and the mode of resolution was far different from the writing of an administrative law opinion on a military installation, and the morale and discipline of the entire force hung in the balance. *See generally id.* The Center for Law and Military Operations recognizes the inherent differences in lessons stemming from when they arise. Accordingly, a goal for the longer term is to bring together judge advocates from diverse military operations to compare notes and assemble wisdom concerning appropriate priorities in the early hours after arrival in the area of operations.

⁸⁹ Readers may debate whether the categories represented in this report are optimal. For instance, there is herein no separate category of “operational law,” which other authorities have sometimes used to denote a relatively narrow set of topics, such as rules of engagement, treatment of detainees, civil affairs, and law of war. *See, e.g.,* FM 27-100, *supra* note 9, at 1-9g; DSAT REPORT, *supra* note 3, at Operational Law-1 and Operational Law-2. Instead, the topics traditionally gathered under this category are broken out into their own categories, and the term “operational law” is used as an umbrella term under which all of the categories in this report will fit. Similarly, whereas other authorities have created special categories for environmental law and labor and employment law, the Haiti intervention did not frequently implicate these areas; as a result, this report collapses these tremendously important areas of operational law back into the topic of Administrative and Civil Law. *See infra* note 415 (discussing isolated instances in which environmental law and labor law issues arose). During its internal debates over the merits of various schemes of classification, CLAMO has been guided by the famous words of Mr. Justice Holmes: “The life of the law has not been logic: it has been experience.” OLIVER WENDELL HOLMES, *THE COMMON LAW* xxi-xxii (Mark DeWolfe Howe ed., Little, Brown & Co. 1963) (1881).

⁹⁰ Colonel Fred Green, *An Address to the American Society of International Law, on the Subject of Implementing Limitations on the Use of Force: The Doctrine of Proportionality and Necessity* (1992) (using this informal definition of ROE), *reprinted in* 86 AM. SOC’Y INT’L L. PROC. 39, 62-67 (1992); *see also* DEP’T OF ARMY, SUBJECT SCHEDULE 27-1, *THE GENEVA CONVENTIONS OF 1949 AND THE HAGUE CONVENTION NO. IV OF 1907*, para. 3a (29 Aug. 1975) (using this definition of ROE). Formally, ROE are “directives issued by competent authority that delineate the circumstances and limitations under which United States forces will initiate and/or continue combat engagement with other forces encountered.” JOINT CHIEFS OF STAFF, PUBLICATION 1-02, DEP’T OF DEFENSE DICTIONARY OF MILITARY AND ASSOCIATED TERMS 317 (1 Dec. 1989) [hereinafter JOINT PUB. 1-02].

over-aggressiveness—can hinder mission accomplishment in such operations. Moreover, the mission will involve achievement of diplomatic or policy aims rather than prosecution of a war. Accordingly, ROE will be “conduct-based,” in that decisions to use force must respond to hostile acts or intentions, rather than “status-based,” in which pre-declared enemy forces may be shot on sight.⁹¹

Judge advocate involvement in drafting and disseminating ROE is heaviest in operations other than war,⁹² and the Haiti deployment confirmed this modern trend. Rules of engagement serve three distinct yet overlapping types of purposes—legal, policy, and military.⁹³ The legal purposes that ROE serve include fulfillment of United Nations Security Council resolutions, compliance with international agreements applicable in peacetime, and respect for host nation laws. Executive branch policy purposes may not be apparent in the face of conflicting directives. Achievement of military purposes requires familiarity with weapons systems and tactics. Consequently, judge advocates are well equipped to provide the interpretive and other assistance Commanders need to issue effective rules.

Uphold Democracy marked the full integration of joint ROE terms, concepts, and procedures into a land force operation other than

⁹¹ See JOINT WARFIGHTING CENTER, JOINT TASK FORCE COMMANDER'S HANDBOOK FOR PEACE Operations 75 (28 Feb. 1995) [hereinafter JTF COMMANDER'S HANDBOOK].

⁹² See Martins, *supra* note 86, at 27, 52-54 (charting essential differences between wartime and peacetime rules of engagement, noting the large base of doctrinal and training materials available for wartime rules, and citing modern operations in which wartime ROE issues “when they finally arose, were relatively simple to resolve”); see also Colonel W.H. Parks, USCMR, *No More Vietnams*, UNITED STATES NAVAL INSTITUTE PROCEEDINGS, Mar. 1991, at 27-28 (noting the contrast between Vietnam, in which rules of engagement were complicated by policy constraints far more complex and restrictive than the law of war, and Desert Storm, in which battlefield commanders were returned the responsibility to prosecute operations within the law of war); FM 100-5, *supra* note 13, at 13-4 (“In operations other than war, these ROE will be more restrictive, detailed, and sensitive to political concerns than in war. Moreover, these rules may change frequently.”).

⁹³ See Captain Ashley Roach, USN, *Rules of Engagement*, NAVAL WAR C. REV. 46, 48 (1983).

war. Although standing joint peacetime rules had been in effect since 1986,⁹⁴ their security classification (secret), orientation (naval and air force), and applicability (superseded in times of conflict) frustrated widespread use by land forces.⁹⁵ The technical terms “hostile act,” “hostile intent,” and “proportionality” might or might not have appeared in a corps or division operations plan in the early 1990’s.⁹⁶ The joint system of ROE supplementation might or might not have received emphasis in land force exercises and evaluations.⁹⁷

Two particularly telling facts reflect the incompleteness of joint ROE integration in land forces before the Haiti deployment. First, keystone Army doctrine as late as 1993 included no mention of the existence of a standing set of rules in several passages discussing ROE.⁹⁸ Second, the Army’s rapid deployment corps continued to employ its own unique terminology as late as early 1994.⁹⁹ By D-Day of Operation Uphold Democracy, however, United States land forces had assimilated the joint ROE apparatus.¹⁰⁰

⁹⁴ SECRET Memorandum, Joint Chiefs of Staff, subject: Peacetime Rules of Engagement (PROE) (28 Oct. 1988) (superseding 1986 Memorandum of identical subject). *See generally* Martins, *supra* note 86, at 33-45 (charting the development of standing rules).

⁹⁵ *See, e.g.* International Law Note, “Land Forces” Rules of Engagement Symposium: *The CLAMO Revises the Peacetime Rules of Engagement*, ARMY LAW., Dec. 1993, at 48.

⁹⁶ *See* Martins, *supra* note 86, at 57-58.

⁹⁷ *See id.* at 54.

⁹⁸ *See* FM 100-5, *supra* note 13, at 2-3 to 2-4, 13-4.

⁹⁹ *See* Stai Memorandum, *supra* note 35, at 6 (“XVIII Abn Corps had long used its own terms, such as ‘suspicious actor’ and ‘hostile actor’; its own unclassified definitions of ‘hostile act’ and ‘hostile intent’; and its own OPLAN format rather than the Joint Operation Planning and Execution System (JOPES) format.”).

¹⁰⁰ *See, e.g.*, Wishard Interview, *supra* note 72 (describing numerous examples in which infantry privates deployed to Haiti understand the meaning of “hostile act” and “hostile intent”). Three reasons explain the recent assimilation. First, the core of the new standing rules of engagement is unclassified. *See* SECRET CHAIRMAN OF THE JOINT CHIEFS OF STAFF, INSTRUCTION 3121.01, STANDING RULES OF ENGAGEMENT FOR U.S. FORCES (1 Oct. 1994) (including a unclassified portion, Enclosure A, intended for wide distribution). Second, recent missions for land forces in Somalia and northern Iraq have accustomed judge advocates and commanders to use the supplemental structure of the joint ROE apparatus. Third, the placement

1. Be Prepared for Controversy Over Protection of Foreign Nationals. This apparatus received great public scrutiny in the initial phase of the deployment. Prior to D-Day, commanders, judge advocates, and other staff officers concentrated on two alternative sets of ROE, corresponding to the two plans for entry into Haiti.¹⁰¹ The forced-entry plan was to employ ROE in which the FAd'H was declared a hostile force. *Appendix G* reprints the card summarizing the ROE for soldiers. The permissive entry plan was to employ ROE that declared no forces hostile, but that permitted use of force in response to hostile acts or indications of hostile intent. *Appendix H* contains the ROE for the permissive entry plan, while *Appendix I* reprints the soldier card for that plan. After the Carter-Jonassaint agreement was signed, the two plans were melded, and various portions of each plan survived in the melded version. The ROE and card for the permissive entry plan were among the portions that survived.¹⁰²

Prior to D-Day, judge advocates and other officers at United States Atlantic Command and the 10th Mountain Division recognized a lack of express guidance in the ROE with respect to violence committed by one Haitian against another.¹⁰³ The mission was to establish a secure and stable environment, and in the context of a permissive entry, the Joint Chiefs of Staff understandably believed that conducting police duties in the streets of Port-au-Prince could defeat rather than help create such an environment.¹⁰⁴ Nevertheless, on 18 September, D-1, USACOM requested, and JCS ultimately approved, additional guidance

of operations other than war into keystone Army doctrine has created unprecedented emphasis upon ROE within the land forces. See, e.g., Dep't of Army, Training Circ. 7-98-1, Brigade and Battalion Operations Other Than War Training Support Package, Ch. 2, Lesson 4 (May 1995) (as yet unapproved draft, a copy of which is on file with CLAMO) (containing 32 pages entitled "Rules of Engagement Application").

¹⁰¹ See Stai Memorandum, *supra* note 35, at 1-32.

¹⁰² See Wishard Interview, *supra* note 72.

¹⁰³ *Id.*; Woods Interview, *supra* note 34.

¹⁰⁴ Woods Interview, *supra* note 34.

that expressly permitted soldiers to use deadly force against persons committing serious criminal acts.¹⁰⁵ USACOM transmitted this additional guidance to CJTF 180, and the latter headquarters transmitted same to CJTF 190 headquarters.¹⁰⁶ Meanwhile, 10th Mountain Division soldiers who would eventually enter Haiti continued to carry and study the card containing permissive-entry ROE but lacking the additional guidance on Haitian violence against Haitians.¹⁰⁷ This card, *Appendix I*, bore the date 6 September 1995.

Cards containing the additional guidance were not issued until 21 September.¹⁰⁸ In the meantime, ROE had jumped into news headlines around the United States. As recounted in part II.A above, on 20 September Haitian police and militia brutally beat demonstrating Aristide supporters. Among the persons beaten was a coconut vender, who died after about five minutes of continuous clubbing, in view of United States soldiers, and after some of the fatal attack had been videotaped. Networks and newspapers in the United States widely reported the killing and the decision of the soldiers not to intervene.¹⁰⁹

¹⁰⁵ *Id.*

¹⁰⁶ See Message, Headquarters, Combined Joint Task Force 180, subject: Change One to Rules of Engagement ISO OPOD 2380-95 (211008 Sep 94).

¹⁰⁷ Woods Interview, *supra* note 34.

¹⁰⁸ Coordination of printing ROE cards required great energy and attention to detail, given the rapid pace of events. See Stai Memorandum, *supra* note 35, at 28 (describing events on 15 Sept. 1994) (“With time running out, MAJ [Kyle] Smith recommended that we print the ROE cards based on our best assessment of what the final changes would be. The total cost of printing 43,000 hostilities ROE cards, 43,000 CMO ROE cards, and 1,000 air ROE cards was about \$1,000.”); Office of the Staff Judge Advocate, 10th Mountain Division (Light Infantry), Operation Uphold Democracy, Multinational Force Haiti After-Action Report, 29 July 1994–13 January 1995, at 5-6 (May 1995) [hereinafter 10th Mountain Div. AAR] (“Although we produced sufficient cards for all soldiers in the operational area, imperfect distribution, unexpected unit arrival, and individual loss of cards led to shortages. Future ROE card production should aim for three times the number of soldiers in theater. This amount should cover the need for replacement cards.”).

¹⁰⁹ See, e.g., Kenneth Freed, *Haitian Police Attack Crowds as American Troops Look on; At Least One is Killed and Dozens Injured as Local Forces Disperse Demonstrators Welcoming Arriving Soldiers; U.S. Policy Leaves Issue of Civil Order to Haitian Authorities*, LOS ANGELES TIMES, Sept. 21, 1994, at A1; T.J. Milling, *Haitian Police Savagely Club Demonstrators; Man*

Then, on 21 September, units in CJTF 180 distributed on new cards the additional guidance pertaining to violence by Haitians against Haitians.¹¹⁰ News reports widely attributed this “change” in the ROE to embarrassment over media coverage from the day before.¹¹¹

Spokesmen and commanders, advised by judge advocates, appropriately stressed the mission to establish a “stable and secure environment,” and to maintain “essential civic order.”¹¹² They also emphasized troops’ obligation to respect the Carter-Jonassaint agreement, which had reserved a role for the FAd’H.¹¹³ Although these responses effectively defused the criticism and media attention soon turned toward other aspects of the operation, the visibility and potential controversy of ROE provide an important lesson learned for judge advocates in operations other than war.

Beaten to Death at Port; Disgusted G.I.'s Forced to Watch, HOUSTON CHRON., Sept. 21, 1994, at A1; Julian Beltrame, *U.S. Troops Watch as Haitians Beaten; At Least One Killed*, N.Y. TIMES, Sept. 21, 1994, at A1; Mark Matthews, *U.S. Forces' Failure to Intervene in Haitian-on-Haitian Violence Raises Questions*, BALTIMORE SUN, Sept. 21, 1994, at 11A.

¹¹⁰ See Appendix J to this report, at para. 7 (“Persons observed committing serious criminal acts will be detained using minimal force necessary up to and including deadly force. Serious criminal acts include homicide, aggravated assault, rape, arson and robbery.”).

¹¹¹ See, e.g., Douglas Farah, *U.S. Warns Haitian Leaders on Abuses; GI Patrols Stepped Up to Stop Civilian Beatings*, WASH. POST, Sept. 22, 1994, at A1; T.J. Milling, *U.S. Troops Cleared for Deadly Force*, HOUSTON CHRON., Sept. 23, 1994, at A1 (“The rules of engagement have been changed five times since a delegation led by former President Carter struck an 11th-hour peace accord Sunday. The latest changes have given troops more latitude in dealing with civil unrest. They were apparently in response to public criticism of the troops’ inaction while Haitian military and police brutally beat demonstrators calling for the return of democratically elected President Jean-Bertrand Aristide.”); Geordie Greig & James Adams, *Sleeping with the Enemy*, SUNDAY TIMES, Sept. 25, 1994 (“Rules of engagement which did not permit American forces to open fire unless they were threatened were too narrow and were changed the next day.”).

¹¹² See, e.g., Freed, *supra* note 109 (quoting spokesman Colonel Barry Willey); Brigadier General John Altenburg, Staff Judge Advocate, XVIIIth Airborne Corps, Remarks Before the Haiti After Action Review Conference in Charlottesville, VA (May 8, 1995) (videotape on file with CLAMO) [hereinafter Altenburg Remarks]; see also *infra* notes 269-274 and accompanying text.

¹¹³ See Altenburg Remarks, *supra* note 112.

2. *Use Situational Training.* Judge advocates who deployed or prepared to deploy to Haiti agree that soldiers benefit from situational training on the ROE. According to Army training doctrine, situational training exercises (STX's) focus on one or a small group of tasks—within a particular mission scenario—and require that soldiers practice until the tasks can be executed to some preestablished standard.¹¹⁴ Some authorities refer to these scenarios as “vignettes,” and to this type of training as “lane training.”¹¹⁵ To conduct STX's on ROE, a commander, judge advocate, or other trainer places a soldier in a particular simulated METT-T¹¹⁶ and then confronts him with an event, such as the crashing of a traffic checkpoint barrier by a speeding vehicle. The trainer evaluates the soldier's response, and afterward discusses alternative responses available within the ROE. The STX brings to life abstract rules on the ROE card, giving the soldier concrete terms of reference within which to determine his response. In this way, the soldier achieves the balance between initiative and restraint so important to success in operations other than war.¹¹⁷

A debate continues over whether it would be wise to establish default rules in the form of a common task upon which soldiers could train—before the deployment. Some senior judge advocates express principled concerns that to do so risks oversimplifying responses that must be based on judgment, or creates a false sense of security in commanders who have concerns about ROE, or causes too much emphasis to be placed on restraint and thus erodes the warrior spirit

¹¹⁴ DEP'T OF ARMY, FIELD MANUAL 25-101, BATTLE FOCUSED TRAINING at C-7 (Sept. 1990) [hereinafter FM 25-101].

¹¹⁵ See, e.g., JTF COMMANDER'S HANDBOOK, *supra* note 91, at 76; FM 25-101, *supra* note 114, at 3-20, 4-8, 4-13, 4-22, 4-23, 4-24, 4-37, 4-42 & 4-46.

¹¹⁶ See, e.g., DEP'T OF ARMY, SOLDIER TRAINING PUBLICATION NO. 21-II-MQS, MILITARY QUALIFICATION STANDARDS II: MANUAL OF COMMON TASKS FOR LIEUTENANTS AND CAPTAINS 3-86 (31 Jan. 1991) (Task 04-3303.02-0014, Prepare Platoon or Company Combat Orders) (describing the factors of “mission, enemy, terrain, troops, and time available”).

¹¹⁷ See generally Martins, *supra* note 86, at 90-92 (extolling the virtues of scenario training).

essential for victory in combat.¹¹⁸ Other judge advocates maintain that truly effective STX's require some standard against which to evaluate the soldier's response, and that even a nicely worded ROE card has limited value as a training tool if it arrives on the scene during the deployment.¹¹⁹ The former group generally has reservations about mnemonics that some unit commanders have adopted in efforts to make STX's more effective; the latter group generally supports the use of such mnemonics.¹²⁰

Both sides of the debate agree, however, that before and during the operations in Haiti, vignette training made a positive difference in soldier preparedness. The most elaborate ROE training took place in

¹¹⁸ See, e.g., Altenburg Remarks, *supra* note 112; Brigadier General Walter Huffman, Assistant Judge Advocate General for Military Law & Operations, Remarks Before the Haiti After Action Review Conference in Charlottesville, VA (May 8, 1995) (videotape on file with CLAMO) [hereinafter Huffman Remarks].

¹¹⁹ See, e.g., Mr. W. Hays Parks, Special Assistant to The Judge Advocate General, United States, for Law of War Matters, Remarks Before the 2d Annual Rules of Engagement Conference in Fort Bragg, NC (Nov. 10, 1994); Martins, *supra* note 86; Colonel F. M. Lorenz, USMC, Rules of Engagement in Operation United Shield, at 8 (16 May 1995) (draft manuscript of article soon to appear in *Military Review*); 10th Mountain Div. AAR, *supra* note 108, at 5.

¹²⁰ See, e.g., Martins, *supra* note 86, at 86-90 (proposing "R-A-M-P"); *infra* Appendix L (utilizing "A-R-M-E-D"). The idea of putting notes onto a card that soldiers may carry with them is a popular response to many operational challenges. See, e.g., Memorandum, Staff Judge Advocate, 25th Infantry Division (Light) and U.S. Army, Hawaii, APVG-JA, to G-3 Plans, subject: Haiti and Uphold Democracy Lessons Learned, para. 1f(2) (28 Apr. 1995) [hereinafter 25th ID Lessons Learned Memorandum] ("A medical ROE card should be published and disseminated in the same manner as the use of force ROE card, and medical ROE vignettes should be added to the use of force training scenarios.") (copy on file with CLAMO); Memorandum, LTC Arthur L. Passar, AMSMI-GC-AL-D, to Staff Judge Advocate, U.S. Army Material Command, subject: After Action Report, Legal Support to Joint Logistics Support Command, Joint Task Force 190, Haiti, Operation Uphold Democracy, September 1994-March 1995, at para. 6h(iv) (11 May 1995) [hereinafter Passar AAR] ("Though [soldier claims of ignorance of the prohibition against souvenir-taking] were not necessarily credible, and without legal significance even if true, I would advise minimizing such claims by providing each soldier in a deployment with a card summarizing any similar punitive order just as we do rules of engagement."). Nevertheless, no one advocating use of soldier cards harbors illusions that such cards are a panacea. See, e.g., LIEUTENANT GENERAL W.R. PEERS, THE MY LAI INQUIRY 230 (1979) (noting that "[s]everal of the men [of Task Force Barker] testified that they were given [Military Assistance Command, Vietnam's] 'Nine Rules' and other pocket cards, but . . . they had put the cards in their pockets unread and never had any idea of their contents . . .").

Camp Santiago, Puerto Rico, where a judge advocate and other soldiers from 194th Armored Brigade conducted STX's for a battalion of Combined Caribbean soldiers, a Bangladeshi battalion, a Guatemalan battalion, and a group of international police monitors that eventually deployed to Haiti as part of the MNF.¹²¹ This meticulously planned and well-resourced training consisted of a circuit of six lanes, comprising 18 different vignettes. The availability of a 9-day block in which to conduct the STX's permitted soldiers to experience repetitive reinforcement of key rules, and to practice until their performance achieved the high standard set by the trainers. *Appendix K* reprints the sheets used by trainers as they evaluated soldiers' responses during the vignette. Even when lack of time made full STX's impossible, soldiers benefited from briefback sessions based on vignettes.¹²² *Appendix L* reprints a card used as a basis for briefbacks by the 82d Airborne Division prior to D-Day.¹²³

¹²¹ See Memorandum, Brigade Judge Advocate, 194th Armored Brigade (Separate), AFVL-JA to Staff Judge Advocate, XVIII Airborne Corps, subject: After Action Report for Judge Advocate Participation in Uphold Democracy (19 Dec. 1994) [hereinafter 194th Armored Brigade AAR] (on file with the CLAMO).

¹²² See, e.g., UNITED STATES ARMY TRAINING AND DOCTRINE COMMAND, CENTER FOR ARMY LESSONS LEARNED (CALL), NEWSLETTER NO. 95-2, PEACE OPERATIONS TRAINING VIGNETTES (Mar. 1995) (including 18 vignettes developed by CALL in conjunction with the 25th Infantry Division (Light) in preparation for that unit's deployment to Haiti in January of 1995); Passar AAR, *supra* note 120, at 12-13 (describing ROE briefback sessions); Office of the Staff Judge Advocate, XVIIIth Airborne Corps, Conduct Combat Operations According to the Rules of Engagement (July 1994) (consisting of 23 pages of performance-oriented training materials prepared by Major Brad Stai and Captain Query Erisman) (copy on file with CLAMO); Office of the Staff Judge Advocate, 10th Mountain Div. (Light Infantry), Combined JTF Haiti ROE Training Lesson Plan and Vignettes (Aug. 1994) (including 38 vignettes anticipating conditions in Haiti).

¹²³ It is difficult to overstate the success a wide range of units have experienced with situational training on ROE. One staff judge advocate heavily involved with Operation Safe Haven, *see supra* notes 70-71 and accompanying text, and with subsequent migrant operations offered the following comments:

From our experience in Panama in Operations Safe Haven and Safe Passage, we realized that situational training plays a major role in the successful execution of an operational mission. Our situational training for Operation Safe Passage was created with combined efforts of Judge Advocates (JA's) and 101st Airborne Division officers to ensure realistic scenarios and practical responses. Classes

3. *Be Willing to Take the Lead in Multinational ROE*

Development. The Haiti deployment provided unique opportunities for United States forces to develop ROE in conjunction with forces from other nations and with civil authorities from the United Nations. Prior to the arrival in Haiti of the international components of the MNF, commanders of United States forces sought to ensure that all members of the MNF would be implementing the same guidance on the use of force.¹²⁴ Commanders of international units, meanwhile, occasionally expressed concerns about whether the ROE were consistent with their countries' national policies or military doctrine regarding the use of force.¹²⁵ Later, in early 1995, during the transition from the MNF to UNMIH, officials in the United Nations sought to create ROE that resemble those used in peacekeeping operations elsewhere in the world, while the United States component of the UNMIH force articulated its interest in rules consistent with a peace enforcement mission.¹²⁶

Energetic participation by judge advocates in the drafting process helped ensure that final products reflected the legitimate interests of all

were taught by JA's and Airborne officers. After the classes, each commander practiced the situational training in the field with his/her troops. The soldiers felt well-prepared and thoroughly understood the ROE. The soldiers were sensitized to potential problem situations, and had rehearsed their responses to them. That, in turn, reduced reaction time during the actual operation. The operation was executed with precision and confidence. . . . Situational training is not just beneficial, it is vital. When properly prepared, taught, and practiced, situational training can save lives because soldiers can swiftly and instinctively react to all situations within the guidelines of the ROE.

Memorandum, Staff Judge Advocate, Headquarters, United States Army South, Unit 7104 SOJA, subject: Review of the Draft Law and Military Operations in Haiti, 1994-95: Lessons Learned for Judge Advocates, paras. 2-3 (16 Nov. 1995) (copy on file with CLAMO) (recommending revision of the draft to place greater emphasis on the value of situational training).

¹²⁴ See 194th Armored Brigade, *supra* note 121, at Observation Number 1.

¹²⁵ See *id.*

¹²⁶ Letter from Colonel David Petraeus, U-3 of United Nations Mission in Haiti, to Major Mark Martins (Mar. 17, 1995) (on file with CLAMO).

sides.¹²⁷ These judge advocates benefited by having a completed draft available as a basis for discussion, particularly in circumstances when a nation's military doctrine or experience have never incorporated ROE. When developing ROE in conjunction with the United Nations, diplomatic or policy constraints occasionally dictated language peculiar to United Nations operations.¹²⁸ In these cases, the availability of a complete, preferred alternative gave United States judge advocates and commanders a medium with which to communicate their concerns.¹²⁹ *Appendix M* reprints the full text of the ROE eventually issued for UNMIH. *Appendix N* reprints the soldier card.

After the drafting stage had passed, judge advocates participated in developing situational training exercises effective in reinforcing the UNMIH ROE.¹³⁰ As the June 1995 parliamentary elections approached, vignettes pertaining to balloting sites received particular training emphasis.¹³¹ Also, once newly trained police forces had been deployed

¹²⁷ *Id.*; Hudson Interview, *supra* note 65; Telephone Interview with Major Mark Ackerman, International & Operational Law Division, Office of the Judge Advocate General (Mar. 29, 1995).

¹²⁸ *Id.*

¹²⁹ *Id.* Frequent areas of friction include the question whether deadly force may be used to protect any property, even mission-essential property, and whether troops may intervene to prevent harm to civilians; *see also* Office of the Staff Judge Advocate, United States Atlantic Command, Transition to UN Mission in Haiti (UNMIH): Uphold Democracy AAR, at 2c (May 1995) (unpublished issue sheet on file with CLAMO) ("Good result obtained by US UN commander, US JA advisor, and more aggressive UNSR 940 mandate.").

¹³⁰ *See generally* Headquarters, United Nations Mission in Haiti, United Nations Forces In Haiti: Force Training Program, Annex C (3 Mar. 1995) (consisting of 59 pages of training viewgraphs on rules of engagement, including discussions of 11 vignettes) (copy on file with CLAMO).

¹³¹ *See* HEADQUARTERS, UNITED NATIONS MISSION IN HAITI, ELECTION DAY TRAINING VIGNETTES (May 1995) (10 page document containing 8 vignettes labeled as follows: Vignette 1—Routine, Peaceful, Organized Electoral Operations; Vignette 2—BIV [registration and voting bureau] Runs Out of Ballots or Time; Vignette 3—BIV Fails to Open; Vignette 4—Political Party or Candidate Complain of Fraud (Name Not on Ballot or Some Other Injustice); Vignette 5—Voters Complain of Intimidation; Vignette 6—Noisy Demonstration Outside BEC [departmental electoral bureau] or BIV; Vignette 7—Violent Demonstration Outside BEC or BIV; Vignette 8—Shots Fired at a BIV or BEC) (copy on file with CLAMO).

in Port-au-Prince and other communities, vignettes relating to instances of Haitian violence against other Haitians received added emphasis.¹³² These police forces in many instances still wore civilian clothes while executing law enforcement missions, requiring UNMIH soldiers to be extremely alert when facing an apparent situation of Haitian-on-Haitian violence.

B. International Law

Military operations other than war such as those undertaken by the MNF and UNMIH in Haiti challenge traditional categories of international law. In one respect, the United States was acting as an agent of the United Nations and was exercising authority granted to it by that body. United States troops in Uphold Democracy were contributing to a “peace enforcement” action, authorized by a Security Council resolution that expressly invoked Chapter VII of the United Nations Charter.¹³³ United States soldiers participating in UNMIH were “peacekeepers,” members of a type of force authorized under Chapter VI of the Charter.¹³⁴

¹³² Memorandum, COL K. M. Huber, U-3, United Nations Mission in Haiti, to Distribution C, subject: Rules of Engagement Training, at para. 3 and encls (1 Nov. 1995) (enclosing 3 situational training exercises).

¹³³ See S.C. Res. 940, U.N. SCOR, 49th Sess., 3413th mtg., at para. 4, U.N. Doc. S.RES/940 (1994); *An Agenda For Peace—Preventive Diplomacy, Peacemaking, and Peacekeeping: Report of the Secretary-General*, para. 44, U.N.G.A., 47th Sess., U.N. Doc. A 47/277 (1992) (“[Peace enforcement units] would have to be more heavily armed than peacekeeping forces and would have to undergo extensive preparatory training within their national forces. . . . I consider such peace-enforcement units to be warranted as a provisional measure under Article 40 of the Charter. Such peace-enforcement units should not be confused with the forces that may eventually be constituted under Article 43 to deal with acts of aggression . . .”).

¹³⁴ See, e.g., Salley Morphet, *UN Peacekeeping and Monitoring*, in UNITED NATIONS, DIVIDED WORLD 183, 201 (1994) (stating the guiding principles of peacekeeping to be “the important role of the UN Secretary-General and of UN command—albeit one that the Permanent Members [of the Security Council] had to keep an eye on; the necessity for agreement, both at the UN and on the ground, of the political parameters of

In another respect, the United States and Haiti were acting as separate sovereign states in the international community of states, subject to the law—treaty-based and customary—that governs relations between states.¹³⁵ Because the deployment was permissive and did not involve international armed conflict, a body of law applicable to states in wartime did not strictly apply,¹³⁶ even though the presence of thousands of armed troops and the displacement of thousands of civilians and noncombatants created compelling analogies to that body of law. The prevailing regime was the international law of peace, and under this regime a sovereign host nation applies its domestic laws within its territory.¹³⁷ This is part of the meaning of sovereignty.¹³⁸

the operation, including the need for consent of the host states, and also, in some cases, of the other main parties involved; the fact that those engaged in peacekeeping had to maintain neutrality and impartiality (as peacekeepers *not* peace enforcers) so that they could contribute to the management of the problem rather than risk becoming part of it; the fact that the military should not use force except in self-defence or to defend their positions; and the importance of creative flexibility (e.g. through use of police and administrators) in response to the varying situations that faced them on the ground”).

¹³⁵ RESTATEMENT (THIRD) OF THE FOREIGN RELATIONS LAW OF THE UNITED STATES § 101(2) (1986) [hereinafter RESTATEMENT] (“Customary international law results from a general and consistent practice of states followed by them from a sense of legal obligation.”).

¹³⁶ See, e.g., Geneva Convention Relative to the Treatment of Prisoners of War, Aug. 12, 1949, art. 2, 6 U.S.T. 3316, 75 U.N.T.S. 135, [hereinafter Geneva Convention III]; Theodore Meron, *Extraterritoriality of Human Rights Treaties*, 89 AM. J. INT’L L. 78-82 (1995) (“The agreement of September 18, 1994, negotiated in Port-au-Prince between President Jimmy Carter and General Raoul Cedras, and its acceptance by the Aristide government, led to the consent-based, nonviolent, hostilities-free entry of U.S. forces and their peaceful deployment. In such circumstances, the Geneva Conventions on the Protection of Victims of War of August 12, 1949, are not, strictly speaking applicable.”) (citing authorities).

¹³⁷ See, e.g., RESTATEMENT, *supra* note 135, at § 206 (“Under international law, a state has . . . sovereignty over its territory and general authority over its nationals.”).

¹³⁸ See *id.* at cmt. b (“As used here, [‘sovereignty’] implies a state’s lawful control over its territory generally to the exclusion of other states, authority to govern in that territory, and authority to apply law there.”).

The prevailing Haitian legal system—to the extent that a “system” can be said to have survived the long history of repression and arbitrary rule—was part of the romano-germanic or civil law tradition, which it received from France.¹³⁹ In 1825, Haiti had adopted the French Napoleonic Code with minor changes. It had continued to build its legal system on the French pattern, a development reflected in the adoption of the French Commercial, Criminal, Civil, Civil and Commercial Procedure, and Criminal Procedure Codes.

In Haiti, as under other civil law systems, the principal sources of law are legislative codes rather than cases decided by judges. Haiti’s 1987 constitution called for a bicameral legislature consisting of a Chamber of Deputies and a Senate, a judiciary consisting of courts of first instance, courts of appeal, and a supreme court, and an executive branch headed by a popularly elected president. Haiti was divided into nine administrative departments, each possessing a “prefet” who implemented decisions of the central government. Following the French model—and unlike the United States model of federalism—Haiti’s administrative departments had no independent legislative power.

1. Understand the International Justification for Use of Force and the Impact of Domestic Legislation. By repudiating the Governors Island Agreement and frightening thousands of citizens to take to the high seas, the junta threatened international peace and security and thus justified a temporary displacement of Haitian law and sovereignty. Despite the fact that the Haitian migrants created particular burdens for the United States, any forceful unilateral remedies taken against the de facto Haitian regime would have been legally questionable. The United Nations Charter generally outlaws the threat or use of force by one state against another,¹⁴⁰ and the exception

¹³⁹ This two paragraph discussion of Haiti’s legal system is based on Chantal Hudicourt Ewald, *The Legal System of Haiti*, in 7 MODERN LEGAL SYSTEMS CYCLOPEDIA at 7.210.3 to 7.210.35 (Kenneth R. Redden ed. 1985).

permitting use of force in individual or collective self defense is narrow.¹⁴¹ However, a multilateral response pursued through duly constituted organs of the United Nations provided an international justification for use of force. The member states of the United Nations, in signing the Charter, clearly gave the Security Council broad power to act with respect to “any threat to the peace.”¹⁴²

The series of Security Council resolutions addressing the crisis in Haiti put abundant meat on the legal framework justifying the deployment and provided useful guideposts to judge advocates on the ground. Resolution 940 authorized the MNF “to use all necessary means” to restore the Aristide government and “to establish and maintain a secure and stable environment.”¹⁴³ Resolution 944 provided further direction to the MNF and guided the timing of UNMIH’s deployment.¹⁴⁴ Resolutions 841, 873, 875, 905, and 917 gave operational lawyers a detailed account of the international response to the Haiti crisis and a helpful historical context for their counsel to commanders. The Carter-Jonassaint agreement of 18 September—on its face a bilateral instrument—incorporated Resolutions 940 and 917 by reference.¹⁴⁵ This agreement further instructed United States forces that “the Haitian military and police forces will work in close

¹⁴⁰ U.N. CHARTER art. 2, para. 4.

¹⁴¹ U.N. CHARTER art. 51; RESTATEMENT, *supra* note 135, at § 904.

¹⁴² U.N. CHARTER art. 39; Conrad K. Harper, Legal Adviser, Dep’t of State, Legal Authority for Peace Operations, Statement Before the Legislation and National Security Subcommittee of the House Government Operations Committee (Mar. 3, 1994) (copy on file with CLAMO) (“To begin with, the United Nations Charter provides an extensive and flexible international legal framework for the conduct of peace operations. . . . Chapter VII of the Charter authorizes the Security Council to determine the existence of a threat or breach of the peace or act of aggression and to make recommendations or decide on measures of a mandatory character to restore or maintain the peace. . . . UN Member States are required by the UN Charter to carry out decisions of the Council.”).

¹⁴³ See *supra* quotation in text accompanying note 24 and *Appendix B*.

¹⁴⁴ See S.C. Res. 944, U.N. SCOR, 49th Sess., 3430th mtg., at paras. 1 & 2, U.N. Resolution provided additional guidance for the MNF.”).

¹⁴⁵ See *Appendix C infra*.

cooperation with the U.S. Military Mission” and that “[t]his cooperation, conducted with mutual respect, will last during the transitional period required for insuring vital institutions of the country.”¹⁴⁶ These texts, because they were continuously consulted by judge advocates, ensured that the Haiti deployment followed the rule of international law.¹⁴⁷

It is important to distinguish these international constraints on the operation from certain closely related constraints that stem from domestic United States law. The United Nations Participation Act limits to 1000 the number of United States military personnel that may be assigned to United Nations peacekeeping operations worldwide.¹⁴⁸ Because more than 800 United States soldiers were serving in other peacekeeping operations prior to the constitution of UNMIH, this cap imposed a severe constraint on the latter phases of the Haiti deployment.¹⁴⁹

Other domestic laws also imposed constraints that merited the attention of operational lawyers. The War Powers Resolution contains reporting requirements with respect to deployed United States forces that are “equipped for combat;”¹⁵⁰ accordingly, while War Powers

¹⁴⁶ *Id.*

¹⁴⁷ *See, e.g.*, Smith Interview, *supra* note 40.

¹⁴⁸ United Nations Participation Act of 1945, § 7(a)(1), Pub. L. No. 79-264, 59 Stat. 619 (amended by legislation and codified at 22 U.S.C. § 287d-1(a)(1) (1988 & Supp)) [hereinafter UNPA] (comprising one of the nine sections of the Act that are codified at 22 U.S.C. §§ 287 to 287e-1).

¹⁴⁹ Lieutenant Colonel Richard B. Jackson, Office of the Staff Judge Advocate, United States Atlantic Command, Remarks Before the Haiti After Action Review Conference in Charlottesville, VA (May 9, 1995) [hereinafter Jackson Remarks] (videotape on file with CLAMO); Memorandum, Office of the Chairman, The Joint Chiefs of Staff, Office of the Legal Advisor, to The Legal Advisors and Staff Judge Advocates of the Combatant Commands, subject: Chairman’s Legal Counsel Newsletter #7, para. 4 (22 Mar. 1995) [hereinafter Chairman’s Legal Counsel Newsletter].

¹⁵⁰ War Powers Resolution of 1973, sec. 4 (2), Pub. L. No. 93-148, 87 Stat. 555 (codified at 50 U.S.C. § 1543(2) (1988 & Supp.)).

reports became unnecessary when the United States deployed lightly armed UNMIH peacekeepers,¹⁵¹ deployment of soldiers with the MNF arguably triggered such reports. On the other hand, because MNF soldiers performed their duties under the operational control of United States leadership, the United Nations Participation Act limit did not apply. During all phases of the deployment, meanwhile, the purpose statute¹⁵² in conjunction with the Foreign Assistance Act¹⁵³ and the Arms Export Control Act¹⁵⁴ placed limits on the extent to which United States forces could provide defense articles, military training, or other defense related services to either Haiti or other participant states.¹⁵⁵

2. *Expect to Practice Law Without the Benefit of a SOFA.* As soon as the MNF had established a secure and stable environment and the Aristide government had resumed power, some agreement became necessary to define the legal status of United States troops on Haitian

¹⁵¹ In addition to light armament, peacekeepers also have ROE that stress the maintenance of neutrality vis a vis the warring factions. *See supra* note 134. This is another factor militating against applying the War Powers reporting provisions.

¹⁵² *See* 31 U.S.C. §§ 1301(a).

¹⁵³ Foreign Assistance Act of 1961, 75 Stat. 434 (amended by more than 15 subsequent pieces of legislation and codified at 22 U.S.C. §§ 2301-2349aa-9 (1988 & Supp.) (comprising ch. 32 ("Foreign Assistance"), subch. II ("Military Assistance and Sales")) [hereinafter FAA].

¹⁵⁴ Arms Export Control Act of 1976, 90 Stat. 734, (amended by more than 8 subsequent pieces of legislation and codified at 22 U.S.C. §§ 2751-2796c (1988 & Supp.) (comprising ch. 39 ("Arms Export Control")) [hereinafter AECA].

¹⁵⁵ Note that section 628 of the Foreign Assistance Act authorizes the President to detail personnel to international organizations "to render any technical, scientific, or professional advice or service to . . . such organization." 22 U.S.C. § 2388. Given the 1000 person restriction in the United Nations Participation Act, *see* note 148 *supra*, the majority of personnel constituting the 2400 person United States contribution to UNMIH needed to fall under this description. *See, e.g.*, Chairman's Legal Counsel Newsletter, *supra* note 149, at para. 4 (stating that "the 2400+ troops required of the United States for the UNMIH operation must be detailed to the UN under a combination of these two authorities"); Memorandum, Mr. John McNeill, Acting Principal Deputy General Counsel, Dep't of Defense, to The Deputy Assistant Secretary of Defense for Peacekeeping and Peace Enforcement Policy, subject: Authorities for Assignment of U.S. Military Personnel to Peace Operations (27 Sept. 1993) (opining that a MASH unit deployed to the former Yugoslavia could properly be deemed "technical, scientific, or professional").

soil. Otherwise, these troops would be subject to Haitian laws that could impede their activities and frustrate the political, diplomatic, and strategic objectives that impelled their deployment. In prior centuries, no express agreement was necessary to establish the status of military forces stationed in foreign lands. A sovereign state automatically ceded a portion of its territorial jurisdiction to another when the latter state placed troops on the former state's soil.¹⁵⁶ This was the doctrine of "extra-territoriality," under which a grant of permission by a state to station foreign troops in its territory implicitly contained a broad waiver of jurisdiction. Today, however, this doctrine is in doubt.¹⁵⁷

Yet for four reasons, modern operations other than war often make the rapid conclusion of a comprehensive and detailed status of forces agreement difficult. First, the hope that the deployment will be short in duration and the presence of many other pressing demands on diplomatic resources tend to make the conclusion of a SOFA a less-than-urgent priority.¹⁵⁸ Second, the host nation—if it has a functioning government at all—often may have no well-developed or efficient apparatus with authority to negotiate and conclude agreements. Third, even if the host nation is ready, willing, and able to become party to a

¹⁵⁶ *Coleman v. Tennessee*, 97 U.S. 509, 515 (1878).

¹⁵⁷ *Lauritzen v. Larsen*, 345 U.S. 571, 584-85 (1952); see also DEP'T OF ARMY, PAMPHLET 27-161-1, LAW OF PEACE at 11-1 (Sept. 1979) [hereinafter DA PAM 27-161-1]. But see MANUAL FOR COURTS-MARTIAL, United States, R.C.M. 201(d) analysis, app. 21, at A21-8 (1984) [hereinafter MCM] ("With respect to the exercise of jurisdiction by the United States or a foreign government, *Wilson v. Girard*, 354 U.S. 524 (1957), establishes that the determination of which nation will exercise jurisdiction is not a right of the accused."); *infra* notes 351-352 and accompanying text (finding vitality in the doctrine of extra-territoriality).

¹⁵⁸ For small missions of a short duration, standing authority exists for the Department of Defense to negotiate and conclude simple status of forces agreements that provide members of the contingent the same status as members of the technical and administrative staff of the United States Embassy, who are granted criminal immunity and a few other limited privileges by preexisting international law. See Dep't of State, Action Memorandum, Circular 175 Procedure: Request for Blanket Authority to Negotiate and Conclude Temporary Status of Forces Agreements with the Sudan and Other Countries (Nov. 4, 1981) (approved by Ambassador Stoessel on Nov. 6, 1981) (citing Vienna Convention on Diplomatic Relations, Apr. 18, 1961, arts. 27, 29-35, 23 U.S.T. 3227, 500 U.N.T.S. 95).

SOFA, our own laws and regulations place significant though understandable constraints on who may negotiate and conclude international agreements with foreign states and on how that process must occur.¹⁵⁹ Fourth, United States forces may be present in Haiti representing either the nation or a variety of multinational entities, creating a need for bilateral as well as multilateral instruments.

Eventually, three different agreements governed the legal status of different United States soldiers in Haiti. The status of forces agreement reprinted at *Appendix O* defined the privileges, immunities, and responsibilities of the MNF. A United Nations Status of Mission agreement, reprinted at *Appendix P*, defined the status of Americans serving with UNMIH. A bilateral agreement between the United States and Haiti, reprinted at *Appendix Q*, governed those individuals who served in Haiti outside the umbrella of these international forces.¹⁶⁰ Although numerous existing agreements were available to provide models for judge advocates and diplomats seeking to articulate United States interests in negotiations, and although several dedicated and resourceful professionals led the United States effort, no SOFA was concluded before 22 December 1994. When this agreement—the MNF SOFA—went into effect, early issues that arose included the questions

¹⁵⁹ See, e.g., Case Act of 1972, Pub. L. No. 92-403, 86 Stat. 619 (codified at 1 U.S.C. § 112b); UNITED STATES DEP'T OF STATE, CIRC. NO. 175 PROCEDURE (1974); DEP'T OF DEFENSE, DIR. 5530.3, INTERNATIONAL AGREEMENTS (June 11, 1987); DEP'T OF ARMY, REG. 550.51, AUTHORITY AND RESPONSIBILITY FOR NEGOTIATING, CONCLUDING, FORWARDING, AND DEPOSITING OF INTERNATIONAL AGREEMENTS (1 May 1985).

¹⁶⁰ See also Convention on the Privileges and Immunities of the United Nations, Feb. 13, 1946, 1 U.N.T.S. 15 (Convention acceded to by Haiti on 6 Aug. 1947).

Note that there existed other agreements between the United States and the many nations and international organizations represented in Haiti. See, e.g., Agreement Between the United States of America and the United Nations Organization Concerning the Provision of Assistance on a Reimbursable Basis in support of the Operations of the UN in Haiti (Sept. 19, 1994), cited in Memorandum, CPT Fred K. Ford, Chief of Claims and Legal Assistance, Multinational Forces Haiti, MNF-SJA, to Director of the Combined Joint Staff, subject: Treatment of UN Personnel at MNF Medical Facilities (16 Feb. 1995) (copy on file with CLAMO).

whether locally hired Haitians could use the Post Exchange and whether certain United States servicemembers on military flights need pay a \$25 “departure fee” to Haitian authorities.¹⁶¹

When advising commanders or soldiers on legal issues in a foreign country without the benefit of a SOFA, appreciation of that country’s legal system takes on practical significance. Operational lawyers in Haiti appreciated the need for legal materials on Haiti and resourcefully solicited them from a variety of places; however, the paucity of material written in English limited the extent to which judge advocates could become knowledgeable of Haitian law.¹⁶² The need for attorneys in the force to have such knowledge—for example in the areas of claims and civil affairs—is distinct from the need for troops to be aware of local laws and customs.¹⁶³ Both needs, however, reaffirm the wisdom of having pre-prepared and current country law studies and country studies available for distribution to deploying units.¹⁶⁴

3. Understand When The Law of Armed Conflict Does Not Strictly Apply. The mandate of the MNF in Haiti was not military

¹⁶¹ See, e.g., Passar AAR, *supra* note 120, at para. 6g(ii).

¹⁶² See, e.g., Stai Memorandum *supra* note 35, at 7-8, 19-21 (reporting that one judge advocate translated several Haitian statutes into English); see also SCHLESINGER, *supra* note 2, at 891-98 (describing bibliographies and other research tools for locating foreign law materials). See also Ewald, *supra* note 139 (representing the only Haiti country law study in English).

¹⁶³ See DEP’T OF DEFENSE, CONDUCT OF THE PERSIAN GULF WAR: FINAL REPORT TO CONGRESS 489-90 (1992) [hereinafter DOD FINAL REPORT] (“It is a tribute to American service men and women that, under conditions of considerable stress and hardship, they demonstrated impeccable respect for a culture much different than their own. They recognized the importance to their mission of the overall relationship between Saudi Arabia and the United States.”).

¹⁶⁴ See DEP’T OF ARMY, REG. 27-50: STATUS OF FORCES POLICIES, PROCEDURES, AND INFORMATION, para. 1-4, 1-6, App. B (15 Dec. 1989) (requiring and explaining the importance of conducting formal criminal law studies for countries where United States forces may be stationed). Unfortunately, none of the commercial electronic legal databases contains foreign legal materials for smaller developing countries. See, e.g., Reed Elsevier, Inc., LEXIS-NEXIS Directory of Online Services (1995) (limiting coverage to materials from the United States, Canada, certain British Commonwealth countries, the European Community organization, France, and specific Middle East, African, and South American countries with developed commercial legal practices).

victory or occupation of hostile territory; rather it was “to establish and maintain a secure and stable environment”¹⁶⁵ Moreover, the Carter-Jonassaint agreement—and the Aristide government’s assent to that agreement—resulted in an entry that was based on consent and not hostilities between nations. Under these circumstances, the treaties and customary legal rules constituting the law of armed conflict do not strictly apply.¹⁶⁶ The law of armed conflict includes rules pertaining to the conduct of combat and safeguards that must be provided in time of war to the wounded and sick, to prisoners of war, and to civilians.¹⁶⁷

As a matter of policy rather than legal obligation, United States forces elected to treat potentially hostile persons detained during the operation as if they were prisoners of war. Humanitarian organizations and scholars commended this approach, given the overarching purpose of the Geneva Conventions of 1949 to accord basic fairness and other protections to persons taking no part in ongoing hostilities and to eliminate unnecessary suffering associated with conflict.¹⁶⁸ Still, the details of this policy raised very practical issues for the judge advocates, military police, and soldiers in the intelligence community who dealt with the several hundred persons who were detained at some point in the operations. This report addresses some of these specific issues below, in subpart III.D, in the context of detention issues. At this point, it suffices to note that quite a few of the 143 articles of the Geneva Convention Relative to the Treatment of Prisoners of War do not neatly translate from their intended context of war into an operation other than war.¹⁶⁹

¹⁶⁵ S.C. Res. 940, U.N. SCOR, 49th Sess., 3413th mtg., at para. 4, U.N. Doc. S.RES/940 (1994).

¹⁶⁶ See *supra* note 136.

¹⁶⁷ See, e.g., DA PAM 27-161-1, *supra* note 157, at 1-1 to 1-2.

¹⁶⁸ See, e.g., Meron, *supra* note 136, at 78 (“This attitude deserves to be commended because the Geneva Convention ensures humane treatment and judicial guarantees.”).

¹⁶⁹ See, e.g., Geneva Convention III, *supra* note 136, at art. 60 (providing a monthly pay schedule for prisoners), art. 79 (providing for prisoner of war representatives), art. 84 (requiring

With respect to the law of occupation—that subset of the law of armed conflict that presumes an invader has rendered an invaded state incapable of self-government¹⁷⁰—translation of the rules to operations in Haiti was still more problematic. United States policy maintained that the MNF was not an occupying force, with good reason.¹⁷¹ Treaties place affirmative duties on the occupying power to protect civilian inhabitants. An occupying force has a comprehensive duty to restore and maintain public order,¹⁷² an obligation in tension with a specific provision of the Carter-Jonassaint agreement. Such a force must provide food and medical supplies to the general population,¹⁷³ a massive requirement that makes sense following an invasion by one

prisoners to be tried for offenses by a military court of the detaining power); Larry Rohter, *Legal Vacuum is Testing U.S. Policy*, N.Y. TIMES, Nov. 4, 1994, at A32 .

¹⁷⁰ See, e.g., DEP'T OF ARMY, FIELD MANUAL 27-10, THE LAW OF LAND WARFARE at para. 352 (18 July 1956) [hereinafter FM 27-10] ("Occupation . . . is invasion plus taking firm possession of enemy territory for the purpose of holding it."); *id.* at para. 355 ("Military occupation is a question of fact. It presupposes a hostile invasion, resisted or unresisted, as a result of which the invader has rendered the invaded government incapable of publicly exercising its authority, and that the invader has successfully substituted its own authority for that of the legitimate government in the territory invaded."). Cf. DOD FINAL REPORT, *supra* note 163, at 610 ("Coalition forces [in the Persian Gulf conflict] acted briefly as an occupying power.").

¹⁷¹ Lieutenant General Henry H. Shelton, Commander of Combined Joint Task Force 180, Remarks During Press Conference at the United States Embassy in Port-au-Prince Haiti (Sept. 19, 1994) ("We have stressed from the beginning that this is not an occupation force."), quoted in *A 'Cordial' Reception as Americans Take Control; Peacekeeping Troops Met No Resistance—and Some Cheers—As They Took Haitian Ports and Airfields. But Risks Remain High*, THE ORLANDO SENTINEL, Sept. 20, 1994, at A1.

¹⁷² Annex to Hague Convention No. IV Embodying the Regulations Respecting the Laws and Customs of War on Land, Oct. 18, 1907, art. 43, 36 Stat. 2295, 205 Consol. T.S. 289 [hereinafter Hague Regulations] (stating that the occupying power "shall take all the measures in his power to restore, and ensure, as far as possible, public order and safety, while respecting, unless absolutely prevented, the laws in force in the country.") reprinted in FM 27-10, *supra* note 170, at para. 363.

¹⁷³ Geneva Convention Relative to the Protection of Civilians in Time of War, Aug. 12, 1949, art. 55, 6 U.S.T. 3516, 75 U.N.T.S. 287 [hereinafter Geneva Civilians Convention] ("To the fullest extent of the means available to it, the Occupying Power has the duty of ensuring the food and medical supplies of the population; it should, in particular, bring in the necessary foodstuffs, medical stores and other articles if the resources of the occupied territory are inadequate.") reprinted in FM 27-10, *supra* note 170, at para 384.

belligerent of another but that conflicts with the more limited contributions member states are requested to make when they assist in peace operations under United Nations auspices. These and other burdens borne by occupiers address material resources that the inhabitants of every underdeveloped country—not merely occupied populations—desire. Yet while the plight of these inhabitants arouses our sympathy and may be the basis for voluntary humanitarian aid, it does not give rise to an international legal duty to intervene.¹⁷⁴

¹⁷⁴ Nor does any treaty outside of the law of armed conflict impose such a duty. Defenders of Captain Lawrence Rockwood, *see infra* subpart III.I.2, have construed a peacetime treaty as imposing an obligation on individual members of the armed forces to investigate and police human rights violations committed by foreign officials on their own citizens. Lawyers Committee for Human Rights, *Protect or Obey: The United States Army versus CPT Lawrence Rockwood* 5(1995) [hereinafter *Lawyers' Committee*] (invoking International Covenant on Civil and Political Rights, Dec. 16, 1966, art. 2, 999 U.N.T.S. 171, 6 I.L.M. 368, *entered into force for the United States* Sept. 8, 1992 [hereinafter *Covenant*]) (reprinting an amicus brief submitted in opposition to a prosecution pretrial motion). Examination of the text of the treaty, however, reveals a more restrictive meaning. The treaty establishes a procedural apparatus under which a Human Rights Committee shall be formed and shall study and take action on reports of human rights practices submitted to it by states. However, the Covenant's language also reflects the understanding of the states party to it that the Covenant will not create new individual obligations or rights that tear at the fabric of discipline and good order essential to military operations: "Everyone shall have the right to freedom of association with others . . . This article shall not prevent the imposition of lawful restrictions on members of the armed forces and of the police in their exercise of this right." *See Covenant, supra*, at art 22.

Nor can customary international law serve as an authority for such an obligation. Captain Rockwood's defenders have also invoked this source of law. *See Lawyers Committee, supra*, at 5 ("These duties derive not from the UN Charter or from the treaties themselves, but from customary rules, acknowledged as firmly established law, of which the treaties are a concrete manifestation."); *Id.* (" . . . there is growing support for the view that even without separate warring sides, violence in a contested political situation may trigger customary humanitarian law governing non-international armed conflicts."). The United States Supreme Court has long recognized the binding character of customary international law. *See The Paquete Habana*, 175 U.S. 677 (1900) (holding that even in the absence of a treaty, "an ancient usage among civilized nations" had ripened into a rule of international law that exempted coast fishing vessels from capture as prize of war). Nevertheless, recall that "[c]ustomary international law results from a general and consistent practice of states followed by them from a *sense of legal obligation*." *RESTATEMENT, supra* note 135, at § 102(2) (emphasis added). The United States government is careful to maintain that treaties applicable to armed conflict do not apply to particular operations other than war, despite the fact that United States forces as a matter of policy follow all relevant rules and protections from those treaties during their operations. *See, e.g.* Letter from Abraham D. Sofaer, Legal Adviser to the United States Dep't of State, to Richard L. Thornburgh, United States Attorney General (Jan. 31, 1990) (explaining that "[p]risoner of war

C. Intelligence Law

No issues from the body of law regulating intelligence activities received wide attention during the Persian Gulf War.¹⁷⁵ “Intelligence Law” is not one of the functional areas addressed in the *Desert Storm Assessment Team Report*.¹⁷⁶ Nor does official army doctrine for legal operations—written at the end of the cold war in support of AirLand Battle doctrine—list any aspect of intelligence law among the seven functional areas of legal services provided by the Judge Advocate General’s Corps.¹⁷⁷ Legal concerns with intelligence functions during military operations are a modern outgrowth of two factors: first, the strong public and political reaction against military intelligence activities that targeted Americans in dissident groups and that came to light in the mid-1970’s;¹⁷⁸ second, the dramatic change in the military threat away from an advancing Soviet column of tanks and artillery pieces toward a diverse collection of bad actors capable of harming national security through sporadic acts of violence at home or abroad.¹⁷⁹

status is generally sought by captured individuals because persons entitled to such status may not be prosecuted for legitimate acts of war,” and reporting that on December 20, 1989 the Departments of State and Defense had elected to extended protected treatment to members of the Panamanian Defense Force “even if they might not be entitled to these protections under the terms of Article 4 of Geneva Convention III”).

¹⁷⁵ In this subpart, “intelligence law” will refer to rules governing intelligence activities. See Daniel B. Silver, *Intelligence and Counterintelligence*, in JOHN NORTON MOORE, FREDERICK S. TIPSON & ROBERT F. TURNER, NATIONAL SECURITY LAW 913 (1990) [hereinafter NATIONAL SECURITY LAW] (also including in the body of intelligence law relations between branches of government in controlling intelligence and having access to it, secrecy in the judicial process, and internal discipline in the intelligence community).

¹⁷⁶ See DSAT REPORT, *supra* note 3.

¹⁷⁷ See FM 27-100, *supra* note 9, at para. 1-9 (listing administrative law, claims, contract law, criminal law, international law, legal assistance and operational law).

¹⁷⁸ See Silver, *supra* note 175, at 920.

¹⁷⁹ See, e.g., Peters, *supra* note 2.

Even the open society can easily accommodate intelligence activities on the traditional battlefield. Intelligence collection, analysis, and dissemination coexist harmoniously with any urgent need to defeat an enemy army locked in mortal combat with our own forces. Yet the open society—at least in its American form—grows concerned at spying and kindred activities in peacetime. This truth complicates military operations other than war, increasing the demand for judge advocates to ensure that intelligence and counterintelligence assets are not so paralyzed by rules meant to protect basic liberties that the entire operation fails.¹⁸⁰

Knowledgeable observers attribute part of the military success in Haiti to “joint intelligence.”¹⁸¹ This term refers to a series of measures designed to bring the diverse military and nonmilitary assets in the intelligence community to bear upon the Joint Task Force Commander’s needs. Despite changes in intelligence law designed to unify intelligence efforts,¹⁸² many regarded intelligence support to the Persian Gulf war as fragmented and suboptimal.¹⁸³ Among the successful corrective measures fielded in Haiti was a joint intelligence staff in support of the MNF Commander in Port-au-Prince. Judge advocates who supported this joint intelligence apparatus also deserve a portion of the credit.

1. Know That Force Protection Can Justify Collecting Information on United States Persons. One example of the role operational lawyers serve occurred when members of the 519th Military

¹⁸⁰ Intelligence law for the military community largely involves interpretation of regulatory materials subordinate to a fourteen year-old executive order. Executive Order No. 12,333, 46 Fed. Reg. 59,941 (1981) (“United States Intelligence Activities.”).

¹⁸¹ See, e.g., Wilson, *supra* note 31.

¹⁸² See, e.g., DEP’T OF DEFENSE, INSTRUCTION NO. 5240.10, DoD COUNTERINTELLIGENCE SUPPORT TO UNIFIED AND SPECIFIED COMMANDS (May 18, 1990) (C1, 4 Aug. 1992).

¹⁸³ See Wilson, *supra* note 31, at 57.

Intelligence Battalion told their supporting judge advocate that they were unwilling to interrogate someone who claimed to be a United States person.¹⁸⁴ Eye witnesses had linked this individual to violent crimes committed by the extreme right wing of FRAPH, and his interrogation would have contributed to force protection and to the mission of creating a secure and stable environment.

Telephone conferences with judge advocates in his technical chain,¹⁸⁵ confirmed the initial opinion of the 519th's legal advisor on the ground: the individual could be interrogated. The regulation governing Army intelligence activities contains a clear exception to the general rule prohibiting intelligence components from gathering information about United States persons. That exception states that "information may be collected about a United States person who is reasonably believed to threaten the physical security of Department of Defense employees, installations, operations, or official visitors."¹⁸⁶

The tendency of military intelligence personnel to read the rules restrictively is understandable. Rigorous training, such as that provided to Army intelligence specialties at Fort Huachuca, Arizona, commendably stresses caution with respect to many intelligence activities that can threaten basic civil liberties if abused. Judge advocates can and must contribute their ability to see particular rules in the context of the entire architecture of intelligence law, and thus advise as to when exceptions apply.

2. *Understand the Different Roles of Military Intelligence and Military Police.* The Joint Detention Facility in Port-au-Prince was a source of intelligence for the MNF as it sought to stabilize the country

¹⁸⁴ Unless otherwise stated, the information in the next twenty paragraphs is based upon Interviews with Major Peter G. Becker, Former Legal Advisor to the Joint Intelligence Facility in Port-au-Prince, in Charlottesville, Aug. 22-25, 1995 [hereinafter Becker Interviews].

¹⁸⁵ See *infra* notes 283-284 and accompanying text.

¹⁸⁶ DEP'T OF ARMY, REG. 381-10, U.S. ARMY INTELLIGENCE ACTIVITIES, at 2-2 (1 Jul. 1984).

in the early months of the operation. At one point in the first few weeks after entry, the facility housed more than 200 persons.¹⁸⁷

Notwithstanding their commitment to staying within the law, military intelligence personnel sought to assemble for the commander an accurate picture of the threats he, his forces, and the fragile democratic structures of the Haitian government faced. To interrogate those persons who were detained pursuant to clearly established and reasonable criteria would support this crucial intelligence mission. Furthermore, the doctrinal manual for military intelligence interrogators properly urged techniques that, while respecting basic humanity and dignity, might cause a judge to rule a confession inadmissible were they used to elicit statements from an accused soldier prior to a court-martial.¹⁸⁸

From the perspective of the military police who administered it, the Joint Detention Facility was a prisoner of war camp. As subpart III.B.3 above explained, because the Haiti deployment was not international armed conflict, the protections of the Geneva Convention Relative to the Treatment of Prisoners of War did not strictly apply,¹⁸⁹ nor did service implementing policies.¹⁹⁰ Yet broadly worded

¹⁸⁷ See Becker Interviews, *supra* note 184; Rohter, *supra* note 169 (citing American military authorities for a cumulative figure of more than 200 persons as of early November 1994).

¹⁸⁸ See DEP'T OF ARMY, FIELD MANUAL 34-52, INTELLIGENCE INTERROGATIONS, 1-11, Fig. 1-4 (28 Sept. 1992) (describing the "ego-down" approach). So long as not used arbitrarily and inhumanely, such techniques are defensible in light of the fact that use for intelligence purposes (i.e., corroborating a much larger collection of data pointing to the time and place that a violent attack might occur) differs from use for prosecution (i.e., establishing criminal guilt and punishment against a particular individual).

¹⁸⁹ The Haiti intervention was not "international armed conflict." See Geneva Convention III, *supra* note 136, at art. 2. It also was not a "Common Article 3" armed conflict. *Id.*, at art. 3; INTERNATIONAL COMMITTEE OF THE RED CROSS, COMMENTARY ON III GENEVA CONVENTION FOR THE PROTECTION OF PRISONERS OF WAR OF 12 AUGUST 1949 at 27-44 (Jean S. Pictet ed., 1960) [hereinafter III PICTET] (construing article 3's reference to "armed conflict not of an international character").

¹⁹⁰ DEP'T OF ARMY, REG. 190-8, ENEMY PRISONERS OF WAR ADMINISTRATION, EMPLOYMENT, AND COMPENSATION, para. 1-5a(1) (2 December 1985) [hereinafter AR 190-8] ("All persons captured, interned, or otherwise held in U.S. Army custody during the course of *conflict*. . . .") (emphasis added).

commitments in a diplomatic note and in military operations plans to accord “prisoner of war treatment” to detained persons,¹⁹¹ resulted in disagreements between military policemen and intelligence personnel over whether interrogation procedures constituted a form of coercion forbidden under the Geneva Convention and under the implementing policies.¹⁹² Despite the fact that even the Convention and the policies contemplate noncoercive questioning of prisoners and a robust apparatus for collecting intelligence both before and after camp in-processing has occurred,¹⁹³ military police are apt to take a conservative approach by discouraging good faith interrogation measures that an outside observer might challenge.

The judge advocate often inherits the duty of reconciling legal and doctrinal references that to the two sides in disagreement seem irreconcilable.¹⁹⁴ The judge advocate assigned to the Joint Intelligence Facility discharged this duty by explaining that the rules, though

¹⁹¹ See United States Permanent Mission in Geneva, Diplomatic Note to the International Committee of the Red Cross (Sept. 19, 1994) (“If it becomes necessary to use force and engage in hostilities, the United States will, upon any engagement of forces, apply all of the provisions of the Geneva Conventions and the customary international law dealing with armed conflict. Further, the United States will accord prisoner of war treatment to any detained member of the Haitian armed forces. Any member of the U.S. armed forces who is detained by Haitian forces must be accorded prisoner of war treatment.”), *quoted in* Meron, *supra* note 136, at 78; Headquarters, XVIIIth Airborne Corps, Combined JTF-180, Operation Plan 2370, Tab D to Appendix 4 to Annex E, para. 5b (10 Sept. 1994) (copy of declassified appendix entitled “ICRC Inspections of Detention Facilities,” on file with CLAMO) (“The JTF Provost Marshal will ensure that . . . [d]etainees are treated in accordance with the Geneva Conventions.”).

¹⁹² See AR 190-8, *supra* note 190, at para. 1-5d (“No form of coercion may be inflicted on persons to obtain information of any kind. Those who refuse to answer questions may not be threatened, insulted, or exposed to unpleasant or disadvantageous treatment of any kind.”). Operational lawyers readily discern that the drafters of the regulation intended this paragraph to incorporate Geneva Convention III, *supra* note 136, at art. 17.

¹⁹³ See, e.g., DEP’T OF ARMY, FIELD MANUAL 19-40, ENEMY PRISONERS OF WAR, CIVILIAN INTERNEES, AND DETAINED PERSONS, paras. 2-2, 2-5, 3-2, 3-62 to 3-65 (27 Feb. 1976) [hereinafter FM 19-40]; PICTET III, *supra* note 189, at 163-64; HOWARD S. LEVIE, PRISONERS OF WAR IN INTERNATIONAL ARMED CONFLICT 108-09 (1976).

¹⁹⁴ Put simply, the texts in question are an executive order which charges the military intelligence community with the responsibility of conducting intelligence activities, see Exec. Order 12,333, *supra* note 180, at subparts 1.11, 1.12 (d), 1.12 (e), and a regulatory provision seeking to implement a binding treaty. See AR 190-8, *supra* note 190, at 1-5(a)(1).

ultimately compatible, are *intended* to constrain each other. The interrogators must be brought to understand that treatment of individual detainees may not be arbitrary, and that absent articulable bases, the schedules for feeding, sleeping, and so on will be enforced as to all prisoners.¹⁹⁵ Military police must accept that rules are meant to accommodate the collection of valuable intelligence, and that the questioning of a detainee may sometimes call for a reasonable, minimally intrusive variation of the camp's regimen.¹⁹⁶

3. Monitor Use of Intelligence Contingency Funds and Counter-Intelligence Force Protection Operations. During Uphold Democracy, local informants provided the MNF Commander perishable information on potential terrorists, saboteurs, and other activities hostile to the MNF.¹⁹⁷ Supporting intelligence units procured the services of these local informants using intelligence contingency funds (ICF).

Regulations carefully circumscribe the use of informants for force protection purposes.¹⁹⁸ Intelligence experts today refer to such operations as "counterintelligence force protection operations (CIFPO)," a term that recently replaced "defensive source operations."¹⁹⁹ Regulations also carefully circumscribe the use of ICF,

¹⁹⁵ See, e.g., DEP'T OF ARMY, TRAINING AND DOCTRINE COMMAND, FIELD MANUAL 30-96C, SOLDIER'S MANUAL FOR INTERROGATOR, MILITARY OCCUPATIONAL SPECIALTY 96C, Task # 301-96C-1102 (11 Feb. 1977) (training interrogators to comply with Geneva Convention III strictures).

¹⁹⁶ See Becker Interviews, *supra* note 184 (discussing situations in which interrogators sought to wake detainees thought to have time-sensitive information and in which military police objected to particular detainees being fed scalloped potatoes).

¹⁹⁷ See, e.g., Stai Memorandum, *supra* note 35, at 14 (reviewing operation plan for low-level source operations); 25th ID Briefing Viewgraphs, *supra* note 58 (discussing counterintelligence operations); cf. Major General S.L. Arnold & Major David T. Stahl, *A Power Projection Army in Operations Other Than War*, PARAMETERS, Winter 1993-94, at 4, 21 ("In Somalia our counterintelligence agents were our major source of the intelligence information that shaped maneuver operations.").

¹⁹⁸ DEP'T OF ARMY, REG. 381-175, COUNTERINTELLIGENCE FORCE PROTECTION OPERATIONS AND LOW LEVEL SOURCE OPERATIONS (30 Dec. 1994) (S/NF/WN).

¹⁹⁹ See *id.*

for CIFPO as well as other uses.²⁰⁰ In isolated but important instances, the military intelligence brigade judge advocate in Port-au-Prince referred intelligence personnel to provisions of these regulations.²⁰¹

D. Detention of Non-members of the Force

United States troops did not fight their way into Haiti and did not capture prisoners of war. Nevertheless, within 72 hours of the United States' arrival in the country, the need for a facility to house detained persons became apparent.²⁰² Intelligence sources indicated that certain Haitians posed threats to the force, and soldier eyewitness accounts established that certain Haitians were seriously harming other Haitians. The newly arrived military forces had ample international legal authority to detain such persons.²⁰³ Moreover, the Haitian jails and prisons were not reliable places to transfer these individuals.²⁰⁴

The CJTF 180 staff initially considered removing the first individuals detained to the brig aboard the *U.S.S. America*.²⁰⁵ This course of action held several disadvantages. The ship would have been tied to Haitian waters. It would have been deprived of brig space for sailors accused of crimes because the brig's layout would not permit segregation of detainees. Visitation by representatives of the International Committee of the Red Cross would have been

²⁰⁰ DEP'T OF ARMY, REG. 381-141, INTELLIGENCE CONTINGENCY FUNDS (30 Jul. 1990) (C).

²⁰¹ See Becker Interviews, *supra* note 184 (declining to discuss classified details).

²⁰² See Wishard Interview, *supra* note 72.

²⁰³ At the time, deployed judge advocates were expressly relying upon Security Council Resolution 940 and article 51 of the United Nations Charter. See Headquarters, Multinational Force Haiti and 10th Mountain Division (Light Infantry), Briefing Viewgraphs (9 May 1995) (copies deposited with CLAMO during the conference mentioned in note 15, *supra*) [hereinafter 10th Mountain Div. Briefing Viewgraphs].

²⁰⁴ See JTF-180 Briefing Viewgraphs, *supra* note 38.

²⁰⁵ See Smith Interview, *supra* note 40; USACOM Briefing Viewgraphs, *supra* note 37.

cumbersome. Moreover, the Secretary of Defense would need to approve the plan.²⁰⁶ In light of these disadvantages, the CJTF constructed a small, temporary facility at the Light Industrial Complex in Port-au-Prince and began detaining individuals there on 30 September.²⁰⁷ Within a few days, the detention operation, termed the Joint Detention Facility, moved to a larger building nearby. A military police company commander commanded this larger facility, and his company provided the manpower for daily operations.²⁰⁸ A small military intelligence cell operated in the Facility. This cell consisted of several interrogation teams.

The Joint Detention Facility became one of the most conspicuous successes of Uphold Democracy. Beyond removing threats to the force, to President Aristide's restoration, and to other Haitians, the Facility instituted the rule of law in a land that had rarely before seen it. The Facility's standards of humane treatment and due process stood in marked contrast to Haiti's legacy of arbitrary and sometimes brutal detention. These standards also convinced the International Committee of the Red Cross—if not all members of the news media or human rights groups—of the discipline, good faith, and essential justice of the multinational force. As one judge advocate remarked, "ICRC personnel became strong supporters of the JDF when criticism arose from the media and several detainee family members."²⁰⁹

²⁰⁶ See DEP'T OF THE NAVY, SECRETARY OF THE NAVY INSTRUCTION 3461.3, PROGRAM FOR PRISONERS OF WAR AND OTHER DETAINEES (19xx); UNITED STATES ARMY TRAINING AND DOCTRINE COMMAND, CENTER FOR ARMY LESSONS LEARNED (CALL), OPERATION UPHOLD DEMOCRACY, INITIAL IMPRESSIONS: HAITI D-20 TO D+120, VOLUME II, at 123 (Apr. 1995) [hereinafter CALL INITIAL IMPRESSIONS VOL. II]; see also Geneva Convention III, *supra* note 136, at art. 22 ("Prisoners of war may be interned only in premises *located on land* and affording every guarantee of hygiene and healthfulness.") (emphasis added).

²⁰⁷ See 10th Mountain Div. AAR, *supra* note 108, at 7-9.

²⁰⁸ See *id.*

²⁰⁹ *Id.*

1. Begin Planning Early for Detention Issues. Operational lawyers and other staff officers in the 10th Mountain Division began planning for a detention facility on 29 July 1994. The model on which they based their plans was the 10th Mountain Division's detention facility in Somalia in 1993.²¹⁰ Planners must make detailed arrangements for locating a building of appropriate size and sturdiness, for processing, safeguarding, feeding, and clothing the detainees. Plans must also consider providing health care, questioning detainees for intelligence purposes, and responding to requests for access made by attorneys, human rights groups, and members of the media. Operations in Grenada and Panama provided useful precedents for some of these planning factors.²¹¹ Given the ultimate responsibility they bear in administering the facility, military police must be involved at every stage of the planning process.

Peculiarities of the locale must receive careful attention. Will there be any buildings suitable to house the detainees? If not, when will the flow of material into the country permit the erection of a shelter? What is the extent of the disparity between United States standards of detention and local living conditions?²¹² Will the detainees likely be

²¹⁰ *Id.*; cf. Colonel F.M. Lorenz, *Law and Anarchy in Somalia*, PARAMETERS, Winter 1993-94, at 27, 34-35 (summarizing issues pertaining to detention of civilians during the early phases of Restore Hope) ("A military detention facility with a capacity of 20 prisoners was established at the U.S. Support Command Headquarters. It never held more than six prisoners at once, and it was not equipped to handle long-term detainees.").

²¹¹ See, e.g., Colonel Ted B. Borek, *Legal Services in War*, 120 MIL. L. REV. 19, 47 (1988) (describing judge advocate involvement in detention issues in Grenada); Center for Law and Military Operations, Just Cause After-Action Seminar Executive Summary, para. III.C (26-27 Feb. 1990) ("Over 4100 persons were detained during the first few days of Just Cause.") (copy on file with CLAMO).

²¹² The Staff Judge Advocate for the MNF discussed the implications of this question as follows:

The material on detention facilities in [the draft *Haiti Lessons Learned* report] is crucial, especially when we are not an occupying force. Much work needs to be done in this area. However, a problem we really need to look at is the difference between what we as Americans consider acceptable physical standards and what the local populace is experiencing. More specifically, when detainees were

afflicted with any unusual diseases? With regard to this last question, those who planned the detention facility and those who executed the plan grappled with how to provide medical care to HIV-infected Haitians.²¹³ Given that the Geneva Conventions served as the baseline for treatment, detainees would receive a level of care equal to that provided United States servicemembers. Yet field surgery upon a detainee whose HIV status was unknown could result in the infection of other detainees as well as members of the force. Because United States servicemembers undergo regular HIV testing, medical workers elected to set aside a surgical bed for detainees. They also stressed the importance of field sterilization techniques.²¹⁴

released and spread the word about our clean, safe detention facilities with decent food and medical check-ups/treatment, we were flooded with petty “criminals” doing just enough to get detained—they admitted doing this to receive the benefits of our detention. What . . . are we supposed to do when humane detention standards far exceed average living conditions? This is a very serious problem.”

See Memorandum, Staff Judge Advocate, 10th Mountain Division (LI), Fort Drum, AFZB-JA, to Deputy Director, Center for Law and Military Operations, subject: Haiti AAR—Duty Loge/1st Week—10th Mtn (19 Oct. 1995).

²¹³ See, e.g., USACOM Briefing Viewgraphs, *supra* note 37.

²¹⁴ Captain Warren Reardon, Recorder for the Haiti After Action Review Conference in Charlottesville, VA, at para. 4-5 (May 9, 1995) [hereinafter Reardon Notes] (recorder’s notes on file with CLAMO) (recording the conclusion of the conference participants that “for future contingencies, the Army must have superior field sterilization procedures in place”).

It would be a mistake to conclude that because operations took place in a “legal vacuum,” *see* Rohter, *supra* note 169, plans for the treatment of detainees lacked specificity. These plans properly built upon techniques, procedures, and training that, while created to support wartime operations, nevertheless provided detailed and orderly guidelines to camp guards. *See, e.g., UNITED STATES ARMY TRAINING AND DOCTRINE COMMAND, CENTER FOR ARMY LESSONS LEARNED (CALL), OPERATION UPHOLD DEMOCRACY, INITIAL IMPRESSIONS: HAITI D-20 TO D+40*, at 145-47 (Dec. 1994) [hereinafter CALL INITIAL IMPRESSIONS VOL. I] (concluding that the military police company “had no problems reaching mission success with this [detention facility] mission because this is on their Mission Essential Task List (METL) and they train it to standard”) (also noting, nonetheless, that innovations were developed: “A young NCO developed the method used to secure and distribute the personal hygiene packets which is being considered for incorporation into the new FM 19-XX (MP Support to OOTW)”).

The plan should anticipate transfer of responsibility for the facility to the host government. Bolstering the legitimacy of that government militates in favor of such a transfer, as does relieving scarce military police assets from a burdensome mission. In circumstances such as those in Haiti, the transfer will likely occur in phases. The detainee population crested at about 200 during the first month of the deployment,²¹⁵ but by 9 January 1995, only 24 detainees remained in the facility.²¹⁶ On this day, the Commander of the MNF sent a letter to the Haitian government proposing a plan for transfer.²¹⁷ The MNF would turn over the physical structure and would continue for several weeks to provide outer security, to assist in record-keeping and interrogation, and to supply food, water, and medical care.²¹⁸ Release authority and overall responsibility would immediately vest in the Haitian government, though MNF staff officers recommended that 12 of the 24 detainees be released.²¹⁹ *Appendix R* reprints the Memorandum of Agreement between the MNF and the government of Haiti that effected the transfer.²²⁰

2. Give Two Judge Advocates Independent Roles In the Release Determination Process. Upon the arrival of detainees in the Facility, military police would prepare a Detainee Personnel Record form for each individual

²¹⁵ See *supra* note 187 and accompanying text.

²¹⁶ See 25th ID Briefing Viewgraphs, *supra* note 58; Telephone Interview with Major Mark Sposato, Chief Criminal Law, Office of the Staff Judge Advocate and former Deputy Staff Judge Advocate for MNF Haiti, (Sept. 5, 1995) [hereinafter Sposato Interview].

²¹⁷ Letter from Major General David C. Meade, Commander, Multinational Force to Prime Minister Smarck Michel (Jan. 9, 1995).

²¹⁸ *Id.*

²¹⁹ *Id.*; See also Memorandum For Record, Staff Judge Advocate, Multinational Force Haiti, subject: Detention Facility, paras. 3-4 (13 Feb. 1995).

²²⁰ Planning for detention of facilities also extended to coordinating with federal prosecutors in Florida concerning potential trials of Haitians alleged to have committed United States federal offenses. See, e.g., JTF-180 Briefing Viewgraphs, *supra* note 38; Telephone Interview with Lieutenant Colonel Richard E. Gordon, Former Deputy Staff Judge Advocate for MNF Haiti (Sept. 7, 1995) [hereinafter Gordon Interview].

detained.²²¹ The 52 fields of this form are automated in a database maintained as part of the Prisoner of War Information System (PWIS), which captures and reports available and pertinent facts such as name, date of birth, nationality, sex, place, date, and circumstances of detention, and medical information.²²² Facility personnel would collect, inventory, and safeguard detainee personal effects, conduct a medical examination, and perform several other tasks of inprocessing.²²³ Interrogators would compile additional information pertaining to the intelligence provided by the detainee, to biographical information about the detainee, and to the circumstances and legal bases for detention.²²⁴

The legal adviser to the Facility, a judge advocate captain, would review detainee files within 72 hours of the detainee's arrival to prepare a recommendation as to whether further detention was warranted.²²⁵ Continued detention could rest on one or more of the following four grounds:

1. the individual is a member of the Haitian military or police, or is armed, and threatens essential civic order;

²²¹ See CALL INITIAL IMPRESSIONS VOL. I, *supra* note 214, at 146; Becker Interviews, *supra* note 184.

²²² AR 190-8, *supra* note 190, at para. 2-10. Because the Privacy Act requires safeguards only for individuals who are citizens of the United States or aliens lawfully admitted for permanent residence, *see* 5 U.S.C. § 552a(a)(2) (1988), this database raises no Privacy Act issues.

²²³ See 10th Mountain Div. AAR, *supra* note 108, at 8 (noting also that “[d]etainees were permitted access on a limited basis to family members, religious services, and to retain legal counsel and private medical treatment”); CALL INITIAL IMPRESSIONS VOL. I, *supra* note 214, at 144-45.

²²⁴ See Becker Interviews, *supra* note 184.

²²⁵ See *id.* Every attempt was made to comply with the letter and intent of the Constitution of Haiti. HAITI CONST. art. 26 (1987) (“No one may be kept under arrest more than forty-eight (48) hours unless he has appeared before a judge asked to rule on the legality of the arrest and the judge has confirmed the arrest by a well-founded decision.”); 10th Mountain Div. AAR, *supra* note 108, at 9 (stating that the MNF afforded detainees treatment of prisoners of war and due process protections of human rights instruments and also that “we crafted a system similar to Haitian law”).

2. the individual poses a threat to United States forces, other protected persons, key facilities, or property designated mission-essential by the Combined Joint Task Force Commander;
3. the individual has committed a serious criminal act, meaning homicide, aggravated assault, rape, arson, robbery, burglary, or larceny;
4. the individual has valuable information pertaining to individuals not yet detained to whom one or more of grounds 1 through 3 apply.²²⁶

A separate judge advocate captain would interview each detainee. Each detainee was given the opportunity to make a statement through an interpreter and to present facts rebutting the command's stated basis for detention. The interviewing judge advocate did not establish an attorney-client relationship with the detainee, but rather served as an independent source of information for the command by articulating the argument against further detention.²²⁷

Throughout the period of detention, detainees were permitted access on a limited basis to family members and to private legal

²²⁶ See Becker Interviews, *supra* note 184 (stating that Detention Facility authorities derived grounds 1, 2, and 3 from the ROE card reprinted at *Appendix J* and ground 4 from Resolution 940's mandate to "use all necessary means to . . . establish and maintain a stable and secure environment"). Operational lawyers in the MNF fully understood that it was an extraordinary situation—an environment that was far from stable and secure, a broken judicial and prison system, the need to ensure safety for the newly reinstalled government—that justified ground 4, and even then that ground 4 detentions should be as brief as possible in light, *inter alia*, of provisions of the Haitian Constitution. See HAITI CONST., art. 24 (1987) ("No one may be prosecuted, arrested, or detained except in cases determined by law and in the manner it prescribes. . . . Except where the perpetrator of a crime is caught in the act, no one may be arrested or detained other than by written order of a legally competent official."); *id.* at art. 25 ("Any unnecessary force or restraint in the apprehension of a person or in keeping him under arrest, or any psychological pressure or physical brutality, especially during interrogation, is forbidden. . . . No one may be interrogated without his attorney or a witness of his choice being present."); see also *supra* note 188 (discussing the defensibility of interrogation for intelligence rather than criminal prosecution).

²²⁷ See 10th Mountain Div. AAR, *supra* note 108, at 8.

counsel, if retained.²²⁸ Several detainees hired Haitian and United States lawyers to argue for their release. Two other judge advocates, including the Staff Judge Advocate for the MNF, would coordinate visits by representatives of the ICRC, human rights groups, and outside observers.²²⁹ All of these safeguards resulted in numerous releases, as the grounds for detention no longer applied. These fair and orderly procedures not only had a calming effect upon the detainee population,²³⁰ they deeply impressed Haitians who were not detained. According to one judge advocate, “[t]he ICRC credited this program with giving Haitians the first real lesson on fairness, real due process, and the right to be heard.”²³¹

3. Encourage Commander to Delegate Authority to Release.

After receiving the separate recommendations of the judge advocate for the Facility and the judge advocate who interviewed the detainees, the Staff Judge Advocate would create a report for the MNF Commander.²³² The report would list each detainee, in priority of the strength of the recommendation to retain. Thus, for instance, those who had been caught committing violent crimes would be at the top of the list, and those recommended for release would be at the bottom. The MNF Commander would receive separate recommendations from the J-2 and the Provost Marshal before deciding whom to retain and whom to release. This reporting and decision-making process would occur daily.²³³

²²⁸ See Gilbert A. Lewthwaite & Bill Glauber, *American Woman Accuses U.S. Troops in Haiti of Mistreating Her Husband in Jail*, THE BALTIMORE SUN, Oct. 17, 1994, at 3A (reporting that Mrs. Michele McGurk Mourra was allowed to visit her husband, Gerry Mourra, a detainee).

²²⁹ See 10th Mountain Div. AAR, *supra* note 108, at 11-12.

²³⁰ *Id.* at 8 (“The International Committee of the Red Cross (ICRC) and detention personnel remarked that this provision of minimal due process allowed detainees to let off steam. As detainees were released, other detainees knew they were being heard and their cases were being considered.”).

²³¹ *Id.* at 8.

²³² See Becker Interviews, *supra* note 184.

²³³ See 10th Mountain Div. AAR, *supra* note 108, at 8.

Due to the sensitivity of inadvertently releasing a murderer or a potential assassin, the MNF Commander in Haiti elected to retain release authority.²³⁴ Given the resemblance of the release decision to the duties of a military magistrate or judge and the difficulties in arranging a daily decision by the Commander in charge of all military activities in the country, delegation of the release decision to the Staff Judge Advocate would have been warranted and appropriate.²³⁵

Discomfort of commanders to delegate release authority may persist until the development of a comprehensive set of guidelines for establishing and operating a detention facility during operations other than war. Although judge advocates, military police, medical personnel, and interrogators gleaned many useful and specific forms, techniques, procedures, and approaches from disparate treaties, regulations, and field manuals,²³⁶ these dedicated professionals clearly would have preferred a single source of standards. The demand for a unified approach has led the International and Operational Law Department of The Judge Advocate General's School to coin the term "Civilian Protection Law" to embrace all of the international legal sources that bear upon the recurring problems associated with detention.²³⁷ The United Nations could perhaps fill this demand by

²³⁴ See Wishard Interview, *supra* note 68.

²³⁵ See Becker Interviews, *supra* note 184; Altenburg Remarks, *supra* note 112 (noting that early in the operation, the Commander of CJTF-180 had delegated release authority to the Staff Judge Advocate).

²³⁶ See, e.g., *supra* note 214.

²³⁷ See OP. LAW HANDBOOK, *supra* note 9, at ch. 13 (4th ed. 1995) (proposing an approach consisting of "four tiers of protection" that attempt to provide a practical summary of the numerous and varied legal materials that bear upon detention of civilians).

supplementing its Standard Operating Procedures for Peacekeeping Operations with specific guidelines for detention.²³⁸

E. Weapons Buyback and Control.

Members of the CJTF 180 staff identified at an early stage that establishing a stable and secure environment in Haiti would require a comprehensive plan for getting firearms and explosives off the street and out of the countryside.²³⁹ The plan as originally conceived would have comprised four elements. First, the MNF would purchase weapons from Haitians who had them or found them. Second, MNF soldiers and military police would seize or confiscate weapons.²⁴⁰ Third, Haitians legitimately possessing small arms would register them. Fourth, the MNF would issue picture identification cards to each person authorized to carry a weapon.

The first element of the plan came to be known as the “Weapons Buyback” Program.²⁴¹ This program consisted of four partially

²³⁸ See, e.g., MNF Historian Memorandum, *supra* note 48 (submission to the Joint Uniform Lessons Learned System entitled “UN-Mandated Detention Facilities”) (recommending that “[t]he UN should establish a model set of guidelines for the establishment of a detention facility and then establish administrative and operational rules to ensure humane treatment of detainees. Further, the UN should create a working group to create and support the detention facility once it becomes operational.”).

²³⁹ See Stai Memorandum, *supra* note 35, at 14. Unless otherwise noted, the remainder of this paragraph relies upon this memorandum.

²⁴⁰ The law of armed conflict employs various terms to denote the taking of property, see, e.g., Hague Regulations, *supra* note 172, at art. 23(g) (relating to “seiz[ure of] the enemy’s property”); *id.* at art. 53 (relating to “seiz[ure]” of “all movable property belonging to the State which may be used for operations of the war” and of similar items “even if they belong to private individuals”); *id.* at art. 46 (“Private property cannot be confiscated.”). Some authorities recognize a hard distinction between “confiscation” and “seizure.” See, e.g., OP. LAW HANDBOOK, *supra* note 9, at 9-1 (defining confiscation as “the permanent taking or destruction of enemy *public* property found on the battlefield,” and seizure as “the temporary taking of *private* property”). The use of these terms in the text is not intended to imply such a distinction.

²⁴¹ See 10th Mountain Div. AAR, *supra* note 108, at 6; 25th ID Briefing Viewgraphs, *supra* note 58. Unless otherwise noted, the information in this paragraph is based upon JTF-180 Briefing Viewgraphs, *supra* note 38 (viewgraph entitled “Cash for Guns Concept”).

overlapping phases. Phase 1, which lasted from 23 to 26 September, involved efforts to obtain existing registration lists from the Haitian police. Phase 2, which lasted from 26 September to 24 October, consisted of psychological operations to inform and explain the program to Haitians. Phase 3, which lasted from 27 September to 17 October, was the collection phase, in which Haitians turned weapons in at designated collection points and received cash payments according to the following schedule:

<i>Weapon</i>	<i>Payment</i>
Handguns	\$ 100
Rifles	\$ 200
Automatic Weapons	\$ 400
Large Caliber Machineguns	\$ 600
Heavy Weapons	\$ 600
Explosives	\$ 200

Phase 4, which lasted from 17 to 24 October, marked the initial ending of the program, the passage of an amnesty period during which Haitians could reconsider a decision to retain weapons, and a formal assessment of the impact of the program.²⁴² The MNF then chose to continue the program in substantially the same form.²⁴³

Although the program initially drew mixed reviews, in the end most observers cited it among the MNF's accomplishments. The early concern was that not enough Haitians were coming to the collection points, but continued efforts to publicize the program and the distribution of chits by roving weapons collection teams partially

²⁴² Prices were adjusted over time to respond to Haitians' willingness to sell particular types of weapons. See, e.g., CALL INITIAL IMPRESSIONS VOL. I, *supra* note 214, at 104 (listing the purchase price of handguns at \$50, semi-automatic rifles at \$100, automatic weapons at \$200, any large caliber machinegun at \$300, heavy weapons at \$300, and high explosives at \$300).

²⁴³ See Sposato Interview, *supra* note 216.

allayed this concern.²⁴⁴ The command also maintained realistic expectations for the program, which had never been expected to be the sole means of getting weapons off the street.²⁴⁵ The overall plan had foreseen many important details, such as the need for photographic identity cards, a lesson that had been well-learned from experiences in Somalia.²⁴⁶ As of 2 January, the MNF had collected more than 15,000 weapons and explosive devices via cash payments or street sweeps.²⁴⁷ By 31 March, the total was more than 30,000, when President Clinton touted the success of the program in his speech during the United Nations transition ceremony in Port-au-Prince.²⁴⁸

1. Know and Coordinate With All the Key Players in the Weapons Program. During the planning and implementation phases of the plan for purchasing and controlling weapons, judge advocates benefited by knowing, in detail, what the plan entailed and which

²⁴⁴ See CALL INITIAL IMPRESSIONS VOL. I, *supra* note 214, at 104-05.

²⁴⁵ See CALL INITIAL IMPRESSIONS VOL. II, *supra* note 206, at 49 (“The [weapons buyback programs in Panama, Somalia, and Haiti] have had mixed results, but, indeed, if they do not prove productive that tells the peacekeeping force something about the levels of weapons that could still be at large. Knowing what was on the street and what has been turned in provides the delta as to what is remaining. FAd’H armories and stores were fairly known quantities at the time of entry.”).

²⁴⁶ Colonel F.M. Lorenz, *Weapons Confiscation Policy During the First Phase of Operation ‘Restore Hope’*, SMALL WARS AND INSURGENCIES, Winter 1994, at 409, 421 (describing a weapons policy that included no buyback component given the greater risk of banditry and noting that photographic identification cards reduced falsification and abuse).

²⁴⁷ CALL INITIAL IMPRESSIONS VOL. II., *supra* note 206, at ix.

²⁴⁸ See *Appendix D infra*; 25th ID Briefing Viewgraphs, *supra* note 55 (listing a total of 33,088 handguns, shotguns, rifles, automatic weapons, heavy weapons, explosives). The buyback program in Panama had recovered about 4,000 weapons at a cost of about \$800,000. See Lorenz, *supra* note 246, at 415.

The recovered weapons ultimately became a source of arms for the Interim Public Security Force (IPSF), for the new army, and for the new permanent police. See 25th ID Briefing Viewgraphs, *supra* note 55. See also *infra* note 338 and accompanying text.

elements of the MNF were involved.²⁴⁹ The J-2 and intelligence elements played an important role in locating weapons and existing registration lists and in answering questions concerning collected Haitian military equipment. Civil affairs and psychological operations elements spread word that the program was in place as well as evidence that its effects were making the streets safer. The J-3 directed military police to secure the collection point and tasked a detachment of the foreign material exploitation battalion to control the weapons turn-in. The J-4 and the joint logistics support command coordinated myriad aspects of accountability, testing, demilitarization, storage, ship transport to Norfolk, truck transport to Letterkenny Army Depot, smelting, and certification of destruction.

Knowing the “what’s” and “who’s” of this process proved indispensable as the temptation of large amounts of firearms soon resulted in a formal investigation into procedural irregularities, the court-martial of a soldier, and a host of questions about proper disposition of material that some units sought to keep for historical purposes. When international advisers sought to return many of the weapons collected to the newly constituted Haitian police force, knowledge of how particular weapons had been acquired became central to determining their proper disposition. Judge advocates at all levels of command assisted in working through the difficult issues of identifying statutory authority for transferring material back to the Haitian government.²⁵⁰

²⁴⁹ The information from this paragraph and the next is based upon 10th Mountain Div. AAR, *supra* note 108, at 6, upon Gordon Interview, *supra* note 220, and upon 25th ID Briefing Viewgraphs, *supra* note 58.

²⁵⁰ These issues are difficult ones, in general, because Congress comprehensively regulates the sale or transfer of defense articles, military training, and other defense related services through the Foreign Assistance Act and the Arms Export Control Act. *See supra* notes 153-154; Sposato Interview, *supra* note 216 (discussing contemplated use of FAA § 552(c), 22 U.S.C. § 2348a(c) “drawdown” authority and of FAA § 607, 22 U.S.C. § 2357 authority and recalling the urgency with which Mr. Ray Kelly was requesting weapons for the fledgling police force). Given the anxiousness with which representatives of other agencies solicit transfers of Department of Defense material to other countries, judge advocates will likely be the first to

2. Be Prepared to Advise Commanders About Disarming Threats to the Force. Judge advocates proved to be the main advisors to commanders and soldiers on the threshold question of whether and how much force the MNF could use to disarm Haitians.²⁵¹ As discussed above, the rules of engagement were “conduct-based,” in the sense that soldiers could use force if they identified a hostile act or hostile intent.²⁵² What if a Haitian is not attacking a soldier (no hostile act), and is merely carrying his weapon from one point to another (no hostile intent)? The question whether the soldier should use force to disarm the Haitian in this case requires a clear picture of the mission and other mission guidance as well as complete understanding of the rules of engagement.

The mission statement did not contemplate disarming the entire Haitian population. Yet the MNF commander issued mission guidance that a Haitian in possession of an automatic weapon was a “threat to the force,” even in the absence of hostile act or hostile intent.²⁵³ Resolution 940, because it mandated the use of “all necessary means” to “establish a secure and stable environment,”²⁵⁴ provided ample authority for this guidance, which in turn permitted soldiers to use necessary and reasonable force to disarm Haitians with automatic

initiate the process of seeking the Presidential determinations necessary to invoke available statutory authorities. *See, e.g.*, Presidential Determination Number 94-16 of March 16, 1994, 59 Fed. Reg. 14081 (1994), *reprinted in* S. COMM. ON FOREIGN RELATIONS & HOUSE COMM. ON INTERNATIONAL RELATIONS, LEGISLATION ON FOREIGN RELATIONS THROUGH 1994, vol. I-A, at 211-12 n. 638 (1995) [hereinafter LEGISLATION ON FOREIGN RELATIONS THROUGH 1994] (invoking § 552(c) and directing drawdown of up to \$13.5 million “to maintain Egypt’s military readiness and security in view of the dedication of Egyptian resources to the United Nations Operation in Somalia (UNOSOM II”).

²⁵¹ *See* 10th Mountain Div. AAR, *supra* note 108, at 6.

²⁵² *See supra* note 91 and accompanying text.

²⁵³ *See* 10th Mountain Div. AAR, *supra* note 108, at 6; Wishard Interview, *supra* note 68.

²⁵⁴ *See Appendix B infra.*

weapons. Military police and other soldiers came to understand the extent and limits of their authority through situational training.²⁵⁵

3. Understand Applicable Search and Seizure Law. The search of Haitian dwellings and the establishment of traffic checkpoints for weapons raised a related but distinct issue. On one hand, Resolution 940 would seem to authorize searches of private homes and vehicles, if seizing the firearms suspected to be inside are deemed necessary to establishing a secure and stable environment. On the other hand, a secure and stable environment was merely a means to the end of restoring Aristide to power. Given that President Aristide had consented to the entry of the MNF, Haitian law would seem to bear upon the question whether MNF soldiers could intrude upon Haitian homes and vehicles.

The Haitian Constitution guarantees each Haitian citizen “the right to armed self-defence, within the bounds of his domicile,” though it also states that he “has no right to bear arms without the express well-founded authorization from the Chief of Police.”²⁵⁶ The Constitution further states that “[p]ossession of a firearm be reported to the police,” and that “[t]he Armed Forces have a monopoly on the manufacture, import, export, use, and possession of weapons of war and their munitions, as well as war materiel.”²⁵⁷ The approach taken by the MNF respected these principles of Haitian law, as Haitians were permitted to maintain individual small arms in their homes for security purposes.²⁵⁸

The increased risk presented by armed Haitians in vehicles and the absence of a Haitian legal prohibition on vehicular searches compelled MNF forces to man checkpoints throughout Port-au-Prince.

²⁵⁵ See Wishard Interview, *supra* note 72

²⁵⁶ HAITI CONST. art. 268-1 (1987).

²⁵⁷ *Id.* at art. 268-2 to 268-3.

²⁵⁸ See 10th Mountain Div. AAR, *supra* note 108, at 6.

Military police stopped vehicles and searched for weapons. Intelligence personnel provided likely profiles of vehicles and drivers bearing arms, and police acted upon this information.²⁵⁹ Judge advocates correctly identified to commanders that any implications such procedures might have in the United States, under the Fourth Amendment and related statutory and case law, were irrelevant, so long as the procedures did not violate international and domestic Haitian law.²⁶⁰

F. Media Relations.

The deployment to Haiti could scarcely have been more public. On 16 September 1994, two days before the scheduled invasion, over 200 American reporters were in the country, including the anchor for one of the major television networks.²⁶¹ As the delegation headed by former President Carter consulted with members of the junta on 18 September, television cameras from the Cable News Network (CNN) carried more than 12 hours of live, continuous coverage to a captivated audience in the United States and around the world.²⁶² After the junta agreed not to combat the entry of the MNF, viewers on 19 September received the thrill of watching helicopters from the *U.S.S. Eisenhower* deposit troops onto the Port-au-Prince airport.²⁶³ During the ensuing weeks and months, an aggressive, mobile, and well-equipped news media continued to transmit reporters' views and cameras' images to an

²⁵⁹ See Becker Interviews, *supra* note 184.

²⁶⁰ See 10th Mountain Div. AAR, *supra* note 108, at 6.

²⁶¹ See Howard Kurtz, *Administration Acts to Soothe News Media*, WASH. POST, Sept. 16, 1994, at A30.

²⁶² See Ed Siegel, *At End of The Day, CNN Was a Lifeline*, BOSTON GLOBE, Sept. 19, 1994, at 3.

²⁶³ See Interview with Sadie M. Martins, Resident of Virginia Who Was at Home on Monday, 19 September, in Charlottesville, VA (Sept. 19, 1995).

American citizenry that was ambivalent about the entire deployment.

The media's participation in the operation was never as disruptive or potentially dangerous as it had been during the early hours of Operation Restore Hope, when bright television lights illuminated the amphibious landing of United States forces.²⁶⁴ Although major news organizations had knowledge of the departure of aircraft from Fort Bragg on 18 September, none broadcasted or published this information until they confirmed that the junta already had learned of the departure.²⁶⁵ These and other instances of restraint were voluntary. Reporters were not subject to the long-term press pools and other restrictions of the Persian Gulf War, an arrangement that elicited howls of media protest and led to postwar conferences.²⁶⁶ Nor were they even subject to the temporary pools and more relaxed guidelines that resulted from those conferences.²⁶⁷

From the start, judge advocates in Haiti heavily and favorably influenced the military's relations with the media. They gave well-reasoned advice to commanders and public affairs officers on news items or stepped forward into microphones and cameras to answer questions themselves. Particular media interest during the deployment

²⁶⁴ See, e.g., Ben Macintyre, *The Networks Have Landed*, THE TIMES, Dec. 10, 1992 (reporting Secretary of Defense Richard Cheney's anger at the media's having exposed soldiers to danger by the lights of the cameras); Jonathan Clayton, *Lots of Good Shots for Media*, FINANCIAL TIMES, Dec. 9, 1992, at 4; Keith Richburg, *U.S. Vanguard Lands in Somalia; Marine Combat Troops Follow to Secure Port*, WASHINGTON POST, Dec. 9, 1992, at A1; Jonathan Clayton, *Reporters Provide the First Hurdle*, THE IRISH TIMES, Dec. 9, 1992, at 9.

²⁶⁵ Jon Lafayette, *Networks Cover Haiti on Own Terms*, ELECTRONIC MEDIA, Sept. 26, 1994, at 52.

²⁶⁶ See, e.g., Vicki Kemper and Deborah Baldwin, *War Stories: Between the Pentagon's Restrictions and the Media's Failings, the Public Doesn't Get the Full Picture*, COMMON CAUSE MAGAZINE, Mar.-Apr. 1991 (describing media irritation following the Persian Gulf war and recounting how the press pools of that conflict grew out of earlier protests following operations in Grenada and in Panama).

²⁶⁷ Lafayette, *supra* note 265; DEP'T OF DEFENSE AND MAJOR NEWS ORGANIZATIONS, STATEMENT OF PRINCIPLES ON MILITARY-MEDIA RELATIONS (May 1992), *reprinted in* OP. LAW HANDBOOK, *supra* note 9, at F-1.

often coincided with areas where the rule of law was most challenged: the intervention by United States soldiers to protect Haitians from violence by other Haitians; the treatment of persons detained in the Joint Detention Facility; and the maintenance of discipline over members of the multinational force. In these and other areas, judge advocates had the training and the balanced viewpoint to serve as spokesmen for the military and for the interests of the United States and the participating nations.²⁶⁸

1. Describe the Processes and Legal Authorities that Explain Military Actions. Whether they were speaking to the news media or helping to prepare others to do so, judge advocates in Haiti found that standard public affairs guidance is sound.²⁶⁹ Thus, it proved prudent to find out who the reporter was and why he wanted to interview the command, to establish ground rules on what would be covered, and to agree upon how many minutes the interview would last. It proved valuable to anticipate questions and think through responses, to have other staff experts play devil's advocate before the interview, and to read or listen to late-breaking news stories that might affect the questions or responses. Devices such as the "five and five" rule were handy, as were the admonitions to avoid saying "no comment" to acknowledge not being sure of facts, and to decline making "off the record" remarks.²⁷⁰

²⁶⁸ Note that judge advocates need appropriate clearance in order to serve this role. See Dep't of Army, Office of The Judge Advocate General, TJAG Policy Memo 91-2, para. 3 ("Generally, no member of your office should, without your approval, prepare a written statement for publication or permit himself or herself to be quoted by the media on official matters within the purview of your office. Similarly, unless first cleared through the Executive, neither you nor any member of your office should be interviewed by, or provide statements to, representatives of the media on issues or subjects having Army-wide, national or international implications.").

²⁶⁹ The information in the next three paragraphs, unless otherwise noted, is based upon Altenburg Remarks, *supra* note 112; Telephone Interview with Lieutenant Colonel Karl K. Warner, Staff Judge Advocate, 10th Mountain Division (Sept. 7, 1995) [hereinafter Warner Interview]; Smith Interview, *supra* note 38.

²⁷⁰ The OP. LAW HANDBOOK, *supra* note 9, at F-1 to F-7, reprints these and other helpful tips. The "five and five" rule is "Know the five best and worst things about your agency—and be able to discuss them in detail any time." *Id.* at F-3.

Yet beyond following tips on interview methodology, judge advocates had a crucial educative role. Reporters are often ignorant of legal bases and procedures that explain actions taken by commanders and troops, and forceful restatement of the pertinent substantive or procedural rule can change the entire character of a reported story. Even if the tone of the piece remains skeptical or critical, quoted remarks will transmit the military's commitment to following rules, the ultimate authority for which are Congress, civilian officials, in the executive branch, and international law.

Four examples help illustrate the suasive power of legal authorities and processes. First, on 22 September 1995, when the media remained frenzied over attacks by police on pro-Aristide demonstrators, the Staff Judge Advocate for CJTF 190 explained that the rules of engagement implemented Resolution 940 and the Carter-Jonaissant agreement.²⁷¹ Second, on 16 October, when the wife of a detained Haitian aroused the interest of several reporters, the same Staff Judge Advocate calmly explained the detainee's connections to a violent pro-Cedras group, the language in Resolution 940 that justified

²⁷¹ See Altenburg Remarks, *supra* note 112; cf. *U.S. Armed Forces Extend their Control over Haiti*, THE BALTIMORE SUN, Sept. 23, 1994, at 8A ("The chief legal officer for the U.S.-led multinational force said yesterday that there has been no change in the military's rules of engagement but that the 'focus' has changed from unloading troops and supplies to protection of Haitian civilians. Col. John Altenburg, staff judge advocate for the multinational force, said that in the initial phase, the mission had to give the Haitian military time to demonstrate whether it could keep peace. Now the 'focus' has shifted and 'soldiers will be expected to intervene on behalf of Haitians,' Colonel Altenburg said."); Paul Quinn-Judge and Diego Ribadeneira, *US Troops in Haiti Given OK on Force; Soldiers May Intervene to Curb Police, Military*, BOSTON GLOBE, Sept. 23, 1994, at 1 ("If Lt. Gen. Raoul Cedras does not curb his police and military, 'we will intervene,'" warned Col. John Altenburg, the US Task Force's staff judge advocate. He said US troops would be allowed to use deadly force if the situation warranted it.").

his detention, and the procedure by which the military police battalion commander was investigating allegations that interrogators had mistreated the detainee. On the basis of initial inquiries, he also denied that the detainee had been mistreated.²⁷² Third, in early November, the Staff Judge Advocate for the MNF explained that the Geneva Conventions did not strictly apply to those being held in the Joint Detention Facility while describing how their treatment nevertheless met the dictates of fundamental fairness and due process.²⁷³ Fourth, on 4 May 1995, newspapers reported the testimony before Congress of a retired judge advocate, who supported the court-martial of an officer in the MNF by explaining pertinent provisions of the Uniform Code of Military Justice.²⁷⁴

2. Acknowledge the Legitimacy of the Media's Presence in Operations Other Than War. "Information operations" demanded and received effective command emphasis in Haiti.²⁷⁵ Even as soldiers were doing their duty on the ground, senior officials reevaluated

²⁷² See Gilbert A. Lewthwaite and Bill Glauber, *supra* note 228 ("Col. John Altenburg, the staff judge advocate for the intervention force and its top lawyer, denied any physical mistreatment of Mr. Mourra but said yesterday that he had been blindfolded and gagged when first apprehended. His sleep was 'strictly controlled,' to enable shifts of interrogators to question him, he said. 'He was never denied sleep.' . . . 'There has been no mistreatment of Mr. Mourra,' said Colonel Altenburg in a statement responding to questions submitted by *The Sun*. Despite the immediate official denial, Colonel Altenburg said that there would be a full investigation of Mrs. Mourra's allegations and that the findings would be reported to the Red Cross. 'The Military Police battalion commander is currently looking into the allegations,' Colonel Altenburg said.").

²⁷³ See Rohter, *supra* note 169 (quoting Lieutenant Colonel Kasey Warner at length).

²⁷⁴ See, e.g., *Prepared Testimony of Colonel Richard H. Black (USA Ret.) to the House Committee on International Relations Subcommittee on the Western Hemisphere*, FEDERAL NEWS SERVICE (May 4, 1995), reprinted in *Appendix V, infra*.

²⁷⁵ DEP'T OF ARMY, FIELD MANUAL 100-23, PEACE OPERATIONS 14 (30 Dec. 1994) [hereinafter FM 100-23] ("In peace operations, national and international news media coverage plays a major role in quickly framing public debate and shaping public opinion. The news media serves as a forum for the analysis and critique of goals, objectives, and actions. It can impact political, strategic, and operational planning; decisions; and mission success and failure. Therefore, commanders should involve themselves in information operations."); see also USACOM Briefing Viewgraphs, *supra* note 37 (depicting 7 principles for "Winning the Information War"); Smith Interview, *supra* note 40.

political and strategic objectives based on the way the media presented the military deployment. The relatively lower levels of violence inherent in this operation other than war guaranteed greater media access to all parts of the theater, and judge advocates assisted all members of the command to acknowledge both the inevitability and the legitimacy of that access.

In strict constitutional terms, the press does not have a right of access to military operations under the First Amendment.²⁷⁶ Nevertheless, any constraints on the media imposed by the military in a foreign area of operations must be reasonable time, place, and manner restrictions based upon an important governmental interest.²⁷⁷ Legal training and experience do not give judge advocates a unique ability to articulate important governmental interests—such as operational security or preservation of surprise. Commanders and other staff experts may be far better equipped to identify which parts of an operational plan require secrecy. Yet judge advocates do have a unique ability to judge whether proposed restrictions upon media access are reasonable in light of all the circumstances.

The ability to judge whether a restriction is reasonable stems in part from a willingness to recognize the role of the media in a participatory democracy. It also stems from a recognition that reporters—like soldiers—tend to be motivated by a mixture of self-interest and noble ideals. Although many of them have no prior exposure to the military, reporters will often work hard to gather facts

²⁷⁶ *Cf.* *Nation Magazine v. United States*, 762 F.Supp. 1558, 1572 (S.D.N.Y. 1991) (“If the reasoning of [*Richmond Newspapers, Inc.*, 448 U.S. 564, 575 (1979); *Globe Newspaper Co. v. Superior Court for County of Norfolk*, 457 U.S. 596, 606 (1982); *First National Bank v. Bellotti*, 435 U.S. 765, 783 (1978)] were followed in a military context, there is support for the proposition that the press has at least some minimal right of access to view and report about major events that affect the functioning of government, including, for example, an overt combat operation. As such, the government could not wholly exclude the press from a land area where a war is occurring that involves this country. But this conclusion is far from certain since military operations are not closely akin to a building such as a prison, nor to a park or a courtroom.”).

²⁷⁷ *See id.* at 1573-75.

and present an accurate story. Their questions may seem unfairly critical in both substance and tone; still, the best approach is to encourage all soldiers and commanders to treat them with unfailing respect and to remember that the military's credibility with the reading and viewing public depends upon truthful responses.²⁷⁸

G. Joint, Inter-Agency, and Nongovernmental Coordination.

Modern military operations demand judge advocates who will take initiative to coordinate with the legal advisors of other service component commands, with officials in other executive branch agencies, and with representatives of nongovernmental or private voluntary organizations. At least two recent developments make the spirit of initiative necessary. First, profound changes to the national security structure foreshadowed by the passage of the Goldwater Nichols Act in the 1986 have strengthened unified commands²⁷⁹ without eliminating numerous forms of interservice competition—some of which are durable as well as beneficial.²⁸⁰ Among other things, the separate services retain control over the programming and spending of appropriated funds, and they continue to staff separate judge advocate generals' corps in order to satisfy the distinctive needs of commands possessing vastly different missions and resources.

Second, the military operations themselves are different. As this report emphasizes at several junctures, operations other than war place the military in an environment where decisive combat victory does not

²⁷⁸ See CALL INITIAL IMPRESSIONS VOL. I, *supra* note 214, at 6 (describing training in the 10th Mountain Division for conducting the mission with a strong media presence).

²⁷⁹ See *supra* note 29.

²⁸⁰ See Colonel Charles J. Dunlap, *Welcome to the Junta: The Erosion of Civilian Control of the U.S. Military*, 29 WAKE FOREST L. REV. 341, 375-77 (1994); Harry Summers, *Weakened Checks and Balances*, WASH. TIMES, May 27, 1993, at G-3.

describe success.²⁸¹ Nonmilitary agencies and organizations will often have the lead in these operations in order to bolster the legitimacy of a fragile government receiving United States support.

Aided by the phenomenal advances in communications, data-processing, and print reproduction that have occurred over the past decade, judge advocates supporting operations in Haiti coordinated legal issues at a breathtaking pace. Satellite telephone links, facsimile machines, electronic mail, computer graphics software, and photocopy equipment allowed instantaneous transmission and wide distribution of complex and detailed problems, plans, and advice. Faced with a body of “law” that might change with a new message from higher headquarters, judge advocates wisely spurned attempts at independently divining answers in favor of consulting the most knowledgeable fellow attorney—wherever in the world he or she might be. Yet some of the coordination employed the ancient technology of shoe leather. For instance, contact with a human rights organization in Port-au-Prince required only an emphasis on such contact and a willingness to walk to meet a representative of the organization.²⁸²

1. Use Technical Judge Advocate Channels. The command channel is the direct, official link through which one headquarters passes orders and instructions to subordinate headquarters.²⁸³ The command channel links one commanding officer to another. A technical channel is a link between two headquarters that transmits orders, instructions, advice, recommendations, and information inappropriate for the command channel because of their volume,

²⁸¹ See, e.g., FM 100-5, *supra* note 13, at 13-4 (“In [operations other than war], other government agencies will often have the lead. Commanders may answer to a civilian chief, such as an ambassador, or may themselves employ the resources of a civilian agency.”).

²⁸² See Wishard Interview, *supra* note 72.

²⁸³ See FM 101-5, *supra* note 73, at 1-6.

specificity, or routine nature.²⁸⁴ When judge advocates from different command headquarters consult with each other, they are using a technical channel. On certain highly sensitive matters, judge advocates may not have the authority to use technical channels, as when XVIIIth Airborne Corps was planning for the semi-permissive entry in the summer of 1994 without informing the staff of the 10th Mountain Division.²⁸⁵

Technical judge advocate channels received heavy use concerning the Haiti operation beginning in February of 1994, a full seven months before the deployment.²⁸⁶ At that time, an operational lawyer assigned to XVIIIth Airborne Corps began drafting rules of engagement and legal appendices to an operations plan in close coordination with a Marine Corps judge advocate assigned to United States Atlantic Command (USACOM). By June 1994, Navy, Air Force, Coast Guard, and Special Operations representatives were discussing operations plan matters with the XVIIIth Airborne Corps judge advocate, who later would note that he particularly valued expertise gained on rules of engagement for air forces. In July 1994, the Staff Judge Advocate for Headquarters, United States Army Forces Command provided a useful summary of the possible legal bases for military deployment to then Colonel John Altenburg, who would eventually become the Staff Judge Advocate for CJTF-180. Throughout the summer of 1994, operational lawyers in these headquarters were sending through technical channels copies of the Governors Island agreement, key Security Council resolutions, results of research on Haitian law, and other materials.

²⁸⁴ See *id*; DEP'T OF ARMY, REG. 600-20, ARMY COMMAND POLICY, para. 2-2 (29 Apr. 1988) [hereinafter AR 600-20].

²⁸⁵ See 10th Mountain Div. AAR, *supra* note 108, at 5 ("XVIII Corps was not permitted to share valuable ROE information with us until a few days before execution. Because of this, division soldiers had no knowledge of the combat operations ROE until D-1, and the transition from forced entry ROE to civil-military operations ROE became cumbersome.").

²⁸⁶ The information in this paragraph and the next is based on Stai Memorandum, *supra* note 33 and Woods Interview, *supra* note 34 .

In the weeks immediately prior to deployment, the use of technical channels grew heavier still. On 19 July, XVIIIth Airborne Corps turned responsibility for planning the semi-permissive entry over to the 10th Mountain Division, an event which authorized a technical link between operational lawyers in the two headquarters. Examples of information transmitted during this phase included a legal opinion that pepper spray is a riot control agent within the meaning of a recent international convention, a paper outlining a proposed cash-for-weapons program, and numerous aspects of rules of engagement. Participating headquarters involved ranged from the Chairman of the Joint Chiefs, the Chief of Staff of the Army, and the Office of the General Counsel to the Secretary of the Army, in addition to those already named.

After deployment, technical judge advocate channels remained crucial. From the perspective of operational lawyers at USACOM,

[o]perational directives require close coordination between SJA's for ROE's, law of war issues, and international and domestic law as it applies to operations.

- ROE changes—bridge strategic/tactical gap
- LOAC/Human Rights issues are high vis
- War Powers notification and international law authority must be clearly articulated to the field

Technical chain provides a real-time forum for resolving operational and administrative issues which arise during contingency operations.²⁸⁷

Many of these issues persisted or arose after arrival of forces in Haiti. Issues pertaining to military justice, rotation of personnel, and claims adjudication were among those that could not have been resolved without technical channels.²⁸⁸

The heavy and effective use of technical channels between unified and component headquarters mirrored the high degree of cooperation that took place in command channels. Senior commanders and outside observers agree that Operation Uphold Democracy stands as a model of joint cooperation.²⁸⁹ The Operation integrated medical, intelligence, logistics, search-and-rescue, and installation support.²⁹⁰ It involved deployment of Army troops from the *U.S.S. Eisenhower* and the *U.S.S. America* and the use of the *U.S.S. Mt. Whitney* as a joint flagship.²⁹¹ Moreover, it relied upon swift and detailed planning to shift from a forced entry to a permissive entry without losing momentum. The flow of technical information between operational lawyers contributed to and epitomized these achievements.²⁹²

²⁸⁷ See Office of the Staff Judge Advocate, United States Atlantic Command, Technical Chain of Command (8 May 1995) (fact sheet deposited with CLAMO during conference mentioned in note 15, *supra*) [hereinafter USACOM Technical Chain Fact Sheet].

²⁸⁸ See 194th Armored Brigade AAR, *supra* note 121, at para. 5 (“Coordination with the technical JAG channels early and often is the most important element in a successful JAG deployment, and Uphold Democracy proved no exception.”).

²⁸⁹ See Interview with Admiral Paul David Miller, United States Atlantic Command, in Charlottesville, Virginia. (May 18, 1995).

²⁹⁰ See JTF-180 Briefing Viewgraphs, *supra* note 38.

²⁹¹ See, e.g., CALL INITIAL IMPRESSIONS VOL. I, *supra* note 214, at 49 (finding that JTF 180’s use of the *U.S.S. Mount Whitney* as the main headquarters “greatly enhanced command and control of the entry operation”).

²⁹² See, e.g., *id.* at 38-39 (describing the provision by the theater tactical signal brigade of a Mobile Gateway Van (MGV) to meet the demand for unclassified DDN e-mail and MILNET access, the most frequent medium for technical communications).

The flow of technical information also contributed to smooth rotations of units into and out of the area of operations. The highly successful transitions between the 10th Mountain Division and the 25th Infantry Division and between the MNF and UNMIH are the two most important examples.²⁹³

2. Develop Skills for Inter-Agency Coordination. In Haiti, as in all countries not subject to military invasion or occupation, the Chief of Mission was the senior representative of the President. He remained responsible for policy decisions and for the activities of United States personnel in Haiti, though military commanders retained command and control over soldiers, sailors, airmen, and marines serving in the various joint task forces.²⁹⁴ The ambassador, through the Country Team,²⁹⁵

²⁹³ See, e.g., Colonel Brian Bush, Staff Judge Advocate, 25th Infantry Division (Light), Remarks Before the Haiti After Action Review Conference in Charlottesville, VA (May 9, 1995) (videotape on file with CLAMO) [hereinafter Bush Remarks] (emphasizing the value of technical communications and also of a leader's reconnaissance prior to transition).

²⁹⁴ A federal statute defines the duties of the Chief of a United States Diplomatic Mission to a foreign country:

Under the direction of the President, the Chief of Mission to a foreign country—

(1) shall have full responsibility for the direction, coordination, and supervision of all Government executive branch employees in that country (except for employees under the command of a United States area military commander); and

(2) shall keep fully and currently informed with respect to all activities and operations of the Government within that country, and shall insure that all Government executive branch employees (except for employees under the command of a United States area military commander) comply fully with all applicable directives of the Chief of Mission.

22 U.S.C. § 3927(a); JTF COMMANDER'S HANDBOOK, *supra* note 91, at 37-38 (discussing interagency and political coordination).

²⁹⁵ Since the 1950s, Presidents have declared what is now enshrined as law in 22 U.S.C. § 3927, namely that the Ambassador is in charge of all elements in the United States Government in a host country (excluding military forces under command of a United States military commander, such as military units in Korea and Germany, or the forces in Haiti). Some

worked with the CINCUSACOM, the CJTF commanders, the Agency for International Development, the Department of Justice, and other agencies, to integrate the diplomatic, economic, informational, and military aspects of United States policy toward Haiti.

The central role of the Ambassador, and the significant participation of many executive branch agencies, summoned skills that judge advocates traditionally have not needed. For instance, a judge advocate who deployed to train forces of coalition nations on rules of engagement discovered that officials from the Department of State had led participating foreign countries to believe that the MNF could accommodate different nations' rules on the use of force.²⁹⁶ Because he understood the delicate diplomatic constraints under which State Department officials were operating, the judge advocate pursued a

Ambassadors invoke this principle more aggressively than others, but almost all utilize the management device of the "country team."

The country team, with the Chief of Mission at its head, is the principal means by which a mission bonds itself together as a cooperative, coordinated, well-informed staff:

In its broadest sense, the "team" is all the elements—and all the men and women—of the American mission in a foreign country. More narrowly, it is a management tool—a council of senior officers, heads of the various sections of the mission, working together under the Ambassador's direction to pool their skills, resources, and problems in the national interest.

United States Foreign Service Institute, *The Team: The Ambassador Sets the Pace* 1 (undated 3 page information paper widely distributed to individuals receiving foreign service training). No formal directive delineates the composition or functions of the Country Team. The Ambassador determines the type of team that best suits the needs of a particular country. Typical membership at large posts includes the Deputy Chief of the Diplomatic Mission, the chiefs of the political and economic sections of the embassy, the Security Assistance Officer, the Agency for International Development mission, and the United States Information Service (USIS). It also usually includes one or more of the military attaches and the agricultural attache. See generally DEFENSE INSTITUTE OF SECURITY ASSISTANCE MANAGEMENT, *THE MANAGEMENT OF SECURITY ASSISTANCE* 105-06 (14th ed., 1994) [hereinafter *MANAGEMENT OF SECURITY ASSISTANCE*].

²⁹⁶ See 194th Armored Brigade AAR, *supra* note 121, at Observation Number 1 ("The CARICOM deployed with a verbal agreement that they would be allowed to develop their own ROE."); cf. Gordon Interview, *supra* note 220 (describing as routine instances in which foreign government representatives asked the MNF to provide items promised them by other agencies) ("One time, a commander in the French contingent impatiently asked me why the MNF had not yet provided him the 9mm pistols he had been promised.").

course of action that eschewed formal interagency haggling and further intergovernmental negotiations. Over a period of several days, he succeeded in persuading the foreign commander of the benefits of using existing MNF rules.²⁹⁷ In this way, he eliminated a potential source of friction and even danger for military units on the ground in Haiti.

Other judge advocates report similar instances in which an awareness of political and diplomatic objectives served them well in dealings with representatives of United States governmental agencies. Some of these instances involved representatives in Haiti, as when military units were compelled to explain to Department of Justice and Agency for International Development personnel that inter-agency logistical support would violate fiscal laws.²⁹⁸ Others involved

²⁹⁷ *See id.* ("I met with the CARICOM commander early and often and gradually developed a dialog and relationship which would allow me to draft his ROE for him. As we worked together to hone a set of ROE, I gradually steered him towards the standing JTF ROE. Eventually, he agreed with me totally that his unit was bound by the JTF ROE, and he understood the rules themselves very well.")

²⁹⁸ USACOM Technical Chain Fact Sheet, *supra* note 287; Passar AAR, *supra* note 120, at para. 6d(iii) ("We were also requested on a number of occasions to provide supplies or other support to ICITAP, the US Department of Justice organization training a new Haitian police force. Absent funding of such requests by that agency pursuant to the Economy Act, I disapproved such support."). The recorder to the Haiti After Action Review Conference held in May of 1995 described the sense of the conference participants this way:

Congressional-executive branch struggles over the power of the purse have driven the contingency funding process to near melt-down. Byzantine rules govern nation building and coalition support operations. The duration of the funding and the funding sources for such operations are held hostage to political conflict between the branches of government.

The interagency process for assuming fiscal responsibility generates difficulties even when all parties cooperate; the system turns nearly impossible when executive agencies compete for standing and conflict over mission requirements and goals. Pol/mil plans outline fiscal responsibility, but the U.S. agencies tasked with certain functions are either incapable or unwilling to tap their own resources, even after their top level leadership have made "commitments" at interagency Washington meetings. This forces the dominant player, DoD, and its components, to make some hard calls concerning fiscal law. The interagency dispute resolution is unwieldy, and even then, the resulting commitments are not rigorously "enforced." . . .

representatives who remained in the United States, as when the Staff Judge Advocate for the 25th Infantry Division persuaded an official in the Internal Revenue Service to permit servicemembers to file individual tax returns early and contributed to the successful Department of Defense effort to obtain an extension for the filing of individual tax returns for the 1994 calendar year.²⁹⁹

Effective interagency coordination requires patience and an awareness of cultural differences between soldiers and executive branch civilians.³⁰⁰ Military officers are accustomed to directing efforts toward a clearly defined, decisive, and attainable objective, to outlining milestones, and to establishing unity of command.³⁰¹ Other agencies are accustomed to multiple conflicting objectives, ill-defined milestones, and disunity of command.³⁰² In the absence of reform in the nature of an "Inter-agency Goldwater-Nichols Act," which one senior

The interagency mix results in a continuous improvisational challenge for military leaders in the field. Fiscal authority lines are blurred as operators seek to accomplish their mission [Examples: Operation Light Switch, IPSF Uniforms and Equipment, and Training of the Palace Guard]. Contingencies devolve into accounting nightmares for logistics/resource management; commanders are forced to rely on marginal legal authority to meet mission requirements and so "step into the breach" in the sense of risking anti-deficiency violations, GAO opprobrium, and perhaps even criminal sanctions."

Reardon Notes, *supra* note 214, at para. 5.

²⁹⁹ Office of the Staff Judge Advocate, 25th Infantry Division (Light Infantry) and MNF-Haiti, Information Paper, Automatic Extension to File 1994 Taxes (1 Mar. 1995) (copy on file with CLAMO) (stating that the Internal Revenue Service (IRS) had granted an automatic extension until 15 December for servicemembers to file their 1994 tax returns); Bush Remarks, *supra* note 293 (describing coordination with IRS officials). For a more complete account of the coordination of the extension and other tax return filing issues, see *infra* note 405.

³⁰⁰ See, e.g., Joint Chiefs of Staff, Publication 3-08, Interagency Coordination During Joint Operations at I-10 (31 Jan. 1995) (first draft) [hereinafter Draft Joint Pub. 3-08]; ROGER FISHER & WILLIAM URY, GETTING TO YES: NEGOTIATING AGREEMENT WITHOUT GIVING IN 23-25 (1988).

³⁰¹ See, e.g., FM 100-5, *supra* note 13, at 2-4 to 2-6.

³⁰² See, e.g., *id.* at 13-4.

judge advocate deems necessary,³⁰³ lesser initiatives must suffice. These include augmentation of the Ambassador's staff with military experts, the augmentation of the combatant commander's staff with civilian officials from a variety of agencies, and a program of interagency exercises to practice unified action at the operational and even tactical levels.³⁰⁴

3. Maintain Close and Open Communications With the ICRC and other Nongovernmental Agencies. Numerous nongovernmental agencies and private voluntary organizations accompanied the multinational military forces to Haiti. Indeed, some of these organizations arrived in Haiti well before the MNF.³⁰⁵ *Appendix S* lists the organizations with representatives in the country.

In accordance with United States military doctrine, the MNF established a Civil Military Operations Center (CMOC).³⁰⁶ A subordinate element of the CMOC served as the primary interface between all humanitarian organizations and military forces.³⁰⁷ The

³⁰³ Colonel Joseph R. Barnes, Staff Judge Advocate, United States Army Forces Command, Unity of Command and Non-traditional Missions: Do We Need an Inter-agency "Goldwater-Nichols"? at 8-9 (1994) (manuscript on file with CLAMO) ("As was the case in 1986 when the Goldwater-Nichols Act was passed, only the blunt force of such legislation can smash through the vested interests and deeply-ingrained patterns of thought and behavior of both the military and of the relevant civilian agencies concerning their respective roles and authorities during military-civil operations.").

³⁰⁴ *See id.* at 7-8.

³⁰⁵ *See* United States Agency for International Development, Haiti: PVO Profile at 1 (July 1, 1993) (copy on file with CLAMO) ("NGOs, both indigenous and expatriate, have since the 1950s implemented a significant number of donor-funded development assistance projects in the agriculture, health, population, and education sectors in Haiti.").

³⁰⁶ *See* DEP'T OF ARMY, FIELD MANUAL 41-10, CIVIL AFFAIRS OPERATIONS at C-1 (11 Jan. 1993) [hereinafter FM 41-10]; Telephone Interview with Lieutenant Colonel John F. McNeill, USAR, Former Team Chief, Tactical Planning Team 3601, 360th Civil Affairs Brigade, in Port-au-Prince from 19 Sept. 1994 to 22 Nov. 1994 (Aug. 24, 1995) [McNeill Interview]. Unless otherwise noted the information in this paragraph is based on the McNeill Interview.

³⁰⁷ This was the Humanitarian Assistance Coordination Center (HACC), an organ that is not yet doctrinally recognized, but one that served the important function of prioritizing the flood of requests for military assistance made by non-government and private organizations. *See id.*; *cf.*

CMOC consisted of key staff members from the United States JTF and military liaison personnel from other countries, as well as representatives from the Agency for International Development and the Office of Foreign Disaster Assistance, from the International Committee of the Red Cross (ICRC), from various United Nations agencies, from agencies of foreign governments, and from various private voluntary organizations. Among the United States members was a reserve component attorney assigned to the civil affairs unit in Port-au-Prince. This diverse group met daily to discuss problems and coordinate both short and long-term actions. The MNF staff judge advocate attended these meetings at least once a week.³⁰⁸

JTF COMMANDER'S HANDBOOK, *supra* note 91, at 23 (describing the CMOC itself as the primary interface between all humanitarian organizations and military forces). The CMOC then reviewed the requests. It is instructive to note how the United States Agency for International Development perceived the purpose and functioning of the HACC and the CMOC:

Shortly after its arrival in Haiti, the U.S. military established a Humanitarian Assistance Coordination Center (HACC) to identify needs and facilitate military/civilian cooperation. To relieve the logistical constraints that hampered the import of relief supplies, the U.S. military and USAID negotiated to allow one humanitarian flight a day into the Port-au-Prince airport and to open some of the city's port facilities to NGO and commercial shipping. A system was instituted whereby NGOs, PVO's, and U.N. agencies could issue requests for assistance (RFA) from the military for a variety of needs. Most concern the use of harbor and airport facilities, transport for food and medical supplies, and security needs. Requests are prioritized by the Civilian-Military Operations Center (CMOC) according to the resources available.

United States Agency for International Development, Bureau for Humanitarian Response, Office of United States Foreign Disaster Assistance, Haiti-Emergency, Situation Report No. 2 (Nov. 1, 1994) (copy on file with the CLAMO).

³⁰⁸ See Gordon Interview, *supra* note 220. Frequently, judge advocate concerns addressed whether authorizations and appropriations existed to support the missions coordinated by the CMOC. See *supra* note 250 and *infra* subpart III.L.3 for discussions of fiscal constraints and authorities.

In addition, other judge advocates performed liaison duties with specific organizations.³⁰⁹ The ICRC proved to be the most important of these organizations. Within a short time, a positive, constructive, even friendly relationship developed between the MNF operational lawyer serving as liaison and his ICRC counterparts. Efforts to communicate on a daily basis and to accommodate every reasonable request paid dividends, as ICRC officials used quiet persuasion and avoided publicity in their efforts to protect the wounded, inquire after captives, reunite families, and assist displaced persons. Other human rights organizations, however, did not display the neutrality and impartiality of the ICRC. These disparate organizations tended to be poorly informed, biased against military forces, and hungry for publicity. Although designation of a judge advocate to serve as liaison minimized distractions to the command,³¹⁰ the nature of these latter organizations impelled them to voice dissatisfaction.³¹¹

Because it employs officials and organs that perform governmental functions, the United Nations cannot strictly be termed a “nongovernmental” organization. Because its reach and authority are supranational, United Nations dealings with the United States military cannot be termed “inter-agency.” Still, diplomacy, tact, and awareness of institutional values and constraints are required of the judge advocate when he or she interacts with the United Nations. These skills are

³⁰⁹ Unless otherwise noted, the information in this paragraphs is based on 10th Mountain Div. AAR, *supra* note 108, at 8-10, 12.

³¹⁰ See also MNF Historian Memorandum, *supra* note 48 (submission to the Joint Uniform Lessons Learned System entitled “Human Rights, International Agencies”) (“The command should designate the OSJA as the lead agency for dealing with all human rights agencies. Further, an officer within the OSJA should be trained and appointed to coordinate with these agencies.”); CALL INITIAL IMPRESSIONS VOL. II, at 119 (recommended that “[d]uring the deliberate planning process, [the command should] have a human rights cell, comprised of the SJA planner, the PMO planner, and the Surgeon planner, to formulate a human rights investigation plan for all OPLANs.”).

³¹¹ The need for judge advocates to conduct interagency and international—as well as interservice—relations, spawned a descriptive phrase for the operations: “Beyond Purple.” See JTF-180 Briefing Viewgraphs, *supra* note 38.

identical to those required when dealing with other United States agencies or with nongovernmental organizations.

The detailing of Major General Kinzer as the Force Commander of the UNMIH is only one of numerous examples in which interactions with the United Nations required skill and care on all sides. Because UNMIH is a subsidiary organ of the United Nations established pursuant to a Security Council resolution,³¹² the Secretary General and the Under-Secretary General for Peacekeeping Operations expect that the Force Commander will keep them fully informed about organizational, deployment, and operational matters. These expectations of prompt and thorough reports are consistent with a relationship that the United Nations describes as a “chain of command” between it and the Force Commander.³¹³ The United Nations perspective of the relationship between its political and policy organs and the Force Commanders of United Nations operations causes it to seek various guarantees of loyalty: an employment contract; a letter of appointment; a loyalty oath.³¹⁴ Can or should a serving United States Army general sign such instruments?

The answer is no,³¹⁵ but the details are important, and the legitimate interests of both the United States and the United Nations can be honored if communications and legal opinions are crafted with attention to those details. Law and policy precluded Major General Kinzer from signing an employment contract or letter of appointment

³¹² See S.C. Res. 867, U.N. SCOR, 48th Sess., U.N. Doc. S/RES/867 (1993), at paras. 2, 3 & 4; See S.C. Res. 867, U.N. SCOR, 49th Sess., U.N. Doc. S/RES/867 (1994), at paras. 5, 9, 10 & 11. See S.C. Res. 964, U.N. SCOR, 49th Sess., U.N. Doc. S/RES/964 (1994), at para. 5.

³¹³ See Letter from Kofi Annan, Under-Secretary-General for Peacekeeping Operations, the United Nations, to Major-General Joseph W. Kinzer, Force Commander, UNMIH, subject: General Guidelines for the Force Commander, paras. 5-7 (1 Mar. 1995), *reprinted at Appendix T*.

³¹⁴ See Memorandum from Legal Counsel to the Chairman of the Joint Chiefs of Staff to MG Kinzer, subject: Legal Issues Involving Your Detail as UNMIH Commander (3 Feb. 1995).

³¹⁵ See *id.*

with the United Nations.³¹⁶ The same sources also appear to prohibit his swearing a loyalty oath to the United Nations.³¹⁷ Judge advocates on the joint staff provided timely and accurate advice to Major General Kinzer on this matter and thus prevented an awkward situation from developing.³¹⁸ A high level exchange of communications between the United States government and the United Nations subsequently satisfied all parties and cleared the way for Kinzer's assumption of duties. *Appendix T* contains these communications.

H. Civil Affairs.

Civil affairs operations played a central role in the Haiti deployment. That role was to support the MNF's relationship with Haitian civil authorities and the civilian populace, promote the legitimacy of the mission, and enhance the effectiveness of the military forces in the country. Civil affairs operations comprise two distinct types of missions. The first—to conduct civil-military operations— involves a complex of activities and interactions with civilian authorities directed toward eliciting favorable behavior from civilian inhabitants of

³¹⁶ See Message, Office of United States Secretary of State to United States Mission to the United Nations, subject: Military Assistant for United Nations Senior Military Advisor Major General Baril (190153Z Oct 93) ("There is no legal authority that allows U.S. Military Personnel to contract with the UN for the performance of official duties."); UNPA, *supra* note 148, at § 7 (permitting individuals detailed to the United Nations, on approval of the President, to receive direct payment of allowances and other perquisites); Exec. Order No. 10,206, 3 C.F.R. (1951) (delegating approval authority to the Secretary of Defense); Memorandum, Secretary of Defense, subject: Policy on United Nations (UN) Allowances (27 Jan. 1994) (establishing general policy that unless authorized on a case by case basis, United States personnel may not receive direct supplemental allowances from the United Nations); Memorandum, Secretary of Defense to Secretaries of the Military Departments and Chairman of the Joint Chiefs of Staff, subject: Receipt of UN Allowances and Perquisites by the Commanding General, Military Forces, United Nations Mission in Haiti (UNMIH) (29 Mar. 1995) (authorizing MG Kinzer to receive direct payment from the UN for the purpose of fulfilling UN representational responsibilities, payable based on completion of the representational duties and upon presentation of receipts, but also stating that "[n]o other allowances or perquisites offered by the UN incident to that detail are allowed").

³¹⁷ See Memorandum, *supra* note 314, at para. 2b.

³¹⁸ See *id.*

a war zone or area of operations.³¹⁹ The second—to support civil administration—consists of direct military involvement with executive, legislative, and judicial branches of a foreign government so as to stabilize it.³²⁰ In addition to describing these two types of missions, the term “civil affairs” denotes military personnel and units trained to plan, support, or conduct these missions.³²¹

Elements of four different civil affairs units—all of them United States Army Reserve component units—supported the MNF in Haiti.³²²

Because the MNF sought to restore the democratically elected president and leave the reins of government with his administration, these elements limited their activities to the first type of mission (civil-military operations).³²³ The second type of civil affairs mission (support to civil administration) would have implied a degree of involvement with the inner workings of the Haitian government that might have frustrated rather than fulfilled Resolution 940.³²⁴ Civil affairs personnel planned and coordinated numerous humanitarian assistance and military civic action projects. They supported the J-3 civil affairs officer, an army major who had staff responsibility for tasking elements of the MNF, such as the Joint Logistics Support Command, or the separate military police brigade to support civil affairs projects.³²⁵

³¹⁹ See FM 41-10, *supra* note 306, at Glossary 5.

³²⁰ See *id.*

³²¹ See *id.*

³²² These were the 450th Civil Affairs Battalion, the 416th Civil Affairs Battalion, the 360th Civil Affairs Brigade, and the 358th Civil Affairs Command. See McNeill Interview, *supra* note 306; see also FM 41-10, *supra* note 306, at 4-1 to 4-13 (describing civil affairs organization).

³²³ See *id.* at ch. 10 (describing the five major civil-military organization missions as foreign nation support, populace and resource control, humanitarian assistance, military civic action, and civil defense).

³²⁴ See *id.* at ch. 11.

³²⁵ See McNeill Interview, *supra* note 306.

The terms “civil affairs,” “civil-military operations,” and “civil administration” are creatures of United States military doctrine rather than law. The rule of law is so important to legitimacy and stable government, however, that judge advocates inevitably become deeply involved in civil affairs operations. For example, because formal support to civil administration, as doctrinally defined, did not strictly serve the purposes of the MNF’s presence in Haiti, the Ambassador and the country team developed a program of “legal mentorship.”³²⁶ Judge advocates in the reserve and active components were ideal participants in this program, which was so close in method and intent to civil affairs operations as to be indistinguishable from them.

1. Ensure That the Staff Judge Advocate is the Sole Advisor to the Command on Its Legal Obligations. Civil affairs doctrine further implicates judge advocates because it purports to give civil affairs officers a role in advising the command on legal obligations to the foreign civilian populace. Recall that the mission of The Judge Advocate General’s Corps is to support the commander by providing legal services as far forward as possible throughout the operational continuum.³²⁷ This mission implies that judge advocates are the command’s legal advisors, and the field manual guiding judge advocates expressly reinforces this role.³²⁸ Yet the Army’s civil affairs field manual states that the civil affairs personnel and related staff officers “[r]ecommend[] command policy concerning obligations to the population in the [area of operations] and obligations relative to treaties, agreements, international law, and U.S. policies.”³²⁹ This apparent conflict between the role of judge advocates and the role of civil affairs

³²⁶ See *infra* at subpart H.2 and H.3.

³²⁷ See FM 27-100, *supra* note 9, at para. 1-4.

³²⁸ See, e.g., *id.* at para. 11-6a (“The staff judge advocate is the commander’s primary legal advisor and supervises legal operations in support of civil affairs. The G5 coordinates with the SJA on all legal matters related to civil affairs.”).

³²⁹ See FM 41-10, *supra* note 306, at 4-9; See also *id.* at 4-3, 4-4, 4-5 (“Advises and assists the commander to meet legal obligations and moral considerations.”).

personnel need never become a problem. Indeed, professionalism and careful coordination on the part of the individual officers involved can obviate confusion and ensure that the command has single source for its legal advice.³³⁰

The staff judge advocate for the MNF eliminated potential confusion of roles at an early stage, primarily in the area of fiscal law issues. Humanitarian assistance projects and military civic action programs employ military personnel and require the expenditure of military operations and maintenance and construction appropriations.³³¹

These civil affairs operations in Haiti took the form of medical care, food distribution, and rudimentary construction of roads and sanitation facilities.³³² By designating three judge advocates, including himself, as the sole advisors on the propriety of using military resources for such operations, the staff judge advocate prevented misallocation of funds and protected the command.³³³

³³⁰ See generally DSAT REPORT, *supra* note 3, at Operational Law-6, 11, 12, Issues 520, 573, 626, and 627 (discussing the potential friction arising from overlapping roles); Lieutenant Colonel Rudolph C. Barnes, Jr., *Legitimacy and the Lawyer in Low-Intensity Conflict (LIC): Civil Affairs Legal Support*, ARMY LAW., Oct. 1988, at 5, 7 ("Because many issues in LIC are mixed legal and political issues, however, there is no clear line of demarcation between the support requirements of the SJA and the civil affairs staff support element.").

³³¹ See FM 41-10, *supra* note 306, at 10-19 (reprinting 10 U.S.C. §§ 401-402, which prescribe fiscal and other limitations on conduct of humanitarian and civic assistance by military units)

³³² See, e.g., Passar AAR, *supra* note 120, at para. 6d; Gordon Interview, *supra* note 220; Warner Interview, *supra* note 269.

³³³ See 10th Mountain Div. AAR, *supra* note 108, at 7; 25th ID Lessons Learned Memorandum, *supra* note 120; *cf.* Memorandum, Major General George A. Fisher, Commander of Multinational Forces Haiti, MNF-CG, to Distribution A, subject: Medical-Civil Action Guidelines (25 Jan. 1995) ("Refrain from independent Medical Civic-Action (MEDCAP) activities unless specifically approved by the CMOC or MNF Surgeon.").

Provision of humanitarian and civic assistance by military units is likely to be scrutinized by the General Accounting Office (GAO). See *infra* note 468 (describing the functions of the GAO). A recent GAO report on Department of Defense humanitarian and civic assistance projects was critical in tone and substance:

Program coordination between the U.S. military and the U.S. embassies and AID missions in two of the countries we visited—Panama and Honduras—was

Civil affairs officers cooperated in this arrangement. The civil affairs mission in a country such as Haiti is challenging enough without the added responsibility of advising the command on its legal obligations. Coordinating the work of nongovernmental and private voluntary organizations, planning and executing those humanitarian assistance and civic action projects deemed by judge advocates to be proper uses of funds, and persuading Haitian officials and citizens of the benefits of orderly and rule-governed processes—these and related activities easily absorbed the full attention of available civil affairs resources. For example, in September and early October, civil affairs officers in the Humanitarian Assistance Coordination Center devoted much time and energy to conferences with Haitian merchants. The port director of Port-au-Prince, a corrupt official allied with the junta, continued to charge tariffs and storage charges these merchants deemed unjust. The civil affairs officers, in full coordination with the Staff Judge Advocate, assisted the merchants in devising a plan to engage in commerce while respecting Haitian law.³³⁴

minimal. We found projects that were not designed to contribute to U.S. foreign policy objectives, did not appear to enhance U.S. military training, and either lacked the support of the host country or were not being used. Finally, the two commands we visited have not systematically evaluated HCA projects to determine their success or failure. HCA program officials at the command level had not performed routine follow-up visits.

See UNITED STATES GENERAL ACCOUNTING OFFICE, REPORT TO CONGRESSIONAL REQUESTERS, DEP'T OF DEFENSE: CHANGES NEEDED TO THE HUMANITARIAN AND CIVIC ASSISTANCE PROGRAM, B-248270, GAO/NSIAD-94-57 (Nov. 2, 1993) at 3.

³³⁴ *See* McNeill interview, *supra* note 306 (also noting that civil affairs missions multiplied in the immediate aftermath of Tropical Storm Gordon, which wracked Haiti on 17 November); Electronic Message, Lieutenant Colonel Karl K. Warner, Staff Judge Advocate, 10th Mountain Division (LI), to Deputy Director, Center for Law and Military Operations (19 Oct. 1995) (opining that when the de facto government is illegitimate, and the United States controls the port on behalf of the de jure government, customs should be paid to the de jure government upon its arrival and assumption of port control rather than to the outgoing de facto government).

2. *Understand All Three Legs in the Stool of the Justice System.* The efforts of other United States agencies supplemented the MNF's civil affairs operations in Haiti. Officials from the United States Agency for International Development (AID) and from the International Criminal Investigation and Training Assistance Program (ICITAP) of the Department of Justice joined with the MNF in addressing a cluster of problems known as the "three-legged stool." *Figure 9* graphically depicts this interrelated set of problems.³³⁵

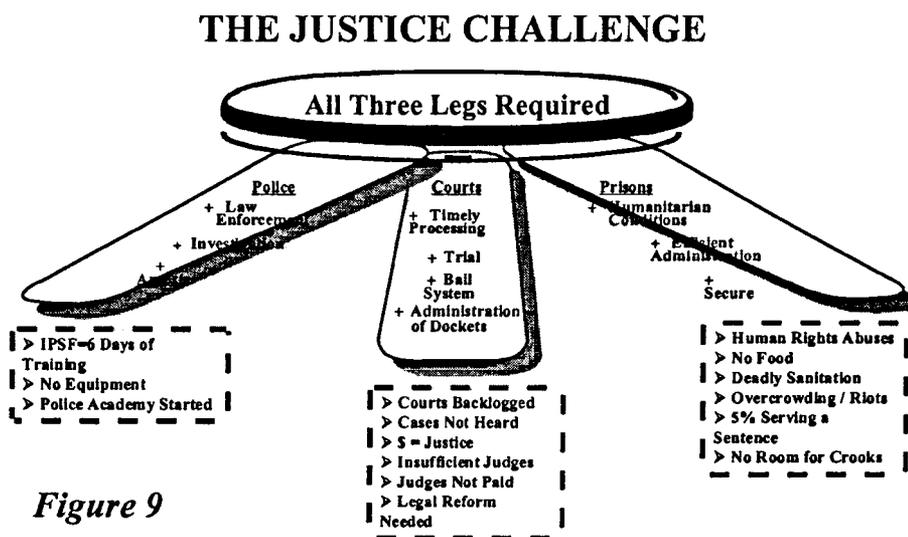


Figure 9

Operational lawyers figured prominently in efforts to fix each of the three legs. With narrow exceptions, the law precludes the United States military from training and equipping foreign police forces.³³⁶

³³⁵ This figure is a slightly modified version of that contained in 25th ID Briefing Viewgraphs, *supra* note 58.

³³⁶ Programs that furnish training to foreign personnel must not be supported by appropriations intended to be used elsewhere, such as operation and maintenance (O&M) appropriations of United States forces. *See* 31 U.S.C. §§ 1301(a). Training of foreign forces should occur through the International Military Education and Training Program (IMET), *see* FAA, *supra* note 153, at §§ 541-45, 22 U.S.C. §§ 2347-47d, a Foreign Military Sales (FMS) case, *see* AECA, *supra* note 154, at §§ 21-22, 22 U.S.C. §§ 2761-62, or some other specifically

Accordingly, the main responsibility for helping the Haitian government build a competent police force free from corruption fell to Mr. Ray Kelly and officials from ICITAP.³³⁷ Still, judge advocates advised on whether and which weapons collected from the city streets and from the countryside could be turned over to the fledgling police force.³³⁸ They

authorized program. *See also The Honorable Bill Alexander, House of Representatives, B-213137 at Enclosure-1, Enclosure-20 to Enclosure-27 (Jan. 30, 1986) (holding that lengthy, elaborate instruction of foreign forces in artillery fire-direction practices and counterinsurgency techniques was not authorized to be financed with operation and maintenance appropriations) ([unpublished letter ruling of the Comptroller General] [hereinafter *Honduras II*]).* Moreover, Congress has specifically prohibited the training of police forces. FAA § 660(a), 22 U.S.C. § 2420(a). The exemption for longtime democracies with no standing armed forces and with good human rights records, *see* FAA § 660(c), 22 U.S.C. § 2420(c), does not seem to apply to Haiti.

Operational lawyers have been quick to point out that section 660 of the Foreign Assistance Act says only that foreign police forces may not be trained with "the funds made available to carry out *this Act*." *See, e.g.,* Stai Memorandum, *supra* note 35, at 15 (implicitly and resourcefully arguing thereby that section 660 places no prohibition on the use of Department of Defense funds). The more defensible position is that section 660, in conjunction with the purpose statute, *see* 31 U.S.C. § 1301(a), prevents *any* support of the Congressional scheme for police training by *any* appropriations intended to be used elsewhere. A wise approach, which was employed in Somalia, is to bring these statutory prohibitions to the Ambassador's attention so as to seek a Presidential invocation of special authority. *See* Presidential Determination No. 93-43 of Sept. 30, 1993, 58 Fed. Reg. 52207 (1993), *reprinted in* S. COMM. ON FOREIGN RELATIONS & HOUSE COMM. ON FOREIGN AFFAIRS, LEGISLATION ON FOREIGN RELATIONS THROUGH 1993, vol. I-A, at 613-14 n. 696 (1994) [hereinafter LEGISLATION ON FOREIGN RELATIONS THROUGH 1993] (invoking FAA § 614(a), 22 U.S.C. § 2364(a) and directing use of Department of Defense resources to assist the United Nations in training police forces in Somalia "without regard to . . . section[] . . . 660 of the Foreign Assistance Act of 1961"). Pending the Presidential determination, ensure that all uses of military funds can be clearly linked to the mission statement. *See* Interview with Brigadier General Walter B. Huffman, Staff Judge Advocate for USCENTCOM during Operation Restore Hope, in Charlottesville, Virginia (Sept. 6, 1995). Interestingly, this is one sense in which it is helpful to have an expansive mission statement. The countervailing consideration is that expansive mission statements lend themselves to "mission creep," the process by which well-equipped, responsive, efficient military forces are dedicated to tasks that are not specifically identified in the mission statement. *See, e.g.,* Major General S.L. Arnold and Major David T. Stahl, *A Power Projection Army in Operations Other Than War*, PARAMETERS, Winter 1993-94, at 4, 12-13 (describing the process of mission creep during 10th Mountain Division operations in Florida and Somalia and noting that "broad mission statements with unclear end states may be necessary in a crisis; they certainly provide the maximum flexibility to the operational and tactical commanders").

³³⁷ *See, e.g.,* Raymond W. Kelly, *Learning When to Wear Gloves*, N.Y. TIMES, Apr. 2, 1995, at 4:1 (providing an account of how Mr. Kelly perceived his mission).

³³⁸ *See supra* note 250.

helped commanders and military police plan and execute operations to quell vigilante violence that resulted from frustration over the early inability of that force to fight crime.³³⁹ They advised military police investigating and tracking Haitian criminals during the trainup period for the Haitian police force.³⁴⁰

Judge advocate contributions toward strengthening the “prisons” leg of the stool were equally varied and important. A judge advocate served in the human rights investigation cell, and prisons were a frequent source of alleged human rights abuses.³⁴¹ Unsanitary conditions and the lack of food in Haitian prisons demanded well-drilling and minor construction, which judge advocates advised were appropriate expenditures of military appropriations to the extent they contributed to a secure and stable environment.³⁴² Noting that the vast majority of prisoners in the overcrowded prisons had never appeared before a judge, judge advocates invoked the Haitian constitutional provision requiring an appearance before a judge within 48 hours of detention.³⁴³ When on 19 February 1995 a riot broke out at the National Penitentiary, a judge advocate major was a principal adviser to the MNF Commander in controlling the disturbance.³⁴⁴ An active

³³⁹ See 25th ID Briefing Viewgraphs, *supra* note 58; Bush Remarks, *supra* note 293.

³⁴⁰ See Sposato Interview, *supra* note 216.

³⁴¹ See Wishard Interview, *supra* note 72; 10th Mountain Div. AAR, *supra* note 108, at 9 (“Because of the lack of dependable communications systems and a Haitian penchant for exaggerating rumor, many human rights allegations became difficult to investigate. Upon questioning, persons claiming to have witnessed human rights violations usually had only heard of them. Although many human rights violations were thought to have occurred after the ouster of Aristide in 1991, finding evidence of such violations became a difficult process.”).

³⁴² See Gordon Interview, *supra* note 220.

³⁴³ See Sposato Interview, *supra* note 216.

³⁴⁴ See Memorandum For Record, Major Mark Sposato, former Deputy Staff Judge Advocate of Multinational Forces Haiti, MNF-SJA, subject: Disturbance at the Federal Penitentiary (19 Feb. 1995) (reporting that the MNF Commander on the evening of the disturbance convinced the official from the Haitian Ministry of Justice to confront the problem of long pretrial detention periods). Of course, judge advocates were not alone in efforts to improve conditions at the prisons. See, e.g., Captain Robert Burns, *Automated Prisoner Tracking System—Haiti*, CENTER FOR ARMY LESSONS LEARNED (CALL) NEWS FROM THE FRONT, Jul.-Aug.

component judge advocate fluent in French and reserve component attorneys served on the ministerial advisory team that conducted on-site evaluations of all Haitian prisons and developed a comprehensive program of reform. That team also arranged a judicial review of detainee cases that resulted in the release of over 300 individuals, greatly easing the overcrowding problem.

3. *Be Prepared to Mentor Foreign Judges and Ministry Officials.*³⁴⁵ The ministerial advisory team also served as “judicial mentors,” evidence that the “courts” leg of the stool demands elaborate and sophisticated support. During the assessment phase of the mentorship program, the team conducted on-site evaluations of 178 justices of the peace, 15 prosecutors, 15 courts of first instance, 15 investigating judges, and over 100 civil registrars. It completed a photographic survey of courthouses. The team brought about the first direct contact between the Ministry of Justice and the justices of the peace. It audited the skills of court personnel, and court records, inventoried supplies, surveyed caseload distribution, and evaluated the

1995, at 17-19 (describing the database for tracking prisoners developed by Second Lieutenant Jincy R. Pace, the platoon leader for 1st Platoon, 66th Military Police Company).

³⁴⁵ The information in this paragraph and the two that follow it is based upon the following sources: Memorandum, Colonel Daniel Laurence Rubini & Lieutenant Colonel Michael Cleary, to Brigadier General Bruce B. Bingham, subject: After-action Report Operation Uphold Democracy Ministry Advisory Team—Justice, 30 Oct. 1994 to 15 Dec. 1994 (Dec. 1994) (copy on file with CLAMO); Colonel Daniel Laurence Rubini & Lieutenant Colonel Michael Cleary, to Brigadier General Bruce B. Bingham, subject: After-action Report—TTAD Haiti 1 April to 15 May 1995 (May 1995) (copy on file with CLAMO); Savoie Memorandum, *supra* note 68; Lieutenant Colonel Philip A. Savoie, Former Member of the Team of Ministerial Advisors in Haiti, Before the Haiti After Action Review Conference in Charlottesville, VA (May 9, 1995) [hereinafter Savoie Remarks] (videotape on file with CLAMO); United States Army Civil Affairs and Psychological Operations Command (USACAPOC) Ministerial Advisory Team, Census Report: Justice of the Peace Courts—Republic of Haiti (15 April 1995); Memorandum, Mark L. Schneider, U.S. Agency for International Development, to Mr. Walter B. Slocombe, Lieutenant General Wesley Clark, and Vice Admiral Harold W. Gehman, Jr., subject: Judicial Monitors/Mentors Program (9 Jan. 1995) (copy on file with CLAMO); Message, Ambassador Swing to United States Dep’t. of State, subject: Haiti Justice System: Problems and Prospects (Dec. 1, 1994) copy on file with CLAMO); Major Lawrence K. Peterson, U.S.A.R., *Mentoring Justice in an Unjust Land*, OREGON STATE BAR BULLETIN, Jul. 1995, at 13-16; Lieutenant Colonel Bill Maddox, *Haiti Recovers*, ARMY RESERVE MAGAZINE, Spring 1995, at 18-19; Mike Dorning, *Justice Eludes Aristide’s Haiti; Slow-Moving Reforms Bring Little Change to Corrupt Courts*, THE RECORD, Mar. 3, 1995, at B9; Eric Schmitt, *Judge Who is Also a General Repairs Haitian Judicial System*, N.Y. TIMES, Aug. 27, 1995, at 34.

scheme of compensation for judicial officers. The team also assessed the ability of the ministry of justice to supervise the judicial system.

During the recommendation phase, the team encouraged the Ministry of Justice to establish a program for court security. The team recommended a program of construction and renovation of courthouses and identified 20 courthouses for immediate action. It advocated the establishment of a national judicial training center on the grounds of the former military academy and the creation of a supervision program to audit judicial processes, investigate corruption complaints, monitor training, and develop a code of judicial ethics.

During the implementation phase, the team planned and coordinated the transformation of the military academy into a national judicial training center. It obtained and distributed 208 sets of legal codes containing Haitian laws. The team created, reproduced, and distributed more than 25,000 legal forms. It coordinated the construction and renovation plan for the 20 courthouses identified for immediate action, and prepared a feasibility study on a plan to purchase and install prefabricated courthouses. The team printed and distributed 5000 copies of the Constitution of Haiti and 900 civil registers. The team also identified local suppliers for 200 manual typewriters for distribution to justices of the peace and arranged for distribution.³⁴⁶

³⁴⁶ These activities of judge advocates also served the campaign objectives of the Joint Psychological Operations Task Force. See USACOM Briefing Viewgraphs, *supra* note 37 (listing among the objectives “increase awareness of democracy,” “present positive image of U.S. intent,” and “increase support for Government”).

This report elaborates the formal program of mentoring that began months into the deployment. However, as the Staff Judge Advocate for the MNF during the first month observes,

a similar, rudimentary program can be instituted early in an operation. By the second week of the operation, with the help of our Port-au-Prince born interpreter, we were in a courthouse in north PAP, meeting the clerks and the judge. It was real interesting: The judge wanted to quit but was told she would be imprisoned if she quit. We worked with her, told her about our system of

I. Criminal Law.

The state of good order and discipline in an armed force determines whether it is capable of upholding the rule of law. During military operations in Haiti—as during other deployments in recent years—United States units displayed a level of discipline that is possible only when a responsive and fair system of criminal justice undergirds effective training and leadership.³⁴⁷ Military service in a squalid, impoverished, and politically unstable country is arduous and stressful. Although good logistical support and resourceful leaders can do much to mitigate these hard conditions, commanders must sometimes resort to punitive sanctions to ensure that soldiers, sailors, airmen, and marines do not pursue unlawful alternatives to dutiful service.

justice, brought her in to view our court-martial, and discussed the Haitian system. This worked very well, . . . The point, I think, for JAs, is that you don't have to wait for Dept of State or Justice to come in and start a program. JAs are particularly well-suited to start up a simplified criminal court system in a less-developed country. We also started showing up at the Palace of Justice in downtown PAP just to observe appellate proceedings. Many Haitian lawyers credited our simple presence and discussions with judges with giving their system legitimacy with the Haitian people, with showing US respect for Haitian institutions, and with "effecting a flight of bad elements: from the courthouses. Also, in travels around the country, we always visited courthouses and police stations where local magistrates often handled judicial matters. By doing this . . . and doing it early in the operation . . . JAs can obtain valuable information for later, more formal programs, build good will with the local populace, and begin helping the country's legal system much earlier.

See Electronic Mail Message, Staff Judge Advocate, 10th Mountain Division (LI) and Fort Drum, warnerk@drum-emh1.army.mil, to Deputy Director, Center for Law and Military Operations (24 Oct. 1995) (copy on file with CLAMO).

³⁴⁷ See, e.g., General William C. Westmoreland, *Military Justice—A Commander's Viewpoint*, 10 AM. CRIM. L. REV. 5, 9 (1971).

Some might argue that the small number of courts-martial for misconduct in Haiti indicates a decreased need for a system of military justice that gives such a central role to the commander.³⁴⁸ Such an argument would be specious for at least six reasons. First, although commanders convened only six courts-martial relating to conduct in Haiti,³⁴⁹ hundreds of servicemembers received nonjudicial punishment for minor offenses.³⁵⁰ Second, most charged offenses were distinctly military crimes, such as disrespect, failure to repair, and failure to obey lawful orders. Third, a low rate of indiscipline is precisely the object of the military justice system and reflects its success, not a need for change. Fourth, the duration of any single soldier's stay in Haiti was almost always less than six months, hardly a period long enough to demonstrate the full utility of a system built for potential long-term wartime deployments. Fifth, although arduous, conditions in Haiti rarely threw soldiers into the crucible of hostile fire, which must remain the ultimate context for the system's assessment.

The criminal prosecutions that did occur not only ensured discipline, they demonstrated vitality in the doctrine of extra-territoriality of jurisdiction.³⁵¹ Although academic skepticism of the

³⁴⁸ Cf. Charles W. Schiesser & Daniel H. Benson, *A Proposal to Make Courts-Martial Courts: The Removal of the Commander From Military Justice*, 7 TEXAS TECH L. REV. 559, 600 (1976); Jonathan Lurie, *Military Justice 50 Years After Nuremberg: Some Reflections on Appearance v. Reality* 13-15 (1995) (draft of article presented to conference held in Charlottesville, Virginia on 18 November 1995, to be published in volume 149 of the *Military Law Review*) (copy on file with CLAMO) (approvingly referring to several authors' suggestions that the commander's role in the military justice system be reduced).

³⁴⁹ See 10th Mountain Div. AAR, *supra* note 108, at 13; O'Brien Interview, *supra* note 46; Passar AAR, *supra* note 120 at paras. 5e & 6h; Sposato Interview, *supra* note 216.

³⁵⁰ Activity in nonjudicial punishment was substantial even after numbers of United States troops dropped to the 2,400 participating in the UNMIH. See Memorandum, Captain Carl O. Graham, Defense Counsel in United States Army Trial Defense Service Supporting Soldiers in United States Forces Haiti, USFORHAITI-JA-TDS, to MAJ Michael Hargis, Senior Defense Counsel, United States Army Trial Defense Service, Fort Hood, Texas, subject: Clients and Hours (21 July 1995) (reporting 9 Article 15 clients for April, 6 for May, 9 for June, and 5 for July).

³⁵¹ See *supra* note 157 and accompanying text.

doctrine wisely acknowledges the interests of state sovereignty, punctures a dubious legal fiction of implied consent, and encourages states to put their agreements in writing, the doctrine nevertheless offers a principled and useful approach to achieving accountability and order in the ranks. This approach is simply to apply, on foreign soil, United States military criminal law and process, which commanders, operational lawyers, and soldiers know well.³⁵² The doctrine supports a commander's decision to discipline a soldier who commits an offense 10 days after the deployment but before President Aristide has returned to power and before a status of forces agreement can be signed.

1. Seek Court-Martial Convening Authority for the Joint Task Force Commander Over All Members of the Joint Task Force.

Discipline and effectiveness in a military force are achieved through unity of command. Unity of command means "that all the forces are under one responsible commander," and "[i]t requires a single commander with the requisite authority to direct all forces in pursuit of a unified purpose."³⁵³ This time-honored principle of military operations provided much of the motive force behind the move toward joint commands in the United States military.³⁵⁴ It also accounts for the long tradition by which the senior military commander in an area of operations has been empowered to convene military tribunals to hear all cases arising in that area and to enforce general orders throughout his command.³⁵⁵ The successive joint task force commanders of United

³⁵² See DEP'T OF ARMY, PAMPHLET 27-173, TRIAL PROCEDURE, para. 7-3 (31 Dec. 1992) (construing *The Schooner Exchange v. M'Faddon*, 11 U.S. (7 Cranch) 116, 144, 147 (1812), and explaining that case as the basis for implying—in MCM, *supra* note 157, R.C.M. 201(d)(3)—immunity of visiting forces from criminal jurisdiction of a foreign power during peacetime).

³⁵³ See FM 100-5, *supra* note 13, at 2-5. Military doctrine modifies but does not scrap this principle during operations other than war. See *id.* at 13-4 (describing the principle of "unity of effort").

³⁵⁴ See *supra* note 29.

³⁵⁵ See, e.g., 11 Op. Att'y Gen. 299, 305 (1865) ("The commander of an army in time of war has the same power to organize military tribunals and execute their judgments that he has to set his squadrons in the field and fight battles."); 2 W. WINTHROP, MILITARY LAW AND PRECEDENTS 798-830 (2d ed. 1896); JOHN A. APPLEMAN, MILITARY TRIBUNALS AND

States servicemembers in Haiti—Lieutenant General Shelton, Major General Meade, and Major General Fisher—sought unity of command by issuing or reissuing *General Order Number 1*, reprinted at *Appendix U*. By creating a uniform set of rules pertaining to things such as alcohol consumption, sexual contact with the Haitian populace, and the taking of souvenirs, a general order also serves the related but distinct interests of justice and troop morale, as soldiers situated equally are treated equally.³⁵⁶

Operational and political factors will often be the most important influences in establishing a task force structure, but judge advocates must advise on the legal considerations and rules bearing upon unity of command. During Operations Desert Shield and Desert Storm, General Schwartzkopf was the senior commander in the area of operations and the signer of an earlier version of *General Order Number 1*.³⁵⁷ As a unified combatant commander, he possessed statutory authority to convene courts-martial for trial of members from every service and assigned to every subordinate headquarters.³⁵⁸ Thus, if a marine corps corporal or an Army special forces sergeant had violated *General Order Number 1* by consuming alcohol, General Schwartzkopf could have, if he deemed necessary, withheld the authority of subordinate commanders over the offense and disposed of the offense himself. This arrangement fully served the interests of unity of command.

INTERNATIONAL CRIMES 320-21 (1954); A. Wigfall Green, *The Military Commission*, 42 AM. J. INT'L L. 832, 834 (1948).

³⁵⁶ See ROGER SCRUTON, *DICTIONARY OF POLITICAL THOUGHT* 244 (1983) (attributing to Aristotle the notion that justice means 'treating equals equally').

³⁵⁷ See Huffman Remarks, *supra* note 118. Brigadier General Huffman was Staff Judge Advocate, United States Army VIIth Corps, a unit subject to *General Order 1* during the Persian Gulf Conflict, and later was Staff Judge Advocate for CENTCOM, which continued to use the identical order in later operations.

³⁵⁸ See UCMJ art. 22(a)(3); MCM, *supra* note 157, R.C.M. 201(e)(2)(A).

By contrast, the senior commanders in the area of operations in Haiti were joint task force commanders, whose authority to convene general courts-martial over members of sister services must come from the Secretary of Defense, and whose authority to convene lesser courts must come from the unified combatant commander-in-chief.³⁵⁹ These joint task force commanders retained authority in their capacity as corps or division commanders over soldiers in their original commands,³⁶⁰ but the marine corps corporal and the special forces sergeant assigned to, attached to, or under the operational control of the joint task force fell outside their reach.³⁶¹ While the original chain of command of these servicemembers could choose to enforce the joint task force commander's general order, unity of command was frustrated on several occasions.³⁶²

³⁵⁹ MCM, *supra* note 157, R.C.M. 201(e)(2)(B) & (C).

³⁶⁰ See UCMJ, art 22(a)(5); see also Memorandum, Major General George A. Fisher, Commanding General, 25th Infantry Division (Light) and U.S. Army, Hawaii, APVG-CG, to The Judge Advocate General, subject: Request for Designation as General Court-Martial Convening Authority (13 Dec. 1994) (seeking general court-martial convening authority for a brigadier general to be placed in temporary command of 25th Infantry Division (Light) (Rear) and U.S. Army, Hawaii), *request granted by* Action, Secretary of the Army Togo West (Jan. 6, 1995) ("The Commander, 25th Infantry Division (Light) (Rear), is designated by me, pursuant to the Uniform Code of Military Justice, Article 22(a)(8), a general court-martial convening authority, effective 2 January 1995.") (copies on file with CLAMO). When deploying commanders take their convening authority with them, it becomes attractive, if not necessary, to seek separate convening authority for the commander remaining in the rear.

³⁶¹ See 600-20, *supra* note 284, para. 2-12b ("In general, court-martial jurisdiction by a member of one Armed Force over members of another should be exercised only when the accused cannot be delivered to the Armed Force of which the individual is a member without injury to the Service. Commanders of joint commands or joint task forces who have authority to convene general courts-martial may convene a court-martial for the trial of members of another Armed Force when specifically empowered by the President or Secretary of Defense to refer such cases for trial by courts-martial.")

³⁶² See 10th Mountain Div. AAR, *supra* note 108, at 14 ("Commanders of future joint operations need UCMJ authority over all military members of the joint command in order to enforce their general orders and to maintain morale, good order, and discipline."); Memorandum from Captain John Bickers, Senior Defense Counsel, United States Army Trial Defense Service, Fort Drum Field Office, AFZA-TDS, to Regional Defense Counsel, Region I, Fort Meade, Maryland, subject: After-Action Report—Operation Uphold/Maintain Democracy, para. 4 (2 Feb. 1995) [hereinafter Bickers Memorandum] (copy on file with CLAMO) ("There was an additional problem with the application of the general order: there was a widespread belief, unfortunately supported by the facts, that it was applied unevenly."); Interview with Captain John M. Bickers,

Early dialogue between the Staff Judge Advocates for the task force and the combatant command can identify and address these issues. The Commander-in-Chief of the combatant command has the power and duty to structure court-martial convening authority with respect to a joint task force.³⁶³ His Staff Judge Advocate will thus consider the myriad unique factors pertinent to command structure and court-martial convening authority within a particular concept of operation. Consultation with the Staff Judge Advocate for the task force commander will provide valuable information on some of these unique factors. In addition, both of these staff officers can increase the likelihood that the structure of convening authority ultimately adopted respects the principle of unity of command.

2. Emphasize to Soldiers That Neither General Guidance from the President Nor Personal Feelings About Atrocities Will Justify Disobedience. The deployment to Haiti was not the first and will not be the last deployment in which American soldiers may encounter evidence of war crimes³⁶⁴ or violations of humanitarian laws committed by a regime against its own citizens.³⁶⁵ Yet a court-martial

Former Trial Defense Counsel in Haiti, in Fort Leavenworth, Kansas (October 16, 1995); O'Brien Interview, *supra* note 46; cf. Bob Schacochis, *Our Two Armies in Haiti: Green Berets and Infantry*, TALLAHASSEE STAR TRIBUNE, Jan. 10, 1995, at 9A (discerning two armies, one conventional the other unconventional, in the same task force); Interview with Colonel Joe Graves, Former Staff Judge Advocate for 21st Theater Army Area Command and for the Joint Task Force carrying out Operation Provide Comfort in 1991, in Charlottesville, VA (Sept. 6, 1995) (noting that commanders of special operations forces during that operation sought to use preexisting UCMJ authority for military justice matters).

³⁶³ See 10 U.S.C. § 164 (c)(G) (1988).

³⁶⁴ As used here, the term "war crimes" denotes only violations of the laws or customs of war, *see, e.g.*, 2 L. OPPENHEIM, INTERNATIONAL LAW §§ 252-52 (7th ed., H. Lauterpacht, 1955), as opposed to "Crimes Against Peace" and "Crimes Against Humanity" as those terms have been defined since 1945, *see* Charter of the International Military Tribunal, art. 6, *annexed to the Agreement for the Prosecution and Punishment of the Major War Criminals of the European Axis*, Aug. 8, 1945, 59 Stat. 1544, 82 U.N.T.S. 279 [hereinafter London Charter].

arising out of military operations in Haiti squarely raised the issue whether a soldier's personal interpretation of broad policy pronouncements about human rights violations or his own religious and philosophical views could justify disregard of command orders. They cannot.

The accused was United States Army Captain Lawrence Rockwood, a counterintelligence officer assigned to the 10th Mountain Division with place of duty in Haiti at the Combined Joint Task Force 190 Headquarters, located in the Light Industrial Complex in Port-au-Prince.³⁶⁶ On the evening of 30 September 1994, Captain Rockwood was scheduled for duty as the senior officer in charge of the J-2 Counter-Intelligence Human Intelligence Cell in the Headquarters. A perimeter wall surrounded the secure compound that included the Headquarters, and security guards imposed on those seeking to leave the compound a minimum of two vehicles per convoy and two persons per vehicle. Captain Rockwood, armed with a loaded M-16 rifle, avoided the security guards by jumping over the perimeter wall. Then he traveled about six kilometers to the National Penitentiary, where Haitian authorities had remained responsible for the prisoners, and demanded entry. After learning that Captain Rockwood was making an unannounced appearance at the prison, Major Lane, the military attache at the United States embassy, went to the prison in order to prevent an altercation. Captain Rockwood then insulted Major Lane and denounced the chain of command, claiming that President Clinton's televised speech on 15 September gave him authority to prevent human rights abuses. About two hours later, Major Lane succeeded in calming

³⁶⁵ See London Charter, *supra* note 364, at art. 6 (defining Crimes Against Humanity); Convention on the Prevention and Punishment of the Crime of Genocide, opened for signature Dec. 11, 1948, art. II, 78 U.N.T.S. 277, *reprinted in* 45 AM. J. INT'L L. 7 (Supp. 1951) [hereinafter Genocide Convention] (defining genocide as killing and other acts "committed with intent to destroy, in whole or in part, a national, ethnic, racial, or religious group").

³⁶⁶ Unless otherwise noted, the information in this paragraph and the two following it is based upon the 14 volume record of trial of United States v. Rockwood (10th Mountain Div. 22 Apr. & 8-14 May 1995) (copy on file with CLAMO).

Captain Rockwood down, convinced him to unchamber the round in his rifle, and got him to leave the prison.

The charges consisted of failure to go to his place of duty at the Headquarters on the evening of 30 September;³⁶⁷ violation of an order not to leave the compound without the proper convoy;³⁶⁸ dereliction in performance of duty to leave only in a proper convoy;³⁶⁹ going from his place of duty at the hospital ward to which he was taken after leaving the prison;³⁷⁰ disrespect to Lieutenant Colonel Bragg, whom he confronted and shouted down after leaving the hospital;³⁷¹ disobedience to Lieutenant Colonel Bragg, who repeatedly had ordered him to “stop talking,” and to “lower his voice” during the post-hospital confrontation;³⁷² and conduct unbecoming an officer and gentleman for the entire course of events leading up to his departure from the prison.³⁷³ On 14 May 1995, a general court-martial in Fort Drum, New York found Captain Rockwood guilty of all but the two charges pertaining to the convoy procedures. It sentenced him to dismissal and total forfeiture of pay and allowances.

The case is instructive, and its facts and legal principles bear emphasis with deploying soldiers.³⁷⁴ The transcript of Captain Rockwood’s May 1995 statement before a Congressional subcommittee, reprinted at *Appendix V*, contains many of the arguments the accused and counsel forwarded at his court-martial. *Appendix V*

³⁶⁷ See UCMJ art. 86.

³⁶⁸ See UCMJ art 92.

³⁶⁹ See UCMJ art 92.

³⁷⁰ See UCMJ art 86.

³⁷¹ See UCMJ art 89.

³⁷² See UCMJ art. 90.

³⁷³ See UCMJ art. 133.

³⁷⁴ See UCMJ art. 137 (requiring explanation of the UCMJ to enlisted members upon entrance on active duty, 6 months later, and then again upon reenlistment). Many commands require periodic briefings of all personnel to ensure compliance with article 137.

also reprints contrasting testimony from a retired judge advocate Colonel, who provided the subcommittee a well-reasoned summary of why, in the end, Captain Rockwood's affirmative defenses of duress and justification failed.³⁷⁵

3. Be Prepared to Conduct Courts-Martial in the Area of Operations. Five of the six courts-martial arising out of the Haiti deployment were held in the United States.³⁷⁶ The decision as to where the courts should be held must take into account the location of witnesses and other evidence, the likely duration of deployment and the concomitant effect that duration will have on witness availability, the ability of counsel, military judge, and court reporters to complete their myriad pre-trial and trial duties in primitive facilities that must be equipped and prepared from scratch, and the alternative demands on the court personnel and resources proposed for deployment.³⁷⁷ Primarily because the deployment was short for any given unit and because essential witnesses generally did not include Haitian nationals, these factors militated in favor of trials back in the United States.

³⁷⁵ The case has stirred great media interest, further establishing the Haiti intervention as a media extravaganza. See, e.g. Lawrence Di Rita, *Court martial With Haitian Policy Links*, THE WASHINGTON TIMES, Apr. 17, 1995, at A17; Bob Gorman, *The Beatification of Capt. Lawrence Rockwood*, WATERTOWN DAILY NEWS, May 7, 1995, at G1; *Captain Won't Let Charges Be Dropped*, THE WASHINGTON TIMES, May 9, 1995, at A7; Francis X. Clines, *American Officer's Mission for Haitian Rights Backfires*, N.Y. TIMES, May 12, 1995, at A1; *Incident in Haiti Brings Dismissal of Army Captain*, WASH. POST, May 16, 1995, at A10; *The Real Lesson of the Rockwood Case: U.S. Military Interventions Will Require Special Human Rights Training*, LOS ANGELES TIMES, May 16, 1995; *Court-Martialed Officer Gets Rights Award*, N.Y. TIMES, May 19, 1995, at 22; Colonel David H. Hackworth, *When Duty and Conscience Clash: Why Warriors Shouldn't Follow Blindly*, NEWSWEEK, May 22, 1995, at 38; David H. Hackworth, *'Kangaroo Court' Ends Career of Exemplary Officer*, FORT LAUDERDALE SUN-SENTINEL, May 25, 1995, at 27A; Ron Lajoie, *A Soldier's Story*, AMNESTY ACTION, Summer 1995, at 6; Harry Summers, *The ACLU and the 'Dogs of War'*, WASH. TIMES, June 1, 1995, at A19.

³⁷⁶ See 10th Mountain Div. AAR, *supra* note 108, at 13-14; O'Brien Interview, *supra* note 46.

³⁷⁷ See OP. LAW HANDBOOK, *supra* note 9, at 17-1 to 17-2.

Yet our doctrine encourages courts-martial to be held as far forward as possible, throughout the operational continuum.³⁷⁸ The design of the military justice system supports that doctrine.³⁷⁹ Discipline and justice may depend on the ability to convene a court-martial and try an accused in a foreign host nation, where the court can hear all relevant and available testimony, and where the visibility of the process can encourage lawful conduct in the other soldiers in the command. The court-martial held in Haiti also served the salutary purpose of exercising the personnel and procedures of the military justice system that must continue to be used so that due process can be achieved in harsh and demanding conditions.³⁸⁰

J. Legal Assistance.

The deployment of thousands of military personnel to Haiti confirmed that legal assistance is a key readiness tool. A soldier's effectiveness during a military operation is a function of training, physical fitness, leadership, weaponry, intelligence, and supply. Yet it

³⁷⁸ See FM 27-100, *supra* note 9, at para. 6-4c ("Usually, courts-martial will be conducted in the accused's unit's area of operations. Trying courts-martial as far forward as possible will minimize disruption of the unit, provide better availability of witnesses, and speed the administration of military justice.").

³⁷⁹ See, e.g., UCMJ art. 26 (stating that "[a] military judge shall be a commissioned officer of the armed forces"); UCMJ art. 27 (b) (stating that trial counsel and defense counsel detailed for a general court-martial must be judge advocates).

³⁸⁰ This was *United States v. Pacheco* (10th Mountain Div. 1-3 Jan. 1995) (copy of record on file with the Office of the Staff Judge Advocate, 10th Mountain Div., Fort Drum, NY). A general court-martial found Specialist Pacheco guilty of larceny of a .357 caliber Desert Eagle pistol and dereliction of duty in that he stole the pistol while on guard duty. The court-martial sentenced him to be reduced to the grade of E1, to forfeit all pay and allowances, to be confined for six months, and to be discharged from the service with a Bad Conduct Discharge. The trial counsel in the case observed that trial of Specialist Pacheco in Port-au-Prince had a visible and favorable impact on discipline in the command. See O'Brien Interview, *supra* note 46. *But cf. generally* Bickers Memorandum, *supra* note 362, at para. 6 (The trial went fairly smoothly, but there may be a built-in ineffectiveness claim in that the soldier represented by a TDS counsel went to trial in Haiti (over strong objection) while the soldier who retained civilian counsel was able to avoid trial there."). See also *generally* Colonel Keith H. Hodges, former Circuit Judge, Second Judicial Circuit, United States Army Trial Judiciary, Notes on Trying Cases in Haiti (5 Dec. 1994) (copy on file with CLAMO) (describing practical aspects of conducting the trial).

is also a function of his or her ability to focus undivided attention on the mission. Disputes with landlords or creditors, marital difficulties, tax filing deadlines, fears about a potentially adverse or costly administrative action, concerns about the hardships that death might bring to surviving family members—these and other personal legal problems can consume the attention of soldiers, reduce individual efficiency, and create discipline problems.

In addition, as with other benefits provided to soldiers, legal assistance makes a small but significant contribution to the military's efforts to retain experienced and skilled soldiers. Observers have emphasized that success in Haiti was due in part to the base of experience many deployed soldiers and units enjoyed.³⁸¹ Success in future operations may depend upon how well the package of pay, advancement opportunities, and other benefits affects retention rates. The majority of Americans are unwilling to endure the sacrifices the military demands of its uniformed men and women. According to Department of Defense surveys, less than 25 percent of eligible males are interested in joining the military.³⁸² Only 17 percent of those who do join are willing to serve for 20 years.³⁸³

Along with pay and entitlements, a sound apparatus of group life insurance, free medical care, counseling services, and recreational opportunities for families, legal assistance helped mitigate the great personal and family sacrifices the deployment to Haiti entailed. It may have been the most important contribution judge advocates made to the operations, and it consisted of thousands of individual letters,

³⁸¹ See, e.g., CALL INITIAL IMPRESSIONS VOL. I, *supra* note 214, at 1; cf. UNITED STATES ARMY TRAINING AND DOCTRINE COMMAND, CENTER FOR ARMY LESSONS LEARNED (CALL), THE U.S. ARMY AND UNITED NATIONS PEACEKEEPING: HAITI INITIAL IMPRESSIONS VOL. III, at 224 (Jul. 1995) [hereinafter CALL INITIAL IMPRESSIONS VOL. III] ("The JAG operation with the MNF benefited greatly by having attorneys assigned with experience in OOTW and intelligence law.")

³⁸² THE RETIRED OFFICERS ASSOCIATION, SHEDDING LIGHT ON THE FACTS: READINESS, ENTITLEMENTS, AND THE MILITARY RETIREMENT SYSTEM 4 (Dec. 1994).

³⁸³ See *id.*

documents, interviews, filings, and other tasks. These tasks contributed to military effectiveness because individual legal assistance attorneys—operational lawyers all—consistently employed compassion as well as legal acumen in performing their duties.

1. Expect the Rush in Demand for Wills. The 10th Mountain Division and the other units notified of impending service in Haiti profited from having sound soldier readiness programs. Close and continuous coordination with the Chief of the Military Personnel Division of the division staff G-1 element and the other members of the Soldier Readiness Processing Team had resulted in effective assessments of soldier readiness during in-processing, during annual checkups, and during emergency deployment readiness exercises (EDRE's).³⁸⁴ In particular, the judge advocates manning Station 6, the designated legal station, provided detailed guidance at Station 5, the finance station,³⁸⁵ to ensure soldiers were fully informed before designating individual, trust, or estate beneficiaries under the Servicemen's Group Life Insurance Program.³⁸⁶

Yet even an efficient system of readiness checks did not preclude a surge of demand for legal services when units received official notice

³⁸⁴ See 10th Mountain Div. AAR, *supra* note 108, at 15-16; Wishard Interview, *supra* note 72.

³⁸⁵ See DEP'T OF ARMY, REG. 600-8-101, PERSONNEL PROCESSING, Table 5-1 (26 Feb. 1993) (depicting the steps and work centers by which a soldier completes the readiness check).

³⁸⁶ See DEP'T OF ARMY, REG. 600-8-1, ARMY CASUALTY OPERATIONS/ASSISTANCE/INSURANCE, paras. 11-29 to 11-30 (20 Oct. 1994) (stating that soldiers may no longer designate beneficiaries "By Law" or "By Will" and providing guidance on how to counsel a soldier on the naming of beneficiaries); THE JUDGE ADVOCATE GENERAL'S SCHOOL, JA 272, DEPLOYMENT GUIDE, at 3-28 to 3-31 (Feb. 1994) [hereinafter JA 272] (including sample language for the designation of individual and trust beneficiaries).

of deployment.³⁸⁷ For instance, judge advocates in the 10th Mountain Division prepared and supervised the execution of about 1600 wills at the around-the-clock soldier readiness check site. These were predominantly simple wills that excluded trusts or specific bequests. Soldiers with families or more complicated estates and preferences were handled by exception, through individual appointments at the legal assistance office. By contrast to this predeployment surge, judge advocates from the 10th Mountain Division drafted only 12 wills in Haiti.

Expect the predeployment surge. Ensure that all judge advocate personnel are trained to use the Minuteman will program on the Legal Assistance module of the Legal Automation Armywide System.³⁸⁸ Exercise setup procedures, equipment, and legal personnel during EDRE's. Know the locations, capabilities, and willingness of individual mobilization augmentee (IMA) judge advocates to serve during the predeployment period.³⁸⁹ Coordinate with the local bar for estate planning assistance. None of these measures would be novel,³⁹⁰ but Haiti illustrated that old problems are as challenging as new ones.

2. Educate Soldiers That Deployment Does Not Dissolve Their Debts. Although it is difficult to determine conclusively why at least 50 soldiers who deployed for Uphold Democracy required legal assistance for debt-related issues, the attorneys who represented the soldiers surmise that part of the problem may be a misunderstanding of the Soldiers and Sailors Civil Relief Act.³⁹¹ That Act *suspends*

³⁸⁷ The information in this paragraph is based on 10th Mountain Div. AAR, *supra* note 108, at 15-16.

³⁸⁸ See DEP'T OF ARMY, REG. 27-3, THE ARMY LEGAL ASSISTANCE PROGRAM (30 Sept. 1990).

³⁸⁹ See *infra* subpart III.N.1.

³⁹⁰ See, e.g., DSAT REPORT, *supra* note 3, at Legal Assistance-1 to Legal Assistance-24.

³⁹¹ See 10th Mountain Div. AAR, *supra* note 108, at 15; Wishard Interview, *supra* note 72; Gordon Interview, *supra* note 220.

enforcement of civil liabilities in certain cases “in order to enable [persons in military service] to devote their entire energy to the defense needs of the Nation.”³⁹² With respect to reserve component personnel called to active duty, certain types of suspension provided by the Act may occasionally translate to permanent monetary gain, as when a preexisting loan establishes an interest rate higher than six percent.³⁹³ In cases involving soldiers who incurred civil liabilities while on active duty, however, the Act’s provisions truly work nothing more than a suspension of proceedings.³⁹⁴ The Act’s stay of proceedings rule—well known to operational lawyers and frequently invoked in conversation by “barracks lawyers”—may be misinterpreted by soldiers to mean that deployment will automatically excuse them from paying bills or appearing in court.

Soldier readiness checks provide a good opportunity to explain the limits of the protections provided by the SSCRA.³⁹⁵ Ensure that

³⁹² See 50 U.S.C. App. § 510; guide at 1-4.

³⁹³ In such a case, 50 U.S.C. App. § 526 (1988 & Supp.) arguably limit the rate to 6 percent for the period of active duty. Creditors cannot respond by changing terms of existing credit arrangement. See 50 U.S.C. App. § 518 (1988 & Supp.); Major James P. Pottorf, *Soldier and Sailors’ Civil Relief Act Note: The Soldiers’ and Sailors’ Civil Relief Act Amendments of 1991*, ARMY LAW., May 1991, at 46, 47-48.

³⁹⁴ Moreover, even to obtain a stay of proceedings, care must be taken to invoke the Act without the court deeming the soldier to have made an appearance and thus to have waived the Act’s protections. See OP. LAW HANDBOOK, *supra* note 9, at 19-6 (recommending that requests for stays of civil proceedings should be made via letter from the soldier’s commanding officer).

³⁹⁵ The opposite problem is that soldiers may not know the protections are there. The 10th Mountain Division reported that several soldiers unnecessarily defaulted judgments in paternity and custody suits. See Lieutenant Colonel Richard E. Gordon, Former Deputy Staff Judge Advocate for MNF Haiti, Remarks Before the Haiti After Action Review Conference in Charlottesville, VA (May 8, 1995) (videotape on file with CLAMO) [hereinafter Gordon Remarks].

Of course, even clients entitled to relief and receiving sound legal advice may opt not to pursue remedies in court. One example arose out of the deployment to Somalia. In December 1993, a soldier deployed to Somalia to participate in Operation Restore Hope. His spouse vacated their apartment in January 1994 and left the state with all the couple’s household goods. She failed to pay the rent. After posting a Notice of Motion for Judgment on the apartment door, the apartment manager obtained a default judgment against the soldier. The court had failed to

Station 6 is large enough and contains enough seats to permit a short class to be given to groups of soldiers who are awaiting completion of processing elsewhere. During this class, emphasize that the Army requires soldiers to manage their personal affairs satisfactorily and to pay their debts promptly.³⁹⁶ Deployment does not eliminate this requirement. Also use this opportunity to mention the commander's obligation not to settle disputed debts and to insist that creditors meet all conditions before receiving help in debt processing. Such a class should supplement rather than replace all of the other elements of the preventive law program,³⁹⁷ but its use could clear up a variety of common legal misunderstandings while also stimulating soldiers to ask questions and resolve other legal concerns.

Of course, debt disputes often result from an inability to pay rather than a misunderstanding of the obligation to do so. This deeper problem challenges judge advocates and other providers of family services to equip soldiers and spouses with budgeting skills, debt restructuring, and a clear understanding of the career and life consequences of failing to ensure inflows exceed outflows.³⁹⁸ During the deployment to Haiti, many families' financial matters came under

ensure filing of the affidavit required by the SSCRA, *see* 50 U.S.C. App. § 520, thus entitling the soldier to move the court to reopen the judgment. His Army legal assistance attorney counseled him to take advantage of this available remedy, but the soldier, electing to "put it behind him," paid the judgment, including court costs. He was denied access to his credit union account for almost two weeks while the matter was being addressed. *See generally* Memorandum, Lieutenant Colonel Craig Reinold, Deputy Staff Judge Advocate, United States Army Training and Doctrine Command, ATJA, to Deputy Director, CLAMO, subject: SSCRA Case (7 Dec. 1995) (copy on file with CLAMO).

³⁹⁶ *See* DEP'T OF ARMY, REG. 600-15, INDEBTEDNESS OF MILITARY PERSONNEL, para. 1-5 (14 Mar. 1986).

³⁹⁷ DEP'T OF ARMY, REG. 27-3, THE ARMY PREVENTIVE LAW PROGRAM, para. 3-4 (30 Sept. 1992) [hereinafter AR 27-3].

³⁹⁸ *See, e.g.*, DEP'T OF ARMY, REG. 608-1, ARMY COMMUNITY SERVICE PROGRAMS, para. 9-3 (30 Oct. 1990) (describing the basic prevention education program, the financial counseling program, and the debt liquidation assistance program); David D. Lennon, *Bankruptcy Overview for Military Legal Assistance Attorneys* (1992) (on file in the library of The Judge Advocate General's School).

great strain because the civilian spouse suddenly inherited the responsibility to balance the checkbook while lacking the skills or the maturity to make ends meet.³⁹⁹ For young spouses in Fort Drum, financial difficulties often combined with anxieties over spending a first winter away from home in a region where heavy snowfalls are common.⁴⁰⁰

3. Discourage General Powers of Attorney. Soldiers often seek to lessen the inconveniences that confront loved ones back home by providing them powers of attorney. Legal assistance offices, deployable footlockers, and the LAAWS legal assistance module ensure a healthy supply of these forms. Yet while foresight about personal matters at home is commendable, the general power of attorney is frequently too blunt an instrument to accomplish soldiers' purposes. As with other deployments in recent years, military operations in Haiti produced their share of gross abuses by attorneys-in-fact who possessed general powers.⁴⁰¹

Encourage soldiers to create special rather than general powers of attorney. Explain the misunderstandings that can develop when many miles and many weeks come between people who initially share great mutual affection and trust.⁴⁰² Instruct upon the procedures one must take to revoke a power of attorney.⁴⁰³ Cite a few real-world cases in which powers were abused.⁴⁰⁴ A healthy relationship will not fall

³⁹⁹ See Gordon Remarks, *supra* note 395.

⁴⁰⁰ *Id.*

⁴⁰¹ See 10th Mountain AAR, *supra* note 108, at 15-16.

⁴⁰² See DEP'T OF ARMY, REG. 27-26, RULES OF PROFESSIONAL CONDUCT FOR LAWYERS, Rule 2.1 (1 May 1992) ("In rendering advice, a lawyer may refer not only to law but to other considerations, such as moral, economic, social, and political factors, that may be relevant to the client's situation, but not in conflict with the law.").

⁴⁰³ See, e.g., JA 272, *supra* note 386, at 3-32 to 3-33.

⁴⁰⁴ One such case involved a client of Lieutenant Colonel Mark Rassas, U.S.A.R., highly respected Clarksville trial attorney and Chief of Legal Assistance, Fort Campbell, Kentucky during Operations Desert Shield and Storm. The client was a staff sergeant, married but

into disrepair or distrust over the judicious granting of a power of attorney, particularly when one emphasizes that each member of any mature association remains responsible for certain personal obligations. Such counsel can help prevent soldiers from giving powers lightly.⁴⁰⁵

childless, who deployed to Saudi Arabia with the 101st Airborne Division (Air Assault) in late 1990. The spouse remained in the Fort Campbell area and possessed a general power of attorney that the staff sergeant had obtained from the legal assistance office and delivered to the spouse prior to deployment. In the space of a few months, the spouse used the power of attorney to purchase a home, a new car, and elaborate furnishings. The spouse then abandoned the home, taking the car and many of the furnishings to another state. The soldier—who sought legal assistance in the spring of 1991 and at that time became Lieutenant Colonel Rassas' client—returned to find no money in the joint checking account held with the spouse. This staff sergeant also faced numerous creditors who were unhappy not only because payments on the furnishings and automobiles had lapsed, but because the property in which they held security interests had vanished. Even as the country was celebrating the battlefield victory over Saddam Hussein's forces, this combat veteran was preparing to file a petition in bankruptcy court. *See generally* Telephone Interview with Lieutenant Colonel Mark Rassas (6 Dec. 1995).

Similar cases arise in all military services, and may involve abuse of special powers. A young airman stationed at Hurlburt Field, Florida, about to deploy to Saudi Arabia for 6 months in 1991, obtained a special power of attorney for his girlfriend so that she could manage his financial affairs while he was out of the United States. Though he was advised of the potential risks involved, the airman nevertheless insisted that he wanted the girlfriend to have the ability to access money in his accounts. Toward the end of the deployment, letters from his girlfriend stopped, and the airman began to receive calls from his First Sergeant regarding inquiries from creditors about delinquent bills. Upon return from the deployment, the airman learned that the girlfriend had removed all funds from the checking and savings accounts and moved to California with another man. *See* Memorandum, Lieutenant Colonel Anthony Cochet, U.S.A.F.R., and Labor Counselor, United States Army Training and Doctrine Command, ATJA, to Deputy Director, Center for Law and Military Operations, subject: Powers of Attorney (7 Dec. 1995) (copy on file with CLAMO).

⁴⁰⁵ Space considerations preclude extensive treatment of other legal assistance issues that arose during military operations in Haiti. One of these was the deployment of the 25th Infantry Division (Light) during income tax filing season. As mentioned in note 299, *supra*, the Internal Revenue Service granted service members an extension to file 1994 tax returns. The Armed Forces Tax Council, Office of the Under Secretary of Defense for Personnel & Readiness, formally obtained the extension. *See* Letter, Mr. Thomas J. Smith, Director, International District Operations, Department of the Treasury, Internal Revenue Service to Colonel Tom Abbey, Executive Director, Armed Forces Tax Council (9 Jan. 1995) (stating that the Service “will automatically provide an extension of time to file until December 15, 1995 for those members serving in [Haiti, the former Yugoslavia, or Surinam] on or after March 15, 1995) (copy on file with CLAMO). Judge advocates preparing for deployment coordinated heavily with the committee and argued persuasively and energetically for the extension. Yet the extension was not granted until 9 January, and Division troops were slated to depart in the early days of January.

K. Administrative Law.

One authority defines military administrative law as “the body of statutes, regulations, and judicial decisions that govern the establishment, functioning, and command of military organizations.”⁴⁰⁶ This broad definition suggests that administrative law forms a massive subset of operational law—namely the entire domestic law component. Procurement and fiscal law appear to fall within administrative law thus defined, as do environmental, claims, labor, and even criminal law.

Yet scholars and practitioners always treat criminal law *sui generis* because of the distinct procedures, forums, rules of evidence, and historical precedents that pertain to dispensing punitive sanctions.

To take maximum advantage of the time before departure, the Staff Judge Advocate for the 25th Infantry Division personally coordinated with the Internal Revenue Service and persuaded an official in its electronic filing section to allow the command’s soldiers to file their taxes early using only their Leave and Earnings Statements. The command implemented an accelerated training schedule for tax center personnel and began preparing and filing deploying soldiers’ taxes under an “Express Tax Service” program. In a few days’ time, 500 of the first wave of 1,200 deploying soldiers filed their returns electronically under this program. Finally, the command obtained an exception from the tax software manufacturer to the site licensing agreement (which initially allowed the electronic filing software to be used in Hawaii only), *see* Letter, Scott Crowley, Director of Sales, Drake Software, to Captain Erica Dunn, Fort Shafter, Hawaii (Dec. 7, 1995) (permitting copying and installation of software diskettes “for the purposes of assisting the military operations in Haiti” and stating that “[n]o payment is necessary for the used of this software in the Haiti operation”) (copy on file with CLAMO), and subsequently brought the software to Haiti.

Although judge advocates prepared tax returns in Haiti using the software, electronic filing was frustrated due to the inadequacy of telephone lines. As a result, soldiers filing from Haiti mailed in their returns. *See generally* Memorandum, Staff Judge Advocate, Headquarters, 25th Infantry Division (Light) and U.S. Army, Hawaii, APVG-JA., to Center for Law and Military Operations, JAGS-CLAMO, subject: Comments to Draft Version of Haiti Lessons Learned for Judge Advocates, para. 1b (24 Oct. 1995) (copy on file with CLAMO); Office of the Staff Judge Advocate, Headquarters, 25th Infantry Division (Light) and U.S. Army, Hawaii, Staff Judge Advocate Newsletter, Vol. I—Family Edition: Haiti Deployment, at 3-6 (15 Dec. 1994) (detailing the express tax service and providing other useful guidance for family support during the deployment) (copy on file with CLAMO).

⁴⁰⁶ DEP’T OF ARMY, PAMPHLET 27-21, ADMINISTRATIVE AND CIVIL LAW HANDBOOK, para. 1-1 (15 Mar. 1992).

Similarly, they tend to treat procurement law, claims, and many other subdisciplines that govern the functioning of military organizations separately. Separate treatment occurs over time partly due to the accumulation of distinct legal materials and partly due to chance evolution of organizational and management legal structures. Today, the term administrative law usefully groups a number of important topics that for one reason or another have not formed major separate branches of their own.⁴⁰⁷

The best rule of thumb in anticipating operational administrative law questions is to assume that if an issue arises in a peacetime installation context, it will arise in the context of deployment.⁴⁰⁸ The command continued to promote, reduce, and separate personnel.⁴⁰⁹ It made line of duty determinations, responded to requests for information under the Freedom of Information Act, protected disclosure of personal information in accordance with the Privacy Act, observed ethical restrictions, and surveyed lost property.⁴¹⁰ It executed leases of Haitian property,⁴¹¹ conducted urinalysis testing of troops,⁴¹² inspected local

⁴⁰⁷ *See id.* (surveying the law of military installations, military assistance to civil authorities, federal litigation, environmental law, military personnel law, line of duty, civilian personnel law, government information practices, the report of survey system, nonappropriated fund instrumentalities and private organizations, standards of conduct, and administrative due process); *OP. LAW HANDBOOK*, *supra* note 9, at ch. 16 (discussing conscientious objectors, environmental law, gifts, reports of survey, and 15-6 investigations); *DSAT REPORT*, *supra* note 3, at Administrative Law-1 to Administrative Law-10 & Issues 8, 32, 69, 111, 182, 237, 260, 329, 330, 383, 412, 436, 517, 583, 587, 608, 620, 639 (discussing conscientious objectors, reserve component status and mobilization, citizenship, war trophies, executive agency and its impact on warfighting, fratricide, gifts to the army, inadequacy of soldier dependent care plans, stop loss, review of legislation, and disharmony among component regulations).

⁴⁰⁸ *Cf. id.* at Administrative Law-1 (quoting then Colonel Walter Huffman, Staff Judge Advocate for VII Corps as saying “[i]f it was an admin law problem at home station, it will be a problem in the theater of operations. You cannot ship enough admin law materials”).

⁴⁰⁹ *See* Gordon Interview, *supra* note 220; Sposato Interview, *supra* note 216.

⁴¹⁰ *See id.*

⁴¹¹ *See, e.g.*, Memorandum, Major General George A. Fisher, Commander of MNF Haiti, to Distribution A, subject: Occupation and Leasing of Facilities in Haiti (25 Jan. 1995) (“Several complaints have been received from local property owners that U.S. forces are currently occupying private property without the owner’s permission, and/or a valid lease. Since we are in a

sources of food for sanitary conditions,⁴¹³ established policies for permitting Haitian vendors on United States military compounds,⁴¹⁴ and much much more. The following three lessons learned are merely representative of a broad range of questions fielded by judge advocates supporting military operations in Haiti.⁴¹⁵

permissive environment, we must secure permission or execute a lease before any use of property. . . The MNF Engineer real estate section is the only staff section authorized to execute leases on behalf of the U.S. Government.”) (copy on file with CLAMO); Passar AAR, *supra* note 120, at para. 6e (“For claims founded on contractual (lease) agreements, I advised that such claims should be handled in accordance with AR 405-15. Where occupancy was not accompanied by an agreement, I advised that an agreement should be sought covering the entire period of occupancy, as the regulation instructs.”).

⁴¹² See 25th ID Lessons Learned Memorandum, *supra* note 120, at para. 1b (“Commanders must maintain the capability to test unit readiness through a urinalysis testing program during deployment. Testing capability is especially important in a deployed environment such as Haiti where drugs are readily available.”).

⁴¹³ See Memorandum, Major General George A. Fisher, Commander, MNF Haiti, to Distribution A, subject: Food-Borne Illnesses, para. 2 (25 Jan. 1995) (“AR 40-657 Chapter 2, paragraph 2-3 specifically prohibits the purchase of foodstuffs from unapproved sources for troops to consume. Facilities which produce or store unprocessed and raw foods must be inspected by Veterinary Services to determine if sanitary procedures are adequate.”) (copy on file with CLAMO).

⁴¹⁴ See Memorandum, Major General George A. Fisher, Commander, MNF Haiti, to Distribution A, subject: Policy on Haitian Vendors on U.S. Military Compounds (25 Jan. 1995) (copy on file with CLAMO).

⁴¹⁵ At least one judge advocate encountered an environmental law issue:

As redeployment approached, concerns were raised as to potential liability for environmental damage, such as that arguably created by the sewage disposal at one site done under the LOGCAP contract. I ascertained that although Presidential Executive Order had extended NEPA applicability overseas, it did not create a cause of action for any violations. I also ascertained that the DoD Environmental Compliance directive did not apply in such contingency operations, as opposed to overseas locations where permanent installations exist. Mr. Bob Lingo of AMCCC was most helpful in this regard, confirming the above conclusions and providing advice that we should simply continue to do the best we could, within reason, to prevent unnecessary damage to the (already disastrous) environment of Haiti—a common sense standard.

See Passar AAR, *supra* note 120, at para. 6f; see also CALL INITIAL IMPRESSIONS VOL. III, *supra* note 381 (describing a similar issue raised over the closing down of a multi-purpose range complex west of Port-au-Prince). The same judge advocate also encountered a federal employment law issue:

1. Advise Commander to Announce Clear and Straightforward Guidance on “War Trophies.” Few things aroused such intense passion among troops in Haiti as war trophies or—to use a term more accurate for an operation other than war—deployment souvenirs. The *Desert Storm Assessment Team Report* identified similar interest in souvenirs among deployed troops during the Persian Gulf war.⁴¹⁶ The *Report* also identified inconsistent rules across units, noting that “[s]ome commands, e.g., the 82d Airborne Division, forbade all individual war trophies” while “[o]ther commands had varied, and occasionally changing rules.”⁴¹⁷ Many members of Congress shared the Desert Storm Assessment Team’s recommendation that rules governing captured property be clarified. In 1993, Congress passed and the President signed legislation that requires soldiers to turn in to “appropriate personnel” all enemy material captured or found abandoned.⁴¹⁸ This legislation contemplated an implementing Department of Defense Directive and service regulations, which

Seeking to ensure compliance by civilians accompanying the force with General Order No. 1 and other prohibitions, e.g., the two-vehicle travel restriction, proved challenging. One civilian government employee who violated the latter restriction received a letter of reprimand from the JLSC Commander prior to my arrival and a second letter for a like infraction during my tour. My predecessor had advised the Commander on the issuance of the first letter, and though I understand that some questions were raised as to the procedure used (issuance by someone other than his direct supervisor) and the sanction imposed, i.e., the reprimand, I believe that this action was the only potentially effective tool available to the command to deal with this problem employee. I therefore concurred with the Commander’s desire to issue the second such letter for a subsequent infraction, and prepared the letter. Of course, the employee was provided with a rebuttal opportunity. The letter was then forwarded to the employee’s home station supervisor.

See id. at para. 6i(i). *See also infra* subpart III.L.4, pertaining to remedies against civilians accompanying the force because they are employed by contractors.

⁴¹⁶ DSAT REPORT, *supra* note 3, at Operational Law-8.

⁴¹⁷ *See id.*

⁴¹⁸ National Defense Authorization Act for Fiscal Year 1994, § 1171, 107 Stat. 1765 (1993) (codified at 10 U.S.C. § 2579 (1988 & Supp.)).

conceivably could have authorized the distribution of individual souvenirs.

Although no such directive or regulations have yet been issued, general orders from the command filled the void in Haiti. Still, soldiers caught violating the clear provisions of those orders frequently claimed ignorance,⁴¹⁹ a fact that urges efforts to get the word out through all available channels.⁴²⁰ All versions of *General Order Number 1* prohibited the “[t]aking or retention of individual souvenirs or trophies,” and elaborated that

(a) Private property may be seized during combat operations only on order of a commander based on military necessity. The wrongful taking of private property, even temporarily, violates Article 121, UCMJ.

(b) Public property captured by US personnel is the property of the US. Wrongful retention of such property by an individual violates Article 108, UCMJ.⁴²¹

These provisions recognized that the law of war permits wartime takings of property⁴²² and that restrictions on conversion to personal use in a combat environment lie in domestic rather than international law.

⁴¹⁹ See, e.g., Passar AAR, *supra* note 120, at h(iv).

⁴²⁰ See, e.g., Office of the Staff Judge Advocate, 25th Infantry Division (L) & U.S. Army, Hawaii, Legal Lightning Deployment Guide at 1-4 (6 Dec. 1994) (reprinting draft of General Order No. 1, along with rules of engagement, claims accident standard operating procedure, accident form, and other legal guidance).

⁴²¹ See *infra* at Appendix U.

⁴²² See *supra* note 240.

The background legal regime differs in an operation other than war. Haitian public property that fell into the hands of United States soldiers remained Haitian public property, unless sold through the weapons buyback program.⁴²³ *General Order Number 1* covered noncombat souvenirs in a separate provision:

(c) no weapon, munition, or military article of equipment captured *or acquired* by any means other than official issue may be retained for personal use or shipped out of the [joint operations area] for personal retention or control.

Although it has a different international legal character, conduct that violated provision (c) is nevertheless punishable under the Uniform Code of Military Justice and several other federal laws.

The topic of unit souvenirs also generated questions. Many commanders requested that units be permitted to return to the United States with purchased weapons.⁴²⁴ United States Atlantic Command considered these requests in light of several criteria: intention to display the weapon in an existing national or unit museum; historical significance of the weapon; inoperability of the weapon; and accountability for the weapon on the inventory of the museum.⁴²⁵

2. *Brace for the Flood of Questions About Eligibility to Obtain Medical Care, Use the Post Exchange, and Travel in Military Aircraft.* The peerless service support structure of the United States military will encounter great demand during operations other than war. Many of those seeking the available services will be foreign nationals

⁴²³ See *supra* notes 137-138, and accompanying text.

⁴²⁴ See Gordon Interview, *supra* note 220; Sposato Interview, *supra* note 216.

⁴²⁵ See Memorandum, Major General George A. Fisher, Commander, MNF Haiti, MNF-CG, to Distribution A, subject: Policy Memorandum—Retrograde of Historical Weapons (25 Jan. 1995).

and other individuals not normally eligible to receive them. The Army regulation governing medical care does not expressly provide for many categories of individuals who fell ill or sustained injuries in Haiti.⁴²⁶ However, it does authorize care for “persons outside the United States who are otherwise ineligible when a major overseas commander determines the care to be in the best interest of the United States.”⁴²⁷

Using this authority, and respecting an international agreement that entitled members of the United Nations Mission in Haiti to Medical Care, the Multinational Force authorized care to all MNF forces, to UNMIH personnel, to the International Police Monitors, and to Department of Defense contractors supporting the operation.⁴²⁸ However, other United States government personnel were generally excluded, as were United Nations personnel other than UNMIH forces.⁴²⁹ More generally, the MNF found it necessary to monitor closely its limited in-country medical assets. Judge advocates assisted in this process by coordinating with the local medical commander and the J-3 to ensure standards for use of these assets were principled, fair, and protective of mission requirements.⁴³⁰

⁴²⁶ See DEP'T OF ARMY, REG. 40-3, MEDICAL, DENTAL, AND VETERINARY CARE, para. 4-25 (15 Feb. 1985).

⁴²⁷ See *id.*

⁴²⁸ See Memorandum, Colonel Samuel S. Thompson III, Director of the Combined Joint Staff, MNF Haiti, to Distribution A, subject: Guidelines for MNF Medical Care Entitlements (4 Feb. 1995) (copy on file with CLAMO).

⁴²⁹ See *id.*; see also Office of the Staff Judge Advocate, MNF Haiti, Information Paper (26 Jan. 1995) (providing information concerning eligibility for medical care and serving as the basis for the 4 February memorandum signed by Colonel Thompson).

⁴³⁰ Evacuation of Haitian nationals to United States hospitals when in-country medical capabilities were inadequate also posed an issue. The evacuee must be specifically named as a secretarial designee in order to be evacuated to and receive treatment in Department of Defense health care facilities or in civilian medical facilities at government expense. See DEP'T OF DEFENSE, DIRECTIVE 4515.13-R, AIR TRANSPORTATION ELIGIBILITY, at 5-2 (Nov. 1994). Command policy was to evacuate only those civilians whose injuries were the direct result of MNF activities. See 25th ID Comments Memorandum, *supra* note 405, at para. 1.d (noting that “[c]lose coordination is required between the SJA, J-3, and medical personnel to ensure that only those required for evacuation are in fact evacuated and that the proper designation is obtained before evacuation.”).

Operational lawyers helped the command solve Post Exchange eligibility questions by construing administrative regulations in conjunction with the status of forces agreement executed between the nations of the MNF and Haiti. In short, Department of Army, Department of Defense, and American Red Cross employees accompanying the United States Forces were accorded Exchange privileges, as did Department of Defense contractor employees and other United States citizens who were employees of the United States government.⁴³¹

Foreign nationals and non-Department of Defense Personnel made frequent requests for transportation in military aircraft.⁴³² The form reproduced at *Appendix W* ensured orderly processing of these requests. Judge advocates reviewed the requests and documented on the form the provision of the governing directive granting eligibility.⁴³³

3. Take Initiative to Assist Officers Conducting Official Investigations. Administrative investigations are critical to maintaining respect for the rule of law during a deployment. They are visible reminders to members of the force that command action is not arbitrary, but rather is based on a methodical, sober, and reasonable interpretation of evidence.⁴³⁴ Operational lawyers in Haiti advised

⁴³¹ See Office of the Staff Judge Advocate, MNF Haiti, Information Paper (26 Jan. 1995) (providing information concerning eligibility for post exchange privileges) (copy on file with CLAMO).

⁴³² See Interview with Captain Catherine M. With, former Operational Law and Administrative Law Judge Advocate for MNF Haiti and later the Command Judge Advocate for United States Forces in Haiti, in Charlottesville, Virginia, (Oct. 18, 1995).

⁴³³ See DoD DIR. 4515.13-R, *supra* note 430.

⁴³⁴ See, e.g., DEP'T OF ARMY, REG. 15-6, PROCEDURE FOR INVESTIGATING OFFICERS AND BOARDS OF OFFICERS, para. 1-5 (11 May 1988) ("The primary function of any investigation or board of officers is to ascertain facts and to report them to the appointing authority. It is the duty of the investigating officer or board to ascertain and consider the evidence on all sides of the issue, thoroughly and impartially, and to make findings and recommendations that are warranted by the facts and that comply with the instructions of the appointing authority.").

investigating officers on the proper discharge of their duties and advised commanders on appropriate courses of action in light of investigative findings and recommendations.⁴³⁵

One notable example was an investigation into the reliability of inventories conducted on weapons confiscated from Haitian military and police forces or purchased under the weapons buyback program.⁴³⁶ This investigation utilized informal procedures under the generic Army regulation governing administrative investigations. Another notable example was an investigation into the loss of \$22,668.54 by a disbursing officer. This investigation utilized procedures described in a Department of Defense financial regulation.⁴³⁷ Although the advising judge advocate had never before construed the financial regulation, his previous experience with investigations, consultation through technical channels, and general legal knowledge equipped him with the skills needed to protect command interests and ensure administrative due process for the disbursing officer, who was eventually held pecuniarily liable for the loss.⁴³⁸

L. Procurement Law and Fiscal Constraints.

One defining feature of operations other than war is that the relatively relaxed regime of combat acquisition rules never comes into play. To the contrary, United States military forces generally must provide for full and open competition.⁴³⁹ Broadly speaking, this means

⁴³⁵ See Gordon Interview, *supra* note 220.

⁴³⁶ Unless otherwise noted, the information in this paragraph is based on Passar AAR, *supra* 120, at 16.

⁴³⁷ See DEP'T OF DEFENSE, REG. 7000.14-R, FINANCIAL MANAGEMENT REGULATION, ch. 6 (Dec. 1993).

⁴³⁸ Official investigations and boards of inquiry pertaining to UNMIH followed the guidance contained in UNITED NATIONS, OFFICE OF GENERAL SERVICES, FIELD OPERATIONS DIVISION, FIELD ADMINISTRATION MANUAL, ch. 16 (Sept. 1992).

⁴³⁹ See 10 U.S.C. § 2304 (1988 & Supp.).

that absent certain specific statutory exceptions,⁴⁴⁰ all responsible sources of supply must have an opportunity to compete for the government's business. In specific terms, this means that a massive body of statutory and regulatory law continues to apply to government purchases in a field environment, where strict compliance can present enormous challenges.

Military operations in Haiti provided a textbook illustration of the tension between respecting rules that require competition and addressing military exigencies that demand prompt support. The President and his delegates long have had broad statutory authority to initiate contracts that facilitate national defense, but obligation of funds in excess of \$50,000 under this authority may not be effected by delegates lower than the Army Secretariat.⁴⁴¹ Moreover, Congress must provide the money to pay for obligations incurred under this emergency authority. The Haiti deployment, which never aroused a congressional declaration of war or equivalent resolution, also never prodded Congress to give the President money for purposes of contracting under this statutory provision.⁴⁴²

Similarly, the deployment to Haiti resulted in no broad legislation authorizing the President and the heads of military departments to expend appropriated funds to prosecute the operation as they saw fit.⁴⁴³

⁴⁴⁰ See, e.g., *infra* notes 441-442, 457-460, and accompanying text.

⁴⁴¹ See Act to Authorize the Making, Amendment, and Modification of Contracts to Facilitate the National Defense of August 28, 1958, Pub. L. No. 85-804, 71 Stat. 972 (codified at 50 U.S.C. §§ 1431-1435); Exec. Order No. 10,789, 3 C.F.R. 426, *reprinted in* 50 U.S.C. § 1431 (1988) (implementing the statute as of 14 Nov. 1958); GENERAL SERVS. ADMIN. ET AL., FEDERAL ACQUISITION REG. 50.201(a) (1 Apr. 1984) [hereinafter FAR] (comprising one section of the part implementing the statute, "Part 50—Extraordinary Contractual Actions") ("Authority to approve requests to obligate the Government in excess of \$50,000 may not be delegated below the secretarial level.").

⁴⁴² See 50 U.S.C. § 1435 (1988) ("This chapter [§§ 1431-1435] shall be effective only during a national emergency declared by Congress or the President and for six months after the termination thereof or until such time as Congress, by concurrent resolution, may designate.").

⁴⁴³ Perhaps the most famous example of such legislation was the Lend-Lease Act of 1941 and subsequent related appropriations acts. See An Act to Promote the Defense of the United

As a result, the basic fiscal controls on appropriated funds—namely those constraining availability of appropriations as to purpose,⁴⁴⁴ time,⁴⁴⁵ and amount⁴⁴⁶—continued to have a constraining effect. Accordingly, judge advocates and commanders occasionally faced shortages of proper appropriations for a given purchase. Mission accomplishment in these instances came to depend on a combination of practical resourcefulness and legal knowledge.

1. Know the Terms and Conditions of the LOGCAP. The maxim that knowledge is power applied to contractual matters in Haiti. The maxim was particularly germane to a large contract that had been awarded well before the operation began, under the Logistics Civil Augmentation Program (LOGCAP).⁴⁴⁷ In August 1992, the Army Corps of Engineers awarded the contract to Brown and Root Services Corporation of Houston, Texas, which thus assumed the obligation to provide basic life support—e.g., shelter, sanitation, food, and laundry—to troops deployed in contingency operations.⁴⁴⁸ By September of

States of March 11, 1941, Pub. L. No. 77-11, 55 Stat. 31 (authorizing President Roosevelt to sell, transfer, exchange, lease or lend material purchased with appropriated funds to allies fighting the Axis Powers, and authorizing special appropriations as necessary to accomplish the purposes of the Act). The Lend-Lease program resulted in the transfer of about \$50 billion in arms, food, and other aid. See MANAGEMENT OF SECURITY ASSISTANCE, *supra* note 295, at 13. No recent military operation has resulted in similar broad legislation. See OP. LAW HANDBOOK, *supra* note 9, at 11-2.

⁴⁴⁴ 31 U.S.C. § 1301(a).

⁴⁴⁵ 31 U.S.C. § 1502.

⁴⁴⁶ 31 U.S.C. §§ 1341-42, 1511-19.

⁴⁴⁷ See DEP'T OF ARMY, REG. 700-137, LOGISTICS CIVIL AUGMENTATION PROGRAM (LOGCAP) (16 DEC. 1985). The purpose of the program is to use a civilian contractor to perform selected logistics and engineering services to augment United States forces during military contingency operations. See United States Army Corps of Engineers, Transatlantic Division, Logistics Civil Augmentation Program (LOGCAP), Fact Sheet at 1 (April 1995) [hereinafter LOGCAP Fact Sheet].

⁴⁴⁸ See *id.* The contract creates a generic apparatus for receiving, housing, and sustaining 20,000 troops in five base camps for 180 days. Within 15 days of notification (of an "event"), the contract requires Brown and Root to receive and support 1,300 troops per day. Within 30 days, Brown and Root is required to support 20,000 troops in one rear and four forward base camps for up to 180 days, with options to increase the size of the supported force to 50,000

1994, when the Haiti deployment began, the one-year contract had been extended for the second of four one-year option periods. The cost-reimbursement pricing structure of the LOGCAP contract is necessary to provide the flexibility and responsiveness required to support military contingency operations, but the corresponding absence of a preestablished price and service schedule demands intensive monitoring and oversight of the contractor's costs.⁴⁴⁹ The system of oversight relies, among other things, upon vigilant judge advocates who have detailed knowledge of contractual terms.

In Haiti, for instance, the staff judge advocate advising the Joint Logistics Support Commander helped ensure that fees designed to focus contractor effort toward quality, responsiveness, and cost control really did focus contractor efforts as designed.⁴⁵⁰ Under the contract, these fees, known as "award fees," are to be determined by an Award Fee Determination Board.⁴⁵¹ Yet without a detailed plan both to evaluate contractor performance and to communicate the evaluations to the Board, true assessment of the contractor from the customer perspective would have been absent.⁴⁵² It fell to the judge advocate on the ground in Haiti to develop and implement such a plan.

troops and to extend support to 360 days. The contract provisions call for each base camp to provide billeting, mess halls, food preparation, potable water, sanitation, showers, laundry, transportation, utilities and other logistical support. Contingency equipment and labor pools are available under the contract to perform additional, labor-intensive, non-combat missions for the commander. These include support to arriving forces at aerial ports of debarkation (APODs) and sea ports of debarkation (SPODs), force sustainment, retrograding equipment and supplies, construction support, general logistics services, augmentation to engineer units, and facility engineer support. This generic apparatus is tailored as appropriate upon provision to Brown and Root—by the supported Major Command—of a concept of operations and a scope of work. *See generally id.*, at 6.

⁴⁴⁹ *See id.*, at 5, 7.

⁴⁵⁰ *See* Passar AAR, *supra* note 120, at para. 6b.

⁴⁵¹ *See* LOGCAP Fact Sheet, *supra* note 447, at 5.

⁴⁵² *See* Passar AAR, *supra* note 120, at para. 6b & Encl 4 (providing a detailed and comprehensive plan by which the Joint Logistics Support Commander, whose requirements the contractor is tasked to meet during the "event," could have input into the quarterly award fee determination process).

Knowing the terms of the LOGCAP is useful not only in enforcing what those terms include, but also in deciding what requirements would best be filled by separate, contingency contracts. The LOGCAP has certainly demonstrated its capabilities—in Haiti,⁴⁵³ as well as in Somalia, Rwanda, Saudi Arabia, and Kuwait⁴⁵⁴—but given its pricing structure, it will not be the best tool for every requirement. Other factors making LOGCAP suboptimal in certain cases are the need for funding up front and the existence of various constraints on the scope of work.⁴⁵⁵ Commanders, logistics staffs, contracting officers, and advising judge advocates must continue to consider all options: because the LOGCAP contract is a cost-reimbursement contract intended to provide for situations with unpredictable costs, for many clearly definable requirements a firm fixed price contract should be used.⁴⁵⁶

2. *Expect Second-Guessing About Advance Payments on Acquisitions.* Logistical matters in Haiti benefited from a simplified acquisition ceiling of \$200,000, four times the normal ceiling. This higher ceiling applies when the Secretary of Defense declares a contingency operation, or when reservists are called to active duty for war or national emergency,⁴⁵⁷ and it has the effect of permitting contracting officers in the vast majority of cases to issue purchase

⁴⁵³ More than \$96 million was committed for LOGCAP support. Missions included electrifying 23 buildings, installing perimeter lighting and security fencing, constructing base camps, and providing base camp operations, laundry operations, class I operations, food service operations, class III operations, class II, III(P), IV, and VI operations, maintenance operations, APOD operations, transportation services, and main supply route maintenance. *See generally* LOGCAP Fact Sheet, *supra* note 447, at Appendix C; *see also* USACOM Briefing Viewgraphs, *supra* note 37 (“Brown and Root is expensive, but worth it.”).

⁴⁵⁴ *See id.*

⁴⁵⁵ *See* LOGCAP Fact Sheet, *supra* note 447, at 9.

⁴⁵⁶ *See* Memorandum, Lieutenant Colonel Arthur L. Passar, DAJA-KL, to MAJ Mark S. Martins, JAGS-CLAMO, subject: Draft Lessons Learned on Operations in Haiti, 1994-1995, at para. 2a (10 Nov. 1995) (copy on file with CLAMO).

⁴⁵⁷ *See* 10 U.S.C. § 101(a)(13).

orders for needed supplies after merely soliciting price quotations orally.⁴⁵⁸ A higher ceiling also had greatly eased the supply needs of United States forces during Operations Desert Storm, Desert Shield, and Restore Hope, where 95% of contracting activity consisted of simplified acquisitions.⁴⁵⁹ Along with the LOGCAP, the much broader applicability of simplified procedures represents how far contract law will go to accommodate military operations.⁴⁶⁰

Yet deployment to Haiti revealed that without also permitting advance payment, local contractors might be unable to furnish the items ordered—despite the fact that simplified procedures applied. Typically, the United States demands delivery of supplies or performance of services prior to payment;⁴⁶¹ however, the absence of a financial structure in Haiti occasionally left prospective contractors without a source of loans or working capital to enable them to deliver or perform.⁴⁶² Although advance payments are lawful under certain circumstances,⁴⁶³ the Head of the Contracting Activity⁴⁶⁴ or his

⁴⁵⁸ Memorandum, Acting Director, Dep't of Army, Office of the Assistant Secretary of the Army, U.S. Army Contracting Support Agency, to [wide distribution], subject: Acquisition letter 94-9 (31 Oct 1994); 10 U.S.C. § 2302(7); DEP'T OF DEFENSE, DEFENSE FEDERAL ACQUISITION REG. SUPP. 213.000 (1 Apr. 1984) [hereinafter DFARS]; OP. LAW HANDBOOK, *supra* note 9, at 11-6.

⁴⁵⁹ *See id.*

⁴⁶⁰ *See generally* Major Rafael Lara, Jr., *A Practical Guide to Contingency Contracting*, ARMY LAW., Aug. 1995, at 16.

⁴⁶¹ DEP'T OF ARMY, ARMY FEDERAL ACQUISITION REG. SUPP. 32.409 (1 Dec. 1984) [hereinafter AFARS]; DEP'T OF DEFENSE, FORM 1155, Order For supplies or Services, items no. 26, 32 (Sept. 1989) (reflecting payment further down the page than delivery).

⁴⁶² *See* Passar AAR, *supra* note 120, at 6c(ii).

⁴⁶³ *See* 31 U.S.C. § 3324; 10 U.S.C. § 2307; FAR, *supra* note 441, at subpart 32.4.

⁴⁶⁴ The Head of the Contracting Activity (HCA) has overall responsibility for managing all contracting actions within the activity. There are approximately 72 contracting activities within the Department of Defense in addition to those which have been delegated contracting authority by the heads of the various defense agencies. *See* DFARS 202.101. In this case, the HCA would have been the Commander of United States Army Forces Command, a four star general located in Fort McPherson, Georgia.

Principal Assistant Responsible for Contracting⁴⁶⁵ must approve them, and these individuals rarely will be immediately accessible. In the opinion of one judge advocate in Haiti, requisite approval authority for advance payments on small purchases in future operations should be delegated to the head of the contracting office in theater.⁴⁶⁶ Unless and until such delegation occurs, however, contracting officers should expect that decisions to pay in advance will eventually receive careful scrutiny.

3. Step Forward to Ensure that Operational Funds are not Expended for Unauthorized Purposes. Some of the hardest issues that confront operational lawyers involve the question whether a correct “color” of money is being spent. By their nature, such issues demand knowledge not only of the basic fiscal rule prohibiting application of appropriations to purposes unintended by Congress;⁴⁶⁷ they also demand knowledge of what those purposes are. Because the appropriations and authorization acts that articulate Congressional purposes fill hundreds of pages, because Congress passes such acts annually, and because the legislative process often produces language that is far from clear, judge advocates are frequently the only soldiers in the command equipped to identify the appropriations that fulfill Congressional purposes. To forego questioning activities that involve expenditures counter to those purposes is to risk an adverse report by

⁴⁶⁵ In the Army, the Principal Assistant Responsible for Contracting (PARC) is the senior staff official responsible for oversight and administration of the contracting function for a contracting activity, and the HCA’s delegee for all delegated functions. The PARC has direct access to the HCA on all contract matters, and usually is two or more supervisory levels above the contracting officer within the HCA’s command. See AFARS 1.601-90(c). In this case, the PARC was also in Fort McPherson, Georgia. The Air Force and the Navy also permit delegation of contracting authority to certain delegees. DEP’T OF AIR FORCE, AIR FORCE FEDERAL ACQUISITION REG. SUPP. 1.601-91(a) (1995); DEP’T OF NAVY, NAVY FEDERAL PROCUREMENT SUPP. 1.601(a) (1995).

⁴⁶⁶ See Passar AAR, *supra* note 120, at 6c(ii).

⁴⁶⁷ See 31 U.S.C. § 1301(a).

the General Accounting Office,⁴⁶⁸ a loss of later appropriations, and possible administrative or criminal sanctions.⁴⁶⁹

Operations in Haiti followed the pattern of presenting fiscal law questions in the context of operations and maintenance appropriations and military construction appropriations.⁴⁷⁰ Congress' purpose is that these appropriations will fund the daily operations and maintenance or construction needs of the military rather than assistance to foreign countries; other appropriations are available for this latter purpose.⁴⁷¹ Nevertheless, a certain amount of operations and maintenance and related Army appropriations are available for "interoperability," and for "familiarization and safety instruction" of foreign forces,⁴⁷² for the training of those forces by United States special operations units,⁴⁷³ for

⁴⁶⁸ The General Accounting Office (GAO) is a special congressional support agency that has a great impact on the conduct and management of the United States government and defense. Its most prominent activities are its audits and evaluations of United States government programs and activities, conducted in response to requests from Congress, its Committees, Members, and Staffs. The GAO is under the control and direction of the Comptroller General of the United States, who is appointed by the President with the advice and consent of the Senate for a term of 15 years. The audit authority of the GAO extends to all departments and other agencies of the Federal Government. Known widely as the "Congressional Watchdog," the GAO is expected to investigate any matters in connection with the proper expenditure of public monies. Through its National Security and International Affairs Division, the GAO monitors many activities of the State Department as well as of Department of Defense. *See generally* MANAGEMENT OF SECURITY ASSISTANCE, *supra* note 295, at 77; Lincoln P. Bloomfield, *The National Security Process, in NATIONAL SECURITY LAW*, *supra* note 175, at 910. For an example of an adverse report by GAO, see *The Honorable Bill Alexander*, B-213137, 63 COMP. GEN. 422 (1984).

⁴⁶⁹ The so-called "Anti-Deficiency Act," 31 U.S.C. §§ 1341-42; 1511-17, provides for administrative sanctions, *see* 31 U.S.C. §§ 1349(a), 1518, and criminal penalties, *see* 31 U.S.C. §§ 1350, 1519, in certain circumstances involving improper use of funds.

⁴⁷⁰ *See, e.g.*, Memorandum, Major Douglas P. Demoss, former Command Judge Advocate to the United States Army Material Command Logistics Support Group, Mogadishu, to Staff Judge Advocate/Deputy Chief Counsel, United States Army Material Command, subject: After Action Report, Legal Support to U.S. Army Material Command Logistics Support Group—Mogadishu (AMCLSG), Operation Restore Hope at 2-11, 2-14, 2-17 (24 Feb. 1993) [hereinafter Demoss AAR] (reporting that similar questions arose in Somalia); *see generally* Contract Law Note, *Funding Issues in Operational Settings*, ARMY LAW., Oct. 1993, at 38.

⁴⁷¹ *See, e.g.*, *Alexander*, 63 COMP. GEN. 422-30.

⁴⁷² *See, e.g., id.* at 441.

⁴⁷³ *See* 10 U.S.C. § 2011 (1988 & Supp.).

limited humanitarian and civic assistance projects,⁴⁷⁴ and for construction work of a temporary operational nature⁴⁷⁵—even if such expenditures provide incidental benefit to a foreign government or its people. The challenge to the operational lawyer is to determine when some other appropriation—such as the Economic Support Fund⁴⁷⁶—is necessary.

⁴⁷⁴ See 10 U.S.C. § 401 (1988 & Supp.); DEP'T OF DEFENSE, DIRECTIVE 2205.2, HUMANITARIAN AND CIVIC ASSISTANCE (HCA) PROVIDED IN CONJUNCTION WITH MILITARY OPERATIONS (Oct. 6, 1994); DEP'T OF DEFENSE, DIRECTIVE 2205.3, IMPLEMENTING PROCEDURES FOR THE HUMANITARIAN AND CIVIC ASSISTANCE (HCA) PROGRAM (Jan. 27, 1995).

⁴⁷⁵ See generally THE JUDGE ADVOCATE GENERAL'S SCHOOL, CONTRACT LAW DIVISION, JA 503, FISCAL LAW DESKBOOK, para. III.C.4 (1994).

⁴⁷⁶ The Economic Support Fund (ESF) is a security assistance program managed by the Agency for International Development (AID), which agency has as its central priority the management of "development assistance" under Chapter 1 of Part II of the Foreign Assistance Act (FAA, §§ 100-127, 22 U.S.C. §§ 2151-2292). The ESF, unlike strict development assistance, is authorized by a different part of the Foreign Assistance Act—Chapter 4 of Part II (FAA, §§ 531-35, 22 U.S.C. §§ 2346-46d)—a fact that reflects a distinct purpose, even if the form of the assistance provided looks identical in every way to development assistance. Whereas development assistance programs must be directed at meeting basic human needs and assisting the poor majority in foreign countries with low per capita incomes, the ESF can be directed toward the economic support of countries in which the United States has significant security interests, even for purposes which do not meet the strict development assistance criteria listed in FAA, § 102.

Economic support fund support to a country can take many forms. It is money made available on a grant or loan basis for a variety of purposes: the building of road systems and other infrastructure; economic support to offset trade imbalances and other problems created when a country is devoting large resources to security concerns; health, education, agriculture, and family planning projects. See, e.g. Michael J. Matheson, *Arms Sales and Economic Assistance*, in NATIONAL SECURITY LAW, *supra* note at 175, 1111, 1116-17; MANAGEMENT OF SECURITY ASSISTANCE, *supra* note 295, at 44-45. Notwithstanding statutory language declaring that ESF funds "shall be available for economic programs only and may not be used for military or paramilitary purposes," see FAA § 531(c), 22 U.S.C. § 2346(e), ESF appropriations are a potential source of funds for projects such as the asphaltting of a long stretch of roadway because such a project will undoubtedly have long-term civilian applications as well as near-term military advantages.

Even if a project's military purposes can at some point make ESF funding improper, *cf.* NATIONAL SECURITY LAW, *supra* note 175, at 1117-18 (querying if ESF funds are available "for projects which have general civilian applications but are designed for, and primarily used by, military forces, such as road systems near military installations or communications systems with substantial numbers of military users"), it is probable that ESF appropriations will be more fitting for many large-scale projects than operation and maintenance appropriations of the Department of Defense.

In Haiti, Army judge advocates correctly identified that neither operations and maintenance funds nor military construction funds could be spent to build basketball courts for other nations' forces, to provide supplies for members of the International Criminal Investigation and Training Assistance Program (ICITAP), or to improve certain roads.⁴⁷⁷ Frequently, when requests originated from another United States agency providing support to the Haitian people, the proper approach was to elevate the issue to higher authorities so that appropriate transfers of funds could be made from that agency to the Army pursuant to the Economy Act.⁴⁷⁸ On other occasions, as when various agencies and organizations other than the United States military repeatedly declined to pay for electricity generated by the Army, senior authorities determined that operational needs justified the continued expenditure of operational and maintenance funds.

During the deployment, judge advocates produced several documents that, in addition to the statutory cites provided here and to the documents described in note 555 *infra*, helped acquaint fellow attorneys with various important appropriations and their purposes. See Major Fred T. Pribble, Deputy Legal Advisor, Office of the Chairman, Joint Chiefs of Staff, Support to Multilateral Peace Operations (7 Feb. 1995) (copy on file with CLAMO); Lieutenant Colonel Richard Jackson, Office of the Staff Judge Advocate, United States Atlantic Command, Information Paper, subject: Fiscal Law Issues in Haiti (18 Oct. 1994); Memorandum, Captain Stephen A. Rose, USN, Staff Judge Advocate United States Atlantic Command, JO2L4, to J52, J55, J4ENG, J4, J4PPP, J02M, subject: Expenditure of Title 10 (O&M) Funds in Haiti [Memo #2] (3 Oct. 1994).

Logisticians and judge advocates on the ground in Haiti during the UNMIH phase of the intervention found helpful guidance in portions of field manuals that were written principally by judge advocates. See, e.g., FM 100-23, *supra* note 275, at 56 (describing the legal authorities by which logistics assistance may be furnished to the United Nations during peace operations and instructing United States logisticians to track items that the United Nations agrees to reimburse).

⁴⁷⁷ Unless otherwise indicated, the information in this paragraph is based upon Passar AAR, *supra* note 120, at para. 6d; 10th Mountain Div. AAR, *supra* note 108, at 7; Sposato Interview, *supra* note 216; Telephone Interview with Captain Catherine M. With, former Operational Law and Administrative Law Judge Advocate for MNF Haiti and later the Command Judge Advocate for United States Forces in Haiti (Aug. 15, 1995) [hereinafter With Interview]; Memorandum, General J.J. Sheehan, USMC, Commander in Chief, United States Atlantic Command, to Chairman, Joint Chiefs of Staff (30 May 1995) (copy on file with CLAMO) (requesting quick legal review and assistance concerning road and water repair projects in Haiti).

⁴⁷⁸ See 31 U.S.C. 1535 (1988 & Supp.).

In the latter stages of operations in Haiti, an agreement between the United States and Haiti enabled military forces to provide a broad range of commodities and services to Haiti on a reimbursable basis.⁴⁷⁹ *Appendix X* contains the text of this agreement.⁴⁸⁰

4. *Understand the Status of Civilian Contractor Employees.*

Commanders and soldiers in Haiti grew accustomed to seeing employees of civilian contractors. Although military doctrine has not yet adequately incorporated the enormous role these individuals have in our logistics system, informed observers predict that they will be fixtures in all future military deployments.⁴⁸¹ Employees of the LOGCAP contractor and subcontractors could be found at every turn: preparing and serving meals; cleaning, folding and pressing laundry; servicing vehicles; loading and unloading ships; shuttling troops.⁴⁸² Yet while they often physically resembled military personnel, carried identification cards, and appeared to be members of the force from the

⁴⁷⁹ The Foreign Assistance Act authorizes such agreements. See FAA § 607; 22 U.S.C. § 2357 (requiring a Presidential determination that provision of commodities and services will further the purposes of Subchapter I of the Foreign Assistance Act, of which purposes peacekeeping and disaster relief operations are examples). They have been created to support United Nations operations in Somalia, the former Yugoslavia, Rwanda as well as Haiti. See Pribble, *supra* note 476. One attraction of “607 Agreements” is that reimbursements received may be deposited by the service providing the assistance back into the appropriation originally used or—if received within 180 days of the close of the fiscal year in which the assistance was furnished—into the current account concerned. See *generally id.*; Pribble, *supra* note 476; UNITED STATES GENERAL ACCOUNTING OFFICE, COST OF DOD OPERATIONS IN SOMALIA, GAO/NSIAD-94-88 (March 1994) (opining that reimbursements received after the 180 period cannot be retained by Department of Defense and must be deposited in the miscellaneous receipts account of the general treasury).

⁴⁸⁰ See Agreement Between the United States of America and the United Nations Organization Concerning the Provision of Assistance on a Reimbursable Basis in Support of the Operations of the United Nations in Haiti, 19 Sept. 1994, U.S.-U.N. (copy on file with CLAMO) (representing an earlier “607 agreement” executed to support operations in Haiti).

⁴⁸¹ See, e.g., Major Brian H. Brady, Notice Provisions for United States Citizen Contractor Employees Serving with the United States Armed Forces in the Field: Time to Reflect Their Assimilated Status in Government Contracts?, at 8 (1995) (manuscript on file at TJAGSA).

⁴⁸² See Gordon Interview, *supra* note 220.

perspective of Haitian citizens, the relationship of these civilians to the disciplinary and administrative apparatus of the force often left commanders scratching their heads.⁴⁸³

Commanders have administrative authority over civilians serving with or accompanying the armed forces in the field.⁴⁸⁴ Thus the MNF Commander extended the coverage of General Order Number 1 to “all civilian personnel serving with, employed by, or accompanying forces assigned to JTF 190.” Civilian contractor employees were obliged not to possess privately-owned firearms, consume alcohol, gamble, eat in local Haitian restaurants, or engage in sexual relations with members of the Haitian populace. Administrative actions against civilians who violate these policies could include withdrawing post exchange privileges, withholding medical care, and barring them from military camps altogether. Commanders may also require the contractor to remove personnel from the job.

In time of declared war, contractor employees would be subject to the Uniform Code of Military Justice. In Haiti, they were not. As a result, only administrative options were available to a commander faced with contractor personnel who flouted command orders.⁴⁸⁵ According to the judge advocate advising the Joint Logistics Support Command,

[t]hough the LOGCAP contractor leadership in theater used their best efforts to ensure compliance with the restrictions on alcohol consumption, dining in local facilities, and sex with locals, violations by contractor personnel occurred regularly.⁴⁸⁶

⁴⁸³ See Telephone Interview with Lieutenant Colonel Larry Passar, former Command Judge Advocate for Joint Logistics Support Command, Port-au-Prince (Aug. 23, 1995) [hereinafter Passar Interview].

⁴⁸⁴ See Brady, *supra* note 481, at 59; AFARS 37.7098-1.

⁴⁸⁵ See Passar AAR, *supra* note 120, at para. 6i.

⁴⁸⁶ See *id.*

The LOGCAP prime contractor always quickly removed its offending employees from the job and redeployed them; unfortunately, however, subcontractors sometimes declined to do so.⁴⁸⁷ Unless and until military courts receive peacetime jurisdiction over civilians accompanying the force,⁴⁸⁸ the best approach to the problem of civilian contractor misconduct will be a mixture of a removal provision in the contract that extends to subcontractor employees, a provision placing the civilians fully on notice of their status, and tight management of administrative sanctions such as identification checks at the post exchange, the medical facility, and the entrance to the camp.⁴⁸⁹

M. Claims

Military operations in Haiti confirmed that an efficient claims program directly aids mission accomplishment. Prompt investigation, adjudication, and payment of foreign claims contributed to the goodwill of the Haitian people toward United States forces, which in turn contributed to the security of those forces. In addition, the availability of an orderly process for dealing with noncriminal allegations of harm inflicted by American troops permitted the Commander to concentrate on other pressing concerns.

Some issues that were prominent during previous operations did not arise due to the relatively short duration and to the noncombat nature of operations in Haiti. The brief time spent by most soldiers away from home stations accounted for the low number of claims

⁴⁸⁷ *See id.*

⁴⁸⁸ *See generally* Major Susan S. Gibson, Lack of Extraterritorial Jurisdiction Over Civilians: A New Look at an Old Problem (1995) (manuscript on file at TJAGSA).

⁴⁸⁹ Note that the command's concerns over having appropriate disciplinary authority with respect to civilians extend to government employees as well as to contract employees. *See supra* note 415.

presented under the Personnel Claims Act.⁴⁹⁰ The longer and larger deployment to Southwest Asia for Operations Desert Shield and Storm had resulted in far greater losses of soldier property and had stimulated questions about the adequacy of personal property storage and accountability safeguards.⁴⁹¹ The rarity of hostile encounters in Haiti obviated concerns about finding a way to compensate claimants for damage directly resulting from combat activities,⁴⁹² a category of damage that is not compensable under United States claims statutes.⁴⁹³ In contrast, these concerns had absorbed considerable attention from judge advocates in Vietnam, Grenada, and Panama.⁴⁹⁴

The most important lessons learned fall under the substantive heading of the Foreign Claims Act (FCA),⁴⁹⁵ though, as with much of operational law, the lessons are not strictly legal ones. A quick reading of the FCA and its implementing regulations reveals a straightforward scheme of compensation.⁴⁹⁶ This body of law authorizes payment in local currency to inhabitants of foreign countries for personal injury, death, or property loss caused by United States military personnel

⁴⁹⁰ Claims under the Personnel Claims Act attributable to the deployment were negligible both in numbers of claims filed and in dollar amount of damage claimed. See Telephone Interview with Lieutenant Colonel Phillip L. Kennerly, Chief, Personnel Claims and Recovery Division, United States Army Claims Service, (Oct. 17, 1995) [hereinafter Kennerly Interview].

⁴⁹¹ See DSAT REPORT, *supra* note 3, at Claims-1 & Issues #11, 23, 194-95.

⁴⁹² See Gordon Remarks, *supra* note 395.

⁴⁹³ See OP. LAW HANDBOOK, *supra* note 9, at 10-5; DEP'T OF ARMY, PAM. 27-162, CLAIMS, para. 8-1 (15 Dec. 1989) [hereinafter DA PAM. 27-162].

⁴⁹⁴ See *id.*; Borek, *supra* note 211, at 50; With Interview, *supra* note 477.

⁴⁹⁵ See 10 U.S.C. § 2374 (1988 & Supp.). The purpose of the act is to "promote and maintain friendly relations through the prompt settlement of meritorious claims." See *id.*

⁴⁹⁶ See, DEP'T OF DEFENSE, DIRECTIVE 5515.3, SETTLEMENT OF CLAIMS UNDER 10 U.S.C. 2733 AND 2734 (May 26, 1966); DEP'T OF ARMY, REG. 27-20, CLAIMS, ch. 10 (1 Aug. 1995) [hereinafter AR 27-20].

outside the United States.⁴⁹⁷ The basis of the claim may be either negligence or wrongful conduct.⁴⁹⁸ The local law of the country in which the claim arises provides the standards for determining both liability and damages.⁴⁹⁹ These seemingly straightforward legal principles require practical knowledge for effective application in an operational setting.

1. Appoint Many Judge Advocates to Foreign Claims Commissions. A lesson well-learned from Operations Desert Shield and Desert Storm was that authority to adjudicate claims under the FCA should be delegated early and often.⁵⁰⁰ Adjudication of foreign claims is accomplished by claims commissions consisting of either one or three members, depending upon the amount of the claim.⁵⁰¹ The 10th Mountain Division arranged for four judge advocates to be appointed by the United States Army Claims Service (USARCS) as one-member commissions and for three additional judge advocates to be appointed as a three-member commission.⁵⁰² The 25th Infantry Division arranged for identical numbers and types of appointments.⁵⁰³ Because the Army possessed geographic area jurisdiction for settling foreign claims against the United States in Haiti,⁵⁰⁴ these commissions were the exclusive mechanism for compensating claimants. A liberal approach to

⁴⁹⁷ See AR 27-20 at para. 10-2a.

⁴⁹⁸ See *id.* at para. 10-8.

⁴⁹⁹ See *id.* at paras. 10-10a, 10-11a.

⁵⁰⁰ See DSAT REPORT, *supra* note 3, at Claims-2 to Claims-3.

⁵⁰¹ See AR 27-20, *supra* note 496, at para. 10-15.

⁵⁰² See 10th Mountain Div. AAR, *supra* note 108, at 15-16.

⁵⁰³ See With Interview, *supra* note 477.

⁵⁰⁴ See DEP'T OF DEFENSE, DIRECTIVE 5515.8, SINGLE-SERVICE ASSIGNMENT OF RESPONSIBILITY FOR PROCESSING OF CLAIMS (June 9, 1990) (omitting assignment of Haiti to a particular military department); Memorandum, Mr. John H. McNeill, Senior Deputy Counsel, International Affairs and Intelligence, Department of Defense, to Director, Joint Staff, subject: Designation of the Department of the Army as Single Service Claims Authority (Sept. 22, 1994) (designating the Army as the single service claims authority for Haiti) (copy on file with CLAMO); AR 27-20, *supra* note 496, at para. 10-18.

appointing judge advocates as commission members was therefore essential.

An "off-the-shelf" appointment package previously developed by USARCS helped facilitate the establishment of foreign claims commissions,⁵⁰⁵ as did the planning and early identification of judge advocates by the deploying units.⁵⁰⁶ Unit claims officers were obvious candidates to serve on both types of commissions, though brigade legal advisors and operational law attorneys also served as single-member commissions.⁵⁰⁷ The greater seniority and experience levels of deputy staff judge advocates and staff judge advocates made these officers appropriate members of the three-member commissions.

From October 3, 1994 to August 15, 1995, United States Army foreign claims commissions paid \$175,258.98 in compensation to Haitian claimants.⁵⁰⁸ The ability of commission members to initiate investigations on the basis of oral claims and to perform commission functions wherever posted provided useful flexibility, given the scarcity of transportation and other investigative resources.⁵⁰⁹ Still, the majority of claims were filed in the claims office established by the 10th Mountain Division at the Light Industrial Complex in Port-au-Prince and maintained at that location by the 25th Infantry Division.⁵¹⁰

⁵⁰⁵ Interview with Major E. Allen Chandler, Jr., Chief, Foreign Torts Branch, United States Army Claims Service, (Aug. 15, 1995) [hereinafter Chandler Interview].

⁵⁰⁶ See, e.g., Stai Memorandum, *supra* note 35, at 29 (describing appointment of claims commissions on 15 Sept. 1995).

⁵⁰⁷ See 10th Mountain Div. AAR, *supra* note 108, at 14-15.

⁵⁰⁸ See Chandler Interview, *supra* note 505. As of 21 August 1995, out of 295 claims submitted, 210 were paid, 70 were denied, and 15 were being processed. See Telephone Interview with Sergeant First Class Glenn Attai, Claims Investigator, Foreign Torts Branch, United States Army Claims Service (21 Aug. 1995). Of the 295 claims submitted, 263 were for property damage (191 were paid, 68 denied, 4 still being processed); 28 were for personal injury (24 paid, 2 denied, 2 being processed); and 4 were for death (4 paid). See *id.*

⁵⁰⁹ See With Interview, *supra* note 477; O'Brien Interview, *supra* note 46.

⁵¹⁰ See 10th Mountain Div. AAR, *supra* note 108, at 15 ("The MNF SJA received claims twice weekly at the front gate of Camp Democracy in Port-au-Prince. In addition, the brigade

2. Make Linguist Support and Protection of Claimants

Leadership Priorities. Given the foreign nationality of most claimants under the FCA, the foreign situs of the alleged harm and corroborating evidence, and the foreign source of law to be applied, an efficient claims operation requires persons capable of communicating in the local language.⁵¹¹ Experience in Haiti confirmed this, as Creole and French speakers were indispensable. Native Haitians provided assistance in interviewing claimants, reducing claims to writing, and confirming that claimants understood the contents and effect of forms that were signed. In addition, the interpreters assisted in conducting investigations, in acquiring information about prevailing legal standards in Haiti as to liability and damages, and in maintaining order during claims receipt operations. Judge advocates from the units deployed to Haiti concluded that three dedicated interpreters were needed to implement the claims program and accomplish other legal missions, and that acquiring such individuals must receive the attention of senior leaders as long as necessary for them to be acquired.⁵¹²

One of the thornier issues that arises with claims involving the death of a foreign national is establishing a rate of compensation for lost human life. In theory, local law should be the guide as to the level of damages, and this theoretical approach works tolerably well in highly developed western legal systems, where litigation generates data upon

legal advisers in Port-au-Prince and Cap Haitien received and adjudicated claims stemming from incidents within their units.”).

⁵¹¹ Unless otherwise indicated, subparts III.M.2 and III.M.3 are based upon the following sources: 10th Mountain Div. AAR, *supra* note 108, at 3,4, 14-15; With Interview, *supra* note 477; Gordon Interview, *supra* note 220; O’Brien Interview, *supra* note 46 (describing methodology of using the Civil Military Operations Center linguists and personnel to identify potential claimants and process claims).

⁵¹² See also CALL INITIAL IMPRESSIONS VOL. II, *supra* note 206, at 121 (“Having linguists assigned to the JTF SJA office before a deployment is a necessity . . . Assign no less than three linguists to the JTF SJA.”); O’Brien Interview, *supra* note 46.

which a principled amount of compensation may be based. In practice, local law may not be well enough developed or reported to eliminate arbitrariness from the determination. In Haiti, the problem was aggravated because the local legal system combined aspects of civil law and customary law traditions,⁵¹³ neither of which emphasizes the development of compensation levels through case law. Judge advocates found it necessary to set a compensation level early and thereby establish a precedent.⁵¹⁴

One of many practical claims issues that benefited from the 10th Mountain Division's previous recent deployment to Somalia was that of physical security for compensated claimants. Claims personnel who were veterans of Mogadishu who had knowledge of robberies of Somalis were determined to preclude similar robberies of compensated Haitian claimants. The purposes of a foreign claims program and of the FCA itself are frustrated if the payment of worthy claims merely trigger muggings that leave claimants worse off than ever. Experience and planning for protection of Haitians carrying away money prevented robberies from occurring, as did the payment of claims in Haitian currency.⁵¹⁵

⁵¹³ See RENE DAVID & JOHN E.C. BRIERLEY, MAJOR LEGAL SYSTEMS IN THE WORLD TODAY: AN INTRODUCTION TO THE COMPARATIVE STUDY OF LAW 33-154, 548-76 (3d ed. 1985) (surveying the civil law or "romano-germanic" legal tradition as well as the customary tradition).

⁵¹⁴ This was from \$5,000 to \$14,000 depending on the facts that resulted in loss of life. Death claim payments are to be clearly distinguished from solatia. Solatia are payments to a victim or victim's family without regard to liability. Such payments are in accordance with local custom, are usually immediate in nature, nominal in amount, and represent sympathy with and condolences for the accident or incident giving rise to the injury. The custom of solatia payments is particularly prevalent in the Far East and Middle East. See AR 27-20, *supra* note 496, at para. 15-12; DA PAM. 27-162, *supra* note 493, at para. 8-4.

⁵¹⁵ The experience of claims judge advocates in Somalia was complicated by the vigorous tradition of violence and banditry in that country. See UNITED STATES ARMY INTELLIGENCE AND THREAT ANALYSIS CENTER, RESTORE HOPE SOLDIER HANDBOOK (1993) (describing a lifestyle in Somalia marked by independence, self-reliance, and violent fighting over political and ethnic differences); Interview with Major Curtis A. Parker, Former Command Judge Advocate for the 593d Area Support Group, Mogadishu, in Charlottesville, VA (Aug. 16, 1995) (describing the complications caused by the endemic violence and questioning the wisdom of liberally paying claims in a needy society).

3. *Expect Misdirected and Exaggerated Claims.* Uphold Democracy and subsequent operations in Haiti were thoroughly “joint,” “combined,” and “interagency” as these terms are now defined in military doctrine for operations other than war.⁵¹⁶ The implication of these latter two descriptive terms for the claims program was that army judge advocates were frequently confronted with claims arising from the alleged tortious conduct of coalition forces, of inter-governmental officials, of nongovernmental organizations, or of United States government officials unconnected to the Department of Defense. The “claims days” conducted twice a week in Port-au-Prince soon acquired a reputation for promptness and efficiency; furthermore, the claims procedures used by the United Nations and other entities, if such procedures existed at all, were far less responsive.⁵¹⁷ Accordingly, prospective claimants often decided to test their fortunes with the American military regardless of whether the non-Haitians who allegedly caused damage were United States soldiers. Sometimes, these misdirected claims resulted from understandable cases of mistaken identity, as when members of the ICITAP contingent, who drove vehicles identical to military vehicles, were presumed to be soldiers.⁵¹⁸

⁵¹⁶ See *supra* note 30 (defining “joint”), note 32 (defining “combined”), and subpart III.G.2 (describing “interagency”).

⁵¹⁷ The cumbersome nature of the United Nations claims procedures results from many of the same institutional features that have created controversy over the placement of United States forces under the command and control of the United Nations. See *The White House and the National Security Council, Presidential Decision Directive/NSC-25, subject: Reforming Multilateral Peace Operations (May 1994)*. For understandable and legitimate reasons, the United Nations has evolved as a bureaucratic and largely nonhierarchical organization. These features do not lend themselves to the creation of a prompt and responsive claims system. See *Status of Mission Agreement for the United Nations Mission in Haiti, Mar. 21, 1995, U.N.-Haiti, arts. 51-53, reprinted in Appendix P* (detailing time-consuming procedures for establishing a claims commission, and stating that “the commission shall determine its own procedures”).

⁵¹⁸ See *With Interview, supra* note 477 (describing the frustration in the faces of Haitians with misdirected claims upon learning that the alleged wrongdoer worked for an organization with an unresponsive claims apparatus).

As might be expected in an environment of such extreme poverty, on many other occasions claimants knowingly misdirected or exaggerated their allegations in attempts to exploit an impressive source of wealth. Foreigners who allegedly damaged a claimant's home sounded at first report to resemble soldiers from a coalition partner's forces but upon follow-up questioning they were determined to be United States troops. United States forces conducting operations from an athletic field pursuant to a lease with the purported owner of the field triggered an allegation from another man who claimed to be the rightful owner of not only the field, but also of an elaborate and expensive multi-sport athletic complex that existed before the Americans moved in.⁵¹⁹ These and other examples of creative claims flourish in the operational environment, when judge advocates understandably must place a low priority on policing fraud.

Claims judge advocates in Haiti conclude that the best approach to misdirected and exaggerated claims is to generate evidence that will assist in the investigative and adjudicative phases. Aggressively seek documentation of property ownership prior to signing leases, and obtain sufficient knowledge about the local legal system to determine whether such documentation is appropriately recorded. Take pictures to record the condition of rented real estate and facilities prior to setting up operations. Train military drivers not only to write down basic information about a traffic accident on pre-drafted cards, but also to provide the Haitian citizen involved with translated information about where and when claims may be presented and about what can and cannot be compensated. Such measures enable payment to be based on hard evidence rather than conjecture, contributing to the effectiveness and perceived fairness of the process even as they discourage fabricated claims. *Appendix Y* reprints a card containing standard procedures for soldiers involved in accidents in Haiti. *Appendix Z* reprints the accident form used in Haiti to record important facts.

⁵¹⁹ See Chandler Interview, *supra* note 505 (describing the claim, which continued to be investigated as of 15 August 1995).

N. Reserve Components

Reserve forces from all services played a vital role in the Haiti deployment and resoundingly validated the Nation's Total Force Policy.⁵²⁰ On September 15, 1994, President Clinton authorized the Secretaries of Defense and Transportation to order units and individuals of the selected reserve to active duty. *Appendix AA* contains the executive order authorizing the callup and the corresponding report to congress setting forth the circumstances necessitating the action.⁵²¹ In the coming months, more than 5,700 soldiers, sailors, airmen, marines, and coastguardsmen were ordered to active duty,⁵²² with most of these agreeing to enter or remain on active duty voluntarily.⁵²³

⁵²⁰ See, e.g., DOD FINAL REPORT, *supra* note 163, at 471-72 (providing an overview of the Total Force Policy and its implementation in the 1980's).

⁵²¹ This order, Exec. Order No. 12,927, 3 C.F.R. 921 (1995), invoked 10 U.S.C. § 673b, which was recently amended and relocated within the United States Code to 10 U.S.C. § 12,304. See National Defense Authorization Act for Fiscal Year 1995 at §§ 511(a), 1662(e)(2), 1675(c)(2), Pub. L. No. 103-337, 108 Stat. 2663, 2752, 2992, 3017. Section 673b(a) stated that in times other than war or national emergency, the President may authorize the Secretary of Defense "to order any unit, and any member not assigned to a unit organized to serve as a unit, of the Selected Reserve" to active duty for not more than 90 days. The amendment increased the period of involuntary service to 270 days. See 108 Stat. 2752.

⁵²² See *Hearings on H.R. 2126 Before the House Committee on National Security*, 104th Cong., 1st Sess. (Apr. 3, 1995) (prepared statement of General Robert L. Rutherford, USAF Commander in Chief, United States Transportation Command), *reprinted in* 1995 FEDERAL NEWS SERV. (Apr. 3, 1995) [hereinafter Rutherford Testimony].

⁵²³ Although Executive Order 12,927 authorized involuntary callups of up to 90 days, the statutory authority actually employed in most cases was 10 U.S.C. § 672(d), which authorized each military department Secretary to order a reservist to active duty with the consent of that individual reservist and to order a National Guardsman to active duty with the consent of that individual Guardsman and of the governor of the state concerned. Section 672 was recently relocated to 10 U.S.C. § 12,301. See National Defense Authorization Act for Fiscal Year 1995 at §§ 1662(e)(2), 1675(c)(2), Pub. L. No. 103-337, 108 Stat. 2663, 2992, 3017. Army reserve component personnel voluntarily ordered to active duty under section 672 served temporary tours of active duty under the provisions of DEP'T OF ARMY, REG. 135-210, ORDER TO ACTIVE DUTY AS INDIVIDUALS DURING PEACETIME, ch. 3 (1 Oct. 1994) (explaining that tours normally run from 30 to 179 days).

The proportionate contribution of the reserve components was comparable to that made during Operations Desert Shield and Desert Storm, when 245,000 reservists entered active duty in support of that crisis and 106,000 of that number actually served in Southwest Asia.⁵²⁴ For the Haiti crisis, Army National Guard military police companies from Puerto Rico, Arizona, and California backfilled active component military police companies; 165 Guard special forces soldiers and an aeromedical evacuation element deployed to Haiti itself.⁵²⁵ The civil affairs elements discussed above were part of an important contribution from the Army Reserve.⁵²⁶ Members of the 911th Air Wing from Pennsylvania deployed for 6 weeks.⁵²⁷ They were joined in Haiti by a diverse collection of Naval Reserve resources, including Mobile Inshore Undersea Warfare (MIUW) units, and another 135 specialists in intelligence, military sealift, and headquarters support.⁵²⁸ Eighty-four Marine Corps reservists volunteered for 45 days of active duty at Camp Lejeune, and 15 reservists assigned with USACOM spearheaded the efforts of the International Police Monitors in Haiti.⁵²⁹ Coast Guard reservists from Wisconsin and elsewhere also joined the effort.⁵³⁰

⁵²⁴ See DOD FINAL REPORT, *supra* note 163, at 471, 476 (elaborating that reservists represented 16% of forces in the theater at one point).

⁵²⁵ See *Hearings on S. 1087 Before the Subcomm. on Defense of the Senate Committee on Appropriations*, 104th Cong., 1st Sess. (May 9, 1995) (prepared statement of Lieutenant General Edward D. Baca, Chief, National Guard Bureau, United States Army), *reprinted in* 1995 FEDERAL NEWS SERV (May 9, 1995); ARMY NATIONAL GUARD OF THE UNITED STATES, RESEARCH AND SUPPORT OFFICE, NATIONAL GUARD BUREAU, 1996 POSTURE STATEMENT, at 2 [hereinafter POSTURE STATEMENT].

⁵²⁶ See *supra* note 322 and accompanying text.

⁵²⁷ See 141 CONG. REC. S8023 (daily ed. June 8, 1995).

⁵²⁸ See *Hearings on S. 1087 Before the Subcomm. on Defense of the Senate Committee on Appropriations*, 104th Cong., 1st Sess. (May 9, 1995) (prepared statement of Rear Admiral Thomas F. Hall, Chief of Naval Reserve), *reprinted in* 1995 FEDERAL NEWS SERV (May 9, 1995).

⁵²⁹ See *Hearings on S. 1087 Before the Subcomm. on Defense of the Senate Committee on Appropriations*, 104th Cong., 1st Sess. (May 9, 1995) (prepared statement of Major General James M. Livingston, United States Marine Corps Reserve Officers' Association), *reprinted in* 1995 FEDERAL NEWS SERV. (May 9, 1995).

⁵³⁰ Richard W. Jaeger, Madison Man Goes to Haiti: School District Official in Coast Guard Reserve, Wisconsin State Journal, Sept. 22, 1994, at 10A.

The rapid withdrawal of most forces from Haiti limited the involvement of reserve component judge advocates. Sixteen did crucial work as ministerial advisors,⁵³¹ and two served in judge advocate positions that are embedded in civil affairs units.⁵³² A judge advocate major in the United States Army Reserve may replace the active component judge advocate presently serving with United States forces in Haiti.⁵³³ Yet despite this limited role for reserve operational lawyers, the deployment to Haiti furnished two important lessons learned.

1. Assist the Command in Developing a Knowledge Base About Individual Mobilization Augmentees and in Securing Individual Reservists With Special Skills. Because of their ability to construe federal law and regulations pertaining to reserve forces, judge advocates are uniquely qualified to assist the command in securing critical support from individual reservists with special skills. In a war or national emergency—neither of which will likely exist during an operation other than war—callup of reservists could be massive and involuntary, as was the case during the Persian Gulf War. In the absence of war or national emergency, callup will emphasize the use of volunteers.⁵³⁴ The methodology of “volunteerism” relies upon detailed knowledge about and training of individual reservists. These reservists may be serving in individual mobilization augmentee billets (IMAs) or in troop units. Individual mobilization augmentees are individual members of the Selected Reserve. They participate in training activities on a part-time basis with an active component unit in preparation for

⁵³¹ See *supra* note 345 and accompanying text.

⁵³² See McNeill Interview, *supra* note 306.

⁵³³ See Interview with Dr. Mark Foley, Judge Advocate Guard & Reserve Affairs Division, Office of The Judge Advocate General, in Charlottesville, VA (Sept. 15, 1995) [hereinafter Foley Interview].

⁵³⁴ See Rutherford Testimony, *supra* note 522.

recall in a mobilization.⁵³⁵ Individuals in troop units of the Selected Reserve may also volunteer for active duty.⁵³⁶

The need for individuals with special skills became urgent during military operations in Haiti.⁵³⁷ Upon restoration of the Aristide

⁵³⁵ See DOD FINAL REPORT, *supra* note 163, at 472; DEP'T OF ARMY, REG. 140-45, INDIVIDUAL MOBILIZATION AUGMENTEE PROGRAM at 12 (23 Nov. 1994).

⁵³⁶ Some understanding of reserve component terminology is essential to understand the text:

Ready Reserve—Ready Reserve is comprised of military members of the Reserve and National Guard, organized in units, or as individuals, liable for recall to active duty to augment the active components in time of war or national emergency. (Title 10 U.S.C. §§ 672, 673 [now 10 U.S.C. §§ 12301 to 12305]) The Ready Reserve consists of three reserve component subcategories—the Selected Reserve, the Individual Ready Reserve (IRR), and the Inactive National Guard.

Selected Reserves—The Selected Reserve consists of those units and individuals within the Ready Reserve designated by their respective Services and approved by the Chairman, Joint Chiefs of Staff, as so essential to initial wartime missions that they have priority over all other Reserves (Title 10 U.S.C. § 268(c) [now §§ 10141-10155]). All Selected Reservists are in an active status.

Individual Mobilization Augmentees (IMA)—Individual members of the Selected Reserves. Trained Individuals preassigned to an active component, Selective Service System or Federal Emergency Management Agency (FEMA) organization's billet which must be filled on or shortly after mobilization. IMA's participate on a part-time basis with an active component unit in preparation for recall in a mobilization.

Individual Ready Reserve (IRR)—The IRR consists of those Ready Reservists not in the Selected Reserves. Composed of Reserve Component members not assigned to a unit. Trained individuals who previously served in the active component or Selected Reserve. Members normally have a remaining military service obligation, are subject to mobilization, and might be ordered to limited involuntary active duty for training.

See DOD FINAL REPORT, *supra* note 163, at 472.

⁵³⁷ Unless otherwise annotated, the information in this paragraph and the two that follow it is based upon Foley Interview, *supra* 533; Hudson Interview, *supra* note 65; Colonel Harlan M. Heffelfinger, Staff Judge Advocate, USASOC, Remarks Before the Haiti After Action Review Conference in Charlottesville, VA (May 10, 1995) (videotape on file with CLAMO).

government, technicians with skills in public works and utilities, public health, economics and commerce, transportation, legal and judicial functions, and other functional areas were in high demand.

Commanders understandably sought detailed information about the rules that governed the procurement of individual reservists and about the specific skills of particular reserve personnel in various combat service support specialties. Judge advocates assigned to the United States Army Special Operations Command (USASOC) provided that command advice on callup rules applying to all reservists. In conjunction with the Judge Advocate Guard and Reserve Affairs Division (GRA), they also searched files of reserve judge advocates and other attorneys in the reserve components to identify candidates for participation in the ministerial advisory team slated to serve as judicial mentors. That search placed a premium on skills associated with administering courts and prisons, on French or Creole language skills, and on willingness to volunteer for active duty.

The methodology used by USASOC and GRA for the Haiti deployment applies equally to judge advocates supporting conventional units. Operational lawyers greatly enhance the readiness of the unit they support by helping commanders and staffs decipher the meaning and effect of the complex maze of mobilization rules. Close coordination with the Deputy G-3 for Mobilization, the G-1, the G-4, and the G-5 can ensure that the command is properly oriented toward identifying particular reservists capable of furnishing a broad range of experience and expertise, particularly in combat service support billets. Also, the identification in advance of needs and skills envisioned by unit plans of all sorts—wartime, contingency operations, mission training, mobilization, force integration—will help reserve personnel managers match skilled reservists to positions.

As most staff judge advocates already know, the same methodology also applies, on a smaller scale, to legal offices. Gaining organization staff judge advocates derive great benefit from maintaining

frequent contact with IMAs assigned to organization billets. Experience tells us to get to know these people well. Resist the temptation to consume their annual training time with odd projects, and train them for their assigned jobs. Learn their special skills. Invest in them by arranging for schooling at The Judge Advocate General's School or elsewhere, as necessary. Annotate whether and in what conditions they would willingly enter active duty.

2. Forge Strong Training and Mutual Support Relationships with Reserve Units. As experience from Haiti demonstrated, joint force packaging for future operations other than war will rely heavily on units in the selected reserves.⁵³⁸ Judge advocate knowledge of rules governing reserve force callups can help structure staff initiatives to plan for reserve unit employment and anticipate scenarios in which units must be procured. Strong, mutually supportive relationships between active and reserve component units enhance this process of mobilization planning and execution. For example, the training relationship between the 10th Mountain Division and the 27th Infantry Brigade of the New York Army National Guard considerably smoothed the activation and assimilation of 115 Guard soldiers who provided deployment assistance to the 10th Mountain.⁵³⁹ Similarly, the training relationship between the 361st Civil Affairs Brigade of Columbia, South Carolina and the XVIIIth Airborne Corps eased the integration of personnel from that unit into the MNF in Haiti.

Again, the methodology applies, in miniature, to legal offices. Train with assigned Judge Advocate General Service Organizations (JAGSOs). Become fully acquainted with the modular structure of JAGSOs to be fielded under the new table of organization and equipment.⁵⁴⁰ Learn the capabilities, equipment, personnel, and leadership of assigned Legal Support Organization, the Legal Services

⁵³⁸ See Rutherford Testimony, *supra* 522.

⁵³⁹ See POSTURE STATEMENT, *supra* note 525, at 2.

⁵⁴⁰ See OP. LAW HANDBOOK, *supra* note 9, at D-3.

Teams, the Trial Defense Teams, and Military Judge Teams.⁵⁴¹ Create memoranda of understanding to strengthen informal training and mission support relationships.⁵⁴² Although these measures did not prove immediately applicable to legal operations in Haiti, they will be indispensable in many conceivable future contingencies.

*O. Equipment and Military Training*⁵⁴³

The rule of law is merely a lofty abstraction without two things: first, legal references; and second, operational lawyers capable of living, moving, and communicating in a field environment well enough to explain the contents of those references. After all, the rule of law is the rule of *law*, not the rule of individual opinions or feelings.⁵⁴⁴ Without ready access to written textual legal materials, and without personnel and resources capable of disseminating the meaning of those textual materials, what reigns is chaos, not law.

Judge advocates supporting military operations in Haiti were, by and large, adequately equipped. Day to day, week to week, they consulted hundreds of different legal authorities. They had field libraries of appropriate depth and variety, and a functional mix of hardcopy and automated materials. When sources were not in their

⁵⁴¹ See DEP'T OF ARMY, REG. 27-1, JUDGE ADVOCATE LEGAL SERVICES, at chs. 10, 11, and app. B (3 Feb. 1995).

⁵⁴² See, e.g., Memorandum of Understanding Between Office of the Staff Judge Advocate, United States Army Central Command, MacDill Air Force Base and 153d Legal Support Organization, 79th United States Army Reserve Command, Willow Grove, Pennsylvania (25 Aug. 1995) (copy on file with CLAMO).

⁵⁴³ Unless otherwise indicated, the information in this subpart is based upon the following sources: 10th Mountain Div. AAR, *supra* note 108, at 1-4; Passar AAR, *supra* note 120, at paras. 2 to 4; 194th Armored Brigade AAR, *supra* note 121, at para. 4; Gordon Interview, *supra* note 220; O'Brien Interview, *supra* note 46; Sposato Interview, *supra* note 216; With Interview, *supra* note 477; Becker Interview, *supra* note 184.

⁵⁴⁴ See *supra* note 2.

immediate possession, judge advocates in technical channels or elsewhere in the Judge Advocate General's Corps quickly provided them copies. The workspaces in which they conducted their legal research were large enough, well-lit, clean, dry, and cool. They used computers to process words, graphics, and other data, and used a variety of means to communicate. They ate, slept, and worked in sufficient comfort to sustain a high level of performance. They had enough mobility to investigate claims and other matters, supervise legal personnel, advise commanders, and coordinate with staff.⁵⁴⁵

Legal personnel also were, by and large, adequately trained in the noncombat military skills necessary to function efficiently during the deployment. They could orient maps to the ground by terrain association and could determine location, direction, and distance so as to navigate themselves or vehicles to desired destinations.⁵⁴⁶ They were capable of engaging targets with their personal weapons as necessary to perform security duties.⁵⁴⁷ They could use the challenge and password properly.⁵⁴⁸ They could protect classified information and material.⁵⁴⁹

⁵⁴⁵ See FM 27-100, *supra* note 9, at paras. 6-3 to 6-6 (describing equipment, mobility, and automation requirements of legal personnel). See also *infra* Appendix BB, response number 18 (answering the questions "when you had a need to travel by vehicle, what vehicle did you use, and what staff element or unit controlled the vehicle?" and "was this arrangement adequate?").

⁵⁴⁶ See DEP'T OF THE ARMY, SOLDIER TRAINING PUBLICATION NO. 21-1-SMCT, SOLDIER'S MANUAL OF COMMON TASKS, SKILL LEVEL 1 at 55 to 109 (1990) [hereinafter COMMON TASKS MANUAL] (tasks 071-329-1000, 071-329-1001, 071-329-1002, 071-329-1003, 071-329-1005, 071-329-1008, 071-329-1012, 071-329-1018).

⁵⁴⁷ See *id.* at 176-87 (task 071-311-2007).

⁵⁴⁸ See *id.* at 420 (task 071-331-0801).

⁵⁴⁹ See DEP'T OF ARMY, REG. 380-5, DEP'T OF THE ARMY INFORMATION SECURITY PROGRAM at ch. 5 (1 Mar. 1988) [hereinafter AR 380-5]. Note, however, that convenient and secure storage space was not always available. See 10th Mountain Div. AAR, *supra* note 108, at 2 ("We were forced to store our classified documents at the division headquarters. This became cumbersome, as the division headquarters building is located approximately three miles from our office.").

Nevertheless, the conditions in Haiti challenged preparedness in equipment and training so thoroughly that deployed judge advocates invariably developed strong opinions about how better to prepare for future operations other than war. In order to reflect the personal observations of a representative group of three legal personnel who deployed to Haiti, this report reprints at *Appendix BB* the answers to a survey about equipment and training. The answers are both illuminating and sobering. Soldiers and attorneys can never be completely ready to deploy, but they can do much useful preparation in advance.

1. Pack Footlockers Ahead of Time With Forms and References, to Include Fiscal Law and Intelligence Law Materials.

More and more legal documents, references, and forms are being translated into microfiche and electronic data formats.⁵⁵⁰ A wealth of information that was hard to find only a year ago is now available on CD-ROM disks or on databases accessible via telephone lines or other communication links. Ten year old guides providing tips on how to conduct legal research today seem hopelessly out-of-date.⁵⁵¹ Along with the rest of the American legal community,⁵⁵² The Judge Advocate General's Corps is in the middle of a legal resource revolution.

Given the crush of work related to providing legal services on a military installation in peacetime and given the continuing revolution in legal resources, the temptation to put off packing for possible deployment is high. If a form or manual will be available on disc a few months from now anyway, why bother? While this mode of thinking is very seductive, the Haiti deployment proves that it is very wrong.

⁵⁵⁰ See, e.g., LEXIX-NEXIS, DIRECTORY OF ONLINE SERVICES (1995) (consisting of 404 pages of small print cataloguing thousands of available documents).

⁵⁵¹ See, e.g., CHRISTOPHER G. WREN & JILL ROBINSON WREN, THE LEGAL RESEARCH MANUAL (2d ed. 1986) (devoting 3 pages out of 219 to computerized legal research).

⁵⁵² See, e.g., Richard A. Matasar & Rosemary Shiels, *Electronic Law Students: Repercussions on Legal Education*, 29 VALPARAISO UNIVERSITY L. REV. 909 (1995).

Operational lawyers profited greatly from footlockers of prepacked, hardcopy materials, even if these did require some repacking in the days immediately before departure.⁵⁵³ Most legal references consulted were in hardcopy: army regulations, handbooks, deskbooks, *The Manual for Courts-Martial*. Most legal forms completed were preprinted, paper forms: article 15's, sworn statements, investigating officer's reports, ordering officer vouchers.⁵⁵⁴ References that were unexpectedly coveted included a compilation of foreign relations legislation printed by the Government Printing Office (GPO) and helpful in resolving fiscal law issues,⁵⁵⁵ a compilation of

⁵⁵³ See, e.g., Stai Memorandum, *supra* note 35, at 10 ([Between 25 April 1994 and 8 May 1994,] I painted one field desk and three footlockers OD green and stenciled "SJA" on them in white letters. I inventoried their contents, replenished their supplies, and began stocking them with joint, Army, and other publications, as available."); *id.* at 31 ("I made 5.5 x 10.5 inch copies of the ROE and legal appendixes, treaties and agreements, and law of war, ROE, and country law training materials. I packed these materials and several ROE cards, foreign claims settlement agreement forms, and property control record books in my rucksack."); 194th Armored Brigade AAR, *supra* note 121, at para. 4 ("When the execute order came on 6 September, I had all of the requisite computer hardware and software, as well as a fully stocked deployment box."); Passar AAR, *supra* note 120, at para. 2d ("The only unexpected hurdle in preparing for deployment was my discovery shortly before departing that there was some doubt whether commercial/military transport would handle the office-provided footlocker of legal resources that I had assembled. Although smaller than the one taken by MAJ DeMoss on his deployment to Somalia, I was advised that mine technically exceeded the dimension limit for baggage by a few inches and that the estimated 100 lb. weight exceeded the maximum weight for each piece of accompanying baggage, 70 lbs. I had previously obtained authorization for excess weight shipment but had not been advised of the limit for each piece. I quickly remedied this potential problem by purchasing a Rubbermaid durable plastic footlocker and split my legal reference materials between the two footlockers, ensuring that both were under the 70 lb. limit. This turned out to make transport of the materials much easier. In Haiti, I discovered that the 18th Airborne Corps transportation personnel deployed with similar plastic footlockers, and I recommend using them rather than the bulkier standard footlocker."); *cf.* Bickers Memorandum, *supra* note 362, at para. 2 ("We were able to beg and borrow space, phones, computer use, etc., but a stocked field desk would be a sound investment and admirable solution, especially in light divisions.").

⁵⁵⁴ For a listing of the formal nomenclature for these forms, see OP. LAW HANDBOOK, *supra* note 9, at 14-8 to 14-11.

⁵⁵⁵ See LEGISLATION ON FOREIGN RELATIONS THROUGH 1994, *supra* note 336. Government Printing Office publications may be ordered by mailing orders to Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402-9325, telephoning orders to (202) 783-3238 between 8:00 am and 4:00 pm eastern time, or sending a fax to the Government Accounts desk at (202) 512-2256.

intelligence law printed by GPO,⁵⁵⁶ regulations of other services pertaining to nonjudicial punishment,⁵⁵⁷ and a guide to family law in the fifty states.⁵⁵⁸

2. Deploy With 486 Laptops Having Software Used By the Rest of the Staff and Having Communications and CD-ROM Reading Capability. Even as it remains necessary to carry paper references and forms, today's operational lawyer must be equipped with modern automated data processing and communication equipment. Almost all judge advocates deployed to Haiti with or had ready access to advanced, lightweight laptop computers. Some of these hooked directly into local area networks linking staff members. Judge advocates researched issues, sent electronic mail, wrote legal memoranda, made entries in the daily log, and prepared briefing charts using computers. Staff elements used a large variety of dot-matrix, bubble jet, and laser printers.

⁵⁵⁶ See HOUSE PERMANENT SELECT COMM. ON INTELLIGENCE, COMPILATION OF INTELLIGENCE LAWS AND RELATED LAWS AND EXECUTIVE ORDERS OF INTEREST TO THE NATIONAL INTELLIGENCE COMMUNITY (July 1993).

⁵⁵⁷ See DEP'T OF ARMY, REG. 27-10, MILITARY JUSTICE, para. 3-7 (C1, 16 Sept. 1994) (providing guidance for commanders imposing nonjudicial punishment over members of other services and requiring compliance with procedures prescribed by the member's parent service); DEP'T OF AIR FORCE, AIR FORCE INSTRUCTION 51-202, MILITARY JUSTICE, NONJUDICIAL PUNISHMENT GUIDE (April 1994); DEP'T OF NAVY, MANUAL OF THE JUDGE ADVOCATE GENERAL, NAVY (JAGMAN) (1 July 1978); UNITED STATES COAST GUARD, MILITARY JUSTICE MANUAL, COMDINST. M5810.1C (15 Jan. 1991). The need for guidance pertaining to nonjudicial punishment of other services mirrored a need for training in other services' procedures. See Electronic Mail Message from Sergeant Steven Wasilausky, Legal Noncommissioned Officer for 2d Armored Cavalry Regiment and United States Forces in Haiti to Major Mark Martins (30 Aug. 1995) (regretting the lack of training in such procedures and stating that "a 'Joint Military Operations Criminal Justice Manual,' with the normal essentials found in AR 27-10 would be invaluable").

⁵⁵⁸ See, e.g., THE JUDGE ADVOCATE GENERAL'S SCHOOL, UNITED STATES ARMY, JA 263, LEGAL ASSISTANCE FAMILY LAW GUIDE (June 1993) (containing state-by-state law summaries in chapter 4).

Software incompatibilities plagued many judge advocates, both before and after deployment. Most other staff offices were using Microsoft Word, Access, and Powerpoint, whereas judge advocates were using Wordperfect, Enable, and Harvard Graphics.⁵⁵⁹ Although the hurdles presented by inconsistent software were never insuperable, they added an unwelcome layer of complexity.

The deployment to Haiti clearly revealed that the Zenith 286 laptop computers, in the inventory of many legal offices since the late 1980's, are not worth bringing to the field in a realworld deployment.⁵⁶⁰

⁵⁵⁹ See, e.g., 10th Mountain Div. AAR, *supra* note 108, at 1 ("This lack of compatibility became a major hindrance for operations planning for the SJA office. It also created undue work for the G-3 staff during times of high stress. Often, G-3 staff members had to create SJA slides for upcoming briefings. It is essential that each SJA office of a deployable division have word processing and graphics software compatible with the division staff.")

⁵⁶⁰ One senior judge advocate who deployed to Haiti provided a colorful description of the inadequacies of this old system:

A caution to those considering taking the old style Zenith lap tops like the ones issued to some in the Trial Judiciary. These computers are completely outdated and should be relied upon with great caution.

(1) The floppy disk drives on the Zenith lap tops will *only* read and write to 720k floppies *but* the current 1.44MB floppies are the industry and Army standard. These Zenith lap tops are the only computers in the Army inventory I am aware of that are so limited. The danger here is that if you intend to use the old Zenith lap tops, ensure that you take spare 720k floppies with you and do not rely on anyone giving you a 3.5" disk unless you are certain it is a 720k disk.

(2) The old Zenith lap tops are dinosaurs for other reasons:

(a) The 286 CPU in the lap tops are electronically incapable of running Windows 3.1 or higher. That program is quickly becoming a military and industry standard for many applications.

(b) The screen display is of the CGA type. That standard is three generations behind the current standard and few programs today will run in CGA mode.

(c) The displays are also of a type that provides not only an inferior quality picture, but become unreadable in extreme temperatures.

(d) The lap tops are very heavy by today's standards and they are difficult to deploy. Their size makes them inconvenient to use in tight spaces and to pack. By contrast, notebook computers can be easily transported in a briefcase or helmet bag with room to spare for other essentials.

A deployment package consisting of an IBM-compatible laptop with an Intel 486 generation processing chip, four megabytes or more of random access memory, a modem of 2400 baud or better, and a CD-ROM drive would have provided any of the deployed judge advocates with optimal automation support. Surely, the next report of this type that is written will describe a package with much greater capability.⁵⁶¹

(e) The hard drives have a very small capacity and are extremely slow.

(f) The limited on board memory limits the usability of the computer. For example, if one loaded a resident program to protect against viruses (always advisable), even some parts of Enable suffer from memory shortages.

(g) I do not support having only the most modern equipment for the sake of being on the edge of technology. However, the old model Zenith lap tops are truly outdated and their best value is as a charitable contribution to a worthwhile cause.

See Hodges, *supra* note 380, at 8g.

⁵⁶¹ The Developments, Doctrine & Literature Department at The Judge Advocate General's School—in coordination with the Information Management Office, Legal Automation Army-Wide System Team, Office of the Judge Advocate General, with the Office of the Staff Judge Advocate, United States Army Forces Command, with the Office of the Staff Judge Advocate, United States Army Special Forces Command, with the International and Operational Law Division, The Judge Advocate General's School, and with CLAMO—has developed an attractive package of components that can be deployed in a rucksack:

JAGS-DDC

8 SEP 1995

MEMORANDUM FOR FILE

SUBJECT: Rucksack Deployable Law Office and Library (RDLOL)

1. This concept envisions a suite of off-the-shelf automation equipment, providing, in a man-portable package, the following capabilities:

- o Word Processing/database/spreadsheet
- o Administrative document production/preparation
- o Criminal Law document production/preparation
- o Legal Assistance document production/preparation
- o Convenience copying
- o Cellular voice communication
- o Wireline and non-wire FAX (w/satcom capability)
- o Wireline and non-wire digital telecommunication (w/satcom compatibility)
- o Photography and digital telecommunication of photographs

-
- o Legal Research w/import to document capability
 - o Compatibility with standard Army communications equipment

2. Some or all of this capability may be procured through the purchase of one of several commercially available suites of equipment, or by local assembly of separately purchased components. Market research discloses that the former option is rather expensive (See attached quotations from Computer Masters (COZMO) and Syntrex Technologies).

3. The concept capabilities are available in components described as follows:

Lightweight, portable (notebook or subnotebook size) computer, IBM compatible, 486-level CPU (prefer 486DX2-66, or 486DX4-100), 8-16 Mbytes RAM, at least 200 Mbyte hard disk storage (prefer removable media), internal MPCII-compatible double-speed or greater CD-ROM drive (prefer CD-ROM access by lifting keyboard), internal or external 3.5" floppy drive, internal or PCMCIA FAX/modem (prefer 28.8 kbps), parallel, serial, VGA monitor ports (prefer external keyboard port), 2 batteries w/external charger (prefer NiMH batteries and 1-2 hour charger w/discharge option).

Full-page, self interfaced, battery operated lightweight, 300 dpi or greater portable scanner, w/internal battery and recharger and bundled scan/FAX/copy software (NOTE: At least 4 MB of computer's RAM is needed for SWAPFILE operations of the scanner).

Lightweight, portable, battery operated, ink jet, 300 dpi or greater printer, w/internal battery and recharger.

Lightweight, portable, cellular telephone (prefer 3 watt), w/battery and 12 volt adapter/eliminator and cellular telephone data interface.

Lightweight, portable, self-interfaced digital camera.

Lightweight, portable surge suppresser/battery extender.

Lightweight hardside carrying case for all the above, at least 12"x18"x9", w/dense foam insert configured or configurable to cushion the above.

Software:

Commercial--DOS 6.22, Windows 3.11, Word Perfect for Windows 6.1, Enable 4.01, ULTRAFAX or WINFAX PRO, Words & Pictures (bundled w/ scanner), WESTLAW or LEXIS, West's Military Justice Reports (CD-ROM edition), West's United States Code Annotated (CD-ROM edition), West's Government Contract Law Reporter (CD-ROM edition), West's Labor law Reporter (CD-ROM edition), West's Environmental Law Reporter (CD-ROM edition).

3. Conduct Individual Soldier and Officer Training on Such Things as First Aid, Vehicle Primary Maintenance, and Writing Messages. One of the principle recommendations of the *Desert Storm Assessment Team* was that “the JAGC better prepare for mobilization, deployment, and war by training more in soldier skills; cross-training personnel in all legal functional areas for greater operational law utility; and developing light, easily-deployable packages of up-to-date automated and other research materials which will withstand severe conditions.”⁵⁶² Judge advocates who deployed state that operations in Haiti—though not war—resoundingly validated this recommendation. Three areas stood out as particularly deserving of training attention: first

Army procured--LAAWS CD-ROM w/Claims and Criminal Law Modules, ARMYPUBS CD-ROM, ARMYFORMS CD-ROM, Forms Engine.

4. Market research discloses that items meeting the above requirement, less scanner and batteries for the printer, are available at a reasonable price on GSA Schedules B and C or the GSA Army Portable-1 contract from Government Technology Services, Inc. (GTSI) (See attached order forms for details).
5. Research also discloses that the cellular telephone capability already exists in most target organizations. The PCMCIA modem available from GTSI is self-interfaced with cellular systems and requires no separate digital interface adapter.
6. The scanner and batteries are available at reasonable cost from GTSI from open-market purchases.
7. The total component cost (\$6,802.00, plus and estimated \$136.00 for the case) is significantly less than that of either the Computer Masters or Syntrex suite.

GAYLEN G. WHATCOTT
MAJ, JA
Combat Developments Officer

⁵⁶² See DSAT REPORT, *supra* note 3, at Executive Summary.

aid;⁵⁶³ preventive maintenance checks and services on military vehicles;⁵⁶⁴ operator maintenance on weapons;⁵⁶⁵ and writing and reading United States Message Text Format (USMTF) messages.⁵⁶⁶

P. Staff Procedures and Operations

Judge advocates fulfill their mission “by providing professional legal services.”⁵⁶⁷ This report has illustrated that the success of the Haiti deployment to date is at least partly attributable to United States forces’ commitment to the rule of law. The connection—between providing legal services and constituting a military force that lives, eats, trains, deploys, and fights according to the rule of law—lies partly in the many substantive areas of the law surveyed in subparts III.A to III.N above. It lies partly in the equipment and training imperatives outlined in subpart III.O. It lies partly in the patriotism and dedication of an extremely talented and skilled population of volunteer soldiers.

Yet the connection also lies in the procedures and operational methods judge advocates employ on the staffs of the commander they support. A relatively small number of legal professionals in Haiti provided services that successfully promoted the rule of law because that number was organized and used procedures that maximize the impact of those services. Legal services are a part of the Personnel

⁵⁶³ See COMMON TASKS MANUAL, *supra* note 546, at 641 to 723 (consisting of 17 tasks, including 081-831-1033—Apply a Dressing to an Open Head Wound and 081-831-1008—Give First Aid for Heat Injuries).

⁵⁶⁴ See DEP’T OF ARMY, SOLDIER TRAINING PUBLICATION NO. 21-II-MQS, MILITARY QUALIFICATION STANDARDS II: MANUAL OF COMMON TASKS FOR LIEUTENANTS AND CAPTAINS 3-70 (31 Jan. 1991) (task 04-4966.90-0010)

⁵⁶⁵ See, e.g., COMMON TASKS MANUAL, *supra* note 546, at 110 (task 071-311-2025).

⁵⁶⁶ See DEP’T OF THE ARMY, SOLDIER TRAINING PUBLICATION NO. 21-24-SMCT, SOLDIER’S MANUAL OF COMMON TASKS, SKILL LEVELS 2-4 at 5-3 to 5-3 (1992) (tasks 113-572-4008, 113-572-5005, 113-572-6005, 113-572-6006); Stai Memorandum, *supra* note 35, at 29 (describing receipt of a key message concerning ROE).

⁵⁶⁷ See FM 27-100, *supra* note 9, at para. 1-4.

Service Support mission area.⁵⁶⁸ They support the Battle Command and Combat Service Support Battlefield Operating Systems.⁵⁶⁹ They comprise three types of services: organizational, judicial, and defense.⁵⁷⁰ Although judicial and defense services are essential to the maintenance of good order and discipline in the force, the lessons learned from Haiti apply principally to organizational services.

1. Keep a Log of All Significant Actions. Military operations in Haiti confirmed that a division Staff Judge Advocate section supporting a combined-joint task force must record all significant events, incidents, and interactions in a chronological log. The 10th Mountain Division section kept a detailed log,⁵⁷¹ as did the 25th Infantry Division section.⁵⁷² To provide a flavor of the kinds of events that might appear in such a log, *Appendix CC* reprints selected entries from that kept by the 10th Mountain Division, while *Appendix DD* reprints selected entries from that kept by the 25th Infantry Division. Judge advocates supporting smaller elements kept detailed chronological records of significant actions.⁵⁷³ . Prior to deployment and throughout the existence of JTF-180, the XVIIIth Airborne Corps judge advocate element in the JTF headquarters at Fort Bragg also kept a log.⁵⁷⁴

⁵⁶⁸ See *id.* at para. 1-5.

⁵⁶⁹ See *id.* Army training doctrine requires commanders to assess many aspects of their units by separately examining each "Battlefield Operating System" (BOS), of which there are seven: intelligence, maneuver, fire support, air defense, mobility and survivability, logistics, and battle command. See FM 100-5, OPERATIONS, *supra* note 13, at 2-12 to 2-15 (introducing "battle command" in place of "command and control. *But cf.* Arnold & Stahl, *supra* note 336, at 14 (describing the addition of a "force protection" operating system, which "included a constant review of the rules of engagement and the building of limited infrastructure in the theater where no infrastructure existed for the support of our soldiers").

⁵⁷⁰ See FM 27-100, *supra* note 9, at para. 1-6.

⁵⁷¹ See Gordon Interview, *supra* note 220.

⁵⁷² See Sposato Interview, *supra* note 216.

⁵⁷³ See Passar AAR, *supra* note 120 ("Through frequent activity summaries (Encl 2a-g) faxed to AMC Command Counsel's office, I informed that office of the significant substantive matters handled during my deployment.").

⁵⁷⁴ See Smith Interview, *supra* note 40.

Appendix EE reprints a short excerpt from the log kept by United States Forces Haiti in the latter part of 1995, more than a year after operations in Haiti began

A log of legal services that have been provided serves three practical functions. First, it jogs the memory when one seeks to recall facts and legal reasoning behind prior advice rendered. Second, it alerts judge advocates serving different shifts in the command post that prior advice has been rendered on particular topics.⁵⁷⁵ Third, it enables the staff judge advocate to identify patterns and areas of high demand for legal services, information that is helpful in deciding what products and training to develop. The first two functions help eliminate inconsistent guidance to the command and discourage “forum-shopping.”⁵⁷⁶ The third provides a key management tool.

A log also serves the higher function of distilling and collecting rules that have achieved a special distinction: they actually have been applied to events in the real world. For lawyers trained in the common law tradition, the law is built upon precedents derived from cases. Though far less formal than decisions rendered by courts, a log provides operational case law.

2. *Maintain a Binder With Messages and Other Authorities Relating to the Operation.* If the daily log is analogous to a body of decisions decided on particular facts, then the resolutions of the

⁵⁷⁵ See 10th Mountain Div. AAR, *supra* note 108, at 12 (“Although the Staff Judge Advocate, the Deputy SJA, and the Operations Law Judge Advocate led the office effort, every judge advocate worked shifts in the Joint Operations Center (JOC), which was manned by a judge advocate 24 hours a day. Thus, every judge advocate needed to keep abreast on all operations issues. . . . While the SJA attended morning and evening command and staff briefings, to include executive sessions, judge advocates attended JOC shift change briefings twice daily. At this briefing, judge advocates briefed the joint staff on current legal issues of interest.”).

⁵⁷⁶ See *id.* at 7 (“Many times, civil affairs personnel would ‘forum shop’ until they found a judge advocate who would provide legal approval for a project. Communication within the SJA office, and with the brigade legal counsel, through SJA meetings and extensive entries in the SJA Duty Log, put an end to this practice.”).

Security Council, the policy pronouncements of the United States, and the directives and messages from higher headquarters are analogous to statutory law. Though often not concrete enough to answer specific legal questions that arise, these resolutions, pronouncements, directives and messages nevertheless relate specifically to the operation in question, and are therefore often the first texts to be construed when legal judgment is required.⁵⁷⁷

3. Obtain Top-Secret Security Clearances for Staff Judge Advocate, Deputy Staff Judge Advocate, and International and Operational Law Attorneys. In the aftermath of the Cold War, some question the existence of significant foreign threats to United States national security.⁵⁷⁸ Prudent assessments, however, indicate that numerous and diverse foreign elements continue to have great interest in stealing United States secrets and influencing or disrupting United States affairs.⁵⁷⁹ Informed observers reason that the threat may be

⁵⁷⁷ See *id.* at 4 (“The MNF SJA office deployed with [all key resolutions, directives, etc.], providing a reference source to answer questions from the command on operations and numerous other issues. In future deployments, every SJA office must deploy with copies of all documents used as a legal basis for the operation. Commanders and J-2/J-3 operators demand quick access to these documents in interpreting missions. We established a binder in the SJA office and at the SJA desk in the operations center with these documents to ensure quick reference. All SJA personnel must read these documents periodically to maintain familiarity with mission directives.”); 194th Armored Brigade AAR, *supra* note 121, at para. 5 (“The lawyers up the command channels rely on the deployed JA personally to read every key message regarding the mission. I was able to articulate my requirements and identify potential legal issues before they became insoluble problems only by reading all of the key messages as they arrived in the Brigade.”).

⁵⁷⁸ See, e.g., John Walcott and Brian Duffy, *The CIA's Darkest Secrets*, U.S. NEWS AND WORLD REPORT, July 4, 1994, at 34, 47 (“Deprived of its historic target, the CIA has found new roles to play, but critics say the agency is simply casting about for ways to justify its budget--if not its existence.”).

⁵⁷⁹ The Soviet KGB and the East German Stasi were the Cold War threat, aggressively recruiting Americans to steal secrets. See, e.g. Suzanne Wood, Katherine Herbig & Peter Lewis, *American Espionage 1945-1989*, in *To Improve U.S. Counterintelligence Measures: Hearings on S.2726 Before the Senate Select Comm. on Intelligence*, at, 55-89, 101st Cong., 2d Sess. (1990) [hereinafter *1990 Senate Hearings*] Modern national threats are diverse, ranging from foreign intelligence and security services (FIS) of east Asian countries seeking advantages in the marketplace, to FIS of eastern European countries seeking influence upon United States foreign policy. See, e.g., *id.* at 171, 175-79 (prepared statement of Mr. Kenneth E. deGraffenreid, former Director for Intelligence Programs at the National Security Council). Today, however,

greater than ever precisely because the Cold War has ended and potential spies can rationalize their behavior as "not really selling out the national security of my country, not really selling out to someone who might use this as a military secret to come and take over our country or invade or launch a surprise nuclear attack."⁵⁸⁰

These national security concerns combine with operational security concerns to ensure that some classification system for safeguarding sensitive documents and information will remain in place for as long as armies continue to exist.⁵⁸¹ Given the enduring need for security classifications and clearances, judge advocate sections must be cleared to see these sensitive documents, many of which will have legal significance. The Haiti operations, particularly the predeployment phase, seems to establish the wisdom of having at least three judge advocates in division and corps-sized offices cleared for Top Secret material.⁵⁸²

IV. Conclusion

Sixteen months ago, the prospect of military operations in Haiti was an unpleasant one for many Americans. Some predicted failure

foreign terrorist groups may be more likely threats than national FIS. Indeed, a recent Presidential directive states that "it is critical that the U.S. maintain a highly effective and coordinated counterintelligence capability" because of "numerous threats to our national interests—terrorism, proliferating weapons of mass destruction, ethnic conflicts, sluggish economic growth . . ." See The White House and the National Security Council, Presidential Decision Directive/NSC-24, subject: U.S. Counterintelligence Effectiveness, at 3 (May 3, 1994).

Studies show that a typical profile of a United States spy transferring secrets abroad is as follows: young; in military service (more likely enlisted than officer); motivated by money; fairly well educated; a volunteer of his espionage services. See, e.g. Wood, Herbig & Lewis, *supra* in 1990 Senate Hearings at 60-73.

⁵⁸⁰ See 1990 Senate Hearings, *supra* note 579, at 114 (statement of Senator Boren).

⁵⁸¹ For the Army, the present system is prescribed in AR 380-5, *supra* note 549, and in related regulations. All services continue to implement the policies and procedures set forth in Exec. Order No. 12,356, 3 C.F.R. 166 (2 April 1982) ("National Security Information").

⁵⁸² See 10th Mountain Div. AAR, *supra* note 108, at 2 ("In addition, the SJA, Deputy SJA, and Operations Law Judge Advocate need to have a "Top Secret" Security Clearance.").

and high casualties. Success would come hard. Today, hindsight happily informs us that the direst predictions were clearly wrong. True, duty in Haiti, far from a traditional war zone but also far from the comforts of home, was arduous and often thankless. True, not all individuals and units—both in the judge advocate community and the wider ranks—were fully successful. Some failures occurred.

True, history may or may not regard the Haiti deployment as a success. The long-term assessment of the past years' events depends on too many factors to predict the outcome with confidence. Haiti continues to face numerous and difficult obstacles to peace, prosperity, stability, and democracy. The short-lived impact of a much longer intervention half a century ago counsels against giddy optimism over Haiti's future.

Yet the multinational force led by the United States and the subsequent United Nations Mission did achieve an impressive list of successes. The MNF shifted from a forced entry to a permissive entry without any loss of momentum. It maintained a delicate yet functional and arms-length relationship with the Cedras regime. It ensured that the leadership of that regime departed the country on schedule. Military operations enforced the restoration of parliament and the reinstatement of President Aristide. They removed 30,000 weapons from the streets and the countryside. These operations provided an environment within which other agencies and organizations could train police and furnish humanitarian and civic assistance. The UNMIH maintained this environment. It also oversaw peaceful and fair parliamentary elections.

Soldiers, sailors, airmen, marines, and coastguardsmen of the active and reserve components achieved these successes. They did so in combination with forces from more than 30 nations. These men and women in uniform performed their mission under great media scrutiny. They did so without the clear definition of success that accompanies a traditional war. One of their implements was the rule of law.

12/10/95

Appendix A: Agreement of Governors Island

UNITED NATIONS

July 3, 1993

The President of the Republic of Haiti, Jean-Bertrand Aristide, and the Commander-in-Chief of the Armed Forces of Haiti, Lieutenant-General Raoul Cedras, have agreed that the following arrangements should be made in order to resolve the Haitian crisis. Each of them has agreed to take, within the scope of his powers, all the necessary measures for this implementation of these arrangements. Furthermore, they both, in any case, express their support for the implementation of these arrangements and pledge to cooperate in implementing them.

1. Organization, under the auspices of the United Nations and the Organization of American States (OAS), of a political dialogue between representatives of the political parties represented in the Parliament, with the participation of representatives of the Presidential Commission, in order to: a) agree to a political truce and promote a social pact to create the conditions necessary to ensure a peaceful transition; b) reach an agreement on the procedure for enabling the Haitian Parliament to resume its normal functioning; c) reach an agreement enabling the Parliament to confirm the Prime Minister as speedily as possible; and d) reach an agreement permitting the adoption of the laws necessary for ensuring the transition.
2. Nomination of a Prime Minister by the President of the Republic.
3. Confirmation of the Prime Minister by the legally reconstituted Parliament and his assumption of office in Haiti.
4. Suspension on the initiative of the United Nations Secretary-General, of the sanctions adopted under Security Council resolution 241 (1993)

and suspension, on the initiative of the Secretary-General of OAS, of the other measures adopted at the OAS Ad Hoc Meeting of Ministers of Foreign Affairs, immediately after the Prime Minister is confirmed and assumes office in Haiti.

5. Implementation, following the agreements with the constitutional Government, of international cooperation:

- a) technical and financial assistance for development;
- b) assistance for the administrative and judicial reform;
- c) assistance for modernizing the Armed Force of Haiti and establishing a new Police Force with the presence of United Nations personnel in these fields.

6. An amnesty granted by the President of the Republic within the framework of article 147 of the National Constitution and implementation of the other instruments which may be adopted by the Parliament of this question.

7. Adoption of a law establishing the new Police Force Appointment within this framework, of the Commander-in-Chief of the Police Force by this President of the Republic.

8. The Commander-in-Chief of the Armed Forces of Haiti has decided to avail himself of his right to early retirement and the President of the Republic shall appoint a new Commander-in-Chief of the Armed Force of Haiti, who shall appoint the members of the General Staff, in accordance with the Constitution.

9. Return to Haiti of the President of the Republic, Jean-Bertrand Aristide, on 30 October 1993.

10. Verification by the United Nations and the Organization of the American States of fulfillment of all the foregoing commitments.

The President of the Republic and the Commander-in-Chief agrees that these arrangements constitute a satisfactory solution to the Haitian crisis and the beginning of a process of national reconciliation. They pledge to cooperate fully in the peaceful transition to a stable and lasting democratic society in which all Haitians will be able to live in a climate of freedom, justice, and security and respect for human rights.

Jean-Bertrand Aristide
President of the
Republic of Haiti

Lieutenant-General Raoul Cedras
Commander-in-Chief of the
Armed Forces of Haiti

Appendix B: Resolution 940, Adopted by the Security Council at its 3413th Meeting, on 31 July 1994

The Security Council

Reaffirming its resolutions 542 (1993) of 16 June 1993, 861 (1993) of 27 August 1993, 863 (1993) of 31 August 1993, 867 (1993) of 23 September 1993, 872 (1993) of 10 October 1993, 875 (1993) of 15 October 1993, 305 (1994) of 22 March 1994, 819 (1994) of 6 May 1994 and 823 (1994) of 30 June 1994.

Recalling the terms of the Governors Island Agreement (S/26063) and the related Pact of New York (S/26297).

Condemning the continuing disregard of those agreements by the illegal de facto regime, and the regime's refusal to cooperate with efforts by the United Nations and the Organization of American States (OAS) to bring about their implementation.

Gravely concerned by the significant further deterioration of the humanitarian situation in Haiti in particular the continuing escalation by the illegal de facto regime of systematic violations of civil liberties, the desperate plight of Haitian refugees and the recent expulsion of the staff of the International Civilian Mission (MICVEN) which was condemned in its Presidential statement of 12 July 1994 (S/PRST/1994/32).

Having considered the reports of the Secretary-General of 15 July 1994 (S/1994/828 and Add 1) and 26 July 1994 (S/1994/871).

Taking notes of the letter dated 29 July 1994 from the legitimately elected President of Haiti (S/1994/905, annex) and the letter dated 30 July 1994 from the Permanent Representative of Haiti to the United Nations (S/1994/910).

Reiterating its commitment for the international community to assist and support the economic, social and institutional development of Haiti.

Reaffirming that the goal of the international community remains the restoration of democracy in Haiti and the prompt return of the legitimately elected President Jean-Bertrand Aristide, within the framework of the Governors Island Agreement.

Recalling that in resolution 873 (1993) the Council confirmed its readiness to consider the imposition of additional measures if the military authorities in Haiti continued to impede the activities of the United Nations Mission in Haiti (UNMIH) or failed to comply in full with its relevant resolutions and the providence of the Governors Island Agreement.

Determining that the situation in Haiti continues to constitute a threat to peace and security in the region.

1. Welcomes the report of the Secretary-General of 15 July 1994 (S/1994/828) and takes note of his support for action under Chapter VII of the Charter of the United Nations in order to assist the legitimate Government of Haiti in the maintenance of public order;

2. Recognizes the unique character of the present situation in Haiti and its deteriorating, complex and extraordinary nature, requiring an exceptional response;

3. Determines that the illegal de facto regime in Haiti has failed to comply with the Governors Island Agreement and is in breach of its obligations under the relevant resolutions of the Security Council;

4. Acting under Chapter VII of the Charter of the United Nations, authorizes Member States to form a multinational force under unified command and control and, in this framework, to use all necessary means to facilitate the departure from Haiti of the military leadership, consistent with the Governors Island Agreement, the prompt return of the legitimately elected President and the restoration of the legitimate authorities of the Government of Haiti, and to establish and maintain a secure and stable environment that will permit implementation of the Governors Island Agreement on the understanding that the cost of implementing this temporary operation will be borne by the participating Member States;

5. Approves the establishment, upon adoption of this resolution, of an advance term of UNMIH of not more than sixty personnel, including a group of observers, to establish the appropriate means of coordination with the multinational force, to carry out the monitoring of the operations of the multinational force and other functions described in paragraph 23 of the report of the Secretary-General of 15 July 1994 (S/1994/828), and to assess requirements and to prepare for the deployment of UNMIH upon completion of the mission of the multinational force;

6. Requests the Secretary-General to report on the activities of the team within thirty days of the date of deployment of the multinational force;

7. Decides that the tasks of the advance team as defined in paragraph 5 above will expire on the date of termination of the mission of the multinational;

8. Decides that the multinational force will terminate its mission and UNMIH will assume the full range of its functions described in paragraph 9 below when a secure and stable environment has been

established and UNMIH has adequate force capability and structure to assume the full range of its functions; the determination will be made by the Security Council, taking into account recommendations from the Member States of the multinational force which are based on the assessment of the commander of the multinational force, and from the Secretary-General;

9. Decides to revise and extend the mandate of the United Nations Mission in Haiti (UNMIH) for a period of six months to assist the democratic Government of Haiti in fulfilling its responsibilities in connection with;

a) sustaining the secure and stable environment established during the multinational phase and protecting international personnel and key installations; and

b) The professionalism of the Haitian armed forces and the creation of a separate police force;

10. Requests also that UNMIH assist the legitimate constitutional authorities of Haiti in establishing an environment conducive to the organization of free and fair legislative elections to be called by those authorities and, when requested by them, monitored by the United Nations, in cooperation with the Organization of Haiti, not later than February 1996;

11. Decides to increase the troop level of UNMIH to 6,000 and establishes the objective of completing UNMIH's mission, in cooperation with the constitutional Government of Haiti, not later than February 1996;

12. Invites all States, in particular those in the region, to provide appropriate support for the actions undertaken by the United Nations and by Member States pursuant to this and other relevant Security Council resolutions;

13. Requests the Member States acting in accordance with paragraph 4 above to report to the Council at regular intervals, the first such report to be made not later than seven days following the deployment of the multinational force;

14. Requests the Secretary-General to report on the implementation of this resolution at sixty-day intervals starting from the date of deployment of the multinational force;

15. Demands strict respect for the persons and premises of the United Nations, the Organizations of American States, other international and humanitarian organizations and diplomatic missions in Haiti, and that no acts of intimidation or violence be directed against personnel engaged in humanitarian or peace-keeping work;

16. Emphasizes the necessity that, *inter alia*:

a) All appropriate steps be taken to ensure the security and safety of the operations and personnel engaged in such operations; and

b) The security and safety arrangements undertaken extend to all persons engaged in the operations;

17. Affirms that the Council will review the measures imposed pursuant to resolutions 841 (1993), 973 (1993) and 917 (1994), with a view to lifting them in their entirety, immediately following the return to Haiti of President Jean-Bertrand Aristide.

18. Decides to remain actively seized of the matter.

Appendix C: Agreement Signed by Jimmy Carter and Emile Jonassaint, the Military-Appointed President of Haiti, in Port-au-Prince, on 18 September 1994

1. The purpose of this agreement is to foster peace in Haiti, to avoid violence and bloodshed, to promote freedom and democracy, and to forge a sustained and mutually beneficial relationship between the governments, people, and institutions of Haiti and the United States.
2. To implement this agreement, the Haitian military and police forces will work in close cooperation with the U.S. Military Mission. This cooperation, conducted with mutual respect, will last during the transitional period required for insuring vital institutions of the country.
3. In order to personally contribute to the success of this agreement, certain military officers of the Haitian armed forces are willing to consent to an early and honorable retirement in accordance with U.N. Resolutions 917 and 940 when a general amnesty will be voted into law by the Haitian Parliament, or Oct. 15, 1994, whichever is earlier. The parties to this agreement pledge to work with the Haitian Parliament to expedite this action. Their successors will be named according to the Haitian Constitution and existing military law.
4. The military activities of the U.S. Military Mission will be coordinated with the Haitian military high command.
5. The economic embargo and the economic sanctions will be lifted without delay in accordance with relevant U.N. Resolutions and the need of the Haitian people will be met as quickly as possible.
6. The forthcoming legislative elections will be held in a free and democratic manner.

7. It is understood that the above agreement is conditioned on the approval of the civilian governments of the United States and Haiti.

Appendix D: Remarks by President William Clinton, United Nations Secretary General Boutros Boutros-Ghali, and President Jean Bertrand Aristide at United Nations Transition Ceremony

Office of the Press Secretary
(Port-au-Prince, Haiti)

For Immediate Release

March 31, 1995

The National Palace
Port-au-Prince, Haiti

2:16 P.M. Eastern Standard Time

PRESIDENT CLINTON: Mr. Secretary General, President Aristide, members of the multinational force in Haiti, members of the United Nations mission in Haiti: We gather to celebrate the triumph of freedom over fear. And we are here to look ahead to the next steps that we will take together to help the people of Haiti strengthen their hard-won democracy.

Six months ago, a 30-nation multinational force, led by the United States, entered Haiti with a clear mission: To ensure the departure of the military regime, to restore the freely-elected government of Haiti, and to establish a secure and stable environment in which the people of Haiti could begin to rebuild their country. Today, that mission has been accomplished, on schedule and with remarkable success.

On behalf of the United States, I thank all the members of the multinational force for their outstanding work, and pledge our support for the United Nations mission in Haiti.

Over the past six months, the multinational force has proved that a shared burden makes for a lighter load. Working together, 30 nations from around the world -- from the Caribbean to Australia, from Bangladesh to Jordan -- demonstrated the effectiveness and the benefits of international peacekeeping. And they helped give the people of Haiti a second chance at democracy.

The multinational force ensured the peaceful transition from the military regime to President Aristide. It removed more than 30,000 weapons and explosive devices from the streets. Through the international police monitors, led by Commissioner Ray Kelly, it trained and monitored an interim police force and worked side by side with them throughout Haiti. And it helped to prepare a permanent civilian police force that will maintain security and respect for human rights in the months and years ahead.

Let me say to the members of the new, permanent police force who are with us here today, you are the guardians of Haiti's new democracy; its future rests on your shoulders. Uphold the Constitution. Respect democracy and human rights. Defend them. That is your sacred mission and your solemn obligation.

Now it is the United Nations mission's task to secure and stabilize the environment in Haiti, and to help the government prepare for free and fair elections. The mission, with participants from 33 countries, has the tools it needs to succeed -- a 6,000-strong military force under the command of United States Army General Joseph Kinzer; a 900-member international police force, led by Chief Superintendent Neil Pouliot of Canada, and dozens of well-trained economic, political and legal advisors.

The United Nations mission will end its work here in February 1996, after the election and inauguration of a new president. To all of you taking part in the U.N. mission, I know many challenges

lie between here and there. Your work will be demanding and difficult. But the multinational force has set a strong foundation of success upon which to build.

Most important of all, the people of Haiti, have shown a powerful commitment to peace and to reconciliation. Working with them, you can help make real Haiti's reborn promise of democracy. I know you will do that.

Good luck and Godspeed. (Applause.)

SECRETARY GENERAL BOUTROS BOUTROS-GHALI:
President Clinton, President Aristide, members of the multinational force in Haiti, members of the United Nations mission in Haiti. Today is a great day for Haiti. It is a turning point in the international effort to bring peace, stability and justice to the Haitian people.

Today is also a great day for the United Nations. It marks the high points of successful cooperation between the United Nations and the coalition of member states, led by the United States of America. On behalf of the United Nations, I express my gratitude to the multinational force and to the United States of America, under leadership of President Clinton. Operation Uphold Democracy has lived up to its name.

The fact that President Clinton has come to Haiti to mark this occasion is an expression of successful cooperation between the United States and the United Nations. And the fact that Operation Uphold Democracy today hands over the United Nations Mission in Haiti, led by my special representative, Lakhdar Brahimi, is another expression of the successful cooperation between the United States and the United Nations.

According to Chapter VIII of the Charter of the United Nations, the world organization may authorize states or groups of states to act to maintain international peace and security. As the multinational force departs and the United Nations takes over, two factors remain vital: The people of Haiti must maintain their commitment to rebuild their society, and the members states of the United Nations must continue to support this revitalization of the multilateral idea.

The way ahead will not be easy, but cooperation brought success so far; continued cooperation will produce an enduring achievement. (Applause.)

PRESIDENT ARISTIDE: Once again, welcome, President Clinton. Welcome to all of you, friends of Haiti. (Speaks in French.)

The implementation of the Governors Island Agreement demonstrates that the world has taken heed to Dr. Martin Luther King's warning that injustice anywhere is a threat to justice everywhere. The engagement of the United Nations, supported by the courageous commitment of the people of Haiti, is a source of thought for all democracies.

United we will raise the banner of a state of law on the flag poles or reconciliation, justice, tolerance, respect and economic progress. United under this banner we will guarantee security and peace. United in this state of law, the new police force in training will take its rightful place. Recommendations made to reform our judicial system will be implemented. And plans to organize free, fair and democratic elections will succeed, as together we move from secure and stable, to safe and more secure.

To join us in this historic day, we welcome today the arrival of the United Nations Mission in Haiti, led by the Special Representative of the Secretary General, Mr. Brahimi, and the Military Commander of the UNMIH, General Kinzer. We welcome friends from America, from Africa, from Europe, from Latin America and from our sister nations of the Caribbean. (Speaks in French.)

END2:41 P.M. Eastern Standard Time

***Appendix E: Military Legal Personnel Deployed
In Support of Operations in Haiti
(Deployed for Varied Periods Between September 1994
and September 1995)***

<i>Activity of Origin</i>	<i>Name and Rank of Individual at Time of Deployment</i>	<i>Supported Element and Location</i>
OSJA, HQ, XVIII Airborne Corps and Fort Bragg, North Carolina	COL John D. Altenburg MAJ Bradley P. Stai MAJ Kyle D. Smith CPT Peter G. Becker CPT Margaret Baines CPT Allan D. Berger CPT James A. Martin CPT Kerry L. Erisman Mr. Michael L. Larson SPC Mark A. Phelps SPC William J. Teeple SPC Ivan Thompson	CJTF 180 in Port-au-Prince and aboard USS Mt. Whitney
SJA US Navy 2d Fleet Norfolk, VA	CDR Joseph Callahan, USN	CJTF 180 aboard USS Mt. Whitney
5th Bomber Wing Minot AFB North Dakota	CPT Joseph P. Bialke, USAF	CJTF 180 in Port-au-Prince
27th Fighter Wing Cannon AFB New Mexico	SSG Kathleen R. Farrell	CJTF 180 in Port-au-Prince

OSJA, 3d US Army, Fort McPherson, Georgia	MAJ Rafael J. Lara	CJTF 190 in Port-au-Prince
OSJA, HQ 10th Mountain Division (LI) and Fort Drum, New York	LTC Karl K. Warner MAJ Richard E. Gordon MAJ Leslie A. Nepper CPT Edward J. O'Brien CPT Darryl R. Wishard CPT Christopher B. Valentino CPT Joseph A. Dewoskin CPT Thomas J. Barrett CPT Nicholas J. Lorusso CPT Katherine A. Varney CPT Sean K. Howe CPT Krista B. Edgette CPT Cheryl Bullard WO1 Edward Peterson MSG Wilfred Mitchell MSG Willie C. King SSG Gregory C. Fisher SSG Gregory R. Kever SSG David E. Watkins SGT Steven McNulty SGT Delanski Williams CPL Joseph F. Carter SPC David A. Dentdant SPC Ronald E. Duncan, Jr. SPC Ronald H. Jennings, Jr. SPC Abigail S. Neff PFC Cleotricia Lilly PFC Robert Martin PFC Fitzroy Robinson	MNF Haiti and CJTF 190 in Port-au- Prince and Cap Haitien

<p>US Army Trial Judiciary Fort Benning, Georgia</p>	<p>COL Keith H. Hodges</p>	<p>MNF Haiti and CJTF 190 in Port-au-Prince</p>
<p>US Army Trial Defense Service Region I, Fort Drum New York</p>	<p>CPT John M. Bickers CPT Judith L. Camarella</p>	<p>Individual soldiers of MNF Haiti and CJTF 190 in Port-au-Prince</p>
<p>US Army Trial Defense Service Region II, Fort Bragg, North Carolina</p>	<p>CPT Norman F. Allen</p>	<p>Individual soldiers of MNF Haiti and CJTF 190 in Port-au-Prince</p>
<p>OSJA, US Army Special Forces Command (ABN), and Group Judge Advocate Element, 3d Special Forces Group, Fort Bragg</p>	<p>CPT Joseph J. Vonnegut CPT James M. Patterson CPT Michael L. Smidt CPT Steven Weir SSG Larry Odoy SGT Greg Morton SGT Gerald Stevens SGT Shane Hendrix SGT Tommy Hall SGT Miguel Nava</p>	<p>3d Special Forces Group in Camp D'Applicacion, Petionville, and in Port-au- Prince</p>

<p>OSJA, HQ, USA Armor Center and Fort Knox, Kentucky</p>	<p>CPT Michael A. Newton CPT Thomas N. Auble</p>	<p>194th Armored Brigade (Separate) (Training CARICOM Battalions and International Police Monitors) in Camp Santiago, Puerto Rico</p>
<p>OSJA, HQ, 25th Infantry Division (L) & US Army, Hawaii, Schofield Barracks</p>	<p>COL Brian X. Bush MAJ Mark P. Sposato CPT Kenneth E. Patton CPT Catherine M. With CPT John P. Coakley CPT Herb Ford SSG Herbert Teope SSG Todd D. Stannard SSG James Bertotti SGT Vince Szumowki SPC Ian S. McCrea PFC Dean A. Neighbors PFC Rex O. France PFC Madril Smith</p>	<p>MNF Haiti Port-au-Prince and Cap Haitien (some eventually supported United Nations Mission in Haiti and United States Forces In Haiti)</p>
<p>US Army Trial Defense Service, Region V, Fort Lewis</p>	<p>CPT Steven E. Engle</p>	<p>Individual soldiers of MNF Haiti in Port-au-Prince</p>

Pine Bluff Arsenal, Arkansas	Mr. William Harbour	Joint Logistics Support Command, Port-au-Prince
Deputy Chief Counsel, US Army Missile Command, Redstone Arsenal, Alabama	LTC Arthur L. Passar	Joint Logistics Support Command, Port-au-Prince
US Army Tank- Automotive Command, Warren Michigan	CPT Marilyn L. Fiore	Joint Logistics Support Command, Port-au-Prince
CJA, Fitzsimons Army Medical Center, Aurora, Colorado	LTC Philip A. Savoie	Ministry of Justice, Haiti, in Port-au-Prince
OSJA, HQ, US Army Special Operations Command, Fort Bragg	MAJ William A. Hudson	United Nations Mission in Haiti (UNMIH) in Port-au-Prince
OSJA, HQ, III Corps and Fort Hood, Texas	SSG Ronnie L. Wyche	United Nations Mission in Haiti (UNMIH) in Port-au-Prince

OSJA, HQ Joint Readiness Training Center and Fort Polk, Louisiana	CPT David Dahle SGT Steven Wasilausky SPC Timothy M. Harner PFC Michael Jones	United States Forces, Haiti (component of UNMIH) in Port-au-Prince
OSJA, 101st Airborne Division (AASLT) and Fort Campbell, Kentucky	CPT Kevin Walker CPT Christian P. Maimone SGT Jeanette Walker	United States Support Group, Haiti, in Port-au-Prince
OSJA, I Corps and Fort Lewis, Washington	SGT Michael Cuellar SGT Edward Barrera	United States Forces, Haiti, in Port-au-Prince
OSJA, 24th Infantry Division (Mech) and Fort Stewart, Georgia	SPC Roderick A. Fludd	24th Infantry Div (Mech) Forces, in Port-au-Prince
OTJAG, International and Operational Law Division, Pentagon, Washington, D.C.	MAJ Mark S. Ackerman	United Nations Mission in Haiti (UNMIH) in Port-au-Prince

<p>US Army Civil Affairs and Psychological Operations Command (various subordinate Civil Affairs Units), Fort Bragg, North Carolina</p>	<p>COL Edward W. McCarty, III LTC Harold F. Daniels LTC Jonathan S. Haub LTC Anthony P. Moncayo LTC John R. Oreskovich LTC Philip L. Weatherbee MAJ Michele H. Altieri MAJ Demetrius K. Bivins MAJ Michael E. Caples MAJ Patrick W. Caples MAJ Joseph A. Nowick MAJ John P. Orilio MAJ Lawrence K. Peterson 1LT Robert J. Caffrey</p>	<p>Ministry of Justice, Haiti, in Port-au-Prince</p>
<p>US Army Trial Defense Service, Region IV, Fort Clayton, Panama</p>	<p>CPT Michael O'Connor</p>	<p>Ministry of Justice, Haiti, in Port-au-Prince</p>
<p>360th Civil Affairs Brigade, Columbia, South Carolina</p>	<p>LTC John McNeill LTC James Harrison</p>	<p>360th Civil Affairs Brigade, in Port-au-Prince</p>
<p>OTJAG, National Defense HQ, Ottawa, Canada</p>	<p>MAJ Marc B. Philippe</p>	<p>United Nations Mission in Haiti (UNMIH) in Port-au-Prince</p>

OTJAG, National Defense HQ, Ottawa, Canada	MAJ Hugh Columb	United States Forces, Haiti (component of UNMIH) in Port-au-Prince
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***Appendix F: Non-Deployed Judge Advocates
Significantly Involved in Matters Arising From Operations In Haiti***

<i>Activity</i>	<i>Name and Rank of Individual at Time of Operations</i>
OSJA, HQ, 82d Airborne Division, Fort Bragg, North Carolina	CPT Paul G. Barden
OSJA, HQ, XVIII Airborne Corps and Fort Bragg, North Carolina	CPT Jeffrey S. Willis CPT Michael Lacey CPT Mark J. Lowmy GM13 Joseph M. Zima
II Marine Expeditionary Force, Camp Lejeune, North Carolina	CPT Eric J. Remington CPT Phillip D. Harward
OSJA, HQ 10th Mountain Division (LI) and Fort Drum, New York	MAJ Charles N. Pede
12th Air Force Davis-Monthon Air Force Base, Arizona	MAJ Theodore Hinsley
OSJA, HQ, US Atlantic Command/ Supreme Allied Command, Atlantic, Norfolk, Virginia	CAPT Stephen Rose, USN LTC Richard B. Jackson MAJ Carl Woods USMC

Office of Legal Counsel to Chairman, Joint Chiefs of Staff, Pentagon, Washington, D.C.	COL James Terry, USMC COL Richard D. Rosen CDR Michael Lohr, USN MAJ Fred T. Pribble
Office of the Command Counsel, Headquarters, United States Army Materiel Command, Alexandria, Virginia	Ms. Elizabeth F. Buchanan Ms. Cassandra T. Johnson Mr. Bob Lingo
OTJAG, International and Operational Law Division, Pentagon, Washington, D.C.	COL David E. Graham LTC Jeffrey F. Addicott Mr. W. Hays Parks MAJ Musetta T. Johnson
Code 10, United States Navy, Pentagon, Washington, D.C.	LCDR Ralph Corey, USN MAJ Vauhn Ary, USMC
Office of the Staff Judge Advocate to Commandant, United States Marine Corps (Code JAO), Operational Law, Washington, D.C.	LtCol Michael Galt Mr. Karl Mirmak
Office of the General Counsel Department of the Army	Mr. Anthony H. Gamboa Mr. Matt Reres
OSJA, HQ, Forces Command, Fort McPherson, Georgia	COL Joseph R. Barnes LTC Andrew M. Warner MAJ Jay Revis

OSJA, US Army Special Forces Command (ABN), Fort Bragg	LTC Robert M. Butler
OSJA, HQ, US Army Special Operations Command, Fort Bragg	COL Harlan M. Heffelfinger

Appendix G: ROE Soldier Card for Nonpermissive Entry

RULES OF ENGAGEMENT (ROE) DURING HOSTILITIES

NOTHING IN THESE ROE LIMITS YOUR OBLIGATION TO TAKE ALL NECESSARY AND APPROPRIATE ACTION TO DEFEND YOURSELF AND YOUR UNIT.

1. Treat as hostile and attack the FORCES ARMEES D'HAITI (FAD'H) and the national police until neutralized, destroyed or captured.
2. Confiscate the property of hostile forces, except captives' personal property and equipment necessary for their protection or welfare.
3. Employ only observed fire.
4. Employ indirect and air-to-ground fires only on order of CJTF 180; DCG TF 181; a task force commander; the DFACC; or the DG, 82d Abn Div, unless such fires are necessary for self-defense.
5. Do not use incendiary weapons (e.g., napalm or white phosphorous) against targets in populated areas. Tracer rounds, illumination rounds, and smoke are authorized in all areas.
6. You may employ claymore mines and anti-armor mines to protect US positions. Keep mines under continuous observation, and remove them when no longer necessary.
7. You may presume that civilians in public armed with crew-served weapons, automatic weapons, or rifle are members of the FAD'H National Police, or paramilitary groups and therefore, may treat them as hostile. Civilians in public armed with shotguns or pistols are presumed to be potentially hostile, but deadly force is not authorized unless such

persons use or threaten armed force against US force, US citizens, or designated foreign nationals.

8. If circumstances permit, give a challenge before engaging civilians. Challenge by:

a. Shouting in English: "STOP; DON'T MOVE; HANDS UP";
or

b. Shouting in Creole: "STOP (STOP); PA BOUJE (PAH BOO-JAY); METE MEN OU AN LE (MAY-TAY MAY-OO ON-LAY),"

9. Do not engage civilian communication facilities with destructive force unless such facilities are being used in a manner that threatens the security of the force.

10. You may use riot control agents (RCA) on approval of a commander (O6 or above), and pepper spray in your own discretion, only in defensive modes in areas under direct US military control.

11. You may stop civilians and check their identities. Search them for weapons, and seize any weapons found.

12. Detain civilians suspected of belonging to the FAD'H or national police or of committing a serious criminal act (e.g., homicide, aggravated assault, arson, rape, robbery, burglary, or larceny). Use the minimum force necessary, up to and including deadly force, to detain civilians who threaten human life or property designated as mission-essential by your commander. In all other cases, use only non-deadly force. Evacuate detainees to designated collection points as soon as circumstances permit.

13. You may also detain civilians when necessary to accomplish your mission or for their own safety, but must release them as soon as circumstances permit.

14. Seize private property only if it has a military use (e.g., weapons, ammunition, communications equipment, or transportation) and your commander authorizes the seizure based on military necessity. Give a receipt to the owner, if available. **TAKING WAR TROPHIES IS PROHIBITED.**

15. Do not enter the **DOMINICAN REPUBLIC** unless necessary to recover friendly personnel or for self-defense.

16. The ROE Appendix to the OPORD provides more detail. Resolve conflicts between this card and the OPORD in favor of the OPORD.

Appendix H: ROE from Operations Plan for Uphold Democracy

[Note that the material in this appendix was declassified by Memorandum, Headquarters, 10th Mountain Division (Light Infantry) (29 March 1995). Original paragraph classification markings are retained to indicate classification in August 1994].

**APPENDIX 8 (RULES OF ENGAGEMENT) TO ANNEX C
(OPERATIONS) TO COMBINED JTF HAITI OPLAN 2380**

REFERENCES:

- a. DOD Directive 5100.77, DOD Law of War Program (U).
- b. JCS PROE (U).
- c. FM 27-10, 18 Jul 56, Law of Land Warfare (U).

1. (S) SITUATION.

- a. (S) Enemy Forces. ANNEX B (INTELLIGENCE).
- b. (S) Friendly Forces. ANNEX A (TASK ORGANIZATION).
- c. (S) Attachments and Detachments. ANNEX A (TASK ORGANIZATION).

2. (S) MISSION. To provide Rules of Engagement (ROE) to achieve the Combined JTF Haiti mission which comply with the guidance and supplemental measures directed by the NCA and the requirements of the law of armed conflict. Nothing in these ROE limit an individual's right to self-defense or a unit leader's obligation to conduct unit self-defense.

3. (S) EXECUTION.

a. (S) General.

(1) (S) Until modified or superseded by ROE promulgated by a FRAGO, JCS PROE (Peacetime ROE) remain in effect. The Supplemental Measures contained at 3b below will be operative an H-hour and will remain in effect until specifically modified or superseded. These ROE apply to all US Forces in Haiti and the associated Joint Operations Area (JOA) not under the operational control of the American Ambassador. Special Operations ROE require separate CINCUSACOM approval.

(2) (S) Under all circumstances, commanders must ensure that use of force is related to a military necessity, is proportional to the threat, and is calculated to avoid unnecessary suffering, loss of life, and destruction of property.

(3) (S) All commanders must take necessary and appropriate actions to defend US Forces. While these ROE may limit the use of force during the execution of military operations, they are not limitations on a commander's responsibility to use all authorized means available to defend the force.

(4) (S) All commanders will ensure that all Combined JTF Haiti personnel know and follow these ROE. SJA personnel will draft and disseminate ROE Cards for use by all members of US Forces, and will be available for ROE Training.

(5) (S) Proposed changes to these ROE will be forwarded to Commander, Combined JTF Haiti, ATTN: SJA, for coordination with CINCUSACOM, using the format at TAB B to this Annex.

b. Supplemental Measures.

(1) (S) Definitions

(a) (S) Deadly Force - the degree of force capable of causing death or serious bodily harm.

(b) (S) Detainee - any person stopped by US personnel who is determined to be a threat to US Forces, key facilities, and mission-essential property.

(c) (S) Hostile Act - an attack or other use of force against the US, US Forces, or US citizens and their property, designated other forces, foreign nationals and their property.

(d) (S) Hostile Intent - the threat of imminent use of force against the US and US national interests, US Forces, or US citizens and their property, designated other forces, designated foreign nationals and their property, as well as any armed force used to preclude or impede the mission or duties of US Forces.

(e) (S) Inherently Dangerous Property - items which, by their basic nature, have the potential to cause injury or death.

(f) (S) Key Facilities - those geographic facilities (airfields, ports, buildings) designated by the Commander, Combined JTF Haiti, as essential to the execution of the mission.

(g) (S) Minimum Degree of Force Necessary - the least amount of force reasonably required to accomplish the mission. The minimum degree of force necessary depends on the situation, the mission, and the ROE. For example, on a graduated scale (no force to deadly force), these include: direct verbal warnings, exhibit weapons, searches of persons and vehicles, use of non-lethal devices (pepper spray), deadly force.

(h) (S) Mission-Essential Property - that property (munitions, equipment, supplies) designated by the Commander, Combined JTF Haiti, or his designee, as essential to the execution of the mission.

(i) (S) Riot Control Agents (RCA) - chemical agents requiring approval before use through Commander, Combined JTF Haiti. Individual non-persistent incapacitating chemical sprays (oleoresin capsicum, capstan, pepper spray) are not considered riot control agents.

(2) (S) Rules

(a) (S) Geographical constraints.

1. (S) Operations are currently authorized in the Haitian territorial land, airspace, and waters, as well as the limits of the JOA. Operations are not authorized into the territorial land, airspace, and waters of the Dominican Republic. Any such operations must be approved by CINCUSACOM.

2. (S) Commander, Combined JTF Haiti, or his designee, may establish areas within the JOA that will be temporarily off-limits to all but authorized personnel. Appropriate force may be used to prevent unauthorized access.

(b) (S) Haitian Military/Police/Other Armed Personnel:

1. (S) No forces have been declared hostile.

2. (S) Offensive military operations (raid, assaults, ambushes) require Combined JTF Haiti approval.

3. (S) Members of the Haitian military, police, or other armed Haitians who commit hostile acts or show hostile intent will be engaged using the minimum degree of force necessary to eliminate the threat. Deadly force may be used when no lesser degree of force will suffice. See Paragraph 3b(2)(d).

4. (S) Members of the Haitian military, police, or other armed Haitians may be stopped, disarmed, and detained if they appear to threaten essential civil order.

(c) (S) Civilians.

1. (S) Civilians may be temporarily detained if they appear to be a threat to US Forces, protected persons, key facilities, or mission-essential property.

2. (S) Civilians may be temporarily detained only as long as needed to determine whether they are a threat. If determined to be a threat, they may be further detained. If not, they will be released.

3. (S) Necessary and appropriate force is authorized to control disturbances and disperse crowds which threaten essential civic order. Use of riot control agents must be approved by Commander, Combined JTF Haiti.

(d) (S) Use of Force.

1. (S) US Forces are limited to the minimum degree of force necessary to accomplish their assigned missions.

2. (S) When practical and a situation warrants (i.e., controlling disturbances, dispersing crowds), fire warning shots into the air before using deadly force.

3. (S) Deadly force is authorized. Deadly force will be used only when no lesser degree of force will suffice and it is necessary to prevent:

a. (S) Death or serious bodily harm to any person;

b. (S) theft, damage, or destruction of mission-essential property;

c. (S) theft of inherently dangerous property;

d. (S) damage to or destruction of key facilities;

4. (S) Targets will be engaged with observed, direct, deliberately-aimed fire.

(e) (S) Weapons and Munitions.

1. (S) US Forces will deploy with only organic weapons.

2. (S) Use of RCA requires approval through Commander, Combined JTF Haiti.

(f) (S) Private Property/Persons. Private property and persons will be treated with dignity and respect at all times. No private property will be taken as trophies or souvenirs. All contraband,

weapons, and property seized will be considered US Government property until such time as other lawful disposition has been made.

(g) (S) Temporary Refuge/Diplomatic Protections.

1. (S) US Forces will not enter, engage, or search diplomatic residences, facilities, or personnel without prior approval of CINCUSACOM, unless invited to do so by an appropriate diplomatic representative.

2. (S) US Forces are not authorized to grant political asylum. However, temporary refuge will be granted to protect human life.

4. ADMINISTRATION AND SUPPORT.

a. (S) Violations of ROE by Combined JTF Haiti personnel will be reported immediately through the chain-of-command to Commander, Combined JTF Haiti, simultaneous copy to CINCUSACOM.

b. (S) Preserve all evidence of alleged violations of the ROE for delivery to proper authorities.

5. COMMAND AND CONTROL. (S) See ANNEX K. These ROE are applicable within the entire JOA identified in the basic OPLAN.

MEADE
MG

WARNER
SJA

TABS:

A--ROE Card

B--Format for Requesting Changes

[ROE Card is Reprinted Separately at Appendix I]

TAB B

1. (S) Instructions.

a. (S) Submit requests for changes or supplemental measures to Commander, Combined JTF Haiti, ATTN: SJA, for coordination with CINCUSACOM, ATTN: SJA.

b. (S) Classify messages requesting ROE changes or supplemental measures at least CONFIDENTIAL. Spell out alphabetized national policy and numbered measures.

c. (S) If required, add amplifying remarks after the alphabetized national policy or numbered measure.

d. (S) Number ROE messages serially.

e. (S) Keep the number of messages to a minimum.

f. (S) An outline of the message is as follows:

Paragraph 1: National policy (with narrative amplification as required).

Paragraph 2: Military policy.

Paragraph 3: New measures requested or authorized.

Paragraph 4: Canceled measures.

Paragraph 5: Previous measures remaining in force.

Paragraph 6: Remarks.

g. (S) Each message should contain all appropriate paragraphs whether changed or not so that a commander need only retain the latest message to have the current ROE.

h. (S) If it is necessary to request or issue measures not found in an approved list, they should be spelled out in plain language in the appropriate paragraph of the ROE message.

2. (S) Format. Use the following GENADMIN message format:

UNCLASSIFIED 01 02 040030Z AUG 94

RR 00 UUUU

CJTF CITY COUNTRY//SJA//
CITY COUNTRY//SJA//

UNCLAS MSGID/GENADMIN/CJTF SJA/001//
SUBJ/ROE REQUEST SERIAL ONE (u)//
REF/A/ROE ANNEX/////

AMPN/ANN N TO OPLAN 2380//
POC/KARL K. WARNER/LTC/SJA/COMBINED JTF HAITI
SJA/LOC:CITY, COUNTRY/SECTEL:281 //

RMKS/

1. (U) N/A
2. () N/A
3. () TWO TWO FOUR. ENTRY INTO THE TERRITORIAL SEAS, INTERNAL WATERS, AIRSPACE, AND LAND

TERRITORY OF (COUNTRY) IS PERMITTED AS NECESSARY FOR MISSION ACCOMPLISHMENT.

4. () N/A

5. (U) N/A

6. () TWO 10TH MTN DIV LRSD TEAMS WILL CONDUCT BORDER CROSSINGS INTO (COUNTRY) BY UH-60 AT 300400ZAUG94. ONE OF THESE TEAMS WILL CONDUCT SURVEILLANCE VIC UV890050 THE N.E. CORNER OF FLS COLE. THE OTHER TEAM WILL CONDUCT SURVEILLANCE VIC UV887023-CARNIS VILLAGE.//

J3 COMEBACK COPY, J1, J2, J3

PLANS, NBC, SOCOORD, ALO, ADE, AIR,

J4, J5, G6, FSE, AVN, EW, ACE, PMO, ENG, SAFE, SJA, SURG, SGS, A2C2, PSYOP,

DISCOM KARL K. WARNER, LTC, JA, SJA CLASSIFIED BY
ACTION OFFICER, MSE XXX- DECLASSIFY ON
NAME, RANK, TITLE UNCLASSIFIED 041230Z AUG 94

3. (S) Oral requests. When an immediate response is required, submit oral requests via the Combined JTF Haiti command net. Follow oral requests with an amplifying message.

Appendix I: ROE Soldier Card of 6 September 1994

Combined JTF Haiti
Rules of Engagement (ROE) Card 1
6 September 1994

Nothing in the ROE limits your right to use necessary force to defend yourself, your fellow service members, your unit, other JTF personnel, key facilities, and property designated by your commander.

1. Repel hostile acts with necessary force, including deadly force. Use only the amount of force needed to protect lives/property and accomplished mission. Engage targets with observed, direct, deliberately aim fire.
2. Do not hesitate to respond with force against hostile acts and signs with hostile intent.
3. You may use necessary force to stop, disarm, and detain members of the Haitian military, police, other armed persons, or other persons committing hostile acts or showing hostile intent. Stop and detain other persons who interfere with your mission. Evacuate detainees to a designated location for release to proper authorities. Treat all detainees humanely.
4. When a tactical situation permits, you should give a challenge before using deadly force. Challenge by:
 - a. Shouting in English "U.S. STOP OR I WILL FIRE!"
 - b. Shouting in Creole "U.S. KANPE OUBIEN MAP TIRE!".
Phonetic: "U.S. kaHJnpey oobeeEH(n) mahp tEErey!.

- c. Fire warning shots into the air.
- 5. Treat all persons with dignity and respect.
- 6. Do not take private property without commander's permission.
- 7. Remember: no force has been declared hostile, including the Haitian Army and police. Use of deadly force must be based on hostile acts or clear indicators of hostile intent.

Appendix J: ROE Card of 23 September 1994

PEACETIME RULES OF ENGAGEMENT (ROE) IN EFFECT
DURING CIVIL RIGHTS OPERATIONS IN HAITI

NOTHING IN THESE ROE LIMITS YOUR OBLIGATION TO TAKE
ALL NECESSARY AND APPROPRIATE ACTION TO DEFEND
YOURSELF AND YOUR UNIT:

1. No forces have been declared hostile. Offensive military operations (raids, assaults, etc.) require CTJF 180 approval.
2. Treat all persons with dignity and respect.
3. Use all necessary force, up to and including deadly force, to defend U.S. forces, U.S. citizens, or designated foreign nationals against an attack or threat of imminent attack. When deadly force is employed, engage targets with observed, deliberately aimed fire.
4. Members of the military, police or other armed persons may be stopped, detained, and if necessary, disarmed if they appear to threaten essential civic order.
5. Civilians may be stopped if they appear to be a threat to U.S. forces, protected persons, key facilities, or property designated mission essential by CJTF 180. If determined to be a threat, they may be further detained. If not, they will be released.
6. Necessary and proportional force is authorized to control disturbances and disperse crowds threatening essential civic order.
7. Persons observed committing serious criminal acts will be detained using minimal force necessary up to and including deadly force. Serious criminal acts include: homicide, aggravated assault, rape, arson and

robbery. Non-lethal force is authorized to detain persons observed committing burglary or larceny. Release persons suspected of serious criminal acts to Haitian law enforcement officers/other appropriate authorities as soon as possible.

8. Civilian vehicles may be stopped and their occupants' identities checked for security purposes. If a civilian vehicle does not stop on order and is approaching a check point or security perimeter, you may fire to disable the vehicle.

9. Do not enter the Dominican Republic without permission from CINCUSACOM.

10. Deadly force is not authorized to disarm Haitians, enforce curfews, or stop looting, unless those individuals involved engage in hostile acts or demonstrate hostile intent.

11. Possession of a weapon in public by any individual does not, by itself, constitute a hostile act or demonstrate hostile.

12. U.S. forces are not authorized to grant political asylum. Temporary refuge will be granted only if necessary to protect human life.

13. Respect diplomatic personnel, residences, facilities, and property. Do not enter diplomatic residences/facilities unless invited by appropriate diplomatic officials or approved by CINCUSACOM.

Appendix K: Trainer Worksheets for ROE Vignettes

1a. SITUATION CHECK POINT

TASK

Respond to checkpoint confrontation.

CONDITIONS

Your mission is to conduct a foot patrol and secure an area of down town PAP.

a. Elements of a local militia have established checkpoints throughout the city. At one check point the militia angrily confronts your platoon, informing you that they have successfully secured the area. They order your platoon to leave the area. How do you respond.

STANDARDS

- Unit approaches checkpoint
- Recognizes checkpoint is interfering with mission
- Recognizes that only non-deadly force is authorized
- Responds without hesitation
- Utilizes non-forceful options
 - Reports to higher
 - Seeks guidance from higher
 - Requests passage
 - Withdraws/avoids
- Utilizes necessary and appropriate non-deadly force
 - Orders group to cease and desist
 - Calls in reserves
 - Shows weapon/challenges
 - Disarms and detains if necessary
 - Proceeds with mission
- Documents detainees , if any, and reports to proper authorities
- No use of excessive of force

Other strategies actually used: _____

General observations of grader: _____

TEACHING POINTS:

- Necessary and appropriate force is authorized to stop, disarm, or detain hostile personnel who interfere with your mission.
- Deadly force not authorized if no hostile intent/act.
- No hostile intent/act if no immediate threat of harm to self/others.

1b. SITUATION CHECK POINT**TASK**

Respond to a checkpoint confrontation.

CONDITIONS

Same situation, however, the armed militia starts to become more hostile and refuses to leave the area. They inform you that the area is already secure and that your platoons presence is a breach to security and that it is mandatory for your platoon to surrender their weapons.

STANDARDS

- () Unit approaches checkpoint
- () Recognizes checkpoint is interfering with mission
- () Recognizes that non-deadly force is authorized
- () Responds without hesitation
- () Utilizes non-forceful options
 - () Reports to higher
 - () Seeks guidance from higher
 - () Requests passage
 - () Withdraws/avoids
- () Utilizes necessary and appropriate non-deadly force
 - () Orders group to cease and desist
 - () Calls in reserves
 - () Shows weapon/challenges
 - () Disarms and detains if necessary
 - () Proceeds with mission
- () Documents detainees, if any, and reports to proper authorities
- () No excessive use of force

Other strategies actually used: _____

General observations of grader: _____

TEACHING POINTS:

- Same as situation 1(a)

1c. SITUATION CHECK POINT

TASK

Respond to checkpoint confrontation that has escalated in degree of threat.

CONDITIONS

Same situation, however, members of the militia become increasingly belligerent and, upon being told that your platoon will pass through the checkpoint, one militia member abruptly reaches for his weapon. What do you do in this situation?

STANDARDS

- () Unit approaches checkpoint
- () Recognizes checkpoint is interfering with mission
- () Recognizes that non-deadly force is authorized upon initial contact; considers/commences appropriate responses, as outlined in 1(a) and (b)
- () Responds without hesitation
- () Recognizes that aggressive move for weapon is hostile intent/act
- () Recognizes that deadly force is authorized
- () Utilizes warning, if practical (i.e., "Stop or I'll shoot," or ("kanpe oubien map tire")
- () Uses (non-deadly)(deadly) force
- () If firing, observes target and uses deliberate, directly-aimed fire
- () Shoots to kill not wound
- () No use of excessive force

Other strategies actually used: _____

General observations of grader: _____

TEACHING POINTS:

- Deadly force is authorized in cases of hostile intent/act
- Nothing in the ROE prevents you from using self-defense to protect your own life or the lives of others

IMMEDIATELY DOCUMENT WHAT HAPPENED AND REPORT THE INCIDENT

- 2a. SITUATION CONVOY

TASK

React to a large unarmed mob that is approaching your convoy.

CONDITIONS

You are in a convoy traveling through the PAP market area. Due to traffic congestion your vehicle must halt. A mob of unarmed individuals is pressing towards your vehicle. You have in your possession, individual weapons, (M16, 9mm), M60, and grenades. How do you respond to this mob?

STANDARDS

- () Convoy approaches market area
- () Recognizes mob is interfering with mission
- () Recognized that non-deadly force is authorized
- () Responds without hesitation
- () Utilizes non-forceful options
 - () Reports to higher
 - () Seeks guidance from higher
 - () Withdraws/avoids
- () Utilizes necessary and appropriate non-deadly force
 - () Orders group to cease and desist
 - () Calls in reserves
 - () Shows weapon/challenges
 - () Proceeds with mission
 - () Accelerates through area if possible
 - () Assumes defensive posture
 - () Fires warning shot
- () No excessive use of force

Other strategies actually used: _____

General observations of grader: _____

TEACHING POINTS:

- Deadly force not authorized if no hostile intent/act.
- No hostile intent/act where no immediate threat of harm to self/others
- Communication and coordination is key

2b. SITUATION CONVOY

TASK

React to an individual within the mob who poses a potential threat.

CONDITIONS

Same situation, however you spot a woman in the mob with a liquid filled glass bottle with a rag stuffed into its neck. The woman continues to hold the bottle at her side but is now raising her other arm, shaking her fist and angrily screaming at you.

STANDARDS

- () Convoy approaches market area
- () Recognizes mob approaching vehicle
- () Observes woman with bottle
- () Recognizes that the bottle with liquid is a potential weapon
- () Recognizes that until bottle becomes a weapon, no hostile intent/act
- () Recognizes that non-deadly force is authorized
- () Utilizes non-forceful options
 - () Reports to higher
 - () Seeks guidance from higher
 - () Shouts warnings/orders
 - () Withdraws/avoids
- () Utilizes necessary and appropriate non-deadly force
 - () Takes action to inspect/disarm
 - () Calls in reserves
 - () Shows weapon
 - () Proceeds with mission
 - () Accelerates out of area
 - () Assumes defensive posture
- () No excessive use of force

Other strategies actually used: _____

General observations of grader: _____

TEACHING POINTS:

- Deadly force not authorized if no hostile intent/act.
- No hostile intent/act where no immediate threat of harm to self/others
- Communication and coordination is key

2c. SITUATION CONVOY

TASK

Respond to a deadly force situation within the mob.

CONDITIONS

Same situation, however, the woman now lights a match and prepares to light the rag sticking in the bottle. What force may be use?

STANDARDS

- () Unit approaches market area
- () Recognizes the mob is interfering with mission
- () Recognizes that non-deadly force is authorized upon initial contact; considers/commences appropriate responses, as outlined in 2(a)
- () Observes woman lighting fuse on bottle
- () Recognizes that aggressive move is hostile intent/act
- () Recognizes that deadly force is authorized
- () Utilizes warning, if practical (i.e., "Stop or I'll shoot," or ("kanpe oubien map tire")
- () Uses (non-deadly)(deadly) force
- () If firing, observes target and uses deliberate, directly aimed fire
- () Upon recognition of hostile act, then shoots to kill not wound
- () No use of excessive force
- () Documents what happened and reports to higher

Other strategies actually used: _____

General observations of grader: _____

TEACHING POINTS:

- Deadly force is authorized in cases of hostile intent/act
- Nothing in the ROE prevents you from using self-defense to protect your own life or the lives of others

3a. SITUATION RESTING PERIMETER

TASK

Respond to an invasion of your perimeter.

CONDITIONS

You are on foot patrol on the suburban outskirts of the Port au Prince. You have set up a tactical perimeter for your platoon to rest.

You see a civilian run through the perimeter and grab an M16 from an unsuspecting soldier. What force can you use to recover the weapon?

STANDARDS

- () Unit sets up a tactical resting perimeter
- () Observes civilian run through perimeter, responds with non-deadly actions
- () Attempts to warn/order to stop
- () Attempts to tackle, trip, individual
- () Recognizes that taking of inherently dangerous weapon authorizes use of deadly force.
- () Uses (non-deadly)(deadly) force
- () If firing, observes target and uses deliberate, directly-aimed fire
- () Shoots to kill, not wound
- () No excessive use of force

Other strategies actually used: _____

General observations of grader: _____

TEACHING POINTS:

- Deadly force is authorized for recovery of inherently dangerous or mission-essential property
- Only the Brigade Commander has authority to designate property as mission essential.

3b. SITUATION RESTING PERIMETER**TASK**

Respond to an attack upon a soldier on the perimeter.

CONDITIONS

Same situation, however, a civilian brandishing a knife rushes toward one of your fellow perimeter guards. What force can you use to stop this act?

STANDARDS

- Unit sets up a tactical resting perimeter
- Observes civilian rush forward with knife
- Recognizes hostile intent/act
- Recognizes that deadly force is authorized
- Considers non-deadly force options if does not endanger lives of fellow soldiers
 - Warning/order
 - Show weapon
- Uses (non-deadly)(deadly) force
- If firing, observes target and uses deliberate, directly-aimed fire
- Shoots to kill, not wound
- No excessive use of force
- Document and report

Other strategies actually used: _____

General observations of grader: _____

TEACHING POINTS:

- Deadly force is authorized in cases of hostile intent/act
- Nothing in the ROE prevents you from using self-defense to protect your own life or the lives of others

3c. SITUATION RESTING PERIMETER

TASK

Respond to an invasion of your perimeter.

CONDITIONS

Same situation however, a civilian runs up to your fellow perimeter guard, grabs an item his personal property and runs away. What force can you use to stop him as he runs away?

STANDARDS

- () Unit sets up a tactical resting perimeter
- () Observes civilian stealing personal property
- () Recognizes no hostile intent/act exhibited
- () Recognizes that non-deadly force is authorized
 - () Issues warning/order
 - () Shows weapon
 - () Attempts to tackle/trip individual
- () No excessive force
- () Avoids endangering lives of fellow soldiers during recovery

Other strategies actually used: _____

General observations of grader: _____

TEACHING POINTS:

- No hostile intent/act
- No inherently dangerous/mission essential property
- No deadly force authorized

4a. SITUATION CRIMINAL ACT AGAINST FELLOW CITIZEN**TASK**

Your mission is to protect the welfare of humanitarian relief workers

CONDITIONS

You are a soldier deployed to Port-au-Prince, Haiti. Your mission includes the protection of a food distribution site and Red Cross Aid site.

Three armed Haitians go through the food line at the food distribution site. They become increasingly hostile and verbally threaten the relief workers in order to obtain more food.

STANDARDS

- () Unit establishes proper security procedures for food distribution/Red Cross site
- () Recognizes that three armed Haitians are interfering with mission
- () Recognizes that no hostile intent/act is exhibited
- () Recognizes that non-deadly force is authorized
- () Utilizes non-forceful options
 - () Reports to higher
 - () Seeks guidance from higher
- () Utilizes necessary and appropriate non-deadly force
 - () Orders to cease and desist
 - () Show weapon
 - () Disarms and detains
- () Documents detainees, if any, and reports to proper authorities
- () No excessive use of force

Other strategies actually used: _____

General observations of grader: _____

TEACHING POINTS:

- No hostile intent/act, therefore no deadly force is authorized
- May use necessary and appropriate force to stop, disarm, detain hostile interference with mission. Document always

4b. SITUATION CRIMINAL ACT AGAINST FELLOW CITIZEN

TASK

Same as above.

CONDITIONS

Same situation however, this time the three armed Haitians draw their weapons and point them at the relief workers. What force can you use to stop this act?

STANDARDS

- () Unit establishes proper security procedures for food distribution/Red Cross site
- () Recognizes that three armed Haitians are interfering with mission
- () Recognizes that hostile intent/act is exhibited
- () Recognizes that deadly force is authorized
- () Uses (non-deadly) (deadly) force
- () If firing, observes target and uses deliberate, directly aimed fire
- () Shoot to kill/not wound
- () Documents detainees, if any, and reports to proper authorities
- () No excessive use of force

Other strategies actually used: _____

General observations of grader: _____

TEACHING POINTS:

- Deadly force is authorized in cases of hostile intent/act
- Nothing in the ROE prevents you from using self-defense to protect your own life or the lives of others

4c. SITUATION CRIMINAL ACT AGAINST FELLOW CITIZEN**TASK**

Same as 4(a).

CONDITIONS

Same as situation, however an unarmed Haitian steals a carton of food from the Red Cross storage area and begins running away. What force can you use to stop this act.

STANDARDS

- () Unit sets up a tactical resting perimeter
- () Observes unarmed civilian stealing carton of food
- () Recognizes no hostile intent/act exhibited
- () Recognizes that non-deadly force is authorized
- () Utilizes non-deadly force options
 - () Issues warning/order
 - () Shows weapon
 - () Attempts to tackle/trip individual
- () No excessive force
- () Avoids endangering lives of fellow soldiers during recovery

Other strategies actually used: _____

General observations of grader: _____

TEACHING POINTS:

- No hostile intent/act
- No inherently dangerous/mission essential property
- No deadly force authorized

5a. SITUATION CIVILIAN PROVOCATION

TASK

Respond to a confrontation by local civilians.

CONDITIONS

You are on a foot patrol in the suburb of PAP when you encounter a group of Haitian men who appear to have been drinking alcoholic beverages. Upon initial contact with the Haitians they begin to taunt you and yell racial slurs.

STANDARDS

- () Unit approaches group of Haitians
- () Recognizes Haitians are not interfering with mission
- () Recognizes that no hostile intent/act exhibited
- () Responds without hesitation
- () Utilizes non-forceful options
 - () Reports to higher
 - () Seeks guidance from higher
 - () Withdraws/avoids
- () Utilizes necessary and appropriate non-deadly force
 - () Proceeds with mission
- () No excessive use of force

Other strategies actually used: _____

General observations of grader: _____

TEACHING POINTS:

- Deadly force not authorized if no hostile intent/act.
- No hostile intent/act if no immediate threat of harm to self/others.

5b. SITUATION CIVILIAN PROVOCATION**TASK**

React to a threat by local civilians.

CONDITIONS

Same situation, however, this time the group of men have begun to encircle your platoon.

STANDARDS

- () Unit approaches group of Haitians
- () Recognizes that Haitians are interfering with mission
- () Recognizes that non-deadly force is authorized
- () Responds without hesitation
- () Utilizes non-forceful options
 - () Reports to higher
 - () Seeks guidance from higher
 - () Requests passage
 - () Withdraws/avoids
- () Utilizes necessary and appropriate non-deadly force
 - () Orders to cease and desist
 - () Disarms and detains
 - () Proceeds with mission
 - () Assumes defensive posture
- () Documents detainees and reports to proper authorities
- () No excessive use of force

Other strategies actually used: _____

General observations of grader: _____

TEACHING POINTS:

- Necessary and appropriate force is authorized to stop, disarm, or detain hostile personnel who interfere with mission.
- Deadly force not authorized if no hostile intent/act.
- No hostile intent/act if no immediate threat of harm to self/others.

5c. SITUATION CIVILIAN PROVOCATION

TASK

React to a hostile confrontation with civilians.

CONDITIONS

Same situation, however, now the group of men have become very angry with you and begin throwing rocks, bottles, and sticks taken from the surrounding environment.

STANDARDS

- () Unit approaches Haitians
- () Recognizes Haitians are interfering with mission
- () Recognized that non-deadly force is authorized
- () Responds without hesitation
- () Utilizes non-forceful options
 - () Reports to higher
 - () Seeks guidance from higher
 - () Withdraws/avoids
- () Utilizes necessary and appropriate non-deadly force
 - () Orders to cease and desist
 - () Disarms and detains if necessary
 - () Proceeds with mission
 - () Assumes defensive posture
- () If situation becomes immediate threat to own life, life of others, deadly force is authorized
- () Force used? (deadly) (non-deadly); deadly force appropriate? (yes) (no)
- () If detainees, documents and reports to proper authorities
- () No excessive use of force

Other strategies actually used: _____

General observations of grader: _____

TEACHING POINTS:

- Necessary and appropriate force is authorized to stop, disarm, or detain hostile personnel who interfere with mission.
- Deadly force not authorized if no hostile intent/act.
- No hostile intent/act if no immediate threat of harm to self/others.

6a. SITUATION APPREHENSION OF A CRIMINAL**TASK**

Apprehend a local criminal hiding within a private residence.

CONDITIONS

Your platoon has been ordered to apprehend a leader of a local violent gang. The leader is accused of having personally ordered the deaths of several Aristide backers.

Upon approaching the front entrance of the house you encounter a woman who angrily tells you to leave her property as she swings wildly with a broom in your general direction. What should you do?

STANDARDS

- () Unit approaches house for apprehension
- () Unit tactically deploys, covers by fire, and guards rear entrance
- () Recognizes woman is interfering with mission
- () Recognizes that no hostile intent/act exhibited
- () Recognizes that non-deadly force is authorized
- () Responds without hesitation
- () Utilizes necessary and appropriate non-deadly force
 - () Orders to cease and desist
 - () Disarms and detains
 - () Proceeds with mission
- () If detained document and report to proper authorities
- () No excessive use of force

Other strategies actually used: _____

General observations of grader: _____

TEACHING POINTS:

- Necessary and appropriate force is authorized to stop, disarm, or detain hostile personnel who interfere with mission.
- Deadly force not authorized if no hostile intent/act.
- No hostile intent/act if no immediate threat of harm to self/others.

6b. SITUATION APPREHENSION OF A CRIMINAL

TASK

Respond to an individual evading apprehension.

CONDITIONS

You have now disarmed and detained the angry woman and placed her into a designated location where she will be kept out of your way. As you approach the house, an unknown person dashes out the back door, in what appears to be an attempted escape.

STANDARDS

- () Unit approaches house for apprehension
- () Recognizes escapee is interfering with mission
- () Recognizes that no hostile intent/act exhibited
- () Recognizes that non-deadly force is authorized
- () Responds without hesitation
- () Utilizes necessary and appropriate non-deadly force
 - () Orders to stop
 - () Tackle, trip or otherwise detain if possible
 - () Proceeds with mission
 - () Documents and reports to higher
- () If detained document and report to proper authorities
- () No excessive use of force

Other strategies actually used: _____

General observations of grader: _____

TEACHING POINTS:

- Necessary and appropriate force is authorized to stop, disarm, or detain hostile personnel who interfere with mission.
- Deadly force not authorized if no hostile intent/act.
- No hostile intent/act if no immediate threat of harm to self/others.

6c. SITUATION APPREHENSION OF A CRIMINAL**TASK**

Respond to sniper fire coming from the private residence.

CONDITIONS

Same situation, however, upon reaching the house your platoon begins to receive sniper fire from a window in the house.

STANDARDS

- Unit approaches house for apprehension
- Receives sniper fire
- Recognizes that hostile intent/act exhibited
- Recognizes that deadly force is authorized
- Responds without hesitation
 - Reports to higher
- Utilizes necessary and appropriate force
 - Disarms and detains
 - Proceeds with mission
 - Assumes defensive posture
- Utilizes (non-deadly) (deadly) force
- If firing use direct and deliberately aim fire
- Shoot to kill not wound
- If detained document and report to proper authorities
- No excessive use of force

Other strategies actually used: _____

General observations of grader: _____

TEACHING POINTS:

- Deadly force is authorized if there is hostile intent/act.
- Can always use self-defense to protect lives of self and others.

Appendix L: 82d Airborne Division Standing ROE Card

82d Airborne Division
Standing Rules of Engagement (ROE)

A-R-M-E-D

Attack. Attack only hostile forces declared by your commander. If attacked, return fire with aimed fire. Return force with force necessary to repel hostile acts (from any source).

Risk. Assess risks/anticipate attack. Against other than declared hostile forces, use force first if, but only if, you see clear hostile intent.

Measure. Measure the amount of force that you use. Use only the force necessary to protect lives and accomplish the mission. Detain only forces/civilians specified by your commander.

Engagement Authority. Prior authorization may be required to use certain weapons. Use weapons such as artillery, riot control agents, mines, etc., in accordance with your commander's orders.

Deadly Force. Use deadly force to protect persons/property designated by your commander. Stop short of deadly force when protecting other persons/property.

Expectations of Troopers

Carry out assigned duties in a military manner. Be sure everything you do reflects credit on you, the United States, and the Army.

Fight only enemy combatants.

Do not harm enemies who surrender; disarm, treat humanely, and turn over to your superior.

Protect all detainees IAW the Geneva Conventions.

Collect and care for wounded, whether friend or foe.

Do not attack medical or religious personnel, facilities or equipment.

Do not attack schools, museums, national monuments, and any other historical or cultural sites unless they are being used for a military purpose and pose a threat.

Destroy only what the mission requires. . . nothing more.

Respect all civilians; treat them humanely.

Respect all private property and possessions.

Obey all lawful orders and the law of war.

Prevent law of war violations.

[printed on a light blue 3-inch by 5-inch card]

Appendix M: UNMIH ROE (Full Text)

3 March 1995

1. The conduct of military operations is controlled and regulated by the provisions of international law, conventions and precedents and by the policy decisions of the parties. Rules of Engagement (ROE) are directives issued by a competent military authority that delineate the circumstances and limitations within which (armed) force may be applied to achieve a mission or objective. In the case of a United Nations conducted operation, it is the responsibility of UN to set the parameters within which the UN can provide to commanders at all levels specific guidance on the use of force by UN personnel. ROE are drafted by the Force Commander, but are approved by the UN and may only be changed with UN authority. The right of self defense is never abridged by inadequate ROE.

2. The UNMIH ROE are provided for UN Forces operating under the auspices of UN Security Council Resolution 940 dated 31 July 1994.

3. The mission of UNMIH is to:

a. sustain the secure and stable environment established during the multinational phase and protect international personnel and key installations,

b. to professionalize the Haitian armed forces and to create and train a separate police force, and

c. to assist the legitimate constitutional authorities of Haiti in establishing an environment conducive to the organization of free and fair legislative elections.

4. The following key definitions must be clearly understood by all UNMIH personnel:

a. Force. The use of, or threat to use, physical means to impose one's will. Military force is the use of the physical means provided by formed, armed, and disciplined bodies of troops under unified command to achieve the same and generally implies the potential to use significant levels of violence.

b. Minimum Force. The minimum degree of authorized force which is necessary and reasonable under the immediate circumstances.

c. Necessary Force. The minimum degree of authorized force which is essential and reasonable to meet the threat of the immediate circumstances.

d. Self-Defense. The use of force to protect:

(1) oneself

(2) other UNMIH personnel,

against a hostile act or hostile intent, [there is no other choice or time for deliberation]

e. Defense of others. The use of force to protect:

(1) other UN military and international personnel who are in the immediate vicinity of the UNMIH personnel employing these ROE, and

(2) other non-UN relief personnel and Haitian civilians

against a hostile act or hostile intent [where there is no other choice or time for deliberation]

f. Hostile Act. A hostile act is an attack or use of force against those entities listed in paragraph 4d. and e. above where there is a reasonable apprehension that death or grievous bodily harm is the likely result.

g. Hostile Intent. Hostile intent is the imminent threat of the use of force against those entities listed in paragraph 4d. and e. above where there is a reasonable apprehension that death or grievous bodily harm is the likely result.

h. Collateral Damage. Damage to persons or property adjacent to, but not part of an authorized target.

i. Non-deadly Force. Any physical means of forcing compliance that does not pose a risk of death or grievous bodily harm to the individual against which the force is directed. This is usually applied through the use of physical force short of deadly force. [the use of firearms or other deadly weapons] Examples include: pushing and lesser forms of striking or hitting, and physically or mechanically restraining persons. Warning shots nondeadly force, even though they involve the use of firearms.

j. Deadly Force. Deadly force is that level of force which is intended or is likely to cause death or grievous bodily harm regardless of whether death or grievous bodily harm actually results. This is the ultimate degree of force.

INSTRUCTION ON THE USE OF FORCE

General

5. All information contained in this part shall be construed as directive guidance.

APPLICABILITY

6. The ROE apply to all personnel provided by nations participating in UNMIH under the provision of UN Security Council Resolution 940 dated 31 July 1994. The use of force is prohibited unless specifically authorized by these ROE.

COMMANDERS' RESPONSIBILITY

7. UNMIH commanders at all levels are required:

a. to have this directive disseminated to every subordinate under their command and translated if required, and

b. to ensure that every subordinate under their command:

(1) is briefed and refreshed on the meaning and application of these ROE as they relate to assigned missions,

(2) understands and complies with the contents of this document, and

(3) has the opportunity to seek additional clarification, guidance or direction if these ROE require further explanation.

8. UNMIH Commanders shall issue orders on the readiness of personal weapons to be maintained appropriate to the situation.

9. The UNMIH force commander may not restrict the inherent right of self-defense.

SELF DEFENSE

10. The right of self-defense is related to, but separate from, ROE and applies no matter what other factors are present. Therefore, notwithstanding any ROE that may be authorized, when an attack occurs, or is anticipated, the right exists to use proportionate force in self-defense to deter, neutralize or destroy the threat.

11. The use of force must be limited in intensity, duration and magnitude to that which is reasonably required to counter an attack or threat of imminent attack or threat of the application of deadly force. Furthermore, force [must never be used with a view to inflicting punishment for acts already committed and] may not be used as a reprisal or punitive action.

USE OF FORCE AND ENGAGEMENT PRINCIPLES

12. When an incident occurs that requires the use of force, the following fundamental principles shall apply to the use of force and engagements:

a. Reasonable Belief. Mere speculation does not constitute reasonable belief. The use of force must be predicated upon a tangible threat.

b. Minimum Force. UNMIH personnel will never use more force than the minimum necessary to enable them to carry out their duties and accomplish assigned objectives or the mission, or to remove a threat to UNMIH.

c. Proportionality. Only a response proportionate to the perception of the level of threat is justified. Any force used must be limited to the degree, intensity, and duration reasonably believed necessary to achieve the objective for which the force is used, and no more.

d. Duration of Force and Disengagement. The application of force, at whatever level, is to cease when it is reasonably believed the hostile act has stopped, or whenever the commander considers there is no longer an imminent threat of attack.

e. [Negotiation and] Warnings. If possible, [negotiation and] warnings must be communicated before any use of force is initiated.

f. Procedures. Except when an attack [comes so unexpectedly that even a moments delay] or demonstration of hostile intent could lead to death or grievous injury to oneself, other UNMIH personnel, others under UNMIH protection, or key installations, the challenge and escalation of force procedures contained herein must be [exhausted] attempted before the use of any deadly force is initiated.

g. Deadly Force. Deadly force is justified only under conditions [or] of extreme necessity and as a last resort when all lesser means have failed or cannot reasonably be employed.

h. Escalation. Escalation of the level of violence is to be minimized, consistent with mission accomplishment and the security of UNMIH forces and other protected persons and places.

i. Collateral Damage. Collateral damage is to be minimized consistent with mission accomplishment and the security of UNMIH forces and other protected persons and places.

j. [Retaliation and] Reprisal. The use of force [in retaliation or] in reprisal is prohibited.

k. Application of Force. The use of force shall be controlled by the on-scene commander and is to cease once the [aim has been achieved] threat has been removed.

l. Use of RCAs is authorized.

AUTHORITY TO USE FORCE

13. Force may be used as follows:

a. Non-Deadly Force. UNMIH personnel are authorized to use non-deadly force in the following circumstances:

(1) in self-defense or in defense of others (as defined herein),

(2) against attempts at infiltration or envelopment of UNMIH units, compounds or locales,

(3) when attempts are made to abduct or detain UNMIH personnel, and

(4) when attempts are made to prevent personnel from carrying out their responsibilities as ordered by their commanders.

b. Deadly Force. UNMIH personnel are authorized to use deadly force as follows:

(1) only in self-defense or in defense of others (as defined in paragraphs 4, d, and e.) against persons committing a hostile act or exhibiting hostile intent.

(2) in defense of key installations designated by the Force Commander as essential to the success of the UNMIH mission and for

which there is no other reasonable way to prevent the damage or destruction of such key installations.

(3) to overcome armed attempts to prevent UNMIH Forces from discharging its duties. [when authorized by the Force Commander]

(4) [to resist armed attempts to compel UNMIH personnel to withdraw from protected areas they were ordered to occupy by the Force Commander, and]

(5) to resist armed attempts to cut off [a] UNMIH [force] personnel.

(6) when attempts are made to abduct or detain UNMIH personnel.

c. Cross Border Fire. UNMIH personnel are authorized to fire across the border of Haiti into the Dominican Republic only when acting in self-defense and in defense of others as defined in paragraph 4d. and e.

AUTHORITY TO SEARCH AND DETAIN

14. Authority to Stop and Search. Persons wishing entry into UNMIH premises can be requested to submit to a consensual search of their persons and property. Refusal of this search or a refusal to surrender weapons constitutes grounds for refusal of entry and seizure of weapons. Persons found attempting to enter UNMIH premises in any potentially threatening manner may be searched for security purposes using necessary minimal [non-deadly] force. Weapons may be seized in such instances and shall be turned over to appropriate UNMIH or host country military or civilian authorities as soon as possible.

15. Authority to Detain. Persons shall only be detained if they commit a hostile act, display hostile intent or carry out any criminal activity [which would require that force be used against them] requiring their immediate detention to assure the safety of UNMIH personnel. They shall be turned over to appropriate UNMIH or host country military or civilian authorities as soon as possible. Any weapons seized in the course of detainment shall be turned over to appropriate UNMIH or host country military or civilian authorities.

16. If it is necessary to detain an individual pending turn-over to appropriate military or civilian authorities, minimal [non-deadly] force is authorized to prevent the escape of a detainee, unless there is a necessity to act in self-defense, in which case minimum force, up to and including deadly force, is authorized.

17. Treatment of Detainees. Detainees shall not be subject to undue harassment, deprivation or humiliation. Medical care and the attention of medical personnel will be provided when required. Detainees will be given adequate rations and shelter [equivalent to that of UNMIH personnel] and treated humanely.

CHALLENGE AND ESCALATION PROCEDURES

18. Except where a response is required in accordance with paragraph 19, the following procedure is to be followed when warning an individual that a hostile act or a display of hostile intent may result in a response in self-defense:

a. Verbal or Visual Warning. Warn the aggressor to stop the aggressive activity, which in normal circumstances, should follow the following sequence:

(1) depending on the circumstances, a warning may be given verbally, by a sign or by illumination (i.e., hand-held red flares, search lights, etc.)

(2) Repeat the verbal or visual warning as many times as is necessary to ensure understanding or compliance.

b. Charge Weapons. Make use of the visual effect of such action to convince the aggressor that failure to stop the aggressive activity may result in the use of deadly force.

c. Warning Force. If the [treat] threat continues employ aimed warning shots in a safe direction [so that there is no danger of personal injury or collateral damages]

d. [Non-Deadly] Minimal Force. If warning shots are ignored, where possible, employ minimal [non-deadly] force and

e. Deadly Force. Except in the case of a lone individual acting in self defense, if the aggressor commits a hostile act or displays hostile intent, on order and under the control of the on-scene commander, employ [minimal deadly force] that required force such as single aimed shots, until the threat is removed.

OPENING FIRE WITHOUT WARNING

19. The only circumstance under which it is permissible to use deadly force without attempting to follow the warning sequence in paragraph 18 would be if a sudden attack [by an aggressor comes so unexpectedly that even a moments delay] or demonstration of hostile intent could lead to death or grievous injury to oneself, other UNMIH personnel, others under UNMIH protection, or key installations.

PROCEDURES DURING FIRING

20. Any use of firearms as a means of applying deadly force, shall be aimed fire. Fire must be controlled and will not be indiscriminate. Automatic fire will only be used as a last resort and fire for effect will only continue as long as it is necessary to achieve the immediate aim of self-defense or defense of others.

PROCEDURES AFTER FIRING

21. After any weapons firing, the following actions are to be taken:

a. Medical. Wounded shall be given first aid as soon as possible one such aid can be given without endangering lives.

b. Recording. Details of the incident will be recorded, including:

- (1) date, time and place of firing
- (2) unit and personnel involved.
- (3) the events leading up to the firing
- (4) why UNMIH personnel opened fire
- (5) who or what was fired on
- (6) the weapons fired
- (7) the apparent results of the firing, and

c. Reporting. The above information and the current situation will be reported through the UN chain of command to the Force Commander as soon as possible.

PART IV

RULES OF ENGAGEMENT

22. The Numbered Summary Rules of Engagement for UNMIH are contained in Annex A. The numbered ROE are written in the form of permissions. Issued as permissions they are direction to commanders that certain specific actions may be taken if they are judged necessary to achieve the aim of the mission.

PART V

CONCLUSION

23. Amendments to this directive will be issued as required and as approved by the UN.

24. The security classification of this document is UNCLASSIFIED.

ANNEX: A. Rules of Engagement
 B. Force Commander's Aide Memoirs (To be published).

ANNEX A
to UNMIH ROE

SUMMARY RULES OF ENGAGEMENT

Rule No. 1. Use of force, up to and including deadly force, is authorized to defend oneself and other UNMIH military or civilian personnel against a hostile act or hostile intent.

Rule No. 2. Use of force, up to and including deadly force, is authorized to defend international personnel against a hostile act or hostile intent.

Rule No. 3. Use of force, up to and including deadly force, to defend civilians against a hostile act or hostile intent.

Rule No. 4. Use of force, up to and including deadly force, is authorized to protect key installations which have been designated by the force commander.

Rule No. 5. Cross-border fire into an adjacent country in self-defense, or to enforce Rules 2 and 3, is authorized.

Rule No. 6. Search and detainment of para-military or non-military personnel is authorized when acting in self-defense, or to enforce Rules 2 to 4 inclusive.

Rule No. 7. Disarmament of para-military or non-military personnel is authorized when acting in self-defense or to enforce Rules 2 to 4 inclusive.

Rule No. 8. Intervention to protect civilians from death or grievous bodily harm at the hands of a military, para-military or civilian group, is authorized.

Appendix N: UNMIH ROE Card

UNITED NATIONS MISSION IN HAITI (UNMIH)
MILITARY FORCE RULES OF ENGAGEMENT (ROE)
PEACEKEEPING OPERATIONS IN THE REPUBLIC OF HAITI
31 MARCH 1995

NOTHING IN THESE ROE LIMITS YOUR RIGHTS TO TAKE ALL
NECESSARY AND APPROPRIATE ACTION TO DEFEND
YOURSELF, YOUR UNIT, AND OTHER UNMIH PERSONNEL

1. Treat all persons with dignity and respect.
2. Use of force must be proportionate to the level of perceived threat.
3. If possible, warnings should be provided prior to the use of force.
4. Never use more force than the minimum necessary to carry out your duties or remove a threat to UNMIH.
5. In the event of an attack or threat of imminent attack, use necessary force to up and including deadly force for self-defense and defense of UNMIH personnel, international personnel, and installations designated as "key" by the Force Commander.
6. UNMIH Forces may intervene to prevent death or grievous bodily harm of innocent civilians at the hands of an armed person or group.
7. When deadly force is employed, targets will be engaged with observed, deliberately aimed fire to avoid collateral damage. (If a weapon is fired, follow ROE reporting requirements on the back of this card.)

8. Search, apprehension, and disarmament are authorized when acting in self-defense or to enforce the rules above. Persons apprehended will be detained using minimal force and turned over to appropriate Haitian authorities as soon as possible.

9. Use of chemical riot control agents is an authorized form of force.

PROCEDURES AFTER FIRING A WEAPON

1. FIRST AID will be given as soon as possible when such aid can be given without endangering lives.

2. RECORD DETAILS OF INCIDENT TO INCLUDE:

- date, time, and place of firing
- unit and personnel involved.
- the events leading up to the firing
- why UNMIH personnel opened fire
- who or what was fired on
- the weapons fired, and
- the apparent results of the firing

3. REPORT above information and current situation through the UN chain of command to the Force Commander as soon as possible.

[Printed on a white, 4 and 5/8 inch by 5 and 5/8 inch white card; in latter months of UNMIH operations, training on these rules emphasized

graduated responses listed on a 2-page document reproduced below].

Graduated Responses

In all graduated response scenarios, the UNMIH soldier will follow the general outline in this order:

1. Issue a Verbal Warning; Use a Loudspeaker if Necessary.
2. Use of Baton or Butt of Rifle.
3. Employ Dogs.
4. Employ Riot Control Agents.
5. Charge Weapons.
6. Warning Shot.
7. Observed, Deliberately-Aimed Fire.

Event: Looting

1. Use Linguist
2. Employ Concertina
3. Execute Civil Disturbance Drill
4. Request/Use Tactical Dissemination Team (TDT) from MIST
5. Request/Use an Airborne Speaker Team from MIST
6. Show Pepper Spray
7. Use Pepper Spray
8. Use Baton or Butt of Rifle
9. Fix Bayonets
10. Show CS Canisters
11. Employ CS
12. Helicopter Wash (this carries the risk of damage to the airframes and potential for claims)
13. Charge Weapons
14. Shoot Rounds in the Air

15. Employ Deadly Force in self-defense or upon show of hostile intent/action toward UNMIH personnel or civilians if serious bodily injury or death is likely to result

Crowd Control

1. Distribute Leaflets
2. Use Linguist
3. Employ Concertina
4. Request/Use TDT from MIST
5. Request/Use Airborne Speaker Team from MIST
6. Civil Disturbance Drill
7. Use dry erase boards on 2 X 4
8. Honk Horns
9. Take Pictures and Point Out Instigators
10. Start Up Vehicles and Rev Engines
11. Employ Dogs
12. Show Pepper Spray
13. Use Pepper Spray
14. Fix Bayonets
15. Show CS Canister
16. Use CS
17. Helicopter Wash (this carries the risk of damage to the airframes and potential for claims)
18. Shoot Rounds in the Air
19. Employ Deadly Force in self-defense or upon show of hostile intent/action toward UNMIH personnel or civilians if serious bodily injury or death is likely to result

Cordon & Search

1. Use TDT Speaker Team and Linguist
2. Have TDT Linguist Enlist Aid of Family and Neighbors

3. Have Dogs Bark
4. Inner Cordon Shout Commands
5. Helicopter fly-over/low hover
6. Employ CS
7. Shoot Rounds in the Air
8. Go in Hot and Break Down the Doors

Traffic Control Point

1. Emplace Signs
2. Emplace Concertina
3. Emplace Obstacles to Force Vehicles to Zig Zag
4. Use Cameras to Photograph (Still/Video)
5. Speed Bumps
6. Nail Boards
7. Fix Bayonets
8. Show Pepper Spray
9. Shoot Pepper Spray Through Window
10. Shoot Round in the Air
11. Shoot to Disable the Vehicle
12. Use Deadly Force in self-defense or upon show of hostile/intent/action toward UNMIH personnel or civilians if serious bodily injury or death is likely to result

Appendix O: Agreement Between the Governments Participating in the Multinational Force ("MNF") Authorized Pursuant to Security Council Resolution 940 and the Republic of Haiti on the Status of MNF in Haiti

The Republic of Haiti and the Governments sending personnel to Haiti pursuant to Resolution 940 of the Security Council of the United Nations enter into this agreement for the purpose of using all necessary means to facilitate the departure from Haiti of military leadership, consistent with the Governors Island Agreement, the prompt return of the legitimate authorities of the Government of Haiti, and to establish and maintain a secure and stable environment that will permit the implementation of the Governors Island Agreement.

I. DEFINITIONS

1. For the purpose of the present Agreement the following definitions shall apply:

(a) "MNF Member States" and "Member States of the Army of the MNF" means the individual Member States participating in and acting together as the multinational force pursuant to Security Council Resolution 940 (1994) of 31 July 1994 on the basis of the recommendations made by the United Nations Secretary General in his reports of 15 July 1994 and 26 July 1994. It is understood in this regard that the Commander of the MNF will exercise operational control over all MNF personnel within the area of operations, and that each state will remain responsible for the conduct of its own personnel.

(b) The "Commander of the MNF" is the commander appointed by the Government participating in the MNF. Any reference to the Commander of the MNF in the present Agreement will encompass all personnel and members of the MNF to whom the Commander of the MNF has delegated a specific function or power.

(c) The "civilian component" consists of officials of MNF Member States and other persons including civilian police, military instructors, and civilian personnel other than United Nations officials.

(d) The "military component" consists of military personnel and specialized civilian personnel made available by the MNF Member States.

(e) "MNF personnel" means the individuals who are members of civilian or military components of MNF Member States, including locally recruited Haiti nationals unless otherwise specified in this Agreement.

(f) "Member State" means a State contributing personnel or equipment to the aforementioned components of the MNF.

(g) "GOH" or "Government" means the Government of the Republic of Haiti.

(h) "President of Haiti" means the legitimately elected President of Haiti.

(i) "Convention" means the Convention on the Privileges and Immunities of the United Nations adopted by the General Assembly of the United Nations on 13 February 1946.

II APPLICATION OF THE PRESENT AGREEMENT

2. Unless specifically provided otherwise, the provisions of the present Agreement and any obligation undertaken by the Government or the MNF Member States or any privilege, immunity, personnel apply throughout the territory of Haiti.

3. It is understood that this agreement is without prejudice to the authorities granted under Security Council Resolution 940 and that this Agreement shall be interpreted so as to be consistent with Resolution 940.

III. APPLICATION OF THE CONVENTION

4. The MNF Member States, their property, funds, and assets, and MNF personnel, including the Commander of the MNF, shall enjoy the privileges and immunities specified in the present Agreement and, as appropriate, provided for the Convention, to which Haiti is a Party.

IV. STATUS RELATING TO MNF MEMBER STATES

5. MNF Member States and MNF personnel shall refrain from any action or activity incompatible with the international nature of their duties or the goals of Security Council Resolution 940 or inconsistent with the present Agreement. They shall respect all validity promulgated local laws and regulations. The Commander of the MNF shall take all appropriate measures to ensure the observance of these obligations, provided that the President of Haiti shall notify the Commander of the MNF of invalidly promulgated local laws and regulations.

6. The Government undertakes to respect the exclusively international nature of the MNF.

7. Without prejudice to the mandate of the MNF and its international nature:

(a) The MNF Member States will carry out their mission in Haiti in such a manner as to respect fully the principles and spirit of the general

conventions and all other international law governing the conduct of military personnel.

(b) The Government undertakes at all times to treat the military component of MNF Member States in such a manner as to respect fully the principles and spirit of the general conventions and all other international law governing the treatment of military personnel. Member States of the MNF and the Government will ensure that the members of the GOH and MNF personnel are fully informed of the principles and spirit of the aforementioned conventions and international law.

MNF Member States Flag and Vehicle Markings

8.(a). Without prejudice to the sovereignty of Haiti, the Government recognizes the right of Member States of the MNF to display within Haiti the accouterments, flags, and insignia of the respective Member States on their headquarters, camps or other premises, vehicles, vessels and otherwise, decided by the Commander of the MNF.

(b) Whenever MNF Member States display their flag over any MNF headquarters, camps, or other premises in Haiti, MNF Member States shall also display the flag of Haiti over such premises. Said flags will be provided by the Government.

9. Vehicles, vessels, and aircraft of MNF Member States shall carry distinctive Member State identification, of which the Government shall be notified.

Communications.

10. The MNF Member States will have the right to install and operate communications equipment for purposes as determined by the Commander of the MNF or his designee. In addition, MNF Member States shall enjoy

the facilities in respect to communications provided in article III of the Convention and shall, in coordination with the Government, use such Haitian facilities as may be required for the performance of their task. The use of any communications equipment to communicate with the general population of Haiti or with that of particular regions and localities shall be for military purposes, and the Commander of the MNF shall consult with the President of Haiti as practicable regarding such communications. Issues with respect to communications which may arise and which are not specifically provided for in the present Agreement shall be addressed under the dispute resolution provision of paragraph 46. MNF Member States shall take appropriate action to ensure that radio or television communications for the entertainment and benefit of MNF personnel are consistent with the requirements of relevant international law.

11. Member States of the MNF may take arrangements through their own facilities for the processing and transport of private mail addressed to or emanating from their personnel, but not for private mail addressed to or emanating from locally recruited Haitian nationals employed by MNF Member States. Included within such postal arrangements is the right of MNF personnel to receive not only letters but also packages and parcels, all such items being free from customs duties, taxes, search, seizure, and inspection. The Commander of the MNF shall consult with the President of Haiti regarding any allegation of abuse presented to the Commander of the MNF by the President of Haiti in order to address such abuse. The MNF Member States shall take such measures as are necessary to prevent abuses of their respective national governments via the mail or other means deemed appropriate by officials of MNF Member States. The President of Haiti shall be informed of the nature of such arrangements, and shall not interfere with or apply censorship to the mail.

Travel and Transport

12. MNF Member States and their personnel shall enjoy, together with their vehicles, vessels, aircraft and equipment, freedom of movement through the territory or Haiti. That freedom, with respect to large movements of personnel, stores or vehicles through airports or on railways or road used for general traffic within Haiti, shall be coordinated with the President of Haiti where practicable. MNF personnel shall only be reviewed to have an individual or collective movement order issued by a Member State or by the Commander of the MNF or a personal identity card, which shall include an individualized number, along with full name, date of birth, title or rank, service (if applicable) and photograph. The Commander of the MNF shall also inform the President of Haiti with respect to the distribution of the military component to the extent practicable. The Government undertakes to supply Member States of the MNF, where necessary, with maps and other information, including locations of mine fields and other dangers and impediments, which may be useful in facilitating its movements.

13. Vehicles, including all military vehicles, vessels and aircraft, of Member States of the MNF shall not be subject to registration or licensing or other regulation by the Government, provided that all such vehicles shall display distinctive national markings of the MNF Member States.

14. Member States of the MNF may use road, bridges, canals, and other waters, port facilities and airfields without the payment of dues, tolls or charges, including charges. However, Member States of the MNF will not otherwise claim exemption from charges which are in fact reasonable charges for services requested and received.

Privileges and Immunities of MNF Member States

15. Member States of the MNF enjoy the status, privileges and immunities of the United Nations in accordance with the Convention. The provisions of article II of the Convention shall also apply to the property, funds and assets of the MNF Member States used in Haiti. The Government recognizes the right of Member States of the MNF in particular:

(a) To import, free of duty or other restrictions, equipment, provisions, supplies and other goods which are for their exclusive and official use or for resale in the commissaries provided for hereinafter;

(b) To establish, maintain and operate commissaries at their headquarters, camps and ports for the benefit of their members, but not of locally recruited Haitian national personnel. Such commissaries may provide foods of consumable nature and other articles. The Commander of MNF shall take all necessary measures to prevent abuse of such commissaries and the sale or resale of such goods to persons other than MNF personnel, and he shall give sympathetic consideration to observations or requests of the Government concerning the operation of the commissaries. The Commander of the MNF shall consult with the President of Haiti regarding any allegation of abuse presented to the Commander of the MNF by the President of Haiti to order to address such abuse. The MNF Member States shall take such measures as are necessary to prevent abuses of privileges provided by these arrangements;

(c) To clear by customs and excise warehouse, free of duty or other restrictions, equipment, provisions, supplies and other goods which are for the exclusive and official use of Member States of the MNF or for resale in the commissaries provided for above;

(d) The provision is not applicable to material sold in the country for non-MNF usage. Disposition of MNF equipment and supplies after the MNF has completed its mission will be as determined by MNF Member States. Property or equipment will not be transferred to Haitian persons or entities except after prior consultation with the President of Haiti.

Such implementation, clearances, transfer or exportation shall be effected with the least possible delay.

V. FACILITIES

Premises Required for Conducting the Operational and Administrative Activities of the MNF Member States and for Accommodating Their Personnel

16. The Government of Haiti shall provide without cost to MNF Member States and in agreement with the Commander of the MNF such areas for headquarters, camps or other premises as may be necessary for the conduct of the operational and administrative activities of MNF Member States and for the accommodation of their personnel and equipment. Without prejudice to the fact that all such premises remain Haitian territory, they shall be inviolable and subject to exclusive control and authority of the MNF Member States. The Commander of the MNF alone may consent to the entry of any person to said premises. Where military personnel of MNF Member States are co-located with military personnel of Haiti, a permanent, direct and immediate access by MNF Member States to these premises shall be guaranteed.

17. The Government undertakes to assist MNF Member States as far as possible in obtaining and making available, where applicable, water, electricity, and other facilities free of charge, or where this is not possible, at the most favorable rate for MNF Members States, and in the case of interruption or threatened interruption of service, to give as is within its powers the same priority to the needs of MNF Member States facilities

cannot be provided free of charge, payment shall be made by MNF Member States in terms to be agreed with the competent authority. MNF Member States shall be responsible for the maintenance and upkeep of facilities so provided.

18. MNF Member States shall have the right, where necessary, to generate within their premises water and electricity for their use and to transmit and distribute such water and electricity.

Provisions, Supplies and Services, and Sanitary Arrangements

19. The Government undertakes to assist MNF Member States as far as possible in obtaining equipment, provisions, supplies, and other goods and services from local sources required for their subsistence and operations. In making purchases on the local market, MNF Members States shall, on the basis of observations made and information provided by the Government in the local economy. The Government shall exempt MNF Members States from all taxes in respect to all official local purchases.

20. MNF Member States and the Government shall cooperate with each other in matters concerning health and pollution, including the control of communicable diseases.

Recruitment of Local Personnel

21. MNF Member States may recruit locally such personnel as they require, except that MNF Member States shall not hire persons who have committed a serious criminal offense or who have an independently verifiable history of violation of human rights in Haiti. Upon the request of the Commander of the MNF, the Government will undertake to facilitate the recruitment of the process of such recruitment. The MNF Member States and to accelerate the process of such recruitment. The MNF Member States will notify the President of Haiti, insofar as possible in

advance. as to those persons they hire who have been recruited locally. The competent authorities of the Government may bring to the attention of MNF Member States information regarding persons the MNF Member States recruit locally. The MNF Member States will consult with the President of Haiti about locally recruited personnel the Government wants terminated. In addition, locally recruited members of the MNF cannot participate in any negotiations or discussions between the MNF and the Government except for interpreters or administrative personnel.

Currency.

22. The Government undertakes to make available to MNF Member States, against reimbursement in mutually acceptable currency, the amounts in gourdes required for the use of the MNF Member States at the official rate of exchange.

VI. STATUS RELATING TO MNF PERSONNEL

23. The members of the civilian component of MNF Member States, except for locally recruited Haitian nationals, shall be considered as experts on mission within the meaning of article VI of the Convention.

24. Military personnel of national contingents assigned to the military components of MNF Members States shall have the privileges and immunities specifically provided for in the present Agreement.

25. Unless otherwise specified in the present Agreement, locally recruited Haitian nationals hired by MNF Member States shall have immunity for words spoken or written within the scope of their official duties and for acts performed within the scope of their official duties. The Commander of the MNF shall, promptly and in a reasonable manner, allow Government authorities to question, serve legal process, arrest, and execute warrants upon locally recruited Haitian national members of the MNF present on MNF premises.

26. With the exception of locally recruited Haitian nationals, MNF personnel shall be exempt from taxation on the pay and emoluments received from their respective participating states and any income received from outside Haiti. They shall also be exempt from all other identifiable taxes, except all registration fees and charges.

27. With the exception of locally recruited Haitian nationals, MNF personnel shall have the right to import free of duties, taxes and other charges their personal effects in connection with their arrival in Haiti. They shall be subject to the laws and regulations of Haiti governing customs and foreign exchange with respect to personal property not required by them by reason of their presence in Haiti with the MNF Member States. Special facilities will be granted by the Government for speedy processing of entry and exit formalities for all MNF personnel upon prior written notification. On departure from Haiti, MNF personnel notwithstanding the above-mentioned exchange regulations, may take with them such funds as the Commander of the MNF certifies were received in pay and emoluments from their respective participating states. Special arrangements shall be made for the implementation of the present provisions in the interests of the Government and the MNF Member States.

28. The Commander of the MNF shall cooperate with the Government and shall render all assistance within his power in ensuring the observance of the customs and fiscal laws and regulations of Haiti by MNF personnel, in accordance with the present Agreement.

Entry, Residence and Departure

29. The Commander of the MNF personnel, except locally recruited Haitian nationals, shall have the right to enter into, reside in and depart from Haiti whenever so required by the Commander of the MNF.

30. The Government undertakes to facilitate the entry into and departure from Haiti of the Commander of the MNF and MNF personnel and shall be kept informed of such movement. For that purpose, the Commander of the MNF and MNF personnel shall be exempt from passport and visa regulations and immigration inspection and restrictions on entering into or departing from Haiti. MNF personnel shall also be exempt from any regulations governing the residence of aliens in Haiti, including registration, but shall not be considered as acquiring any rights to permanent residence or domicile in Haiti. The provisions of this paragraph shall not apply to any locally recruited Haitian nationals.

31. With the exception of locally recruited Haitian nationals, for the purpose of such entry or departure, MNF personnel, shall only be required to have: (a) an individual or collective movement order issued by or under the authority of the Commander of the MNF or under the appropriate authority of an MNF Member State; or (b) a personal identity card issued in accordance with paragraph 32 of the present Agreement.

Identification

32. Each MNF Member State shall issue to its non-locally recruited personnel before or as soon as possible after such personnel's first entry into Haiti, as well as to all locally recruited Haitian national personnel, an appropriate identification document, provided that locally recruited Haitian nationals shall also be required to possess a "carte d'identite."

Such identity document shall be the only document required of MNF personnel.

33. MNF personnel, including locally recruited Haitian nationals shall be required to present, but not to surrender, their identity cards upon demand of an appropriate official of the Government.

Uniform and Arms

34. MNF personnel, except locally recruited Haitian nationals, may wear any appropriate uniformed and may display the national flags, headgear, and other accouterments, while performing official duties. With the exception of locally recruited Haitian nationals, unless otherwise authorized by the President of Haiti, MNF personnel may carry weapons appropriate to their mission as determined by the Commander of the MNF.

Military Police Arrest and Transfer of Custody and Mutual Assistance

36. The Commander of the MNF shall take all appropriate measures to ensure the maintenance of discipline and good order in regard to MNF personnel. To this end, personnel designated by the Commander of the MNF shall police the premises of the MNF and such areas where its personnel are deployed. Elsewhere such police personnel shall be employed, subject where practicable to arrangements with the Government, insofar as the Commander of the MNF considers such employment is necessary.

37. The MNF military police shall have the power of arrest over MNF military personnel. Military personnel placed under arrest outside their own contingent areas shall be transferred to their contingent commander for appropriate disciplinary action. The personnel mentioned in paragraph 36 above may also take into custody any other person who commits an offense on the premises under control of MNF Member States or otherwise as provided in paragraph 36. Such other persons

who are Haitian nationals shall be delivered within 48 hours to the nearest appropriate official of the Government for the purpose of dealing with any offense or disturbance unless it is impracticable under the circumstances for the MNF to deliver or for the Government to receive such persons within 48 hours.

38. Officials of the Government may not detain any members of the military component of MNF, any member having the status of a diplomatic envoy for the purposes of the present Agreement, or any members having the status of an exertion mission for the purposes of the present Agreement. Officials of the Government may detain any other MNF personnel only:

(a) When so required by the Commanded of the MNF; or

(b) When such personnel are detained in the commission or attempted commission of an offense. Such personal shall be delivered immediately, together with any weapons or other items seized, to the nearest appropriate representative of the MNF Member State, whereafter the provisions of paragraph 43 shall apply mutatis mutandis.

39. When a person is detained under paragraph 37 or paragraph 38 (b), the Commander of the MNF or the Government, as the case may be, may make a preliminary interrogation but may not delay the transfer of custody provided for in paragraphs 37 and 38. Following such transfer, the person concerned shall be made available upon request to the authority which detained him/her for further interrogation.

40. The Commander of the MNF and the Government shall assist each other in carrying out all necessary investigations into offenses in respect of which either or both have an interest, in the production of evidence, including the seizure of and, if appropriate, the handing over of any such

items may be made subject to their return within the terms specified by the authority delivering them. Each shall notify the other of the disposition of any case and the outcome of which the other may have an interest or in which there has been a transfer of custody under the provisions of paragraphs 37 through 39.

41. The Government shall ensure the prosecution of persons subject to its criminal jurisdiction who are accused of acts in relation to MNF Member States or their personnel which, if committed in relation to the forces of the Government, would have rendered such acts liable to prosecution.

Jurisdiction

42. All MNF personnel, including locally recruited personnel, shall be immune from legal process in respect of words spoken or written within the scope of their official duties and all acts performed within the scope of their official duties. Such immunity shall continue even after they cease to be members of or employed by MNF Member States and after the expiration of the other provisions of the present Agreement.

43. Should the Government consider that any MNF personnel has committed a criminal offense, it shall promptly inform the Commander of the MNF and present to him any evidence available to it.

(a) If the accused person is a member of the civilian component or a civilian member of the military component, the Commander of the MNF shall conduct any necessary supplementary inquiry and then agree with the Government whether or not criminal proceedings should be instituted. Failing such agreement, the question shall be resolved as provided in paragraph 46 of the present Agreement;

(b) Members of the military component of MNF Member States shall be subject to the exclusive jurisdiction of the respective MNF Member States in respect of any criminal offenses which may be committed by them in Haiti.

44. If any civil proceeding is instituted against MNF personnel before any court in Haiti, the Commander of the MNF shall be notified immediate, and shall certify to the court whether or not the proceeding fails within the officially prescribed duties of such member:

(a) If the Commander of the MNF certifies that the proceeding is related to official duties, such proceeding shall be discontinued and the provisions of paragraph 46 of the present Agreement shall apply;

(b) If the Commander of the MNF certifies that the proceeding is not related to official duties, the proceeding may continue. If the Commander of the MNF certifies that the MNF personnel in question is unable because of official duties or authorized absence to protect his/her interest in the proceeding, the court shall at the defendant's request suspend the proceeding until the elimination of the disability, personnel that is certified by the Commander of the MNF to be needed by the defendant for the fulfillment of his official duties shall be free from seizure for the satisfaction of a judgment, decision or order. The personal liberty of MNF personnel shall not be restricted in a civil proceeding, whether to enforce a judgment, decision or order, to compel an oath or for any other reason.

Deceased Members of MNF

45. The Commander of the MNF shall have the right to take charge of and dispose of the body of MNF personnel who die in Haiti, as well as that member's personal property located within Haiti, in accordance with procedures as established by the Commander of the MNF and Member States.

VII. SETTLEMENT OF DISPUTES

46. All differences between MNF Member States and the Government of Haiti arising out of the interpretation or application of the present agreement shall be resolved by a committee composed of one person appointed by the President of Haiti and one by the Commander of the MNF. As appropriate, the Commander of the MNF and the President of Haiti may agree to appoint additional members. The parties will seek to resolve their differences through agreement. Any dispute which cannot be resolved through this mechanism may be elevated to diplomatic channels.

47. Disputes concerning the terms of employment and conditions of service of locally recruited personnel shall be settled exclusively by the administrative procedures to be established by Commander of the MNF and without restrictions arising from the application of Haitian law.

VIII. SUPPLEMENTAL ARRANGEMENTS

48. The Commander of the MNF and the Government may conclude supplemental arrangements to the present Agreement.

IX. LIAISON

49. The Commander of the MNF and the President of Haiti shall take appropriate measures to ensure close and reciprocal liaison at every appropriate level. The Commander of the MNF and the President of Haiti shall designate one or more individual who shall be available at all times for purposes of implementing this agreement. Such designated individuals shall be available promptly upon a request for such consultations and shall have full authority to engage in those

consultations and otherwise take all actions called for under this Agreement.

X. MISCELLANEOUS PROVISIONS.

50. Wherever the present Agreement refers to the privileges, immunities and rights of MNF Member States and to the facilities Haiti undertakes to provide to MNF Member States, the Government shall have the ultimate responsibility for the implementation and fulfillment of such privileges, immunities, rights and facilities by the appropriate Haitian authorities.

51. The present Agreement shall enter into force on the date of its signature in the English language version by the [Government of the United States of America] and [the Government of the Republic of Haiti]. A version in the French language shall be prepared and shall become equally authentic upon its adoption by an exchange of notes between the authentic upon its adoption by an exchange of notes between the parties. [Government of the United States of America and the Government of the Republic of Haiti].*

52. The present Agreement shall remain in force until the complete departure of MNF Member States from Haiti, and shall continue to apply to actions having occurred during the term of the agreement

[DONE AT Miami and Washington in the English language on this the 8th and 22nd days of December, 1994.]

For the Government of the
United States of America,
acting as the Unified Command
authorized by Security Council
Resolution 940:

For the Government of
the Republic of Haiti

Appendix P: Agreement Between the United Nations and the Government of Haiti on the Status of the United Nations Mission in Haiti

I. DEFINITIONS

1. For the purpose of the present Agreement, the following definitions shall apply:

(a) "UNMIH" means the United Nations Mission in Haiti established pursuant to Security Council resolution 867 (1993) of 23 September 1993 and the mandate of which has been revised and enlarged in accordance with the provisions of paragraphs 9 and 10 of Security Council resolution 940 (1994) of 31 July 1994. Subsequently, UNMIH has been strengthened pursuant to Security Council resolution 975 (1995) of 30 January 1995. UNMIH will be comprised of:

- (i) The "Special Representative" appointed by the Secretary-General of the United Nations. With the exception of paragraph 24 below, any reference to the Special Representative in the present Agreement will encompass all members of UNMIH to whom the Special Representative has delegated a specific function or power;
- (ii) A "civilian component" consisting of officials of the United Nations and other persons, including civilian police instructed by the Secretary-General to assist the Special Representative or made available to UNMIH by the participating States;
- (iii) A "military component" consisting of military personnel and specialized civilian personnel made available to UNMIH by the participating States;

(b) "Members of UNMIH" means a member of the civilian or military components;

(c) "Participating State" means a State contributing personnel to the aforementioned components of UNMIH;

(d) "Government" means the Government of Haiti;

(e) "Convention" means Convention on the Privileges and Immunities of the United Nations adopted by the General Assembly of the United Nations on 13 February 1946.

II. APPLICATION OF THE PRESENT AGREEMENT

2. Unless specifically provided otherwise, the provisions of the present Agreement and any obligation undertaken by the Government or any privilege, immunity, facility or concession granted to UNMIH or any member thereof apply throughout the territory of Haiti.

III. APPLICATION OF THE CONVENTION

3. UNMIH, its property, funds and assets, and its members, including the Special Representative, shall enjoy the privileges and immunities specified in the present Agreement as well as those provided for in the Convention, to which Haiti is a Party.

4. Article II of the Convention, which applies to UNMIH, shall also apply to the property, funds and assets of the participating States used in connection with UNMIH.

IV. STATUS OF UNMIH

5. UNMIH and its members shall refrain from any action or activity incompatible with the impartial and international nature of their duties or

inconsistent with the spirit of the present Agreement. They shall respect all local laws and regulations. The Special Representative shall take all appropriate measures to ensure the observance of the obligations.

6. The Government undertakes to respect the exclusively international character of UNMIH.

7. Without prejudice to the mandate of UNMIH and its international nature:

(a) The United Nations will ensure that UNMIH carries out its mission in Haiti in such a manner as to respect fully the principles and spirit of the general international conventions on the conduct of military personnel. These international conventions include the four Geneva Conventions (Red Cross) of 12 August 1949 and the Additional Protocols thereto of 6 June 1977 and the UNESCO International Convention for the Protection of Cultural Property in the Event of Armed Conflict;

(b) The Government undertakes at all times to treat the military personnel of UNMIH in such a manner as to respect fully the principles and spirit of the general international conventions applicable to the treatment of military personnel. These international conventions include the four Geneva conventions (Red Cross) of 12 August 1949 and the Additional Protocols thereto of 6 June 1977.

UNMIH and the Government will ensure that the members of their military personnel are fully informed of the principles and spirit of the aforementioned international instruments.

United Nations Flag And Vehicle Markings

8. The Government recognizes the right of UNMIH to display within Haiti the United Nations flag on its headquarters, camps, or other premises, vehicles, vessels and otherwise as decided by the Special Representative. Other flags or pennants may be displayed only in exceptional cases. In these cases, UNMIH shall give sympathetic consideration to observations or requests of the government of Haiti.

9. Vehicles, vessels, and aircraft of UNMIH shall carry a distinctive United Nations identification, which shall be notified to the Government.

Communications

10. UNMIH shall enjoy the facilities in respect to communications provided in article III of the Convention and shall, in coordination with the Government, use such facilities as may be required for the performance of its task. Issues with respect to communications which may arise and which are not specifically provided for in this Agreement shall be dealt with pursuant to the relevant provisions of the Convention.

11. Subject to the provisions of paragraph 10:

(a) UNMIH shall have authority to install and operate a radio sending and receiving stations as well as satellite systems to connect appropriate points within the territory of Haiti with each other and with United Nations offices in other countries, and to exchange traffic with the United Nations global telecommunications network. The telecommunication services shall be operated in accordance with the International Telecommunications Convention and Regulations and the frequencies on which any such station may be operated shall be decided

upon in cooperation with the Government and shall be communicated by the United Nations to the International Frequency Registration Board.

(b) UNMIH shall enjoy, within the territory of Haiti, the right to unrestricted communication by radio, (including satellite, mobile, and hand-held radio), telephone, telegraph, facsimile or any other means, and of establishing the necessary facilities for maintaining such communications within and between its premises, including the laying of cables and land lines and the establishment of fixed and mobile radio sending, receiving and repeater stations. The frequencies on which the radio will operate shall be decided upon in cooperation with the Government. It is understood that connections with the local system of telegraphs, telex, and telephones may be made only after consultation and in accordance with arrangements with the Government, it being further understood that the use of the local system of telegraphs, telex and telephones will be charged at the most favorable rate;

(c) UNMIH may make arrangements through its own facilities for the processing and transport of private mail addressed to or emanating from its members. The Government shall be informed of the nature of such arrangements and shall not interfere with or apply censorship to the mail of UNMIH or its members. In the event that postal arrangements applying to private mail of members of UNMIH are extended to transfer of currency or the transport of packages and parcels, the conditions under which such operations are conducted shall be agreed with the Government.

Travel And Transport.

12. UNMIH and its members shall enjoy, together with its vehicles, vessels, aircraft and equipment, freedom of movement throughout the territory of Haiti. That freedom shall, with respect to large movements

of personnel, stores or vehicles through airports or on railways or roads used for general traffic within Haiti, be coordinated with the Government. The Government undertakes to supply UNMIH, where necessary, with maps and other information, including locations of mine fields and other dangers and impediments, which may be useful in facilitating its movements.

13. Vehicles, including all military vehicles, vessels, and aircraft of UNMIH shall not be subject to registration or licensing by the Government provided that all such vehicles shall carry the third party insurance required by relevant legislation.

14. UNMIH may use roads, bridges, canals, and other waters, port facilities, and airfields without the payment of dues, tolls, or charges, including wharfage charges. However, UNMIH will not claim exemption from charges which are in fact charges for services rendered.

Privileges and immunities of UNMIH

15. UNMIH, as a subsidiary organ of the United Nations, enjoys the status, privileges and immunities of the United Nations in accordance with the Convention. The provision of article II of the Convention which applies to UNMIH shall also apply to the property, funds and assets of participating States used in Haiti in connection with the national contingents serving in UNMIH, as provided for in paragraph 4 of the present Agreement. The Government recognizes the right of UNMIH in particular:

(a) To import, free of duty, taxes or other restrictions, equipment, provisions, supplies and other goods which are for its exclusive and official use or for resale in the commissaries provided for hereinafter;

(b) To establish, maintain and operate commissaries at its headquarters, camps and posts for the benefit of its members, but not of locally recruited personnel. Such commissaries may provide goods of a consumable nature and other articles to be specified in advance. The Special Representative shall take all necessary measures to prevent abuse of such commissaries and the sale or resale of such goods to persons other than members of UNMIH, and he shall give sympathetic consideration to observations or requests of the Government concerning the operation of the commissaries;

(c) To clear ex customs and excise warehouse, free of duty or other restrictions, equipment, provisions, supplies and other goods which are for the exclusive and official use of UNMIH or for resale in the commissaries provided for above;

(d) To re-export or otherwise dispose of such equipment, as far as it is still usable, all unconsumed provisions, supplies and other goods so imported or cleared ex customs and excise warehouse which are not transferred, or otherwise disposed of, on terms and conditions to be agreed upon, to the competent local authorities of Haiti or to an entity nominated by them.

To the end that such importation, clearances, transfer or exportation may be effected with the least possible delay, a mutually satisfactory procedure, including documentation, shall be agreed between UNMIH and the Government at the earliest possible date.

V. FACILITIES

Premises Required For Conducting The Operational And Administrative Activities Of UNMIH And For Accommodating Its Members

16. The Government of Haiti shall provide without cost to UNMIH and in agreement with the Special Representative such areas for headquarters, camps, or other premises as may be necessary for the conduct of the operational and administrative activities of UNMIH and for the accommodation of its members. Without prejudice to the fact that all such premises remain Haitian territory, they shall be inviolable and subject to the exclusive control and authority of the United Nations. Where military personnel of UNMIH are co-located with military personnel of Haiti, a permanent, direct and immediate access by UNMIH to those premises shall be guaranteed.

17. The Government undertakes to assist UNMIH as far as possible in obtaining and making available, where applicable, water, electricity and other facilities free of charge, or, where this is not possible, at the most favorable rate, and in the case of interruption or threatened interruption of service, to give as far as is within its powers the same priority to the needs of UNMIH as to essential government services. Where such utilities or facilities are not provided free of charge, payment shall be made by UNMIH on terms to be agreed with the competent authority. UNMIH shall be responsible for the maintenance upkeep of facilities so provided.

18. UNMIH shall have the right, where necessary, to generate, within its premises, electricity for its use and to transmit and distribute such electricity.

19. The United Nations alone may consent to the entry of any government officials or of any other person not member of UNMIH to such premises.

Provisions, Supplies, And Services, And Sanitary Arrangements

20. The Government undertakes to assist UNMIH as far as possible in obtaining equipment, provisions, supplies and other goods and services

from local sources required for its subsistence and operations. In making purchases on the local market, UNMIH shall, on the basis of observations made and information provided by the Government in that respect, avoid any adverse effect on the local economy. The Government shall exempt UNMIH from general sales taxes in respect of all official local purchases.

21. UNMIH and the Government shall cooperate with respect to sanitary services and shall extend to each other the fullest cooperation in matters concerning health, particularly with respect to the control of communicable diseases, in accordance with international conventions.

Recruitment And Hiring Of Local Personnel

22. UNMIH may recruit locally such personnel as it requires. Upon the request of the Special Representative, the Government undertakes to facilitate the recruitment of qualified local staff by UNMIH and to accelerate the process of such recruitment.

Currency

23. The Government undertakes to make available to UNMIH, against reimbursement in mutually acceptable currency, the amounts in gourdes required for the use of UNMIH, including the pay of its members, at the rate of exchange most favorable to UNMIH.

VI. STATUS OF THE MEMBERS OF UNMIH

24. The Special Representative, the head of the civilian police, the Commander of the military component of UNMIH, and such high-ranking members of the Special Representative's staff as may be agreed upon with the Government shall have the status specified in sections 19 and 27 of the Convention, provided that the privileges and immunities

therein referred to shall be those accorded to diplomatic envoys by international law.

25. Members of the United Nations Secretariat, as well as United Nations Volunteers, assigned to the civilian component to serve with UNMIH, shall enjoy the privileges and immunities provided for under Articles V and VII of the Convention.

26. The other members of the civilian component, namely members of the UNMIH civilian police, military instructors, and civilian personnel other than United Nations officials whose names are for the purpose notified to the Government by the Special Representative, shall be considered as experts on mission within the meaning of article VI of the Convention.

27. Personnel of national contingents assigned to the military component of UNMIH shall have the privileges and immunities specifically provided for in the present Agreement.

28. Unless otherwise specified in the present Agreement, locally recruited members of UNMIH shall enjoy the immunities concerning official acts and exemptions from taxation and national service obligations provided for in sections 18 (a), (b), and (c) of the Convention.

29. Members of UNMIH shall be exempt from taxation on the pay and emoluments received from the United Nations or from a participating State and any income received from outside Haiti. They shall also be exempt from all other direct taxes, except municipal rates for services enjoyed, and from all registration fees and charges.

30. Members of UNMIH shall have the right to import free of duty their personal effects in connection with their arrival in Haiti. They shall be subject to the law and regulations of Haiti governing customs and

foreign exchange with respect to personal property not required by them by reason of their presence in Haiti with UNMIH. Special facilities will be granted by the United Nations peace-keeping operation. Special facilities will be granted by the Government for the speedy processing of entry and exit formalities for all members of UNMIH, including the military component, upon prior written notification. On departure from Haiti, members of UNMIH, may, notwithstanding the above-mentioned exchange regulations, take with them such funds as the Special Representative certifies were received in pay and emoluments from the United Nations or from a participating State and are a reasonable residue thereof. Special arrangements shall be made for the implementation of the present provisions in the interest of the Government and the members of UNMIH.

31. The Special Representative shall cooperate with the Government and shall render all assistance within his power in ensuring the observance of the customs and fiscal laws and regulations of Haiti by the members of UNMIH, in accordance with the present Agreement.

Entry, Residence And Departure

32. The Special Representative and members of UNMIH shall, whenever so required by the Special Representative, have the right to enter into, reside in and depart from Haiti.

33. The Government of Haiti undertakes to facilitate the entry into and departure from Haiti of the Special Representative and members of UNMIH and shall be kept informed of such movement. For that purpose, the Special representative and members of UNMIH shall be exempt from passport and visa regulations and immigration inspection and restrictions on entering into or departing from Haiti. They shall also be exempt from any regulations governing the residence of aliens in

Haiti, including registration, but shall not be considered as acquiring any right to permanent residence or domicile in Haiti.

34. For the purpose of such entry or departure, members of UNMIH shall only be required to have: (a) an individual or collective movement order issued by or under the authority of the Special Representative or any appropriate authority of a participating State; and (b) a personal identity card issued in accordance with paragraph 35 of the present Agreement, except in the case of first entry, when the personal identity card issued by the appropriate authorities of a participating State shall be accepted in lieu of the said identity card.

Identification

35. The Special Representative shall issue to each member of UNMIH before or as soon as possible after such member's first entry into Haiti, as well as to all locally recruited personnel, a numbered identity card, which shall show full name, date of birth, title or rank, service (if appropriate) and photograph. Except as provided for in paragraph 34 of the present Agreement, such identity card shall be the only document required of a member of UNMIH.

36. Members of UNMIH as well as locally recruited personnel shall be required to present, but not to surrender, their UNMIH identity cards upon demand of an appropriate official of the Government.

Uniform And Arms

37. Military members and civilian police of UNMIH shall wear, while performing official duties, the national military or police uniform of their respective States with standard United Nations accouterments, i.e. the United Nations headgear and accouterments. United Nations Security Officers and Field Service Officers may wear the United Nations uniform. The wearing of civilian dress by the above-mentioned

members of UNMIH may be authorized by the Special Representative at other times. Military members and civilian police of UNMIH and United Nations Security Officers designated by the Special Representative may possess and carry arms while on duty in accordance with their orders.

Permits And Licenses

38. The Government agrees to accept as valid, without tax or fee, a permit or license issued by the Special Representative for the operation by any member of UNMIH, including locally recruited personnel, of any UNMIH transport or communication equipment and for the practice of any profession or occupation in connection with the functioning of UNMIH, provided that no license to drive a vehicle or pilot an aircraft shall be issued to any person who is not already in possession of an appropriate and valid license.

39. Without prejudice to the provisions of paragraph 37, the Government further agrees to accept as valid, without tax or fee, a permit or license issued by the Special Representative to a member of UNMIH for the carrying of use of firearms or ammunition in connection with the functioning of UNMIH. Under no circumstances, such permit or license shall be granted to locally recruited personnel. The Special Representative shall inform the Government of any permit or license issued.

Military Police, Arrest, And Transfer Of Custody, And Mutual Assistance

40. The Special Representative shall take all appropriate measures to ensure the maintenance of discipline and good order among members of UNMIH, as well as locally recruited personnel. To this end, personnel designated by the Special Representative shall police the premises of UNMIH and such areas where its members are deployed. Elsewhere

such personnel shall be employed only subject to arrangements with the Government and in liaison with it in so far as the Special Representative considers such employment is necessary to maintain discipline and order among members of UNMIH.

41. The UNMIH military police shall have the power of arrest over the military members of UNMIH. Military personnel placed under arrest outside their own contingent areas shall be transferred to their contingent commander for appropriate disciplinary action. The personnel mentioned in paragraph 40 above may also take into custody any other person who commits an offense on the premises of UNMIH. Such other person shall be delivered immediately to the nearest appropriate official of the Government for the purpose of dealing with any offense or disturbance on such premises.

42. Officials of the Government may not detain any member of the military government of UNMIH, any member having the status of a diplomatic envoy for the purposes of the present Agreement, or any member having the status of an expert on mission for the United Nations. Officials of the Government may detain any other member of UNMIH only:

(a) When so requested by the Special Representative; or

(b) When such a member of UNMIH is detained in the commission or attempted commission of an offense. Such person shall be delivered immediately, together with any weapons or other item seized, to the nearest appropriate representative of UNMIH, whereafter the provisions of paragraph 47 shall apply *mutatis mutandis*.

43. When a person is detained under paragraph 41 or paragraph 42(b), UNMIH or the Government, as the case may be, may make a preliminary interrogation but may not delay the transfer of custody. Following such transfer, the person concerned shall be made available

upon request to the authority which detains him/her for further interrogation.

44. UNMIH and the Government shall assist such other in carrying out all necessary investigations into offenses in respect of which either or both have an interest, in the production of witnesses and in the collection and production of evidence, including the seizure of and, if appropriate, the handing over of items connected with an offense. The handing over of any such items may be made subject to their return within the terms specified by the authority delivering them. Each shall notify the other of the disposition of any case in the outcome of which the other may have an interest or in which there has been a transfer of custody under the provisions of paragraph 41-43.

45. The Government shall ensure the prosecution of persons subject to its criminal jurisdiction who are accused of acts in relation to UNMIH or its members which, if committed in relation to the forces of the Government, would have rendered such acts liable to prosecution.

Jurisdiction

46. All members of UNMIH, including locally recruited personnel, shall be immune from legal process in respect of words spoken or written and all acts performed by them in their official capacity. Such immunity shall continue even after they cease to be members of or employed by UNMIH and after the expirations of the other provisions of the present Agreement.

47. Should the Government consider that any member of UNMIH has committed a criminal offense, it shall promptly inform the Special Representative and present to him any evidence available to it. Subject to the provisions of paragraph 24:

(a) If the accused person is a member of the civilian component or a civilian member of the military component, the Special Representative shall conduct any necessary supplementary inquiry and then agree with the Government whether or not criminal proceeding should be instituted. Failing such agreement, the question shall be resolved as provided in paragraph 52 of the present Agreement;

(b) Members of the military component of UNMIH shall be subject to the exclusive jurisdiction of their respective participating States in respect of any criminal offenses which may be committed by them in Haiti.

48. If any civil proceeding is instituted against a member of UNMIH before any court of Haiti, the Special Representative shall be notified immediately, and he shall certify to the court whether or not the proceeding is related to the official duties of such member:

(a) If the Special Representative certifies that the proceeding is related to official duties, such proceeding shall be discontinued and the provisions of paragraph 50 of the present Agreement shall apply;

(b) If the Special Representative certifies that the proceeding is not related to the official duties, the proceeding may continue. If the Special Representative certifies that a member of UNMIH is unable because of official duties or authorized absence to protect his interests in the proceeding, the court shall at the defendant's request suspend the proceeding until the elimination of the disability, but for not more than ninety days. Property of a member of UNMIH that is certified by the Special Representative to be needed by the defendant for the fulfillment of his official duties shall be free from seizure for the satisfaction of a judgment, decision or order. The personal liberty of a member of UNMIH shall not be restricted in a civil proceeding, whether to enforce a judgment, decision or order, to compel an oath for any other reason.

Deceased Members Of UNMIH

49. The Special Representative shall have the right to take charge of and dispose of the body of a member of UNMIH who dies in Haiti, as well as that member's personal property located within Haiti, in accordance with United Nations procedures.

VII. SETTLEMENT OF DUTIES

50. Except as provided in paragraph 52, any dispute or claim of a private law character to which UNMIH or any member thereof is a party and over which the courts of Haiti do not have jurisdiction because of any provision of the present Agreement, shall be settled by a standing claims commission to be established for that purpose. One member of the commission shall be appointed by the Secretary-General of the United Nations, one member by the Government and a chairman jointly by the Secretary-General and the Government. If no agreement as to the chairman is reached within thirty days of the appointment of the first member of the commission, the President of the International Court of Justice may, at the request of either the Secretary-General of the United Nations or the Government, appoint the chairman. Any vacancy on the commission shall be filled by the same method prescribed for the original appointment, shall start as soon as there is a vacancy in the chairmanship. The commission shall determine its own procedures, provided that any two members shall constitute a quorum for all purposes (except for a period of thirty days after the creation of a vacancy) and all decisions shall require the approval of any two members. The awards of the commission shall be final and binding, unless the Secretary-General of the United Nations and the Government permit an appeal to a tribunal established in accordance with paragraph 52. The awards of the commission shall be notified to the parties and, if against a member of UNMIH, the Special Representative or the

Secretary-General of the United Nations shall use his best endeavors to ensure compliance.

51. Disputes concerning the terms of employment and conditions of services of locally recruited personal shall be settled by the administrative procedures to be established by the Special Representative.

52. Any other dispute between UNMIH and the Government, and any appeal that both of them agree to allow from the award of the claims commission established pursuant to paragraph 50 shall, unless otherwise agreed by the parties, be submitted to tribunal of three arbitrators. The provisions relating to the establishment and procedures of the claims commission shall apply, mutatis mutandis, to the establishment and procedures of the tribunal. The decision of the tribunal shall be final and binding on both parties.

53. All differences between the United Nations and the Government of Haiti arising out of the interpretation or application of the present arrangements which involve a question of principle concerning the Convention shall be dealt with in accordance with the procedure of section 30 of the Convention.

VIII. SUPPLEMENTAL ARRANGEMENTS

54. The Special Representative and the Government may conclude supplemental arrangements to the present Agreement.

IX. LIAISON

55. The Special Representative and the Government shall take appropriate measures to ensure close and reciprocal liaison at every appropriate level.

X. MISCELLANEOUS PROVISIONS

56. Wherever the present Agreement refers to the privileges, immunities and rights of UNMIH and to the facilities Haiti undertakes to provide to UNMIH, the Government shall have the ultimate responsibility for the implementation and fulfillment of such privileges, immunities, rights and facilities by the appropriate Haitian authorities.

57. The present Agreement shall enter into force on the date of its signature by the Special Representative of the Secretary-General and the MFA of Haiti.

58. The present Agreement shall remain in force until the departure of the final element of UNMIH from Haiti, except that:

(a) The provisions of paragraphs 46, 52, and 53, shall remain in force;

(b) The provisions of paragraph 50 shall remain in force until all claims have been settled that arose prior to the termination of the present Agreement and were submitted prior to or within three months of such termination.

[Entered into Force 21 March 1995]

Appendix Q: Exchange of Notes Representing a Bilateral Status of Forces Agreement Between the United States and the Republic of Haiti

The Embassy of the United State of American presents its compliments to the Ministry of Foreign Affairs of the Republic of Haiti and has the honor to acknowledge receipt of the Ministry's note number HUR/95-210, dated May 10, 1995, regarding issues related to the status of U.S. military personnel and civilian employees of the Department of Defense who may be present temporarily in Haiti in connection with their official duties. The Embassy of the United States of America has the honor to inform the Ministry of Foreign Affairs of he Republic of Haiti that the Government of the United States of America accepts the proposal contained in that note and to confirm that this reply shall constitute an agreement between our two Governments on this subject effective from this date.

The Embassy of the United States of America avails itself of this opportunity to renew to the Ministry of Foreign Affairs of the Republic of Haiti assurance of its highest consideration.

Embassy of the United States of America, Port-au-Prince, May 11, 1995.

DEPARTMENT OF STATE
OFFICE OF LANGUAGE SERVICES
Translating Division
LS No. 147175
JF/JPM
French

Republic of Haiti
Ministry of Foreign Affairs
No. JUR/95-210

The Ministry of Foreign Affairs and Worship presents its compliments to the Embassy of the United States of America in Haiti and, with reference to the recent discussions between the representatives of the two governments regarding the status of the military personnel and civilian employees of the United States Department of Defense, has the honor to propose the following:

- 1 - Such personnel shall enjoy the same status as that provided to the administrative and technical staff of the United States Embassy;
- 2 - Such personnel may enter, leave, and circulate freely in Haiti with U.S. Government identification;
- 3 - Such personnel shall be permitted to travel individually or in group;
- 4 - The vehicles used by such personnel may have special, easily identifiable license plate;
- 5 - Military personnel shall be authorized to wear uniforms in the exercise of their official duties and to carry weapons if authorized to do so by their commander;
- 6 - The Government of Haiti shall grant them exemption from import and export duties on the goods, property, material, and equipment imported to Haiti by the American Government and its civilian contractors pursuant to their official duties;
- 7 - The Government of Haiti shall grant them exemption from domestic taxes on the goods, property, material, and equipment imported to or

acquired in Haiti by the United States Government and its civilian contractors pursuant to their official duties;

8 - The Government of Haiti shall grant them exemption from domestic taxes such as airport, port, and highway tolls, fees, and charges in Haiti on aircraft, boats, and vehicles of Government of the United States of America;

9 - The Government of Haiti and the Embassy of the United States shall exchange on a regular, not necessarily formal, basis information on all issues raised by the implementation of this agreement.

If these terms are accepted by the American Government, the Foreign Ministry proposes that this note and the Embassy's reply shall constitute an agreement on this subject between the two governments that shall enter into force as of the date of said reply.,

Port-au-Prince, May 10, 1995

Appendix R: Memorandum of Agreement on Detention Facility

MEMORANDUM OF AGREEMENT

The Multinational Force (MNF) will transfer control of detainees held for MNF force security and detainees held for the Government of Haiti (GOH) for the commission of serious crimes. The MNF and GOH agree to the following provisions:

1. The MNF will afford detainees applicable prisoner of war protections of the Geneva Conventions during the transfer of the Joint Detention Facility (JDF) to GOH detention officials. Detainees will be treated humanely pursuant to international law standards at all times.
2. The MNF will transfer the JDF in its current condition, approved by the International Committee of the Red Cross (ICRC) as a humane detention facility. GOH detention officials will operate the JDF in a similar manner. To insure a successful transfer, the MNF will continue to pay the rent on the JDF, provide the outer ring of security, and will provide water, food, electricity, and medical care to the detainees.
3. Upon transfer, GOH detention officials will provide necessary guards and administrators to maintain safe, secure, and humane detention conditions. The MNF agrees to provide military police technical advice on detention matters.
4. Both parties will provide full access to the detention facility to the International Police Monitors (IPM) and the ICRC. Both parties agree to meet periodically with representatives of the ICRC concerning conditions of the JDF.
5. Both parties will agree at the time of transfer on the maximum number of detainees to be held in the JDF, consistent with security needs and humane treatment.

6. GOH detention officials will provide the MNF access to all detainees in order to collect information pertaining to MNF force security and which may assist the MNF mission.

7. Upon transfer, GOH detention officials will control the release of criminal detainees in accordance with legitimate Haitian judicial decisions. GOH detention officials will detain individuals at the facility who are threats to MNF security and those brought to the facility by the MNF as threat to MNF security. Those designated as threats to MNF security will be released upon the order of, and only upon the order of, the MNF Commanding General.

Signed this ___ Day of _____ 1995.

For the Government of Haiti

David C. Meade, 9 January 1995
For the Multinational Force

Appendix S: Nongovernmental and Private Organizations in Haiti

CONCERN	CONCERN Worldwide Limited
IOM	International Organization for Migration
MSF	Medicins Sans Frontieres (Doctors Without Borders)
Oxfam UK/I	Oxfam (United Kingdom and Ireland)
SCF/UK	Save the Children Fund (UK)
DHA	United Nations Department of Humanitarian Affairs
FAO	United Nations Food and Agriculture Organization
ICRC	International Committee of the Red Cross
IFRC	International Federation of the Red Cross and Red Crescent Societies
UNHCR	United Nations High Commissioner for Refugees
UNICEF	United Nations Children's Fund
WFP	United Nations World Food Programme
WHO	United Nations World Health Organization
ADRA	Adventist Development and Relief Agency International *
AFSC	American Friends Service Committee *
AICF/USA	International Action Against Hunger
ARC	American Red Cross *
CARE USA	Cooperative for Assistance and Relief Everywhere *
CRS	Catholic Relief Services *
Childreach	Childreach, USA of PLAN International *
CRWRC	Christian Reformed World Relief Committee *
CWC	Church World Service *
DOW	Doctors of the World *
IAI	International Aid, Inc. *
IMC	International Medical Corps
INMED	International Medical Services for Health *
InterAction	American Council for Voluntary International Action
IRC	International Rescue Committee *
LWR	Lutheran World Relief, Inc. *

Oxfam America	Oxfam America
PA	Planning Assistance
PADF	Pan American Development Foundation (PADF) *
RI	Refugees International
SCF/US	Save the Children Federation (United States) *
TUP	Trickle Up Program *
WBA	World Baptist Alliance
WC	World Concern *
WN	World Neighbors *
WR	World Relief *
WV	World Vision

See United States Agency for International Development, Interaction, Haiti Crisis Situation Report No. 7 (Feb. 7, 1995); *see also* United States Agency for International Development, Bureau for Humanitarian Response, Office of Private and Voluntary Cooperation, Report of American Voluntary Agencies Engaged in Overseas Relief and Development Registered with USAID: Voluntary Foreign Aid Programs (1995) (describing who the United States voluntary agencies are and what they do, summarizing support, revenue, and expenses by voluntary agency, and detailing the percentage of funds received from non-United States government sources in support of international programs).

Appendix T: Communications Between the United States and the United Nations Regarding the Detailing of the Force Commander of the United Nations Mission in Haiti

United States Mission to the United Nations

February 24, 1995

His Excellency,
Mr. Boutros Boutros-Ghali,
Secretary-General of the United Nations
New York, New York

Dear Mr. Secretary-General:

I have the honor to refer to recent discussions between the United States and the United Nations concerning the terms and conditions of Major General Kinzer's service as Force Commander of the United Nations Mission in Haiti. I offer this letter of assurances to confirm my Government's intentions and understandings in this regard.

1. My Government intends to detail Major General Kinzer to the United Nations in order that he can serve as Force Commander of the United Nations Mission in Haiti (UNMIH) until 29 February 1996, unless his services are terminated by the United Nations or by the Government of the United States upon mutual consultations.

2. My Government understands that the salaries and emoluments that would normally be paid to Major General Kinzer would be reimbursed by the United Nations to the United States Government. To the extent permitted by United States law, Major General Kinzer may accept from the United Nations any allowances to which he is entitled as Force Commander of UNMIH.

3. During the period of his service with UNMIH, it is understood that Major General Kinzer would be under the operational control of the Secretary General and would, with respect to his duties as Force Commander of UNMIH, discharge his responsibilities and regulate his conduct with the interests of the United Nations only in view and would not seek or accept instructions in regard to the performance of such duties from any Government or authority external to the United Nations.

4. It is also understood that the provisions of the General Guidelines for the Force Commander of 15 January 1995 would apply to Major General Kinzer's service as Force Commander of UNMIH.

I trust that these instructions and understanding will facilitate the appointment of Major General Kinzer to the position of Force Commander of UNMIH, and advance the implementation of United Nations Security Council Resolutions 940 (1994) and 975 (1995).

Sincerely,

Edward W. Gnehm
Charge d'affaires a.i.

United Nations

3 March 1995

H.E. Mr. Edward W. Gnehm
Charge d'affaires a.i.
Permanent Mission of the
United Nations to the U.N.
New York

Dear Mr. Ambassador,

I acknowledge, on behalf of the Secretary-General, receipt of your letter dated 24 February 1995, regarding the terms and conditions of Major General Kinzer's service as Force Commander of the United Nations Mission in Haiti (UNMIH). I should like to confirm our understanding that, during his assignment to UNMIH, Major Gen. Kinzer will perform his duties in accordance with the revised General Guidelines for the Force Commander of 1 March 1995, the text of which is attached herewith and a copy sent directly to Major Gen. Kinzer. I also confirm the other understandings referred to in paragraph 1 to 3 of your letter.

Accept, Mr. Ambassador, the assurances of my highest consideration.

Kofi A. Annan
Under Secretary-General
for Peace-Keeping Operations

United Nations

1 March 1995

TO: Major-General Joseph W. Kinzer
Force Commander
UNMIH

FROM: Kofi Annan, Under-Secretary-General
for Peace-Keeping Operations

General Guidelines for the Force Commander

1. Please accept my congratulations on your appointment as Force Commander (FC) of the United Nations Mission in HAITI (UNMIH) as the Under-Secretary-General for Peace-keeping operations, I would like to convey to you general guidelines for your mission.

Authorization and Mandate

2. UNMIH is a subsidiary organ of the United Nations established pursuant to Security Council resolution 867 (1993) of 23 September 1993. UNMIH's mandate was established in operative paragraphs 2, 3, and 4 of Security Council resolution 867 (1993) and revised and extended in paragraphs 5, 9, 10, and 11 of Security Council resolution 940 (1994). The mandate was slightly expanded by paragraph 5 of Security Council resolution 964 (1994).

Terms of Reference

3. The mandate of UNMIH specified in Security Council resolution 940 (paragraph 5, 9, and 10) is:

a. UNMIH Advance Team.

- (1) To carry out the monitoring of the operations of the multinational force (MNF).
- (2) To assess the requirement and to prepare for the deployment of UNMIH upon completion of the mission of the MNF.

b. UNMIH Main body: To assist the Democratic Government of Haiti in fulfilling its responsibilities in connections with:

- (1) sustaining the secure and stable environment established during the MNF phase.
- (2) Protecting international personnel and key installations.
- (3) The professionalization of the Haitian armed force and the creation of a separate police force.
- (4) In establishing an environment conducive to the organization of free and fair legislative elections.

4. Security Council resolution 964 (1994) paragraph 5, authorizes the Secretary-General to strengthen progressively the advance Team to 500 personnel in order to further facilitate planning of UNMIH, identification of conditions required for the transition from MNF to UNMIH and preparation for the actual transition, as well as to make good offices available for the achievement of the purpose approved by the Security Council in resolution 940 (1994).

Chain of Command between UNMIH and UN HO:

5. As you are aware, Mr. Brahimi is the Special Representative of the Secretary-General (SRSG) for HAITI and as such is the Head of Mission for UNMIH.
6. You will maintain the closest possible working relationship with the SRSG, and the Chief Administrative Officer (CAO) and keep them fully informed about the organization, deployment and operations of the Military Component of UNMIH.
7. You will consult the SRSG in advance about any decision of yours which have political implications and on matters of policy, you will report through him to this Headquarters. On purely military and technical matters, you may report directly to me, while keeping the SRSG fully informed.

Reporting

8. The Secretary-General (SG) reports to the Security Council (SC) about UNMIH when appropriate, but necessarily at regular intervals. Any matters which might affect the nature of the continued effective functioning of the Mission will be referred to the SC for its decision.
9. You will keep me fully informed of the developments relating to the functioning of the Military Component of the mission in accordance with the instructions specified in paragraphs 3, 4, 5, 6, and 7 above. All matters which may affect the nature or the continued effectiveness of UNMIH will be referred to this Headquarters for decision, as will all matters likely to affect the United Nations' relations with the Parties or the troop contributing governments. In this connection, you are asked to prepare and submit to me a monthly report reviewing the overall military situation as it affects the work of the Mission, and on internal matters including personnel, administration and logistics. You should also

submit ad hoc reports on any developments of special importance occurring in the interval between monthly reports.

Responsibilities of Force Commander UNMIH

10. Your responsibilities as FC are as follows:

- a. You will be responsible, under the authority of the Secretary-General and through the SRSG, for the organization and smooth functioning of the Military Component of UNMIH;
- b. All military personnel assigned to UNMIH will be under your operational control and they will be directly answerable to you for the conduct and the performance of their duties;
- c. You will have full and exclusive authority with respect to the assignment of members of your headquarters staff, except for the DFC, COS, and CMO, who have been designated by myself, on a rotational basis amongst contributing countries. When selecting officers for staff positions in your headquarters, you should make every effort to ensure that all contingents are, to the extent possible, represented;
- d. You will have full and exclusive authority with respect to the operational deployment of all military personnel under your command;
- e. You will establish a chain of command for the military component of UNMIH, making use of the officers of your headquarters staff and the commanders of the national contingents made available by participating Governments.

You may delegate your authority through the chain of command;

- f. As indicated in the notes prepared for the guidance of military personnel, during the term of appointment, they will carry out their duties and regulate their conduct solely with the interests of the United Nations in view and shall not seek or accept instructions in respect of performance of their duties from any other authority external to the United Nations. They shall exercise the utmost discretion in respect of all matters of official business. They shall not communicate to any person any information known to them by reason of their official position which has not been made public, except as required in the course of their duties or by authorization of the FC. Nor shall they, at any time, use such information to private advantage.
- g. You are asked to inform me immediately if it comes to your knowledge that many of the participating Governments are attempting to issue orders to its personnel on matters related to their UNMIH duties or are communications with them directly on questions of UNMIH policy;
- h. You are required to submit performance evaluation reports on the officers under your control. Such reports will be forwarded through me to the national authorities concerned;
- i. You will be responsible for the good order and discipline with UNMIH. You may make investigations, conduct inquiries and request information, reports, and consultations for the purpose of discharging this responsibility. Responsibility for disciplinary action in national

contingents of UNMIH rests with the commanders of the national contingents. If you consider it necessary in the interest of Mission to repatriate an officer, you should so recommend to me and I will take the matter up with the Government concerned.

11. In the performance of your functions as FC, you will be assigned by:

- a) 24 Military Observers (only during MNF phase)
- b) 6000 troops and staff

Organization

12. UNMIH is headed by the SRSG. The Military Component of UNMIH is commanded by the Force Commander. So far the following countries have been approved to contribute to the military component of UNMIH:

Argentina, Bangladesh, Canada, CARICOM (Antigua Bahamas, Barbados, Belize, Jamaica, Trinidad Tobago), Djibouti, Guatemala, Honduras, India, Ireland, Nepal, Netherlands, New Zealand (MNF phase only), Pakistan, Surinam, Tunisia (MNF phase only), United States.

13. UNMIH military component is composed of a Force Headquarters, five Infantry Battalions, a Special Forces Battalion, a light CAV Battalion, a Military Police Battalion and a number of support and service units such as Aviation, Engineers, Logistics, a Field Hospital, Civil Affairs, Information, Communications and Movement Control.

Standard Operating Procedures

14. You are asked to draw up UNMIH Standard Operating Procedures (SOPs) based on the UN Guideline SOPs as soon as possible upon arrival in the mission area.

Communications with Contributing Governments

15. The channel for communication between the United Nations and the contributing Governments concerning their contingents or UNMIH itself shall be between the United Nations Headquarters in New York and their Permanent Missions to the Organization. It is not permitted that matters of policy or administration be taken up directly between UNMIH HQ and the contributing Governments.

The Chief Administrative Officer

16. In the exercise of your administrative responsibilities, you will be assisted/supported by the Chief Administrative Officer (CAO). Under the overall authority of the SRSG, the CAO shall be responsible for:

- a. all administrative functions and all general and technical services relating to the mission's, activities, and for providing the requisite administrative support for carrying out the substantive work of the mission effectively and economically;
- b. all administrative and financial certification;
- c. the proper implementation of the rules, regulations, and instructions issued by the United Nations, with respect to the administration and finance of the mission;
- d. the CAO will be assisted by a small number of administrative/finance officers, field service officers and other international and local staff as required;

- e. on administrative and financial matters, UNMIH communicates directly with the Field Administration and Logistic Division of DPKO at Headquarters. This is normally done by the CAO. However, as Chief of Mission, the SRSG has of course the right to communicate directly with the Director of the Division if he considers a matter important. You may also bring to my attention administrative matters when they have important operational implications.

17. Should you encounter any major difficulties relating to administrative matters, you are to refer those matters to me.

Respect for Local Laws

18. It is the duty of members of UNMIH to respect the laws and regulations of the Host States and to refrain from any activity of a political character in the Host State or other action incompatible with the international nature of their duties. They shall conduct themselves, at all times, in a manner befitting their status as members of UNMIH.

19. Members of UNMIH are entitled to the legal protection of the United Nations, pursuant to the applicable provisions of the Convention on Privileges and Immunities of the UN.

Visits to UNMIH

20. Visits to the Mission by officials of Governments contributing military personnel to UNMIH shall be arranged through United Nations Headquarters in New York in consultation with you.

Media Coverage of UNMIH

21. UNMIH will be the object of intense media attention. It is desirable that its work be known and well understood by the public, subject to the information policy laid down by the Special Representative of the Secretary-General. You should therefore facilitate the work of journalists wishing to report about UNMIH's activities and be accessible to them yourself to the extent possible without interfering with the discharge of the mission mandate.

Conclusion

22. The foregoing guidance is not exhaustive. I hope, however, that you will find it useful, especially at the beginning of your work.

Annex A

UNMIH - SECURITY COUNCIL RESOLUTION AND OTHER REFERENCES:

Resolutions:

841 (1993) of 16 June 1993,
861 (1993) of 27 August 1993,
862 (1993) of 31 August 1993,
867 (1993) of 23 September 1993,
873 (1993) of 13 October 1993,
875 (1993) of 16 October 1993,
905 (1994) of 23 March 1994,
917 (1994) of 31 July 1994,
940 (1994) of 31 July 1994,
948 (1994) of 15 October 1994,
964 (1994) of 29 November 1994

Report of the Secretary-General of 13 August 1993

Report of the Secretary-General of 21 Sept 1993

Report of the Secretary-General of 15 July 1994

Report of the Secretary-General of 28 Sep 1994
Report of the Secretary-General of 18 Oct 1994
Report of the Secretary-General of 23 Nov 1994

*Appendix U: General Orders Number 1 Used During Operations in
Haiti*

Joint Task Force 180--General Order Number 1

Department of Defense
Headquarters, Joint Task Force 180
Fort Bragg, North Carolina 28307-5000

General Order No. 1

10 September 1994

1. **TITLE:** Prohibited activities of JTF 180 personnel serving in the joint operations area (JOA).
2. **PURPOSE:** To prohibit conduct that is to the prejudice of good order and discipline in JTF 180, is of a nature likely to bring discredit upon JTF 180, is harmful to the health and welfare of members of JTF 180, or is essential to preserving United States and host nation relations.
3. **APPLICABILITY:** This general order is applicable to all U.S. military personnel assigned or attached to JTF 180 and all U.S. civilian personnel serving with, employed by, or accompanying forces assigned or attached to JTF 180.
4. **AUTHORITY:** The Uniform Code of Military Justice (UCMJ), Title 10, United States Code, section 801 et seq.
5. **PROHIBITED ACTIVITIES:**
 - a. Purchase, possession, use, or sale of privately owned firearms, ammunition, or explosives, or the introduction of these items into the JOA.

b. Introduction, possession, use, sale, transfer, manufacture, or consumption of any alcoholic beverage without the approval of a commander in the grade of O6 or above.

c. Gambling of any kind, including sports pools, lotteries, and raffles.

d. Removing, possessing, selling, defacing, or destroying archeological artifacts or national treasures.

e. Taking or retention of war trophies or individual souvenirs.

(1) Explanation of prohibition:

(a) Private property may be seized during combat operations only on order of a commander based on military necessity. The wrongful taking of private property, even temporarily, is a violation of Article 121, UCMJ.

(b) Public property captured by U.S. personnel is the property of the United States. Wrongful retention of such property by an individual is a violation of Article 108, UCMJ.

(c) No weapon, munitions, or military article of equipment captured or acquired by any means other than official issue may be retained for personal use or shipped out of the JOA for personal retention or control.

(2) Limited exception. Souvenirs, other than weapons or munitions, that have been legitimately purchased and are authorized by U.S. customs laws and regulations are permitted.

f. Selling, reselling, loaning, or otherwise transferring to anyone, rationed or controlled items or relief supplies outside of official relief channels.

g. Throwing any food items, including candy or Meals, Ready to Eat (MREs), or any beverages, including water, from moving vehicles.

6. FURTHER RESTRICTIONS:

a. Adopting as pets or mascots, caring for, or feeding any type of domestic animal (e.g., dogs or cats) or any type of wild animal. These animals are infected with a variety of diseases that can be transmitted to humans, and can harbor vectors capable of transmitting diseases to humans (including rabies) that have a high potential for adversely affecting the health of the command.

b. Providing food items directly to or feeding civilian refugees. Odd items may be donated to Humanitarian Relief Organizations (HROs) engaged in humanitarian relief after appropriate medical inspection and release, and field grade Article 15 authority approval. This provision does not prohibit the distribution of small items, such as pieces of candy, to civilian refugees where such distribution is approved by the individual's supervising NCO or officer and is under conditions that are safe both for the recipients and the military personnel involved. (See paragraph 5g above.)

7. PUNITIVE ORDER: Paragraph 5 of this General Order is punitive in nature. Persons subject to the UCMJ may be punished thereunder. Civilians serving with, employed by, or accompanying JTF 180 may face criminal prosecution or adverse administrative action for violation of this General Order.

8. **INDIVIDUAL DUTY:** All persons subject to this General Order are charged with the duty to become familiar with this General Order and local laws and customs. The JTF 180 mission places United States Armed Forces and civilian personnel into a country whose laws and customs prohibit or restrict certain activities which are generally permissible in the United States. All personnel shall avoid action, whether or not specifically prohibited by this General Order, which might result in or reasonably be expected to create the appearance of a violation of this General Order or local laws or customs.

9. **COMMANDERS' RESPONSIBILITIES:** Commanders and supervisors are charged with ensuring that all personnel are briefed on the prohibitions and requirements of this General Order. Commanders and supervisors are expected to exercise good judgment in enforcing this General Order.

10. **CONFISCATION OF CONTRABAND:** Items which are determined to violate this General Order constitute contraband and may be confiscated. Commanders, supervisors, military customs inspectors, and other officials will enforce this General Order during their inspections of personnel and equipment prior to and during deployment to the JOA and upon redeployment from the JOA. Before destruction of contraband, commanders or law enforcement personnel should coordinate with their staff judge advocate.

11. **EFFECTIVE DATE:** This General Order is effective immediately.

12. **EXPIRATION:** This General Order will expire when rescinded by CJTF 180 or higher authority.

13. **WAIVER REQUESTS:** Requests to waive or modify the prohibitions of this General Order should be coordinated with the JTF 180 Staff Judge Advocate prior to submission to CJTF 180 for action.

Joint Task Force 190--General Order Number 1

Department of Defense
Headquarters, Multinational Force
Unit 0080
Port-au-Prince, Haiti APO AE 09383-0080

General Order No. 1

24 October 1994

1. **TITLE**: Prohibited activities of Joint Task Force 190 (JTF 190) personnel serving in the joint operations area (JOA).
2. **PURPOSE**: To prohibit conduct that is to the prejudice of good order and discipline of JTF 190, is of a nature likely to bring discredit upon JTF 190, is harmful to the health and welfare of members of JTF 190, or is essential to preserve US and host nation relations.
3. **APPLICABILITY**: This general order is applicable to all US military personnel assigned or attached to JTF 190, and all US civilian personnel serving with, employed by, or accompanying forces assigned or attached to JTF 190.
4. **AUTHORITY**: The Uniform Code of Military Justice (UCMJ), Title 10, United States Code, section 801 et. seq.
5. **PROHIBITED ACTIVITIES**:
 - a. Purchase, possession, use, or sale of privately-owned firearms, ammunition, or explosives, or the introduction of these items into the JOA.
 - b. Entrance into Haitian churches, temples, or structures conducting religious worship, or to other sites of religious significance,

unless directed by a superior authority or required by military necessity.

c. Introduction, purchase, possession, use, sale, transfer, manufacture, or consumption of any alcoholic beverage without the approval of a commander in the grade of O6 or above.

d. Introduction, purchase, possession, use, sale, transfer, manufacture, or consumption of any controlled substance as defined by Article 112a, UCMJ, and Schedules I through V of the Controlled Substance Act of 1970, 21 USC Section 812.

e. Gambling of any kind, including sports pools, lotteries, and raffles.

f. Removing, possessing, selling, defacing, or destroying archeological artifacts or national treasures.

g. Selling, bartering, or exchanging currency other than at the official exchange rate, if any.

h. Taking or retention of individual souvenirs or trophies

(1) Explanation of prohibition:

(a) Private property may be seized during combat operations only on order of a commander based on military necessity. The wrongful taking of private property, even temporarily, violates Article 121, UCMJ.

(b) Public property captured by US personnel is the property of the US. Wrongful retention of such property by an individual violates Article 108, UCMJ.

(c) No weapon, munition, or military article of equipment captured or acquired by any means other than official issue may be retained for personal use or shipped out of the JOA for personal retention or control.

i. Selling, reselling, loaning, or otherwise transferring rationed or controlled items or relief supplies outside official relief channels.

j. Throwing at civilians any food items, including candy or Meals Ready to Eat (MREs), or any beverage, including water, from moving vehicles.

k. Do not engage in any sexual conduct or contact with any member of the Haitian populace.

l. Adopting as pets or mascots, caring for, or feeding any type of domestic animal (e.g., dogs or cats) or any type of wild animal. These animals may be infected with a variety of diseases that can be transmitted from animals to humans, and can harbor organisms capable of transmitting diseases to humans (including rabies) that have a high potential for adversely affecting the health of the command.

m. Eating food or drinking beverages grown or produced, prepared or served by local Haitian vendors, restaurants, or facilities. Only food and beverages approved by the Commander, JTF 190, or his designee, may be consumed by JTF 190 personnel.

6. FURTHER RESTRICTIONS: Providing food items directly to or feeding civilian refugees. Odd items may be donated to Humanitarian Relief Organizations (HROs) engaged in humanitarian relief efforts after appropriate medical inspection and release approval by an O5 commander. This provision does not prohibit the distribution of small items, such as pieces of candy, to civilian refugees when such distribution is approved by the individual's supervising NCO or officer

and is under conditions that are safe both for the recipients and the military personnel involved. (See paragraph 5j above).

7. PUNITIVE ORDER: Paragraph 5 of this General Order is punitive in nature. Persons subject to the UCMJ may be court-martialed or receive adverse administrative action, or both, for violations of this General Order. Likewise, civilians serving with, employed by, or accompanying JTF 190 may face criminal prosecution or adverse administrative action for violation of this General Order.

8. INDIVIDUAL DUTY: All persons subject to this General Order are charged with the duty to become familiar with this General Order and local laws and customs. The JTF 190 mission places US Armed Forces and civilian personnel into a country whose laws and customs prohibit or restrict certain activities which are generally permissible in the United States. All personnel shall avoid action, whether or not specifically prohibited by this General Order, which might result in or reasonably be expected to create the appearance of a violation of this General Order or local law or customs.

9. UNIT COMMANDER RESPONSIBILITIES: Commanders and civilian supervisors are charged with ensuring that all personnel are briefed on the prohibitions and requirements of this General Order. Commanders and supervisors are expected to exercise good judgment in reinforcing this General Order.

10. CONFISCATION OF CONTRABAND: Items which are determined to violate this General Order and or constitute contraband may be confiscated. Commanders, supervisors, military customs inspectors, and other officials will enforce this General Order in their inspections of personnel and equipment prior to and during deployment to the JOA and upon deployment from the JOA. Before destruction of contraband, commanders or law enforcement personnel will coordinate with their Staff Judge Advocate.

11. EFFECTIVE DATE: This General Order is effective upon the date of the assumption of command of Joint Task Force 190 and the MNF by the undersigned.

12. EXPIRATION: This General Order will expire when rescinded by the Commander, JTF 190, or higher authority.

13. WAIVER REQUESTS: Requests to waive prohibitions of this General Order must be coordinated with the JTF 190 Staff Judge Advocate.

DAVID C. MEADE
Major General, USA
Commanding

United States Forces in Haiti—General Order Number 1

DEPARTMENT OF DEFENSE
Headquarters, U.S. Forces Haiti
Port-au-Prince, Haiti 09320-0080

1 April 1995

GENERAL ORDER NO. 1

1. **TITLE:** Prohibited activities of US Forces Haiti (USFORHAITI) personnel serving as part of the United Mission in Haiti (UNMIH) in the joint operations area (JOA).
2. **PURPOSE:** To prohibit conduct that is to the prejudice of good order and discipline of USFORHAITI, is of a nature likely to bring discredit upon USFORHAITI, is harmful to the health and welfare of members of USFORHAITI, or is essential to preserve United Nations (UN), US, and host nation relations.
3. **APPLICABILITY:** This general order is applicable to all US military personnel assigned or attached to USFORHAITI, and all US civilian personnel serving with, employed by, or accompanying forces assigned or attached to USFORHAITI.
4. **AUTHORITY:** The Uniform Code of Military Justice (UCMJ), Title 10, United States Code, section 801 et. seq.
5. **PROHIBITED ACTIVITIES:**
 - a. Purchase, possession, use or sale of privately-owned firearms, ammunition, or explosives, or the introduction of these items into the JOA.

b. Entrance into Haitian churches, temples, or structures conducting religious worship, or other sites of religious significance, unless directed by a superior authority or required by military necessity.

c. Introduction, purchase, possession, use, sale, transfer, manufacture, or consumption of any alcoholic beverage without the approval of a Commander in the grade of O6 or above. Under no circumstances will use or consumption of alcoholic beverages be authorized while in uniform outside of cononement areas unless at official functions, on duty, when armed, or while driving a vehicle.

d. Introduction, purchase, possession, use, sale, transfer, manufacture, or consumption of any controlled substance as defined by Article 112a, UCMJ, and Schedules I through V of the Controlled Substance Act of 1970, 21 USC Section 812.

e. Gambling of any kind, including sports pools, lotteries, and raffles.

f. Removing, possessing, selling, defacing, or destroying archeological artifacts or national treasures.

g. Selling, battering, or exchanging currency other than at the official exchange rate, if any.

h. Taking or retention of individual souvenirs or trophies.

(1) Explanation of prohibition:

(a) Private property may be seized during operations only on order of a commander based on military necessity. The wrongful taking of private property, even temporarily, violates Article 121, UCMJ.

(b) Public property captured by US personnel is the property of the UN. Wrongful retention of such property by an individual violates Article 108, UCMJ.

(c) No weapon, munitions, or military article of equipment captured or acquired by any means other than official issue may be retained for personal use or shipped out of the JOA for personal retention or control.

(d) This prohibition does not preclude the lawful purchase of souvenirs that can be legally imported into the United States.

i. Selling, reselling, loaning, or otherwise transferring rationed or controlled items or relief supplies outside official relief channels.

j. Throwing at civilians any food, including candy or Meals Ready to Eat (MREs), or any beverages, including water, from either stationary or moving vehicles.

k. Engaging in any sexual conduct or contact with any member of Haitian populace.

l. Adopting as pets or mascots, caring for, or feeding any type of domestic animal (e.g., dogs or cats) or any type of wild animal. These animals may be infected with a variety of diseases that can be transmitted from animals to humans, and can harbor organisms capable of transmitting diseases to humans (including rabies) that have a high potential for adversely affecting the health of the command.

m. Eating food or drinking beverages grown or produced, prepared or served by local Haitian vendors, restaurants, or facilities.

Only food and beverages approved by a US Commander in the grade of 06 or above, may be consumed by USFORHAITI personnel.

n. Entering all bars (an establishment whose primary business is to serve alcohol), brothels, and discos.

6. **FURTHER RESTRICTIONS:** Providing food items directly to or feeding civilian refugees. Odd items may be donated to Humanitarian Relief Organizations (HROs) engaged in humanitarian relief efforts after appropriate medical inspection and release approval by an 05 US Commander.

7. **CONFISCATION OF CONTRABAND:** Items which are determined to violate this General Order and or constitute contraband may be confiscated. Commanders, supervisors, military customs inspectors, and other officials will enforce this General Order in their inspections of personnel and equipment prior to and during deployment to the JOA and upon redeployment from the JOA. Before destruction of contraband, commanders or law enforcement personnel will coordinate with the Staff Judge Advocate.

8. **PUNITIVE ORDER:** Paragraph 5 of this General Order is punitive in nature. Persons subject to the UCMJ may be court-martialed or receive adverse administrative action, or both, for violations of this General Order. Likewise, civilians serving with, employed by, or accompanying USFORHAITI may face criminal prosecution or adverse administrative action for violation of this General Order.

9. **INDIVIDUAL DUTY:** All persons subject to this General Order are charged with the duty to become familiar with this General Order and local laws and customs. The USFORHAITI mission places US Armed Forces and civilian personnel into a country whose laws and customs prohibit or restrict certain activities which are generally permissible in the United States. All personnel shall avoid action, whether or not specifically prohibited by this General Order, which might result in or

reasonably be expected to create the appearance of a violation of this General Order or local law or customs.

10. **UNIT COMMANDER RESPONSIBILITIES:** Commanders and civilian supervisors are charged with ensuring that all personnel are briefed on the prohibitions and requirements of this General Order. Commanders and supervisors are expected to exercise good judgment in reinforcing this General Order.

11. **EFFECTIVE DATE:** This General Order is effective upon the date of the assumption of command of United States Forces Haiti by the undersigned.

12. **EXPIRATION:** This General Order will expire when rescinded by the Commander, USFORHAITI, or higher authority.

13. **WAIVER REQUESTS:** Requests to waive prohibitions of this General Order must be coordinated with the USFORHAITI Staff Judge Advocate.

***United Nations Mission in Haiti—Force Commander Directive
Number 1***

UNMIH MINUHA
United Nations Mission in Haiti
Mission Des Nations Unies En Haiti

FORCE COMMANDER DIRECTIVE NUMBER 1

1. **PURPOSE:** To identify conduct that is prejudicial to the maintenance of good order and discipline of the UNMIH Force and is of a nature to bring discredit upon the mission.
2. **AUTHORITY:** United Nations Guidelines to the Force Commander, dated 15 January 1995.
3. **APPLICABILITY:** This Force Directive is applicable to all the members of UNMIH's military component.
4. **CONTINGENT COMMANDER RESPONSIBILITIES:** Contingent Commanders are charged with ensuring that all personnel are briefed on the prohibitions and requirements of this Force Directive. Commanders and supervisors are expected to exercise good judgment in reinforcing this Force Directive. Contingent Commanders should specifically prohibit any action which would bring discredit on the UN, our military force, or which would inhibit the accomplishment of the UN mission in Haiti.
5. **FURTHER RESTRICTIONS:** The Force Commander may issue further restrictions as deemed appropriate. Contingent Commanders will adhere to this Directive, and may further restrict their contingents as they deem necessary. The Force Commander may recommend to the Under Secretary-General for Peacekeeping Operations the repatriation

of any member of UNMIH's military component in violation of this Force Directive.

6. **INDIVIDUAL DUTY:** All persons subject to this Directive are expected to become familiar with its contents and local laws and customs.

7. **PROVIDING FOOD ITEMS DIRECTLY TO OR FEEDING CIVILIAN REFUGEES:** Odd items may be donated to Humanitarian Relief Organizations, International Agencies, or Non-Governmental Organizations engaged in humanitarian relief efforts after appropriate medical inspection and release approval by Contingent Commanders. This provision does not prohibit the distribution of small items, such as pieces of candy, to civilian refugees when such distribution is approved by the individual's supervisor and is under conditions that are safe both for the recipients and the military personnel involved.

8. **OFF LIMITS ESTABLISHMENTS:** All bars, specifically establishments whose primary business is to serve alcohol, brothels, and discos are off limits to all of UNMIH's military component.

9. **LOCAL EATING ESTABLISHMENTS:** Contingent Commanders will ensure that occasional visits to restaurants by members of their force are properly controlled. Contingent Commanders will establish a set policy for such visits to include frequency of visits and number of vehicles at any one time at a particular establishment. The intent of this restriction is to preclude the development of lucrative targets.

10. **HAITIAN PLACES OF WORSHIP:** No member of UNMIH's military component will enter Haitian churches, temples, or religious structures during religious services. Contingent Commanders should coordinate cultural visits to places of worship through the Force Legal Advisor's Office.

11. **SEXUALLY TRANSMITTED DISEASES:** All members of UNMIH's military component are warned of the high risk of sexually transmitted diseases in the area and should behave accordingly.

12. **PROHIBITED ACTIVITIES:** The following activities are prohibited

a. Purchase, possession, use, or sale of privately-owned firearms, ammunition, or explosives, or the introduction of these items into the areas of operations.

b. Introduction, purchase, possession, use, sale, transfer, manufacture, or consumption of any alcoholic beverage without the approval of a Contingent Commander. The Force Commander will be notified in writing concerning Contingent Commander's policies on consumption of alcohol. However, under no circumstances will use or consumption of alcoholic beverages be authorized while in uniform outside of cononement areas, on duty, when armed, or while driving a vehicle. Driving under the influence of alcohol will not be tolerated.

c. Introduction, purchase, possession, use, sale, transfer, manufacture, or consumption of any controlled or illegal substance.

d. Removing, possessing, selling, defacing, or destroying archeological artifacts or national treasures.

e. Selling, battering, or exchanging currency other than at the official exchange rate.

f. Taking or retaining individual souvenirs or trophies.
Explanation of prohibition is as follows:

(1) Private or public property may be seized during operations only on order of a commander, and will be based on military

necessity. Items will be recorded and turned over to proper authorities as soon as possible.

(2) Property seized by UNMIH personnel is the property of the UN. Wrongful retention of such property by an individual is forbidden.

(3) No weapon, munitions, or military article of equipment captured or acquired by any means other than official issue may be retained for personal use or shipped out of the Republic of Haiti for personal retention or control.

(4) This prohibition does not preclude the lawful purchase of souvenirs that can be legally imported into the contingents home nation.

g. Selling, reselling, loaning, or otherwise transferring rationed or controlled items or relief supplies outside official relief channels.

h. Throwing any food or beverage to local civilians from a vehicle, either stationary or moving.

i. Adopting as pets or mascots, caring for, or feeding any type of domestic animal (e.g., dogs or cats) or any type of wild animal. These animals may be infected with a variety of diseases that can be transmitted from animals to humans, and can harbor organisms capable of transmitting diseases to humans (including rabies) that have a high potential for adversely affecting the health of the command.

13. **CONFISCATION OF CONTRABAND:** Items which are determined to violate this Force Directive and or constitute contraband may be confiscated. Commanders, supervisors, and other officials will enforce this Force Directive in their inspections of personnel and equipment prior to and during deployment and upon redeployment.

Before destruction of contraband, commanders or law enforcement personnel will coordinate with the Force Legal Advisor's Office.

14. EFFECTIVE DATE: This Force Directive is effective immediately.

15. EXPIRATION: This Force Directive will expire when rescinded or superseded by the order of the UNMIH Force Commander or higher authority.

13. WAIVER REQUESTS: Contingent Commanders will coordinate requests for waivers to this Force Directive through the Force Legal Advisor's Office.

*Appendix V: Prepared Congressional Testimony
Of Lawrence P. Rockwood,
Captain, US Army
Former Joint Task Force 190 Counterintelligence Officer*

First of all, I would like to thank the Chairman of the Subcommittee on Western Hemisphere, Congressman Dan Burton and the other members for giving me the opportunity to present my testimony here today. I am submitting for the record this statement with enclosures. I am facing a court martial for my actions as a counterintelligence officer with the 10th Mountain Division while serving in Haiti. The subject of your hearing however, is not my actions, but rather the extraordinary inaction on the part of my superiors. In my statement I will try to demonstrate that while in Port-au-Prince I witnessed, and attempted to stop dereliction of duty if not criminal negligence on the part of my superiors. Last September 15, the President announced that the primary objective of the operation Uphold Democracy was "to prevent the brutal atrocities against Haitians" and, bearing in mind my military oath to the Constitution and the Commander-in-Chief, I took his words at face value. As I assumed my duties in Haiti on September 23 I was informed that 'force protection' was to be the focus of our efforts. In spite of this, it became immediately apparent to me that the main content of the reports that reached me centered on human rights violations against Haitian slum residents rather than any threats directed against our forces. This discrepancy was what triggered my week long odyssey through all possible instances to awake interest of the commanders and staff of the Multinational Forces in human rights violations. On the morning of September 25, I met with the command's Chaplain to discuss reports on the deteriorating human rights situation in Port-au-Prince slums, but the chaplain did not want to get involved in a "political" problem. Later that evening I went to Staff Judge Advocate's (SJA) or the legal department and asked for The Laws of War manual, the 1977 Protocol to the Geneva Convention or the report on the UN High Commission for Human Rights Conference held in Vienna in 1993. The only available reading material on human rights was an Army Field

Manual from 1954. Next evening I went back to SJA to complain about the lack of positive action of the US forces in support of human rights. (The log of SJA - encl number 1 - says "CPT Rockwood seemed very concerned about alleged human rights violations going on in Haiti.") After finding out that no inspection or regular monitoring of prisoners being held by the Haitian military had taken place since the arrival of U.S. forces over two weeks ago I tried unsuccessfully to get the Civil/Military Operations Center interested in surveying the penitentiaries. In fact it is a duty of the army's Civil affairs to monitor and check out the detention centers. The Civil Affairs Operations manual (FM 4 1-10) for the US Army - encl number 2 - Chapter IX (Public Safety) under heading "c" contains penal institutions such as prisons and jails and says literally: "The primal' [sic] consideration in this area is whether the existing institutions (police, fire and penal) may be used to carry out the combat commander's primary mission and to provide the day-to-day control and bodily protection of the local population." Was it unreasonable to expect that a monitoring of the prisons and jails would start "to provide the day-to-day control and bodily protection of the local population"? Similarly, the Civil Military Operations Handbook of the 10th Mountain Division - encl number 3 - under "Law Enforcement Agency Checklist" entry number 9 has "Confinement facilities" and it enumerates the information which the 10th Mountain Division staff should obtain in the confinement: "names, address, grid coordinate, telephone number, type of facility, maximum capacity, present capacity, number of guards (adequate Y/N), capacity of kitchens, name of warden, overall condition of facility and inmates." Under the circumstances I continued to believe that it is not only reasonable but nearly inevitable that the civil affairs of the 10th Mountain Division would be required to obtain this information. On the evening of September 27, I attempted to organize an intelligence team to check out these prisons but I had to ask the military police for the escort. But the military police was concerned only with FADH police functions (joint patrols and police station

monitoring) and refused. It should be noted here that September 27 was the day when the US troops arrived in the southwestern town of Les Cayes and discovered a prison where over 30 men were crammed into a cell no larger than 15- feet square. They were so malnourished that - as with concentration camp victims of WW2 - their food intake had to be increased gradually to avoid harming them. When the American soldiers removed one invalid from the prison, they, discovered that he had lain for so long in one position that some of his skin had fallen off. The same evening I approached a UN Military Observer to discuss my human rights concerns. The UNMO said they couldn't do anything without the US Forces' approval and he told me that the High Commissioner for Refugees, the UNHCR, would not arrive in Haiti until October 13. The next morning a liaison officer of the Special Operations informed me that my unit was not to take action: they were not in other words to inspect the prison or to even find out who the prisoners were and how many were in the prison. Meanwhile an answer arrived from the Pentagon for a high priority request that I made on August 10, 1994: it confirmed that there was a real danger of abuses in Haitian prisons. At this point I thought that I had exhausted all means at my disposal to alert all sections of the Joint Task Force to human rights abuses in Haitian penitentiaries. I therefore turned to the Inspector General and deposited my complaint, which alleged that the command had subverted President's primary mission intent contending human rights - encl number 4. The IG suggested that it be anonymous but there was no point because by then everyone knew about my concern for human rights. I also believed that what I was doing was legally and morally correct, and had no reason to hide my position as an officer unless of course my command was prepared to act improperly in response. The Inspector General informed me that I have done everything a staff officer could have possible done and it was not my job to pursue this further by addressing it to the command's Chief of Staff. I was also told that my complaint would not be brought to the attention of General Meade for at least a week. At this point I informed my immediate superior that I feared the command could

be found criminally negligent under international law and in dereliction of duties in carrying out the President's intent. I reached the conclusion that the US would bear responsibility because the human rights violations would be committed with the knowledge of the command, in the direct proximity of its forces, and by Haitian forces with whom the US had a signed agreement of cooperation. I based my concern over the command's possible criminal negligence on the historical principles recognized in the Charter of the Nuremburg Tribunal which held commanders to be liable for failing to take action to "prevent" war crimes. More particularly, I was aware of the case of the United States vs. Yamashita. General Tomoyuki Yamashita, former commander of Japanese Forces in the Philippines was sentenced to death in 1945 by an international war crimes tribunal for his failure to protect American prisoners, even though he neither ordered nor knew of their execution by his soldiers. The sentence was upheld by the US Supreme Court. He was executed for his indifferent (although completely passive) response to human rights violations against persons protected under customary and/or conventional international law, violations of which he had no direct knowledge (unlike the present case where general Meade and his staff, including myself, had direct and specific knowledge of human rights abuses in the Haitian penitentiaries).

I also believed that the military Oath of Office not only allowed me but compelled me to place loyalty to the Constitution and the President of the United States before obedience to my immediate superiors who, I suspected were indifferent to violations of the human rights of Haitian prisoners. (This suspicion was later confirmed when, during the preliminary hearing for my court martial, the 10th Mountain Division's senior intelligence officer and my immediate superior testified decisively that human rights violations in Haitian prisons were not a priority.). I was aware that the action contemplated would be considered directly challenging to my superiors' conduct of the operation, but I could find no other way to prevent ongoing human rights abuses. As a student of military history I had in the back of my head a precedent that guided me

in this decision. a precedent that goes back to the blackest episode of the Vietnam war and of US army history: the My Lai massacre. A helicopter pilot, Chief Warrant Officer Hugh C. Thompson, who saw the massacre, ordered his gunner to fire on US forces who were slaughtering unarmed civilians. While he acted clearly outside the range of what is usually associated with "good order and discipline," the Army judiciously gave him an award rather than placing him before a court martial. (Mr. Thompson has agreed to be a defense witness at my court martial.) Like Thompson I had before me the theoretical choice to do nothing or to take unconventional action knowing that I was risking disciplinary measures. But in practice I had no choice. I felt I had to act because lack of such action would have meant an acquiescence on my part to the imminent and ongoing human rights violations, and hypocrisy in the face of duty. Thus on September 30, 1994, I left the military compound to inspect the prison in Port-au-Prince on my own. Two hours later I had only partially accomplished my task - but had already found atrocious conditions and shockingly emaciated inmates. A military officer from the US embassy then arrived and ordered me out. I was taken to the military compound where my rights were read to me and where I underwent a psychiatric evaluation. My actions were determined to be not due to stress or mental disorder but an ethical dilemma. A day later I was escorted back to the States. Meanwhile the Inspector General complaint that I filed on the morning of September 30 was closed in two days. This was in clear violation of the Army Regulation 20-1 - encl number 5 - which states that "(IGs) forward all allegations of impropriety against general officers to U.S. Army Inspector General Agency (USAIGA) Investigations Division by a rapid but confidential means within __ [sic] working days of receipt" (Paragraph 7-3. I (2)) and that "if the IG determines that the "allegation would, if substantiated, adversely affect the public perception of the command's effectiveness, efficiency, readiness, training, morale. or other similar factors, the IG will promptly notify the next higher IG of the allegation. The next higher IG will determine which command IG (other than the command at which the allegation was made) should actually work the Case." Paragraph 64d (5)). Last Apr 17, the Inspector General responded to my defense lawyer

(who had pointed out to this violation of the IG regulation - encl number 6) announcing that he is opening an inquiry into the mishandling of my original complaint - encl number 7. Only recently did I learn that the 10th Mountain Division did not start regular monitoring of this prison until December 19, 1994. In the three months between the arrival of JTF and that date there were several sporadic visits of persons more or less associated with the JTF: COL Michael Sullivan from the 16th Military Police Brigade who in a memorandum to the Commander of JTF 190 General Meade wrote "The appalling conditions render this facility (the National Penitentiary) unsuitable for human habitation, and this must be a priority in our efforts to assist Haiti in its return to democracy." Paul Browne the deputy head of the International Police Monitors (IPM) went there on October 14 and some inmates he found were in such a horrendous condition that he thought that they were in the last stage of AIDS. The Danish monitors from IPM also visited this facilities and considered it "the worst" of all confinement centers in Haiti. The charges I am facing appear petty next to life-threatening human rights violations that continued in the Port-au-Prince National Penitentiary for 2 months after my attempted intervention. There is, however, nothing petty in the charges in my official complaint initiated on the morning of September 30. The inquiry that the Inspector General of the Army, Lieutenant General Ronald Griffith opened recently will deal not only with the mishandling of my complaint but will also look into General Meade's and members of his staff's failure to address the human rights situation in the National Penitentiary and other Haitian confinement facilities during his command of the Multinational Forces in Haiti. Meanwhile on May 8, my court martial, convened on the recommendation of General David C. Meade, will start in Fort Drum.

*Delivered May 4, 1995, Thursday
To The House Committee
On International Relations Subcommittee*

Prepared Testimony Of Colonel Richard H. Black (USA Ret.) To The House Committee On International Relations Subcommittee On The Western Hemisphere

Chairman Burton and Members of the Subcommittee:

I am pleased to appear before the Subcommittee to examine issues raised by the court-martial of Captain Lawrence P. Rockwood. Today, I will be addressing you in my private capacity and not as a representative of the Department of Defense. Let me add that my analysis of the issues is based upon press reports rather than on a personal examination of the evidence in Captain Rockwood's case. My remarks are not meant to impact Captain Rockwood's trial in any fashion, but are simply intended to provide background regarding military justice in the operational setting of Haiti. Charges are lodged against CPT Rockwood for unlawfully slipping over his perimeter compound fence the night of September 30, 1994 and entering Port-au-Prince, Haiti, to inspect the National Penitentiary. The charges suggest that he violated orders regarding security measures to be observed outside the compound. Additionally, he is charged with disrespect toward a superior officer, LTC Frank Bragg, by contemptuously and belligerently yelling, "I want a full accounting from the Commanders, Joint Task Force 180 and 190, of the human rights violations and accounting of all the prisoners." CPT Rockwood does not deny that he knowingly violated the guidance of his superior officers. Troops landed in Haiti to begin Operation Uphold Democracy on September 19, 1994. CPT Rockwood's actions took place during the dangerous period just eleven days after Multinational forces arrived in Haiti. Domestic support for the intervention was fragile. It was evident that Americans felt the operation did not warrant U.S. casualties, so security concerns were paramount. Our "permissive entry" was made with the agreement of both the de facto and the de jure governments of Haiti. We were not in a state of belligerency, and the extent of our influence over the affairs and personnel of the Haitian government was in a state of transition. Port-au-Prince was in a state of

civil unrest. On September 29, the day before CPT Rockwood's surreptitious nighttime departure, the multinational force responded to a grenade attack and two shooting incidents in that city which left 16 Haitians killed and 60 wounded. The potential for a widespread outbreak of violence was substantial. A misstep at that moment might have set in motion a chain of events leading to loss of American lives and collapse of the entire mission. That the entry into Haiti has, to date, involved so little bloodshed, is a tribute to the deliberate and orderly development of a secure base of operations and to the delicate shift of power between the Haitian political factions and the Multinational Force. The superb discipline of Army forces accounted in large measure for the success of this somewhat thankless venture. Discipline and obedience to orders, conveyed through a well-defined chain of command, are factors which distinguish a military force from an armed mob. Responsiveness to commands relayed from the civilian leadership through the Department of Defense is essential under our constitutional form of government. The national government must remain confident that actions taken by military forces correspond to, and do not exceed, the directives of the political leadership. If military forces act beyond the scope of specific directives and the rules of engagement approved by national authority, they risk embroiling America in armed conflicts not sanctioned by our government. No officer has a right to disregard lawful orders of superiors. (Title 10 U.S.C. sec. 890, Article 90, Uniform Code of Military Justice). An order requiring the performance of a military duty or act may be inferred to be lawful and it is disobeyed at the peril of the subordinate. (Manual for Courts-Martial, United States 1984 (hereafter MCM), Part IV, para. 14c.(2)(a)(i)). The dictates of a person's conscience, religion, or personal philosophy cannot justify or excuse the disobedience of an otherwise lawful order. (MCM Part IV, 14c.(2)(a)(iii)). As long as the order is understandable, the form of the order is immaterial, as is the method by which it is transmitted to the accused. (MCM Part IV, para. 14c.(2)(a)(iv)(c)). CPT Rockwood, however, argues that he acted under various higher authorities, including

the Dalai Lama--his "spiritual teacher." He points to a speech in which President Clinton said our national objectives included "stopping brutal atrocities." He believes that the President's general guidance superseded specific orders from his immediate superiors. It is true that an order is not lawfully binding if it is in conflict with the lawful order of a superior authority. (See generally *U.S. v. Green*, 22 M.J. 711 (A.C.M.R. 1986)). An order or regulation is not lawful if it is contrary to the Constitution, the laws of the United States, or lawful superior orders. However, before a President's policy guidance can legally amount to a contrary regulation or order, it must first meet the criteria of enforceability under Article 90 or Article 92, UCMJ. To be considered a conflicting order under Article 90, UCMJ, the President's guidance must have been a specific mandate to do, or not to do, a specific act. (MCM Part IV, para. 14. (c)(2)(iv)(d)). Under MCM Part IV, para. 16c.(1)(e), "Regulations which supply only general guidelines or advice for conducting military functions may not be enforceable under Article 92(1)." The analysis at MCM App. 21, para. 16, pg. A21-92, states: "The general order or regulation violated must, when examined as a whole, demonstrate that it is intended to regulate the conduct of individual servicemembers, and the direct application of sanctions for violations of the regulation must be self-evident." (*United States v. Nardell*, 21 U.S.C.M.A. 327, at 329; 45 CMR 101, at 103 (1972)). The commanders of the 10th Mountain Division were apparently sensitive to CPT Rockwood's idealism. Although they were not required to do so, they attempted to explain their actions to him. He was allowed to air his concerns within his chain of command, with the legal officials of the Staff Judge Advocate, with a U.N. military observer, and with the Multinational Force Inspector General. CPT Rockwood would have us believe that none of these individuals shared his superior sense of compassion. When his reckless vendetta eventually forced his command to discipline him, they did so in a measured fashion. They reportedly offered him nonjudicial punishment under Article 15, UCMJ. (Title 10 U.S.C. sect 815). This modest punishment might have kept his military career intact, while reinforcing

the principle that officers of the division could not arrogate power unto themselves. CPT Rockwood refused to argue his case at this lower-level forum, instead choosing to demand trial by court-martial. Next, the command offered to allow him to resign from the Army in order to avoid the stigma of a court-martial conviction. He declined the offer. The command appears to have taken carefully measured steps to balance the equities of the case with the need to maintain discipline within the division.

Having elected trial by court-martial, CPT Rockwood will have the right to air fully his claims before a military court. The court will be conducted under laws and regulations carefully crafted by the U.S. Congress and various Presidents. His assertion that human rights provisions and President Clinton's comments justified his actions will be fully litigated. If found guilty, he can appeal to the court-martial convening authority, then through two levels of appellate courts to the U.S. Supreme Court. Americans continue to question our involvement in Haiti. They are deeply distrustful of the United Nations, and have little regard for their peacekeeping missions. But they credit our servicemen and women with making the best of a difficult situation in Haiti. They respect those who carry out these difficult, unrewarding tasks with professionalism. While political leaders debate the merits of intervention in foreign lands, the Department of Defense must have congressional support to maintain order within its ranks. I applaud the men and women who have served in Haiti. I complement their superb leaders, who have persevered throughout this difficult endeavor. In closing, I thank the Chairman and each of the members of this Subcommittee for allowing me to appear here today. The President's general policy guidance did not meet the criteria for either a lawful general regulation or an "other" lawful order. In my view, the President's policy statement provided no legal justification for any officer to disobey orders of immediate superiors in the 10th Mountain Division. Several newspapers have published articles based on interviews with CPT Rockwood. ("Duty to Disobey," *The Washington Post*, Feb. 6, 1995; "An Order Fit to Be

Disobeyed," Los Angeles Times, Mar. 16, 1995; etc.). In them, he claims the Vietnam-era My Lai trials and the post-World War II trial of General Tomoyuki Yamashita provide justification for intentional disobedience of orders in situations where human rights are endangered. But we must question whether this is true when American forces are neither engaged in armed conflict nor participating in the commission of any suspected criminal acts. Does international law compel U.S. forces to intervene immediately in the internal affairs of sovereign states whenever they suspect prisoners are being mistreated? The crimes involved in the My Lai incident were committed by American soldiers--not foreign nationals. And, When Japanese General Yamashita was hanged after World War II, he was being punished for widespread, vicious crimes committed by soldiers under his command. He was not punished for failing to halt abuses committed by foreign nationals. An American officer might, under unusual instances, be held criminally responsible for violations of law committed by his subordinates. However, officers are not responsible for rectifying violations committed by foreign officials not subject to their direct control. We cannot allow servicemembers to act unilaterally to correct human rights abuses in countries where they are stationed. Military officers serve as attaches in many of the world's capitals. Unilateral attempts to force our standards of human rights on the Peoples Republic of China, Mexico, or Saudi Arabia would obviously be counterproductive. Overreaching during the first days following our arrival in Haiti could likewise have had unfortunate results. CPT Rockwood's unusual undertaking might have had catastrophic results. Although we can only speculate regarding potential consequences, they could have spelled disaster for the entire operation. When he arrived unannounced at the prison, he could have provoked a shooting incident. He was armed with an M-16 and reportedly entered, ". . . by literally placing my boot in the door." Had an exchange of gunfire resulted, it might have triggered an attack by one of the edgy, armed factions in Port-au-Prince. His actions could have triggered a prison riot. U.S. forces might have been compelled to

intervene with subsequent loss of American lives. CPT Rockwood's superiors were responsible for anticipating threats to the successful execution of the mission. They were required to implement measures minimizing the danger to their troops in a manner consistent with national objectives. Troops must be tightly controlled in volatile situations in order to avoid needless, unintended risks.

Delivered May 4, 1995, Thursday

*Appendix W: Form Used to Process Requests for Air Transportation***DETERMINATION OF AIR TRANSPORTATION
ELIGIBILITY/ ISSUANCE OF INVITATIONAL TRAVEL
ORDERS**

DATE: _____

MEMORANDUM FOR J4, USFORHAITI, PORT-AU-PRINCE,
HAITISUBJECT: Request for Determination of Passenger Eligibility and
Issuance of Invitational Travel Orders (ITOs) for Non-DOD Personnel
and Foreign Nationals

1. Request determination of passenger(s) eligibility and issuance of
invitational travel order(s) in accordance with the following information:
 - a. Name/SSN/Position/Nationality (If more than one pax, attach a
list with information on all additional pax.)
 - b. Purpose of Travel:
 - c. Point of Origin: Destination:
 - d. Date(s) of Travel:
 - e. Type of Aircraft:
 - f. Travel is ____ Non-reimbursable

_____ Reimbursable. Obtain fund cite from
Comptroller prior to submission of this request. Fund
Cite: _____

g. Arms are _____ Not authorized _____ Authorized to be
carried/borne.

h. Passenger(s) are required to sign the Air Transportation
Agreement (DD 1381) on reverse side. DD 1381 Forms for additional
pax must be attached to this form. Form(s) are completed and attached.
Yes _____ No _____

2. Name of Requestor _____
Signature of Requestor _____
Position of Requestor _____
Phone # _____

3. Submit completed request to J4, USFORHAITI, Bldg 29, Camp
Democracy (LIC), at least 48 hours prior to requested transportation
date.

TO BE COMPLETED BY SJA, USFORHAITI:

_____ Concur _____ Nonconcur

Authority: Para(s) _____ DoD 4515.13R

COMMENTS:

MEMORANDUM FOR COS, USFORHAITI, PORT-AU-PRINCE,
HAITI DATE: _____

*Appendix X: Section 607 Agreement Between the United States and
Haiti*

AGREEMENT BETWEEN THE DEPARTMENT OF DEFENSE OF
THE UNITED STATES OF AMERICA AND THE GOVERNMENT
OF HAITI MINISTRY OF FOREIGN AFFAIRS CONCERNING THE
PROVISION OF SUPPORT ON A REIMBURSABLE BASIS TO
ASSIST IN THE RESTORATION OF DEMOCRACY, ORDER AND
ECONOMIC STABILITY IN HAITI

PREAMBLE

The Department of Defense of the United States of America and the
Government of Haiti Ministry of Foreign Affairs, hereinafter referred to
as the _____

Noting that the furnishing of commodities and services by the
Department of Defense of the United States of America to the
Government of Haiti on a reimbursable basis would assist in the
restoration of democracy, order and economic stability in Haiti;

On the part of the Department of Defense of the United States of
America, acting under authority of section 607 of the Foreign Assistance
Act of 1961, as amended;

Desiring to establish the terms and conditions for the provision of
assistance by the Department of Defense of the United States of
America at the request of the Government of Haiti, with costs for
requested assistance to be reimbursed to the Department of Defense of
the United States of America by the Government of Haiti;

Have agreed as follows:

ARTICLE I SCOPE OF PROVISION OF SUPPORT

1. In accordance with the terms and conditions of this Agreement, the Department of Defense of the United States of America may provide to the extent it is available, at the request of the Haitian Government, the following types of support on a reimbursable basis;

- (a) Reconstruction of infrastructure and restoration of basic services;
- (b) Transportation services;
- (c) Clothing, billeting, rations, and other subsistence items.
- (d) Vehicles, equipment, and other major end items, spare parts, maintenance and repair services, fuel, and petroleum supplies;
- (e) Operational supplies and services;
- (f) Communication services;
- (g) Training and technical services;
- (h) Special information processing, services, and equipment, and
- (i) Other incidental goods and services, including medical supplies and facilities.

2. As agreed to by the Parties in writing, other types of assistance may be provided on a reimbursable basis in accordance with this Agreement.

3. At its direction, support provided by the Department of Defense of the United States of America under this Agreement may be provided from support acquired through Department of Defense contracts. Contracting for such support shall be in accordance with the laws and regulations of the United States of America.

ARTICLE II SUPPORT PROCEDURES AND REQUIREMENTS

1. Unless the written consent of the United States Government has first been obtained, the Government of Haiti shall not:

(a) Permit any use of any assistance provided pursuant to this Agreement by anyone not an officer, employee, or agent of the Government of Haiti;

(b) Use or permit the use of any assistance provided pursuant to this Agreement for purposes other than to restore democracy, order and economic stability in Haiti; or

(c) Transfer or permit any officer, employee, or agent of the Government of Haiti to transfer any assistance provided pursuant to this Agreement, by gift, sale, or otherwise.

2. The Government of Haiti shall maintain the security of any assistance provided pursuant to this Agreement, and shall endeavor to provide substantially the same degree of security protection afforded by the United States Government.

3. The provision of assistance pursuant to this Agreement may be made subject to additional terms and conditions as may be agreed to in individual implementing arrangements, executed in writing between the parties under this Agreement.

4. As part of its contribution to this Agreement, the Government of Haiti assumes responsibility for all claims (including the costs of defending such claims and of any settlement or judgment thereof) made by any party against the United States of America, or any of its officers, agents, or employees, arising out of the provision of the assistance provided under this Agreement. The United States of America, or any of its officers, agents, or employees, shall not be liable for any claims arising out of the provision of the assistance provided under this Agreement.

5. The Government of Haiti shall not make any claim against or hold liable the United States of America, in respect of injuries or death caused by equipment or materials supplied by the Department of Defense of the United States of America related to any activities under this Agreement. Such claims shall be the responsibility of the Government of Haiti. The Government of Haiti is not limited under this Agreement in its authority to deny responsibility to, or make claims against, any third parties, in relation to, any loss, injury, or death caused by equipment or materials supplied under this agreement, or related to any activities under this Agreement.

ARTICLE III IMPLEMENTATION

The Department of Defense shall implement this Agreement for the United State of America. The Ministry of Foreign Affairs shall implement this Agreement for the Government of Haiti.

ARTICLE IV REIMBURSEMENT PROCEDURES

1. The assistance provided by the Department of Defense of the United States of America under this Agreement shall be fully reimbursed by the Government of Haiti within the time specified in paragraph 2 of this Article.

2. The Comptroller of the Department of Defense of the United States of America shall ensure bills detailing the costs associated with the provision of assistance under this Agreement are submitted to the Central Implementation Unit of the office of the Prime Minister, of the Government of Haiti. A consolidated Department of Defense bill with supporting documentation shall be submitted on a monthly basis. The Government of Haiti shall ensure payment of bills in U.S. dollars to the Department of Defense of the United States of America, within 30 days after receipt of the bills submitted pursuant to this Article.

ARTICLE V ORDERING AND RECEIPT OF EQUIPMENT, SUPPLIES, AND SERVICES

1. The provision of assistance under Article I of this Agreement shall be accomplished pursuant to written support requests issued by an authorized Government of Haiti representative consistent with and incorporating by reference the terms and conditions of this Agreement.

2. The Department of Defense of the United States of America shall in accordance with the terms of this Agreement, endeavor to satisfy such requests. As necessary, additional details regarding receipts, delivery, procedures, and accounting shall be agreed upon by the Parties or their representatives in writing prior to the delivery of any assistance.

ARTICLE VI CONSULTATION AND DISPUTE RESOLUTION

1. The Parties shall meet on a regular basis, agreeable between the Parties, to exchange information on all questions, regarding the application of the Agreement.

2. Any disputes arising under this Agreement shall be resolved through consultation between the Parties or their representatives and shall not be referred to any third party.

3. In the event that there is continued disagreement between the Parties, at the request of either Party, the consultations shall be continued through diplomatic channels.

4. This Agreement is prepared in both English and French. In the event of ambiguity between the two versions, the English version will control.

ARTICLE VII ENTRY INTO FORCE, DURATION, AMENDMENT, AND TERMINATION

1. This Agreement shall enter into force upon signature and shall remain in force for a period of two years.

2. This Agreement may be amended or extended by the written Agreement of the Parties and may be terminated by either Party upon 30 days written notification to the older Party.

3. Notwithstanding the termination of this Agreement, the obligations of the Government of Haiti, in accordance with Article II of this Agreement, and its obligations for reimbursement for support provided under Article IV, shall continue to apply, unless otherwise agreed to writing by the Parties.

DONE at Port-au-Prince, Haiti, this 26th day of June 1995, in duplicate

FOR
THE UNITED STATES OF AMERICA
J.J. Sheehan
General, United States Marine Corps
Commander in Chief
United States Atlantic Command

William Lacy Swing
Ambassador of the United States of America
To the Republic of Haiti

FOR
THE GOVERNMENT OF HAITI

Claudette Werleigh
Ministere des Affaires Etrangeres

Appendix Y: Claims Accident Standard Operating Procedure

USE THIS SOP WHENEVER YOU ARE INVOLVED IN AN ACCIDENT WITH A HAITIAN NATIONAL OR DAMAGE CIVILIAN PROPERTY WITH YOUR VEHICLE

1. Assess the danger and threat to you and the convoy,
2. If circumstances permit, stop your vehicle and signal the convoy to stop.
3. Contact your unit headquarters immediately and inform them of the situation.
4. Check for injuries and assess damage if any.
5. Identify the Haitians involved, specifically the identity of any Haitian injured and the owner of any property damaged.
6. Fill in the blanks (using English) on the Creole accident report form (on other side), sign it, and give to the Haitian involved.
7. Complete an accident report form when you return to your unit. If time permits, enter the basic information into your vehicle log book before leaving the accident scene. Basic information should include date, time, location (either grid or physical description) and a brief description of what happened.
8. If you are stopped and the situation is deteriorating, take your vehicle and leave the area.
9. If your vehicle is inoperable due to the accident, secure the vehicle and wait for help to arrive. Your vehicle is mission essential property. You may use all force necessary to include deadly force to protect the vehicle from theft or further damage.

THIS SOP IN NO WAY CHANGES THE RULES OF ENGAGEMENT. YOU MAY TAKE ALL NECESSARY AND APPROPRIATE ACTION TO DEFEND YOURSELF AND YOUR UNIT TO INCLUDE DEADLY FORCE.

RAPOR ACCIDENT

OU RESEVOIR KATSA PASKE OU MEME OU BYEN PROPRIETE OU TE ANAFE NAN YON ACCIDENT AVEK MACHIN MILITA AMERIKAN.

TAMPRI POTE KAT SA AVEC OU SI OU VLE PROCLAME DOMAGE CONTRE ETAZNUL OU.

KAPAB PRESENTE PROCLAMON OU A CHAK MADI ET VENDREDI MATIN A 9:00 AM JUSKA 11:00 AM DEVAN POTAY INDUSTRIEL COMPLEX TOUPRE AEROPO PORT-AU-PRINCE.

KAT SA PA VLE DI KE ETAZUNI, AMPLOUAYE LI, OU PATRON LI, PRAN RECONSABLITE POU DOMAGE KI PASE PRORIETE OU, NAN NINPOT FAISON DE LA LOI, LA DOUANN, REGULATION, E PRTIKLI.

POSEDESION DE KAT SA PA GUARANTI PEYEMENT NAN NINPOT FASION, MIN SA SE YON INDIKASION KE PROPRIETE OU TE KAPAB PRAN PATINAN YOU ACCIDENT AVEK MACHIN MILTA AMERIKAN.

FOK TOUT PROCLAMON BYEN PRESENTE E JIJ PAR COMMISIONER PROCLAMON ETAZUNI.

VEHICLE NUMBER _____

ON _____ AT _____ HOURS

LOCATION _____

U.S. DRIVER'S NAME _____

U.S. DRIVER'S SIGNATURE _____

UNIT _____ UNIT PHONE NO. _____

**Appendix Z: Claim Form for Claim Against the United States Forces
Under the United Nations**

Non mou'n ki fe reklamasyon-an: _____ Dat: _____

Adre-li: _____ Limewo telefon-li: _____

_____ lan _____, mwen te fe ou aksidan avek
you machin nasyon zini. Mwen vle prezante you reklamasyon kont nasyon zini pu
\$ _____ (dola aisyem).

Siyati mou'n ki fe reklamasyon-an

Claimant's Name: _____ Date: _____

Address: _____ Phone#: _____

_____ in _____. I was involved in a motor
vehicle accident with a vehicle of the United Nations. I wish to file a claim in the
sum of \$ _____ HD.

Claimant's Signature

* Claimant does/does not read Creole.

Translator: Since the claimant does not read Creole, I hereby certify that I read the
document to the claimant before he/she signed the form.

Translator

Appendix AA: Executive Order 12927—Ordering the Selected Reserve of the Armed Forces to Active Duty

September 15, 1994, 59 F.R. 47781

By the authority vested in me as President by the Constitution and the laws of the United States of America, including sections 121 and 673b of title 10 of the United States Code, I hereby determine that it is necessary to augment the active armed forces of the United States for the effective conduct of operational missions to restore the civilian government in Haiti. Further, under the stated authority, I hereby authorize the Secretary of Defense, and the Secretary of Transportation with respect to the Coast Guard when it is not operating as a service in the Department of the Navy, to order to active duty any units, and any individual members not assigned to a unit organized to serve as a unit, of the Selected Reserve.

This order is intended only to improve the internal management of the executive branch and is not intended to create any right or benefit, substantive or procedural, enforceable at law by a party against the United States, its agencies, its officers, or any person.

This order is effective immediately and shall be published in the Federal Register and transmitted to the Congress.

William J. Clinton

*Letter to Congressional Leaders on Ordering the Selected Reserve of
the Armed Forces to Active Duty*

Dear Mr. Speaker:

I have today, pursuant to section 673b of title 10, United States Code, authorized the Secretary of Defense, and the Secretary of Transportation with respect to the Coast Guard when it is not operating as a service within the Department of the Navy, to order to active duty any units, and any individual members not assigned to a unit organized to serve as a unit, of the Selected Reserve. The deployment of United States forces to conduct operational missions to restore the civilian government in Haiti necessitates this action.

A copy of the Executive Order implementing this action is attached.

Sincerely,

William J. Clinton

[identical letters were sent to Thomas S. Foley, Speaker of the House of Representatives, and Albert Gore, Jr., President of the Senate].

Appendix BB: Responses to Survey on Equipment and Training

Soldier Number 1

1. What is your rank? *Captain*
2. On what date did you deploy? *25 September 1994*
3. On what date did you redeploy? *22 January 1995*
4. On what date were you notified that you were going to deploy?
about 25 August 1994 for sure.
5. What personal preparations did you have to make in the time
between notification and deployment? *Update a Power of Attorney (a
previous POA was about to expire; check the date); standard POM
activities--update records and shots.*
6. How did you arrive in country? *C130*
7. What was your score on the last Army Physical Fitness Test prior to
deployment? *About 255. Do you feel you were physically ready for the
deployment? Yes.*
8. What personal gear did you take with you? Please make your answer
specific and complete. *1 qt canteens-2, 2qt canteens-2, rucksack-1,
ammunition pouches-2, poncho-1, poncho liner-1, BDUs-4 sets, boots-
2 pair, socks-10 pair, underwear-10 sets, softcap-2, shelterhalf-2, wet
weather top and pants, complete APFT uniform-2. Nonmilitary stuff
included a camping shower (a contraption with a 5 gallon plastic bag
and a "shower head"), baby wipes or individually wrapped towelettes,
a large plastic bucket (for shaving and laundry), laundry detergent,
clothes pins and 550 cord, Swiss Army knife, bug repellent, extra boot*

laces, flashlight (with extra batteries), civilian clothes -1 set,

9. In what did you carry your personal gear? *My personal gear was scattered throughout my rucksack and A bag. Plan to live out of your rucksack for two weeks; so put whatever personal stuff you'll need in it. Put the rest in your A bag. A two month supply should be sufficient for things like toiletries, etc. By then Class VI sundry packs will be available and the PX will probably be open. If you're deploying with a later rotation, take one month worth of toiletries.*

10. What job-related gear did you take with you? *A basic load of manuals, forms, and office supplies. See OPLAW Handbook. A camera for claims.*

11. After you had arrived in Haiti, what personal gear did you wish you had brought with you? *A small radio or a Gameboy.*

12. What job-related gear did you wish you had brought with you? *A military vehicle. If one is available, take it.*

13. Describe your workplace. *At first, I worked in a building on the airfield. It was a small building about half the size of small mobile home. The Brigade S-1 and the finance teams also worked out of this building. My work area was about the size of a folding table (6' x 2 1/2'). Later, I worked in the Brigade ALOC with the S1 and S4. My work area was too small and eventually I moved into my own GP Medium.*

14. Who was/is your first line supervisor? *For accountability I fell under the Brigade S-1; I worked directly for the Brigade XO.*

15. Who or what element was your client? *A Brigade Combat Team.*

16. What sort of rations did you eat for breakfast, lunch, dinner, and please describe whether you liked or disliked the rations. *For about three weeks we ate 3 MREs per day. When you're really hungry, MREs are tolerable. Eventually we started getting T rations. At first, we got one hot meal per day, then we got two. By mid November we were eating two hot meals from a Brown and Root mess hall and an MRE for lunch. The T rations and Brown and Root food was great compared to MREs. Judged by normal standards, it was satisfactory.*

17. Where did you sleep most nights? *At first a hooch and later a GP Medium with other members of the special staff and S1 personnel. On what did you sleep? At first, the ground; later, a cot.*

18. When you had a need to travel by vehicle, what vehicle did you use, and what staff element or unit controlled the vehicle? *I would use the vehicles controlled by the S1 section--the S1's, the Finance Officer's, etc. Was this an adequate arrangement? This was adequate, however life would have been simpler if I had brought a vehicle.*

19. What modes of communication were available? *Telephone (MSE) and tactical fax. Were they adequate? Yes.*

20. How did you reproduce documents, if necessary? *Several copiers were available in the Brigade Headquarters.*

21. What weapon did you carry? *M16A2 rifle.*

22. When had you last qualified with that weapon? *About a year prior.*

23. In the 3 months prior to being notified of deployment, how many hours of common task training had you undergone? *About 3. What tasks did you train on? NBC related tasks.*

24. In the 3 months prior to being notified of deployment, how many hours of MQS training had you undergone? *0*. What tasks did you train on?

25. After you had deployed, which common soldier tasks did you perceive you needed or would like to have had training on? *The only common task I performed was weapons maintenance and I was sufficiently trained on that.*

26. After you had deployed, which MQS tasks did you perceive you needed or would like to have had training on?

27. Please make any general remarks that you think would assist someone who had to do what you have done at all stages of this deployment?

a. At the brigade level you can get by with a minimum amount of equipment. Bring a computer if you have one and you have room. If you deploy with the initial forces, you won't be able to handcarry a computer because you're carrying so many other things. Concentrate on having the rights manuals and documents.

b. If you can get one, bring a vehicle.

c. Initially, your time will be consumed with OPLAW issues (for example, ROE and weapons buy back program) and logistical issues (local purchase of supplies, local labor program). Prepare and pack accordingly.

d. About 2 weeks into the deployment, military justice, legal assistance, and claims will be your primary focus. OPLAW issues will still be there but not as many.

e. Do not understaff the legal section. Bring an NCO and one or two clerks. This will depend, of course, on the size of your brigade.

f. As early as possible (before deployment) figure out the jurisdictional scheme for attached units. This will save you time later when military justice actions start coming in.

Soldier Number 2

1. What is your rank? *Staff Sergeant*
2. On what date did you deploy? *13 January 1995*
3. On what date did you redeploy? *4 April 1995*
4. On what date were you notified that you were going to deploy?
Around the second week of December 1994.
5. What personal preparations did you have to make in the time between notification and deployment? *Power of Attorney, POM's (to include many pre-deployment briefings, and SHOTS!)*
6. How did you arrive in country? *Civilian charter*
7. What was your score on the last army physical fitness test prior to deployment? *300*. Do you feel you were physically ready for the deployment? *Ready any time*
8. What personal gear did you take with you? Please make your answer specific and complete. *Full LCE/LBE which consisted of 2 1 qt canteens w/cups, first aid pouch, 2 ammo pouches, suspenders, gortex rain coat, wet weather pants, rucksack, poncho liner, poncho, mosquito net (A MUST!!), mosquito poles, 5 sets of BDU's, 2 pairs of jungle*

boots, 6 pairs of socks, 7 boxer shorts (in hot climate, sometimes it was better not to wear underwear), 2 BDU caps, 4 PT uniforms.. Actual personal gear included books, shaving equipment, baby wipes, laundry detergent, radio, many cans of Off, two large flashlights, and many other misc items.

9. In what did you carry your personal gear? *The majority of my personal gear was in foot lockers that were shipped ahead of the deploying party. The rest was in my rucksack and duffel bags. Personnel should be prepared to live out of the duffel bags and rucksacks until the foot lockers arrive. The 10th Mountain Division supplied us with their foot lockers and manmade furniture once they left.*

10. What job-related gear did you bring with you? *MCM, various regulations, typewriter, computer (CPU, monitor, modem ALPS printer), laptop computer, and various officer supplies.*

11. After you had arrived in Haiti, what personal gear did you wish you had brought with you? *A portable T.V. and PILLOWS!!*

12. What job-related gear did you wish you had brought with you? *Personally, I felt that we had overpacked. We inherited all the forms and equipment that the 10th Mountain Division left behind. If you are deploying to replace a unit, coordinate with losing unit to find out what they have so you can take what they leave behind.*

13. Describe your workplace. *Our legal center consisted of one trial counsel (CPT J. Coakley), myself (NCOIC of 3d Bde Legal Center), and one battalion legal specialist (SPC D. Neighbors). We had our own separate work tent next to the ALOC. We had more than enough sufficient work space.*

14. Who was/is your first line supervisor? *I worked directly for the trial counsel. For accountability purposes, the Brigade S-1.*
15. Who or what element is your client? *N/A*
16. What sort of rations did you eat for breakfast, lunch, dinner, and please describe whether you liked or disliked the rations. *We had two hot meals everyday, breakfast and dinner. Lunch consisted of MREs. For the environment we were in, I found the food to be very good. No complaints here.*
17. Where did you sleep most nights? *In a GP Large. On what did you sleep? On a cot.*
18. When you had a need to travel by vehicle, what vehicle did you use, and what staff element or unit controlled the vehicle? *We used the S-1's and S-4's vehicle. We had no problems with transportation.*
19. What modes of communication were available? *MSE Telephones and later during the deployment, AT&T installed commercial phones. Were they adequate? Communication was adequate.*
20. How did you reproduce documents, if necessary? *Copiers were available through the Brigade S-1.*
21. What weapon did you carry? *M16A2 rifle.*
22. When had you last qualified with that weapon? *Two weeks prior to departure from Schofield Barracks. Before that, about 6 months prior.*
23. In the 3 months prior to being notified of deployment, how many hours of common task training had you undergone? *Although there were rumors flying all over the place about the 25th ID deploying at least 1*

1/2 months prior to deployment, CTT was done. What tasks did you train on? The majority of CTT done by the line units were NBC tasks.

24. In the 3 months prior to being notified of deployment, how many hours of MQS training had you undergone? *N/A* What tasks did you train on? *N/A*.

25. After you had deployed, which common soldier tasks did you perceive you needed or would like to have had training on? *Some of the basic Infantry skills. They looked like they were having fun*

26. After you had deployed, which MQS tasks did you perceive you needed or would like to have had training on? *N/A*.

27. Please make any general remarks that you think would assist someone who had to do what you have done at all stages of this deployment.

a. Ensure that regulations that you carry are updated. Deploying Legal NCO's and Legal Specialists should be somewhat familiar with claims.

b. Coordinate with losing unit, if you are replacing one, of what is being left behind so you don't overpack.

c. Deploy physically fit! You won't have much time to do PT. The PT you do will sustain. Because there will be periods of boredom, one should make every attempt to get some kind of PT in.

d. Make sure you keep in touch with loved ones. Although there were phones available, writing is the preferred method. There were soldiers who were running up some astronomical phone bills because of the commercial lines available. BE SMART!

e. Prior to deployment, ensure that coordination is done with your trial counsel to make sure you have everything. Take care of yourself, your trial counsel, and if a legal specialist deploys with you, take care of him/her also.

f. Last but not least, STAY ALERT, STAY ALIVE! BE SAFE!

Soldier Number 3

1. What is your rank? *Captain (3 yr., 9 mos TIG)*
2. On what date did you deploy? *2 Aug 95 (processed through CRC, Ft. Benning, GA) arrived in Haiti on 5 Aug 95.*
3. On what date did you redeploy? *Scheduled to redeploy on/about 20 Jan 96.*
4. On what date were you notified that you were going to deploy? *24 July 1995. (I knew I would deploy, but dates fluctuated between May to September 1995).*
5. What personal preparations did you have to make in time between notification and deployment? *Shots, eye glasses, (prescription sun glasses), dental checks, purchasing some equipment (fan, small light, pistol holster, additional locks, cheap tools (hammer, screwdrivers, pliers, etc.). Had to draw flack vest, pistol, holster & ammo pouches, magazines, weapons transport case (for airline flights).*
6. How did you arrive in country. *Civilian (scheduled) airline flight from Miami.*
7. What was your score on the last Army Physical Fitness Test prior to deployment? *247. Not well acclimated to 24-hour/day heat & humidity.*

8. What personal gear did you take with you? Please make your answer specific and complete. *Complete LBE (includes pistol belt, 2 1 qt canteens with covers & cup, 3 M16 ammo pouches, compass, first aid pouch, strobe light, butt pack, holster, and pistol ammo pouch), 5 sets of BDU (HWBDU), 2 pr boots, 4 sets PT uniform w/3 additional unit PT shirts, 8 sets of underwear, laundry bag, 3 sheets, & pillow case, poncho liner, 2 ponchos, 2 pr shower shows, 3 towels, bathing suit, 2 sets civilian clothes, miscellaneous items, (clock radio, light, fan, night light, books, reading materials, electrical extension cords and three-prong adapters).*

9. In what did you carry your personal gear? *Two duffel bags and 1 rucksack.*

10. What job-related gear did you take with you? *Deployment library, in two footlockers and a metal field file. This deployment library was heavily weighted toward ADLAW (fiscal law, contracting and international agreements), legal assistance, and claims. Deployed with one laptop (IBM compatible), 386CPU, 1 Megabyte of RAM, 40 Megabyte hard disk, internal 3.5" floppy drive, internal modem (2400 bps). This laptop had the following software loaded (Enable 4.0, WordPerfect 5.1, Harvard Graphics 3.2, LAAWS, calendar creator, and ADLAW tracking software). NOTE: Theater standard is MSOffice (MSWord, Powerpoint, etc). on 486 or pentium machines, and laser printers. Thus, I am able to utilize the computerized files (ADLAW and OPLAW items) I brought with me, but cannot interface very well with items in theater. Also have 1995 OPLAW handbook. Brought my personal copy of the Navy JAGMAN.*

11. After you had arrived in Haiti, what personal gear did you wish you had brought with you? *Mask, fins, snorkel; calculator, more sets of underwear (t-shirts & green/black socks), pillow, more uniforms. The uniform issue is directly related to laundry, The contractor is very hard*

on uniforms. Any time you leave the compound, heat, dust, and the highly unsanitary conditions requires that you break out a clean uniform. Uniforms only can be worn for two days anyway.

12. What job-related gear (equipment, field table paper, forms, etc.,) did you wish you had brought with you? *AFI on Non-Judicial Punishment & forms (Art 15), Navy/USMC Art 15 forms, numbers for the USAF USN & USMC OTJAG equivalents (Numbers in the OPLAW Handbook are a good start). More supplies: binders, disks, backup media, calculators, etc.*

13. Describe your workplace. *Located in building #28, Light Industrial Complex, Port-au-Prince. The LIC is a light manufacturing/warehouse complex. All buildings are concrete walls with corrugated steel roofing. This is the current JOC (Joint Operations Center). Approx. 300 sq. ft. Currently open-air, in the process of installing air-conditioning. We have five desks, two tables (one for the copier-single page field copier), and one for a computer/printer center. We also have one five-drawer filing cabinet, a field safe, four bookcases, and five footlockers/storage boxes. Located near the J1, CID, EEO and JG sections, but all other J staff elements are in the building within 2-3 minutes walking distance.*

14. Who was/is your first line supervisor? *Chief of Staff US Forces Haiti (LTC).*

15. Who or what element is your client? *Primary client is the US Support Group, Haiti. This is a green hat, FID type mission (heavy engineering, medical teams and aviation). Similar in nature the operations we conducted in Honduras during the 1980s. SPTGP only has about 250 PAX right now. Most of my work is in support US Forces Haiti and UNMIH.*

16. What sort of rations did you eat for breakfast, lunch, dinner, and please describe whether you liked or dislike the rations. *We eat hot A's three*

times a day. Variety is pretty good. The food service is provided by a contractor (also provides food to cruise lines). Food is good, but not really in sync with current nutritional trends (high calorie, high fat, lots of red meat, eggs, etc.).

17. Where did you sleep most nights? *About one-third of the personnel sleep in air-conditioned USAF tents inside a warehouse. The rest sleep in wooden cubicles on the warehouse floor. Small, but generally provides some privacy. Male & female personnel are intermixed. On what did you sleep? Cots with mosquito netting.*

18. When you had a need to travel by vehicle, what vehicle did you use? *We have one CUCV assigned to OSJA. It's equipped with a VRC-46 radio. Most of the staff vehicles are old CUCVs or M880s (Pick-up trucks).*

19. What modes of communication were available? *We have commercial system with prior approval. Regular mail is slow, especially for packages. Letters arrive in three to 21 days. (Time difference depends on the senders location in relation to a major postal hub. Letters arrive from NY state within three days, (all mails comes via NY(7-10 for Ft Hood or Ft. Polk. We have DSN Fax capability as well as incoming commercial fax lines. (Message Center) We also rely heavily on e-mail and the www/INTERNET. Most effective and important means of communication is e-mail. We have become quite adept at using WWMICS/message traffic. It is as effective as e-mail and allows us to reach commanders and JAG officers world-wide. NOTE on E-mail: Many of the e-mail addresses in the JAGC directory are tied to a certain individual. When those people PCS, their accounts are terminated or left unused. Almost impossible to communicate via e-mail knowing the e-mail address first. This is a major deficiency in the stud book.*

20. How did you reproduce document, if necessary? *We have a single page, field copier in the SJA office. Also have access to at least five high-speed, professional copiers within the JOC.*

21. What weapon did you carry? *I carried a M9, 9mm Pistol, 15 rds of ammo, a large pepper spray and a combat knife. NOTE: I have ordered a concealed holster for my pistol. We are required to be armed at all times outside of the compounds. I frequently travel to the embassy, the Haitian Foreign Ministry, courts and other public buildings where I am armed but must conceal the weapons.*

22. When had you last qualified with that weapon? *April 1995.*

23. In the 3 months prior to being notified of deployment, how many hours of common task training had you undergone? *NONE* What tasks did you train on? *N/A*

24. In the 3 months prior to being notified of deployment, how many hours of MQS training had you undergone? What tasks did you train on?

25. After you have deployed, which common soldier tasks did you - perceive you needed or would like to have had train on? *First Aid. We often come upon situations that require us to render first aid to Haitian civilians. Also could have used some refresher training on PMCS/maintenance procedures and forms.*

26. After you had deployed, which MQS tasks did you perceive you need or would like to have had training on?

27. Please make any general remarks that you think would assist someone who had to do what you have done at all stages of this deployment? *Augmentees must be especially proactive during all phases of their deployment. Special attention must be paid to POR/SRP, finance,*

deployment equipment & library, personal equipment and CIF. Individual replacements carry a much larger percentage of their deployment readiness on their own shoulders.

*Appendix CC: Extract of Events Recorded in SJA Section Log of the
10th Mountain Division (LI)*

19 Sep 94	Arrived at PAP Int'l Airport. Warner and Wishard
2230 hrs	Retired for the evening on floor of airport. No supplies, no nothing -- only what's in the ruck.
20 Sep 94	Awoke at PAP Int'l . . . Scramble to make some order.
0700 hrs	Located 16th MP Bde Legal Advisor (CPT Erisman), XVIII AB Corps Ops Law JA (MAJ Kyle Smith), and XVIII AB Corps Contracting Attorney (Mike Larson). Made contact with 1st Bde Legal Advisor (CPT Valentino) and Aviation Bde Legal Advisor CPT Barrett). With JAs coming from all over, need to arrange for meeting place, if at all possible, before the operation. One of first priorities: Establish commo with SJA on the ground.
1700 hrs	Moved to industrial complex about 1/2 miles from airport gate. Spent night in abandoned warehouse. No power/facilities. Digging slit trenches; looking for water. Set up our table at Combined JTF Joint Operations Center (JOC). SOPs with JA participation are nice, but, in reality, you have to fight for a seat at the table.

- 21 Sep 94 Set up SJA shop in JOC. Warner at PAP Int'l for 0700 hrs meetings.
- 1100 hrs Printed 400 ROE cards for 16th MP Bde. They were coming under forced entry scenario; need our ROE cards. Have a feeling we will never have enough ROE cards.
- 1400 hrs CPT Erisman visits, and MAJ Smith departs with him for tour of 16th MP Bde work area. You have to get out, especially in early stages or legal issues will pass right over top of you.
- 1500 hrs CPT Valentino arrives at JOC. He is looking for Warner on answers to ROE questions re: force used against FAdH when they use excessive force in their police activities. Warner to address issue to ACOM.
- 1700 hrs MAJ Smith departs for CONUS. Larsen stays behind until MAJ Lara arrives. You've got to have a deployable deployment contracts JA; a top priority for a deployable division. We arranged for MAJ Lara from 3rd Army but we've got to have our own trained---one who can deploy!
- 2100 hrs Issue: TF Black is at Camp D'Application. They want to count heavy weapons (V-150s, Artillery, AA guns). If FAdH does not cooperate, can US forces use force to do the count? Wishard opines that, based on the ROE, the lack of a disarmament policy, and the FAdH cooperating with US forces, we

- should not use force to count the heavy weapons. Instead, monitor the area for movement and negotiate through diplomatic channels.
- 2300 hrs Wishard retired for night. Warner did not return from PAP airport.
- 22 Sep 94 Warner returns from PAP Int'l;
- 0100 hrs Departing again at 0600 hrs. Most of minute-to-minute action (the DTAC if you will) is still at the airport. Letter of instructions for SJA personnel while he is gone is issued.
- 0800 hrs McNulty meets with SGM Spears regarding obtaining vehicles from port. SJA party departs for port to locate vehicle.
- 1040 hrs Warner closed out legal operations at PAP Int'l and returned to JOC. Talked to COL Altenburg to keep SPC Teeple; if you can ID good people and have support from above to keep them, life becomes much easier. Best SPC in the US Army!
- 1115 hrs Future Issue from Valentino: Can we keep the FAdH out of the port? LTC Sullivan did that the first day and wants to continue this. This is not an issue yet, but may become one before 15 Oct.

- 1500 hrs Barrett reported aviation accident and had a question about reviewing authority for investigation. Also, Barrett briefed on ROE changes.
- 1530 hrs Prepared additional ROE scenarios to match ROE changes regarding stopping serious criminal acts. Vignette training was a major league success story; we have to keep generating vignettes for ROE changes; troops are used to learning via that method--highly effective. Prepped for CG brief at 1700 hrs.
- 1745 hrs Warner gave 1700 update brief on 21 Sep 94 ROE card.
- 23 Sep 94 Received request from BG Close for legal review on 0010 hrs request to impose curfew over industrial park for force protection -- restricting Haitians. Nonconcurrent under circumstances: not a US installation or occupying force. Don't want to give ammo to those who would like to impose on us "occupying force" status. Need to negotiate with landlord for curfew based on protecting innocent Haitians from injury. If not successful, negotiate through diplomatic channels; it appears the LIC is actually Haitian Government property leased to private concerns.
- 0700 hrs Attended 0700 staff update to CG. More (always more) ROE cards needed per CofS.

- 0805 hrs Valentino called. Issue: kicking FAdH security force out of airport. 1st Bde Cdr needs answer ASAP.
- 0815 hrs Issue: CMOC states that US flag raised over Bowen airfield. No legal implications. This is causing a stir among the local populace. Suggest lowering flag and placing it within the compound in a less conspicuous location.
- 0900 hrs General POA for PVT Johnson. Noted that LAAWS program POA program does not work with Canon BJ-10. Tried to fix and made hard copy blanks on Enable for backup.
- 1030 hrs ROE cards at USS Whitney, and arriving in afternoon per XVIII Corps SJA. Using all possible resources to print: USS Whitney presses, psyops printers from Bragg, and sending contractors downtown to see if they can find any printers still in business.
- 1300 hrs ROE cards being flown in from USS Whitney at 1500 hrs. Arranging for vehicle for pickup.
- 1430 hrs Contacted Drum SJA office. Determined that they and Bde enroute received new ROE cards before flying.
- 1500 hrs Main body SJA office arrives (MAJ Gordon, MAJ Lara, CPT DeWoskin, CPT Bullard, CPT Lorusso, MSG Mitchell, SSG Peterson). It's good to see 'em. SJA, Ops Law, Bde

Legal Advisor, a legal NCO, and a great SPC can handle anything for awhile, but now we can move out.

1600 hrs

Received ROE cards from the USS Whitney. Distributing them to units. All SJA personnel now at JOC.

1630 hrs

Issue: CMOC/J3 has funding issue under Title 10, USC regarding funding HCA programs. CPT DeWoskin tasked to work with MAJ Friedman (G5) on issue. I see the HCA piece, by itself, becoming full time JA job in this operation.

1700 hrs

Prepared draft GOMOR for CG signature regarding disrespect to CSM Laye. We should have prepared fill in the blank forms on the computer for stuff like this beforehand.

1830 hrs

CMOC presented numerous issues regarding PVO/NGO requests for military assistance. Most were no-gos based on common sense objections (wanting flights and vehicles for trips to countryside when we cannot get troops from PAP Int'l to our compound) and no exceptional need stated to require military assistance. Need to monitor CMOC closely. Guys, this is a "give an inch and they will take a mile" situation. CMOC will continue to push hard to do everything asked of them -- they see it as their mission. We have to play it by the book.

- 2100 hrs ICRC request for meeting with chief legal advisor to JTF Cdr. Informed COL Altenburg, faxed a copy, and asked him for guidance. We need to be there due to our long term status. Awaiting answer from MAJ Smith.
- 2130 hrs S4 from COSCOM reported numerous units taking over buildings at airport without proper lease negotiated. We are not in combat situation, so they say. Cannot take what you need. Need to put word out at 0700 hrs and 1700 hrs briefing on the subject. Anticipate a claims nightmare.
- 2200 hrs Advised CofS and CG that COL Gaddis/CSA and COL Altenburg/LTG Shelton have our ROE scenarios.
- 2215 hrs Big potential problems regarding command influence on accidental discharges: "I'll give a FG 15 to next occurrence, etc." Getting word out on how to warn of maximums without crossing the line. Same with uniform violations (flak vests, Kevlar mandatory wear at all times), disrespect in tough situations. We've talked command influence in garrison til we were blue in the face, but we have to continue preaching, especially now when times are tough, tempers are short, and disciplinary problems need immediate attention.

24 Sep 94

0800 hrs 700 hour update info passed out at SJA meeting on hostile fire pay, SECDEF and CARICOM Bn Cdr/MG Byron visit, President's call, weather, opposition activities, mail, etc. MSG Mitchell working on life support, obtaining vehicles, and finding our CONEX. As we surmised, the first week of legal operations will be conducted out of your rucksack.

0845 hrs CPT Becker (525th MI) arrived in PAP 220615 Sep 94 and is attached to MI Task Force located in industrial complex. Issues: continue to disseminate and issue ROE cards dated 21 Sep 94 and GO #1, service contract with Haitian nationals, CI use of candy and tobacco to establish rapport with populace, and vetting/documentation exploitation at archives. (We've got to prohibit soldiers from throwing candy from vehicles; this quickly provokes fights for food and endangers those who stampede a moving vehicle for food. Claims issue.)

1015 hrs CPT Barrett/PFC Carter received info from 0800 SJA meeting. Issues: request for full-time TDS attorney, request for additional ROE cards. Need an additional 300 cards.

1100 hrs ROE question: Can we use deadly force to stop a vehicle approaching a checkpoint? Security points are authorized. Deadly force

is authorized to disable vehicles endangering personnel at these checkpoints.

1100 hrs

MAJ Gordon attended daily CMOC briefing. Primary emphasis on CMOC flow. CMOC is developing to where we need a dedicated JA to keep legal control.

1130 hrs

Contacted MAJ Woods at ACOM. Issue: Confiscating military weapons being taken past checkpoint at port. ACOM says we can confiscate military weapons going through checkpoint unless 1) military purpose shown; 2) ownership by FAdH confirmed. We will hold them for legitimate GOH for release. Military (automatic) weapons are assumed to be offensive. ACOM also sending a copy of Carter Agreement. No SOFA/SOMA yet with legitimate GOH.

1155 hrs

Confirmed that weapons at port are owned by FAdH, and is a legitimate movement of weapons. One of the top FAdH port security people confirms this report. Small automatic weapons can be released through checkpoint. Large weapons (AA guns) not released because a threat to our air security.

1157 hrs

CPT Erisman/SGT Peoples checked in. Typed up ROE vignettes and left copies with SJA. Issue: GOMOR for unlawful weapon discharge in clearing barrel?

1400 hrs

Issue: J5 Plans had question regarding weapons buyback program. What is the punishment under Haitian law for having an unregistered weapon?

2040 hr

CG mini-brief. Issue on arms at Port where US soldiers at checkpoint were confronted with port security trying to move 14 M1 Garands and two AA guns. Eventually allowed to move the Garands upon credential check and port security chief (trusted) vouched. AA guns did not go thru the checkpoint, per MAJ Hagg, G-3 Ops.

2145 hrs

LTC Harrington (CMOC) had question regarding the distribution of medical supplies to local hospitals.

2315 hrs

Previous entry: Must watch these requests for legal review prior to normal staffing. Only then can we give full, efficient, timely legal review. Provided CMOC requester with written summary of Title 10 provisions and normal staffing guidance. Gave response to above question to COL Geiger. In future operations, this Title 10 guidance must be written up in advance, distributed, and made part of civil affairs training with civil affairs attorneys actively involved; at times it seems we are in an adversarial relationship with our own (i.e., JTF Reservist folks).

2320 hrs

Reports coming in of WIA-Navy Seaman-Cap Haitien.

25 Sep 1994

- 0500 Heavy rains begin. Possible hurricane. We need to be ready for disaster relief operations on top of normal mission.
- 0630 hrs Reports on Navy linguist in Cap Haitien injured, with our response to the violence by force. Report of eight (8) Haitian national casualties.
- 0800 hrs Wishard attends TF Black meeting. No issues, just a face-to-face with JTF staff counterparts. Informed COL Knight that we have been in contact with CPT Jim Patterson, his JA, on a daily basis.
- 0815 hrs Gave COL Knight 400 ROE cards for TF Black.
- 0830 hrs Reviewed CALL report on ROE. Agreed that ROE cards coming from XVIII AB Corps too complicated for soldiers to quickly read and understand. Also stated that parallel planning for operations needs to be closely coordinated, especially in the area of ROE, when parallel operation plans could stand alone or follow initial entry/sequel format. Made recommended changes to CALL report, gave them a copy of all ROE cards, and returned to CALL representative.

1035 hrs

LTC Herrington (CMOC) came by, introduced his JA (LTC Hill), and picked up two actions he gave us the previous night. Told him he needed to run all actions through the staff, then to us for review, then to CofS and CG. This is highly important; there are lawyers working CA missions with the CMOC. They can be a valuable resource, but they cannot give final decision legal advice to the CMOC and the command; that must remain the JTF SJA function.

1115 hrs

UN Observers from New Zealand want issued general CIF, weapons, flak vests, and kevlar. No legal objection, although told them they need to run through CofS for approval. May need to check their weapons qualification for weapons issue. Lets look closely at this further.

1230 hrs

CPT Erisman, TC for 16th MP Bde (Airborne) checked-in. Called the Mount Whitney, and talked to COL(P) Altenburg and MAJ Smith. Got a copy of the Carter Agreement and got information on the shootings. Phone number at the 16th is 461-7301. No pending MP legal issues.

1235 hrs

LTC Warner, CPT Lorusso, CPT Bullard and SGT McNulty convoyed to the U.S. Embassy to attend MG Meade's meeting in the embassy compound.

1335 hrs OC/J-3 Civil Affairs (CPT Henderson)
question re: treatment of local girl injured
when helicopter gust blew her to ground,
breaking her leg and receiving cuts and
scrapes. She was flown to the USS Comfort
for treatment. Issue: Is it legal to treat her?
Question moot now since we treated her. If
emergency situation, we should treat her.
However, advised that we should arrange with
local hospital for treatment of injured civilians
so we don't set a precedent of treating all
civilians injured by us when not an
emergency. *****POTENTIAL
CLAIM*****

1540 hrs 525th MI (CPT Becker) At issue is whether
there is a JTF policy which provides for US
protection of Haitian Nationals who cooperate
with US forces and fear FRAPH retaliation. A
525 CI agent was approached today by a
Haitian who provided information and
requested protection. 525 response was to
turn the Haitian over to the MPs. As
HUMINT collection continues this issue will
likely resurface. Suggested providing
informants with number to call for assistance
if retaliation effort detected.

1550 hrs Issue: CMOC needs opinion on distributing
food not eaten by soldiers at the future dining
facility and giving to a PVO/NGOs to
distribute to the Haitians. Also, having
soldiers put unused MRE excess packets in
box and turning over to PVO/NGOs to

- distribute. Wishard opined no legal objection. Advised that they needed to get approval from command.
- 1600 hrs Wishard attended Targeting Cell. Issue regarding targeting church for PSYOP purposes where FRAPH have frequent meetings. No legal objection for PSYOP purposes.
- 1945 hrs COSCOM requests we equip UN observers with TA-50, kevlar, 9mm weapons, and ammunition. Need to coordinate with USACOM JA on issue tomorrow as to UN support requirements.
- 2140 hrs Spoke with COL Altenburg on USS Whitney. He seems to think there is a problem giving weapons to UN personnel. Will research and clarify tomorrow.
- 26 Sep 94
- 0105 hrs MAJ Lara reviews letter contract for ice delivery to JTF.
- 0615 hrs Further research determines answer on providing weapons, TA-50, ammo, etc. to UN force observers. Cannot provide this aid to them.
- 0650 hrs UPDATE: SJA spoke to brother at Pentagon who says a formal agreement has been reached between State and Congress under

607 of Foreign Assistance Act to allow UN supply on reimbursable basis--operational supplies and ammo (no mention of weapons). However, an LOA (Ltr of Assist) must be received specifying the support and details. Passed to MAJ Early and LTC Weiss at 0800 for further coordination with ACOM J-4.

0825 hrs

CPT Erisman and SGT Peoples checked-in. Sought clarification on the accidental discharge issue and whether or not 10th Mtn will handle as JTF HQ as opposed to lower unit handling. All are sensitive to the command influence issue. Conducting a ton of ROE training to the MPs, as it applies to their ongoing missions.

0900 hrs

MSG Mitchell, SSG Peterson, SSG Fisher, SGT McNulty and SPC Jennings down loaded SJA milvan, brought supplies and equipment to both the JTF HQ and JTF billets. SGT McNulty also put together HQ 61 commo and performed a PMCS and function check on radio, everything is in working condition.

0945 hrs

CPT DeWoskin and CPT Lorusso returned from CMOC JAGCAP. Went to look at land that we are leasing from a local landowner. Talked to his security man. He informed us that the people using the land for farming understand that our forces are going to be moving on to the land. The security man allows the people to use the property for

crops, the "farmers" then give him some food if they have a good harvest. If there is a poor harvest, no food is given. None of the people expressed an interest in obtaining compensation. The people were very friendly and appeared to be truly happy with, as they said, our "liberation."

1035

SJA "off duty" (yeh, right) personnel now walking around the compound handing out ROE cards to soldiers and posing scenarios for appropriate action. Need to expand this program; gives SJA a much better idea on what needs to be tweaked as to ROS, soldier understanding, unit training on ROE, etc. -- especially those non-10th units. Possession of cards was spotty but knowledge was impressive.

1245 hrs

Answer from MAJ Garcia from JPOTF LNO: if we provide the paper, PSYOP will print the ROE cards for us. SJA called MAJ Nepper and has him shipping down several boxes of cardstock for the inevitable change in cards.

1246 hrs

1LT Haynes from 2-14 Inf Bn had one legal assistance issue and one criminal justice issue. Soldier under temporary court order for support of children and wife pending divorce. Ordered to pay approx. \$1100.00 a month. Unclear whether he was notified of pending court action or not. May have a SSCRA action. Command wanted to know what to do with him. Advised it was their call whether to

send him back to attempt to attack the order. Apparently soldier is substandard and is not currently performing his job in country anyway. He is also being investigated for fraud. Apparently his wife and children left quarters. The soldier stayed on and moved his girlfriend in with him. CPT O'Brien was aware of before deployment and CID is involved. Second issue: JTF soldier threw down his weapon and left his fighting position. Said that he didn't want to play anymore. NCO's told him to go back to his position, he said no. CO talked to him about UCMJ, etc. and told him to drink some water, rest awhile and think about it and go back to his position. Soldier refused. CO ordered him to go back to his position. Soldier refused. CMD looking at CM. Conditions are real tough; heat is getting to people; expect this type of disciplinary problem.

1330 hrs

CPT Wishard, CPT Lorusso, MSG Mitchell, SSG Peterson, SGT McNulty and SPC Teeple conveyed to the dock to locate the 18th Abn. Corps vehicle and to investigate a potential claim. The vehicle has not yet been unloaded from the ship, but it should be available at 0800 on 27 SEP 94. The claim at issue was that a soldier hit a Haitian civilian's vehicle. We looked for the 7th Transportation Group 71D to discuss the matter, but were unable to locate him.

390

CENTER FOR LAW AND MILITARY OPERATIONS

1345 hrs

COL Altenburg OKs provision of weapons, ammo, TA-50 to UN observers but not international police monitors and MNF Bns, who should be coming with their own. Passed to J3 and J4 on written memo.

27 Sep 94

0115 hrs

CMOC issue: Two locals at front of gate at PAP airport fearing for their lives to go home because of retaliation from neighbors. Can we provide protection from Ms, etc? Answer is no. Our mission does not include providing personal protection for the populace. Those fearing imminent danger can be temporarily protected and turned over to Haitian authorities. In this case, the threat is not imminent. Report to Haitian authorities and give locals numbers to contact us in case of emergency.

0630

Darnell from ISSO needs legal assistance on schooling tuition recovery. CPT Lorusso to handle.

0700

Update. Cite Soleil now off limits due to attempts there to confront soldiers to see how we will react. Received blue ROE cards from Drum. CMOC has received guidance on humanitarian assistance from ACOM--way beyond abilities and into nationbuilding vs. mission enhancement. Buyback program (weapons) starts today. Cedras told by XVIII to police the 30th demonstration. New task

organization effective 1800 today. Internal security becoming a problem. 1100 teleconference today.

0900 hrs

CPT Becker (525 MI): At issue is whether CI agents may seize film from Haitian nationals when there is reasonable suspicion that film contains photos of US activities which threaten US security, considering the mission we have. Proposed answer: Yes, reasonable force may be used to detain and question persons suspected of collecting intelligence on US activities. Reasonable force may also be used to seize film which we believe to contain photos of US activities which compromise US security. A second issue is whether Task Force CI agents may enter FRAPH, FADH, and police HQs. I have briefed commanders that absent hostilities . . .at this time and with this mission . . . CI agents may enter FRAPH, FADH, and police HQs only with consent of occupants.

1125 hrs

In last hour: XVIII SJA gave a NO GO on arming AMC and other civilians due to lack of SOFA and possible criminal sanctions by GOH.

1350 hrs

CMOC hit us up again for "what 10 U.S.C. Section 940 says?" Watch out for forum shopping by those wanting to push CA affair past permissible limits.

1400 hrs

At approximately 1245, went with LTC Hill, CMOC, to discuss setting up of J4 Dining Facility at a building we have not yet leased. Talked to COL Boucard, Director SONAPI (Societe Nationale Des Parcs Industriels). Received approval to use the property. Upon going down to property, we discovered that people were living on the property. They were paying rent up until four years ago. They have continued to live there even though they were no longer paying rent. They appear to be very friendly and cooperative. Need to determine the best course of action in removing the locals from the property. Numerous options are available. Need to come to closure today.

1410 hrs

Call from MAJ Warner at FORSCOM. First, spoke with him on general issues concerning civil affairs/humanitarian assistance to provide security (via mission) and creeping into nation building. Certain rudimentary things we can do (dig wells, simple structures, etc.). In a nutshell, no "nation building" programs until Congress and DOS OK it. We have HCA programs in existence via DOS, and coordinate requests through embassy. Told him we were on line with this. Second, he says ICITAP may request for us to build them structures. We will keep an eye out for this request. They should go through their own DOJ channels. Third, on weapons buy back, he suggests finding a way to have us not take control of the weapons permanently, but to

hold them temporarily for legitimate GOH. I told him I thought we were doing this already. Fourth, he stated that we should get letter of agreements from UN for reimbursement on supplying UN observers with uniforms, weapons, ammo, etc. Told him we were doing this already. Gave me POC at UN (Maurice Deprez) for letter of agreement OK. He is assisting us by looking up 10 U.S.C. Section 940, cited by CMOC on recent issue. (Wishard)

1800 hrs

First USA TODAY (first newspaper!) arrives in CJTF SJA office. (DeWoskin)

2100 hrs

LTC Warner hair is cut by Teeple . . . go ahead and laugh now. This (haircutting) is something you have to plan for in advance . . . attention to detail. (Mitchell)

28 September 1994

0745 hrs

SJA drafts memo to CMOC/HACC and J4 re: nation building activities and the need for LOA from UN (Wishard).

0930 hrs

Coordinated with SSG Williams, J-1, regarding interpreters missing from Task Force Mountain. Apparently there is a systemic problem with interpreters. He is trying to track the interpreters to units now and will inform when he finds them. Next time, it would be nice to find at least one good, solid interpreter in advance and have the interpreter deploy with the SJA office;

otherwise, you have to compete with a lot of people for the talent.

1020 hrs

COL Altenburg arrived for SJA visit. Spoke to all JAs and 71Ds in the JOA. Briefed that, for this week and possibly next, all civil affairs/CMOC/HACC matters directly related to maintaining civil order and force protection, and can be approved. This will change as things stabilize and NGO/PVOs arrived in JOA.

1145 hrs

LTC Godfrey (JTF Surgeon) has two questions: 1) Can we provide medical treatment to the Ambassador's official staff? 2) Can we provide medical treatment to the Ambassador's personal staff? These are issues which, in future, we must anticipate in advance and get readouts on early.

1205 hrs

SJA to attend country brief at the embassy tomorrow. Time TBD.

1500 hrs

Reported gunfire in area of JAs at USAIDS compound. (Lorusso)

1515 hrs

CMOC issue: PVO/NGO needs transportation to move 57 tons of relief supplies from PAP to Cap Haitien. No legal objection if transportation available. CMOC issue: relief ship now docked at port. Haitian customs going through ship to inspect. Can we get waiver from Haitian customs? No, we

must follow Haitian law. Only waiver can be made through diplomatic channels. Would only request waiver in emergency situation or if any sort of custom duty seems excessive.

1630 hrs

CPT Becker (525 MI): At issue is whether US forces may treat seriously injured Haitian civilians. The short answer is yes. US forces may provide first aid to seriously injured Haitian civilians, and evacuate them to the nearest hospital. Here, a CI team discovered a 12 year old Haitian boy who they initially treated as a heat casualty before being told he had been run over by a truck. Next, they evacuated him to a MASH unit at PAP. Finally, they notified the child's family. The boy was diagnosed as having broken ribs and a punctured lung. He will be returned home in a couple of days. A second issue is whether Intelligence Contingency Funds (ICF) may be used to purchase a television, Bearcat Scanner, radios, newspapers, magazines, etc. for open source collection. The short answer is yes. AR 381-141 governs expenditure of ICF. Paragraph 1-5 establishes base guidance. A final issue is whether CI agents may search a vehicle when driver has consented to search. Answer: Yes, as in criminal procedure, consent cures an otherwise unjustified search.

1930

SJA back from ICRC meeting with COL Altenburg, Mr. Dolan, SJA, Ms. Gros, and

Cedric Piralla. Discussed our mission and they discussed theirs. Concerned about quick commo with us. SJA will be POC. Mr. Dolan provided radio and frequencies to SJA which ICRC will use as necessary. They were concerned about barbed wire strung thru Red Cross Bldg near the legislative palace for security and funneling crowds towards that operation. I promised correction and briefed it at 1700 update. Same thing with isolated incident where troops went into a local hospital, causing quite a stir. New office of ICRC being set up at Rue Louissaint #8 in Bourdon, PAP--#45 64 66. Will need to visit soon and check up on the security situation at the Parliament. Mr. Amar, high level ICRC official, coming 14 and 15 October--we need to set up a meeting with BG Ryneska.

1955

Advised MAJ John Brown, CMOC, to write up letter for ship captain holding food shipment in bay--from the commander at the port---saying OK to land and we'll protect from port thugs charging a fee. Give a NLO when it is drafted.

2145

Received report from Corps SJA of possible human rights violation at FAdH compound in Les Cayes--40 prisoners in extremely poor condition, to include man with skin ripped off his back and showing bare bones. B 519th MI reported. BG Potter apparently has visited the site or will do so tomorrow; JSOTF personnel here say a medical team is heading there

tomorrow to assist. Attempts made thru COL Larue at HACC to contact ICRC to report this incident. He will attempt contact on Haitian telephone and return with status. Otherwise, will visit ICRC tomorrow with information.
KKW

COL Larue to pick SJA up in the AM for a morning meeting with Mr. Crandall of USAID at Crandall's home.

2335 hrs

Received two taskers from J3. One regarding transporting injured child's father in a military vehicle so he can greet son at PAP. The other requesting transportation for 57 tons of food supplies for HACC.

29 September 1994

0040

SJA produced info paper on use of deadly force for crowd control for C/S. Laid out when DF authorized in such situations--copy to archives. Issue: 3 lines in the sand concept by CG and ADC-O. MAJ Gordon needs to honcho in morning.

0735 hrs

CPT Roston from J-2 had questions about whether individual soldiers can provide food and water to Haitians, and whether or not individual soldiers can contract for goods and personal services with Haitians. Answer per LTC Warner to all is no. Roston wanted to try and work up a document to go to soldiers;

maybe incorporate with ROE or general order, to emphasize those four points.

1000 hrs

HACC NGO/PVO meeting attended by SJA at USAID director's home. Repeat next Thursday morning. NGO/PVOs extremely concerned/almost hostile about lack of security provided to them by US. Explained mission with LTC Vale, COL Larue, MAJ Friedman, etc., also force protection, political concerns, logistical problems, Title 10, etc. Valuable venting of frustrations. We gave advice on providing grid coordinates for QRF. Amazing what they expect from us--almost what we owe them. They hear we have 20,000 and expect that each one should be made available to them first for security; no regard whatsoever for our billions in equipment and thousands of soldiers also needing secured. No regard for our mission to stand up and secure a government. This piece needs to be briefed to these organizations during peacetime--what to expect, procedures for obtaining, etc. They have unreasonable expectations of the military.

1100 hrs

Informed LTC Godfrey that he could treat embassy personnel in emergency situations, and that he could treat other individuals with serious medical conditions affecting employment per de minimus exception to Economy Act.

- 1500 hrs Issues: (1) can a Brigade commander put sex off limits to all personnel while in Haiti - Yes; (2) took copy of a letter of reprimand for WO1 who stole a porno magazine at Fort Drum (3) does SSCRA freeze interest on Visa account during a deployment - No; (4) Is there a program to assure absentee voting? (Barrett)
- 1535 hrs CPT Becker (525 MI): CDR, 519 MI plans on initiating document exploitation (DOCEX) at Baby Doc Palace which houses the Haitian Department of elections. Records include voter registration, political party charters, candidate applications, Etc. Purpose is to assist the vetting process. The palace and all records are in the custody of 1/22 INF. COL A recommends we expedite.
- 1544 hrs MAJ Cassidy from 10th Signal asked if the U.S. Army could arm and equip (1) DoD civilian employees and (2) GTE employees installing phone lines. Advised him that we could not do so, but that I would confirm with LTC Warner. (Lorusso)
- 1548 hrs LTC Ellis from PMO asked if there had been a change in the ROE, specifically concerning whether detainees were still to be turned over to the Haitian law enforcement authorities. I informed him that there has not been a change in the ROE since 21 SEP 94. (Lorusso)

400 *CENTER FOR LAW AND MILITARY OPERATIONS*

2000 SJA attended meeting at PAPIA with cdrs of all units involved in the upcoming demonstration to go over plan. Discussed ROE and above matters. SJA to accompany CG to Embassy during the demonstration--command post.

0900 hrs Checked on phones. Need to run an auxiliary power cable from JTF HQ to this building. Signal folks will continue to work on system today. Courier run departed PAP via ISSO at JOC. Also, answered CMOC question on 54 CONEXs of relief to be transported.

0930 hrs CPT Baines enroute to finance det to talk to COL Stormer re: allowing spouses in the rear to pick up soldiers' LES's. This problem has been surfaced by 44th Med and COSCOM units in the rear.

1100 hrs Prepared memo for J5 Plans on detention facility. (Wishard)

1200 hrs Coordinated with CPT Becker and Erisman on capture of "Bobby." COL Altenburg is on-line, and LTG Shelton has the approval authority for release. Questioning to begin to determine whether "Bobby" is a US citizen. If so, CID will conduct the questioning. More to follow. I inspected the confinement facility and viewed the delivery of "Bobby."
(Wishard)

- 1500 hrs Received message request from LTC Hill, CMOG JA, re: dealing with squatters at HHC, 10th MTN DIV mess hall.
- 1543 hrs MAJ Sisk, J5 Plans, came by to discuss the setting up of an SOP for human rights violations. Advised of the way things were done in Somalia (Kismayo Mass Grave Site). Told him to discuss with MAJ Gordon, who is currently at the CJOC. (DeWoskin)
- 2100 hrs CPT Wishard attended J5 meeting. Issues: detention facility construction, the return of President Aristide, and long term planning objectives.

*Appendix DD: Extract of Events Recorded in SJA Section Log of the
25th Infantry Division (Light)*

DATE	ACTIVITY
20NOV94	COL Bush deploys with members of 25th ID(L) Command Group for on site recon of Haiti and initial transition coordination meetings with members of the 10th MTN Staff. The visit lasts 5 days. The SJA OPLAW attorney, CPT Patton, continues to refine the Division OPLAN and Rules of Engagement.
19DEC94	SJA vehicles and equipment (secondary loads) loaded onto <i>American Condor</i> at Pearl Harbor.
28DEC94	Received copies of Rules of Engagement and Vehicle Accident cards from Government printing plant.
3/4JAN95	MAJ Sposato and SSG Bertotti deploy to Haiti to coordinate SJA transition with 10th MTN and reception of main body. Make contact with 10th MTN counterparts.
5JAN95	MAJ Sposato visited Joint Detention Facility (JDF) and reviewed facility operations with 10th MTN SJA and MPs. Reviewed detention procedures established by the MNF. A judge advocate reviews cases of new detainees twice a week. Evidentiary threshold for detention is lower than probable cause standard. Detainees are held either as a force protection measure under UN Resolution 940, or because they were observed by MNF forces while in the act of

committing a serious criminal offense. Determined that International Committee of the Red Cross (ICRC) has been monitoring conditions in the JDF regularly.

6JAN95

Discussed retention of MNF courtroom facility with MNF Engineer and HQ Commandant. Determined that CID should move into the office and vacate certain areas in the event that a court-martial is conducted in theater. Prepared memorandum justifying assignment of one civilian and one military linguist to OSJA to assist in claims processing, witness interviews, and translation of legal documents. Viewed claims processing at the main gate of the Light Industrial Complex (LIC). Claims are processed at this location every Tuesday and Friday from 0900 to 1200 hours. Claims made by Haitians against U.S. Forces are processed for payment under the Foreign Claims Act. MAJ Sposato travels to the office of the ICRC and meets with the director, Mr. Cedric Peralla. Discussed conditions at the JDF.

7JAN95

Haitian national contract linguist Mr. Jean Joseph Ligonde begins working for OSJA.

8JAN95

OSJA enlisted personnel move into building 36 billets. Began coordination with GOH on transfer of the JDF to Haitian control.

- 9JAN95 Coordinated for billeting and office space for incoming trial counsel at Warrior and Bronco Bases with 10th MTN counterparts.
- 10JAN95 OSJA main body arrives: COL Bush, SJA; CPT Ford, Claims/Legal Assistance Attorney; CPT With, OPLAW Attorney; and CPT Engle, Trial Defense Counsel. *American Condor* arrives in Port-au-Prince.
- 11JAN95 Vehicles with equipment arrive on LIC. OSJA relocated from Bldg. 10 to Bldg. 29. Trial Defense Service office located in Bldg. 29 as well. Fully operational by 1800 hours.
- 12JAN95 Two Special Forces soldiers were attacked at a roadside tollbooth in Gonaives. Killed were SFC Gregory Cardott and Mr. Orel Frederick (former FAhD officer); wounded was SSG Tommy Davis. Frederick shot and killed Cardott and wounded Davis after he was stopped by the soldiers for running a toll booth. SSG Davis then shot and killed Frederick. Incident was determined to be random violence and not part of any orchestrated anti-MNF effort.
- 13JAN95 25thID(L) OSJA assumed claims mission from 10th MTN OSJA.
- 14JAN95 Transition from 10th Mtn (LI) to 25th ID(L) occurred at 140001JAN95. MG Fisher signed General Order #1, superseding MG Meade's GO#1 effective immediately. COL Bush

appointed to Commission on Justice, an interagency working group charged with reviewing operations of the Haitian police, prison, military and judicial systems. COL Bush met with UN Human Rights Commission members Mr. Bruno Celli and Ms. Hinkle-Babul.

- 15JAN95 Question of urinalysis for deployed units was raised. Units must deploy with unit Alcohol and Drug Coordinating Officer and necessary supplies in theater such as Haiti where prevalence of drugs is high.
- 16JAN95 Conducted OSJA AAR. Ammunition and .38 caliber pistol found in port-a-sans. Redeploying 10th MTN soldiers probable culprits. Amnesty point established at ADAG and MP Battalion.
- 17JAN95 Published information papers on legal assistance, tax, and claims services, provided by OSJA. Obtained new automation equipment from AMO including color laptop 486 computers with battery backup capability. Due to frequent power outages and circuit overloads, automatic backup feature saves much data and wear and tear on computer equipment.
- 18JAN95 MAJ Sposato attended a meeting with COL Saunders, MAJ Spence Lance from ACOM at the Ministry of Defense. Present for the GOH were Minister of Defense (MOD) Lehersion, his

deputy COL Cleremont, and his legal advisor LTC Bertrand. Discussion topics included the jobs program for former FAh'D members and release of Haitian military prisoners in the Federal Prison. Also toured the Federal Prison and interviewed 15 military prisoners concerning their status.

19JAN95

MAJ Sposato returned to the Federal Prison to conclude interviews with Haitian military prisoners. MAJ Sposato also attended a meeting at International Police Monitor headquarters with Mr. Ray Kelly to discuss logistic support of the IPM and Interim Public Security Force requirements.

20JAN95

Control of JDF passed to the GOH today. The operation of the facility, now called the Haitian Detention Facility (HDF) will be overseen by the 66th MP Company until 15 March, when full control will pass to the GOH. The GOH now controls release of all detainees.

23FEB95

CPT Ford compiled an information paper detailing the inapplicability of MTMC umbrella policy to vehicles rented in Haiti.

24JAN95

COL Bush and MAJ Sposato visit the Federal Prison to meet with the MOJ and representatives from the UN Civilian Mission. CPT Ford determined notary entitlement and authorizations.

- 25JAN95 MG Fisher signed off on the MNF Commander Policy Memoranda.
- 26FEB95 CPT Ford prepared information papers detailing medical care and PX eligibility for members of the MNF.
- 28JAN95 Mr. [name deleted], a Class A agent for JLSC, was found pecuniarily liable for the loss of nearly \$23,000 in U.S. funds. Mr. [name deleted] had no plausible explanation for the loss.
- 29JAN95 IRS tax forms for tax program arrived in mail.
- 30JAN95 10% urinalysis conducted by HHC, 25th ID(L). Processed seriously injured Haitian victim of accident with Philippine IPM for medevac to CONUS. Obtained Secretary of the Army Designee status for victim, which allowed her to be flown at U.S. expense. Medevac necessary due to serious nature of head injury and lack of medical equipment in Haiti.
- 31JAN95 U.S. ship owner Gary Evans held in Cap Haitien jail by order of local judge for failing to off-load goods on his ship which had been paid for by local Haitians. He demanded more money and got jail until he delivers.
- 1FEB95 COL Bush, MAJ Sposato and CPT Ford attended a meeting at the ICRC to discuss state of HDF and Haitian prison system.

- 3FEB95 MNF Commander and COL Bush met with new Minister of Justice (MOJ) resume today to discuss the status of detainees at the HDF. MOJ agrees to review detainee files and release prisoners if no credible evidence existed to prosecute.
- 4FEB95 The Director of the Combined Joint Staff (DCJS) signed a memorandum detailing medical care entitlement guidance.
- 5FEB95 Problem identified with soldiers converting plywood footlockers made by MNF-employed local national labor to individual use. These items are theater property, as the wood and labor is furnished by the U.S. Government and purchased with theater funds.
- 6FEB95 Files on HDF detainees were delivered to the MOJ and Chief of Police Major Dany Toussaint today.
- 7FEB95 Received report from Special Forces on the Island of Gonaives that a 15-year old boy was killed in an apparent range accident. The Special Forces had used the area for target practice minutes before the explosion took place.
- 12FEB95 MNF conducted Great Aloha Run of 5.2 miles (4 times around the LIC perimeter). CPT Ford traveled to Gonaives and settled the ordnance

explosion death claim of the family of a 15-year old boy.

- 14FEB95 Prisoner Joel Geffard, previously held in the National Prison, was moved to the HDF by request of the U.S. Embassy until the Drug Enforcement Agency could arrange for his removal to the U.S. Geffard is an alleged drug king pin, and is subject to indictment shortly by the Miami U.S. Attorney's Office. GOH is expected to expel Geffard, who is a U.S. citizen.
- 15FEB95 Completed court-martial jurisdiction scheme and sent it to the MNF Commander for approval.
- 16FEB95 Received Tactical Terminal Adapter e-mail terminal from J6 today. Greatly enhances ability to communicate with the rear. The MNF Commander approved the UCMJ scheme as proposed. CPT Ford prepared a memorandum detailing the accessibility of medical care for UN civilian personnel.
- 17FEB95 Received word that a Haitian judge visited the HDF and interviewed all detainees and advised them that their cases were being reviewed. Determined that the stay behind JA would have a dedicated CUCV for vehicle support.
- 19FEB95 Riot at the Federal Prison. Extensive damage to confinement areas. MG Fisher responded to the scene and convinced the MOJ to address the prisoners. Some 15 prisoners unaccounted for and another are expected to have escaped.

- 21FEB95 Investigated an incident at the Shodecosa warehouse complex in which a concrete wall collapsed and killed 8 people and injured another 8 after heavy rain. The wall kept looters out, as a slum had developed outside the wall. No liability on part of MNF was apparent. Shodecosa is rebuilding the wall around the clock, as most of the NGOs in Haiti use the complex to store relief supplies. The complex also houses some Brown and Root buildings.
- 22FEB95 Conducted weekly AAR. MAJ Sposato and SSG Bertotti attempted to locate a court-martial witness requested by OSJA Fort Drum for an Operation Restore Democracy case being tried at Fort Drum, to no avail.
- 23FEB95 The GOH directed the release of Claudel Josephat, Gerry Mourra, and Romeo Halloun, three of the most notorious detainees held at the HDF. The GOH did not coordinate the release with the MNF.
- 24FEB95 Claims day coincided with the visit of former President Carter, Senator Sam Nunn, and GEN (Ret) Colin Powell, who were here on a fact finding trip. Also arriving in country today was MAJ Bill Hudson, who will be the UNMIH

Judge Advocate. CPT With attended a meeting at USAID to discuss the Jacmel road rebuilding project.

25FEB95

Six soldiers from 125th MI Bn became sick when they consumed a fish caught out of local waters. Fish apparently was contaminated with ciguatera bacteria. Soldiers were hospitalized for varying periods. All are expected to fully recover. By consuming fish from an unapproved source, the soldiers violated GO#1.

27FEB95

MAJ Sposato attended meeting called by the HQ Commandant to discuss the consolidation/reorganization of the LIC preparatory to the transition to UNMIH on 31 March. LTG Ord, USARPAC Commander visited the LIC today.

1MAR95

CPT With volunteered to remain with the JTF after the main body redeploys in early April. SSG Stannard from 2nd Bde will remain as her NCOIC. CPT Ford released several information papers detailing tax assistance options in theater.

2MAR95

An officer assigned to 1-21 IN improperly directed his soldiers to spray paint a protester from head to toe as the result of an incident in front of the Presidential Palace during President Carter's visit. The Haitian national was caught spray painting anti-President Carter graffiti on the Palace walls.

- 3MAR95 COL Bush and MAJ Sposato visited with Mr. Brutus, the Chief Prosecutor for Port-au-Prince, to discuss the slow pace of the GOH on setting hearings for detainees/prisoners in the HDF and National Prison.
- 6MAR95 LTC Mac Warner, FORSCOM OSJA, arrived in country with the FORSCOM audit team. CPT With attended the UNMIH planning conference at the Hotel Christopher. MAJ Sposato and CPT Ford visit the National Prison to assess conditions 2 weeks after riot. Prisoners continue to experience inordinately long delays before they are brought before judges, and the physical plant continues to deteriorate.
- 7MAR95 MAJ Sposato meets with Mr. Brutus, Chief Prosecutor, at the HDF. Mr. Brutus reviewed the cases of all 22 remaining detainees. MAJ Sposato and LTC Forney, the PM, informed Mr. Brutus that the HDF would be closed on 15 March when the MNF pulled out its equipment and personnel. Mr. Brutus and LT Blaise, the Commander of the National Prison, both indicated that they understood the time constraint.
- 9MAR95 CPT With presented transition plan briefing to BG Hill and COL Swannack. Conducted AAR for OSJA. Finalized relocation plan for SJA office from Bldg, 29 to Bldg. 28, effective 19 March.

- 10MAR95 MAJ Sposato accompanied BG Hill and COL Pulley, SOTF Commander to investigate allegations of excessive force on the part of an ODA team in Les Cayes.
- 13MAR95 Sonapi through its attorney served notice on the MNF that it demanded \$2 million in damages plus 35% interest for the MNF "occupation" of the LIC. The MNF Engineer estimated that the MNF had spent at least \$2.9 million in upgrades on the LIC to date.
- 14MAR95 Completed joint Uniform Lessons Learned for J3 today.
- 15MAR95 The HDF was closed today when all 22 prisoners were transferred to other facilities. The 10 most serious cases were transferred to the National Prison.
- 17MAR95 Prepared final report on disposition of HDF detainees for the IRC.
- 18MAR95 Trial Defense Service office was relocated to Bldg 28 today. Received report that a civilian DC3 had crashed into a medevac UH-60 on landing. The Haiti Air prop plane caused massive damage to the helicopter, which was parked off the runway. No liability apparent on part of MNF. CPT Ford has coordinated investigation and affirmative claim recovery process.

- 19MAR95 MAJ Carl Woods, OSJA, ACOM arrived for a 3-day visit. He will evaluate progress made by Judicial Monitors working under MG Campbell.
- 25MAR95 CPT With attends POTUS (President of the U.S.) Transition Ceremony briefing at which representatives of Presidential Advance Team participate. Conducted OSJA AAR. Over \$120,000 paid out in foreign claims since the operation began in September.
- 26MAR95 Larceny of supplies from Brown and Root warehouse is interrupted by the warehouse supervisor at approximately 2200 hours. Two NCOs and a Specialist are apprehended with over \$3,000 worth of TA50 and other supply items.

*Appendix EE: Extract of Events Recorded in SJA Office Log of
the United States Forces Haiti*

20 OCT 95

Met FOB 31 for ROE Brief at A/DACG
- MAJ Terry - SOTF XO, gave ROE
brief. (Plane landed 1 hour early)

Gave MAJ Terry ROE cards. (CPT
Walker). Work call - SPC Teeple.

GPOA for client in HHC 1st Bde, 101st
Airborne Division (AASLT); action:
CPT O'Connor.

SPOA/Guardianship for client of HHC
126th Finance Bn; action: SGT
Wasilausky.

Claims set up; action Mr. Ligonde, SPC
Teeple, PFC Jones. Claims - three (3)
follow-ups; one (1) report request.
(MINUH).

Initiate work on living will/health care
POA for client. Contacted OSJA, XVIII
Airborne Corps for information
concerning issues presented (action:
SPC Teeple).

Dropped legal opinion on economat
meat disposal to J4; action: CPT
Walker.

Called USARCS- Peggy Skelly-Nolan, re: container claims/impact of embargo on lawful claims. (CPT Walker).

Called LTC Jackson USACOM - re: SPTGP. (CPT Walker)

a) Future work under 607/CIU supplied materials.

b) Joint venture w/ private Haitian construction firm.

Called LTC Risser - 1st COSCOM contracting - left message. (CPT Walker)

MAJ Ackerman visits with CPT Walker. Discussed SST action. (Sting with CID to get back an SST stolen from the LCU at CAP Haitian. Thief walked on LCU, drove SST off, returned later, parked SST and informed the personnel that if they want the keys to the vehicle he must be paid \$100 US.) CPT Walker.

Claims follow-up at UN; action: SPC Teeple, PFC Jones. SGT Wasilausky downloads new NETSCAPE program.

21 OCT 95

On site visit to Glasslight Haiti; action: CPT Walker, SSG from J2, SGT Wasilausky, SPC Teeple, PFC Jones.

Dropped off marriage packet for client.
Met incoming plane; main body 101st arrival; picked up CPT Maimone, SGT Walker (CPT Walker, SPC Teeple, PFC Jones).

RCO meeting w/CPT Walker & CSM
Re: FG 15 for a SFC.

Meeting with CPT Prigge, re: 15-6.
Advised him to complete investigation.

Met MAJ Cordova re: advice on small purchase threshold and \$208,000 purchase of computer equipment as GFE for BRSC.

22 OCT 951000

Met with MAJ Ackerman.

Topics:

Vehicle report of survey,
UN Ids,
SOTF fatal accident (St. Marc),
UN resolutions,
Djibouti life support at the LIC

issues.

Spoke with MAJ Ackerman Re:
interrelation between the time limits in UNSCRs 940, 975, and 1007. The military mission ends on 29 FEB 96, the CIVPOL and UNMIH civilian mission will continue for a period of time after Feb.

Called US ACOM LTC Jackson - discussed - Fairwinds project- The message of Friday of 20 OCT funding was relatively well received. The tone of Paragraph 1.1/1.2 was questionable. Discussed the differences between the 607/LANTDIV proposal and the USAID projects. Other CIU projects maybe similar to Fuertas Caminos type exercises. Base Camp (Fairwinds) construction will be ERC funds. LTC Jackson also mentioned that there maybe a possibility to shift funds from CinC programs pot (lumber at GTMO) to the FY96 HCA projects HCA-DoD-Non-lethal equipment (see 10 USC 402, 2551, 2547; there are also excess vehicles at GTMO that maybe offered to the HNP.

Worked less lethal weapons issues.

TAX: DFAS Tax Advisory Committee "forget it", no support for an exception, maybe able to get legislative relief in a year or two (Tax on TDY).

Solicitation letter opinion-- needs info from the symposium.

Claims- no US fault in the accident, MEDCOM authorized MEDEVAC &

care; who authorized the transport to the US? (CPT Walker).

CID briefed CPT Walker reference the SOTF/Sonapi guard incident. Opined no criminal conduct.

Call from 1LT(P) Smallfield, re: senior officer's vehicle report of survey - SGT Wasilausky is getting forms and will take back to 1LT(P) Smallfield.

Faxed drug case maximum penalties to CDR, 1/2 ACR.

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COL John Burton	LTC John Krump	SGT Gerald Stevens
COL Brian Bush	CPT Nick Lorusso	MAJ Steven Strong
1LT Miranda Cade	LTC Bob McFetridge	SSG Herbert Teope
COL Demmon Canner	LTC John McNeill	MAJ Mark Toole
MAJ Nat Causey	MAJ Larry Morris	CPT Chris Valentino
MAJ Elwood A. Chandler	MAJ Mike Newton	CPT Joe Vonnegut
CPT Dan Cowhig	LTC Larry Passar	CPT Kevin Walker
LTC Dave Crane	CPT Jim Patterson	LTC Mac Warner
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LAW AND MILITARY OPERATIONS IN HAITI

The Security Council . . . Acting under Chapter VII of the Charter of the United Nations, authorizes Member States to form a multinational force under unified command and control and, in this framework, to use all necessary means to facilitate the departure from Haiti of the military leadership, consistent with the Governor's Island Agreement, the prompt return of the legitimately elected President and the restoration of the legitimate authorities of the Government of Haiti, and to establish and maintain a secure and stable environment that will permit implementation of the Governor's Island Agreement on the understanding that the cost of implementing this temporary operation will be borne by the participating Member States.

*Security Council Resolution 940
31 July 1994*

Six months ago, a 30-nation multinational force, led by the United States, entered Haiti with a clear mission: To ensure the departure of the military regime, to restore the freely-elected government of Haiti, and to establish a secure and stable environment in which the people of Haiti could begin to rebuild their country. Today, that mission has been accomplished, on schedule and with remarkable success.

*President William Clinton
31 March 1995*