

**LAW AND  
MILITARY  
OPERATIONS  
IN  
KOSOVO:  
1999-2001**



**LESSONS  
LEARNED  
FOR  
JUDGE  
ADVOCATES**

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

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IN KOSOVO: 1999-2001**

**LESSONS LEARNED FOR  
JUDGE ADVOCATES**

**CENTER FOR LAW AND MILITARY OPERATIONS**

**15 DECEMBER 2001**



# LAW AND MILITARY OPERATIONS IN KOSOVO, 1999-2001: LESSONS LEARNED FOR JUDGE ADVOCATES

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# LAW AND MILITARY OPERATIONS IN KOSOVO: 1999-2001

## LESSONS LEARNED FOR JUDGE ADVOCATES

### I. INTRODUCTION

As Kosovo<sup>1</sup> leapt onto the world stage at the close of the twentieth century, the U.S. military was again engaged in operations marked by legal complexity. Like the missions in Somalia, Haiti, and Bosnia that preceded Kosovo, the broadcast images of the mission only told part of the story. People around the world recall the vivid photographs of the NATO bombing campaign, the Kosovar refugees flooding into temporary camps set up in neighboring countries, and troops moving into Kosovo to keep the peace and begin the rebuilding process. Less visible were the judge advocates (JAs) providing counsel on critical legal issues underlying military action. Also hidden from view but seen throughout this review of the Kosovo operation was a common thread—that of change at a dizzying rate.

The rapid transition in Kosovo from international armed conflict to peacekeeping<sup>2</sup> was just one example of change faced by JAs and legal specialists<sup>3</sup> from the outset. JAs addressed the change in the status of their mission in the former Yugoslav Republic of Macedonia (FYROM) when, overnight, they were no longer part of a UN mission they had been sent to perform. JAs wrestled with the fiscal implications involved in rapidly transforming and training the former Kosovo Liberation Army (KLA) into a U.S. National Guard-like force with an ongoing emergency services mission. JAs sent to Albania as advisors for an attack aviation effort suddenly found

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<sup>1</sup> The province is known as *Kosovo* to the Serbians and *Kosova* to the Albanians. This book will utilize the Serbian term rather than the Albanian as the former is the more commonly used term in most Western style manuals.

<sup>2</sup> Throughout this publication, Operation Joint Guardian will be referred to as a “peacekeeping” mission. “Peacekeeping” is a “military operation undertaken with the consent of all major parties to a dispute, designed to monitor and facilitate implementation of an agreement and support diplomatic efforts to reach a long-term political solution.” JOINT CHIEFS OF STAFF, JOINT PUB. 1-02, DEPARTMENT OF DEFENSE DICTIONARY OF MILITARY AND ASSOCIATED TERMS 322 (12 Apr. 2001). See also JOINT CHIEFS OF STAFF, JOINT PUB. 3-07, JOINT DOCTRINE FOR MILITARY OPERATIONS OTHER THAN WAR 371 (16 June 1995).

<sup>3</sup> On 1 Oct. 2001, the Military Occupational Specialty 71D, Legal Specialist, changed to 27D, Paralegal Specialist. The change was designed to consolidate and unify all aspects of Army Military Legal Services under one career management designation. Throughout this Book, the terms “71D” and “legal specialist” are used.

themselves faced with the unexpected issue of the capture of prisoners of war. JAs supporting a criminal detention mission in Kosovo addressed an explosion in the number of noncriminal detainees posing both a threat to the force and to the overall mission of establishing a secure environment in Kosovo. Daily, JAs working in targeting cells reviewed newly discovered targets of opportunity for compliance with legal obligations. JAs assisting in the mass humanitarian immigration of thousands of refugees from Kosovo to the U.S. faced the unfamiliar web of issues surrounding the use of military forces domestically and the interaction with federal agencies outside the Department of Defense.

Dizzying change and fluid operating environments often do not provide the opportunity for contemplative thought. Additionally, the operational environment may lead deployed JAs to perceive facts and circumstances differently than JAs reviewing the deployment years later with the benefits of time, comfort, and unlimited resources. As described by the first legal advisor to the U.S. task force in Kosovo, an underlying theme of the Kosovo mission was the famous Clausewitzian metaphor: “the light of reason does not move here in the same medium . . . it is not refracted in the same manner as in speculative contemplation.”<sup>4</sup> Undoubtedly, one of the largest hurdles in undertaking a lessons learned publication is trying to understand the manner in which the light of reason was refracted by those participating. With the benefit of speculative contemplation, the Center for Law and Military Operations (CLAMO or “the Center”) has not set out to criticize or question decisions made by those participating in the operation. Rather, CLAMO’s efforts, as described below, summarize the issues and solutions as the JAs who were on the ground in Kosovo described them and, using the benefit of hindsight, attempt to augment the analysis with appropriate legal authority.

The reasoned application of law during these ever-changing operations by military lawyers from all services contributed to the remarkable success of the Kosovo missions during the first two years, the time period reviewed by this Book. NATO’s bombing efforts stopped the Serbian campaign against Kosovar civilians. Millions of displaced Kosovar

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<sup>4</sup> LTC Mark S. Martins, Deputy Staff Judge Advocate, 11D, Task Force Falcon Interim After Action Review, Operational Law CLE, PowerPoint presentation, briefing slide 3 (3 Dec. 1999) (quoting GENERAL CARL VON CLAUSEWITZ, *ON WAR*, bk. I, ch. IV (edited and translated by J.J. Graham, N. Trubner 1873) (1832) (presentation on file with CLAMO). LTC Martins was the former Legal Advisor and Chief of Staff of Task Force Falcon.

civilians returned to their homes in Kosovo. The province of Kosovo enjoys a relative level of peace and security not experienced for a decade. Military lawyers played a role in all of these efforts.

While change provides a common thread through the lessons from Kosovo, there is also an undercurrent of continuity. For example, the Kosovo operations served to validate traditional operational law analysis, which may have been dormant during recent years of peacekeeping. A resurgence of the need to understand the basics of the law of armed conflict, a static concept when compared with other aspects of legal practice, emerged when judge advocates were called on for counsel on targeting and prisoner of war status.

Perhaps the best evidence of continuity, the Kosovo operations also served to validate Army Judge Advocate General's Corps (JAGC) doctrine.<sup>5</sup> The Center can say with great confidence that current JAGC doctrine accurately reflects "how the JAGC provide[s] legal support to operations and how commanders should integrate legal support in operational planning and training."<sup>6</sup> Validation of doctrine is most clearly seen in the roles of the JA in the commanders' key decision-making processes. JAs were engaged in targeting analysis, deep operations planning, information operations, ROE cells, and the military decision-making process. Doctrinal validation is also captured in the support provided by JAs to command and control, sustainment, and personnel service support functions.

The Center can also state that the JAGC is learning the lessons of previous operations. While some of the lessons of this Book are similar to lessons from previous operations, the issues as presented here were, almost without exception, addressed with the knowledge of previous JA efforts and often with the full benefit of the previous research and thought. The clearest example of this is found within the law and order mission conducted by U.S. forces in Kosovo. JAs preparing and executing the law and order mission were able to draw on the lessons of Operation Restore Hope in Haiti and put those experiences to use in Kosovo.

From the outset, this project was an ambitious work. Previous reviews by the Center have focused on a single type of operation, typically

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<sup>5</sup> U.S. DEP'T OF ARMY, FIELD MANUAL 27-100, LEGAL SUPPORT TO OPERATIONS (1 Mar. 2000) [hereinafter FM 27-100].

<sup>6</sup> *Id.* at vii.

occurring in one theater.<sup>7</sup> In contrast, this Book addresses three different operations, with three very different missions, occurring in multiple theaters. Operation Allied Force was NATO’s bombing campaign in the Federal Republic of Yugoslavia; Operation Joint Guardian was the peacekeeping mission to Kosovo; and Operation Provide Refuge was the immigration assistance mission at Fort Dix, New Jersey. Where possible, this work also incorporates some of the lessons of the U.S. Marine Corps, whose 26th Marine Expeditionary Unit, Special Operations Capable (MEU(SOC)), participated in two of the three operations.<sup>8</sup>

Thus, the name of this Book, “Law and Military Operations in Kosovo,” may be slightly misleading. The report reflects the experience of JAs that supported a variety of operations surrounding the Kosovo crisis. This Book captures lessons from JAs operating around the world and across the operational spectrum. JAs supported the Kosovo mission both inside and outside Kosovo—from Germany, FYROM, Italy, Albania, Belgium, and the U.S.—and they provided advice on bombing campaigns, peacekeeping, and humanitarian assistance. Most importantly, this Book attempts to capture not only knowledge helpful for future missions to Kosovo, but also knowledge that allows future JAs and legal specialists deploying to any theater to gain the benefits of historical experience.

The mission of the JAGC is “to provide professional legal support at all echelons of command throughout the range of military operations.”<sup>9</sup> In assessing the JAGC performance of this mission in Kosovo, the Center, where possible, has organized the discussion around the six core legal disciplines: international law, military justice, administrative law, civil law, claims, and legal assistance.<sup>10</sup> The choice of organization, by legal discipline rather than chronologically, is useful yet artificial; it should not lead the reader to believe that all lessons are equal. Two similar sets of facts—one arising while the mission was new and uncertain and the area of operations fluid, the other arising in a mature theater—may, correctly, be

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<sup>7</sup> See THE CENTER FOR LAW AND MILITARY OPERATIONS, THE JUDGE ADVOCATE GENERAL’S SCHOOL, U.S. ARMY, LAW AND MILITARY OPERATIONS IN HAITI 1994-1995: LESSONS LEARNED FOR JUDGE ADVOCATES (1995) [hereinafter HAITI]; THE CENTER FOR LAW AND MILITARY OPERATIONS, THE JUDGE ADVOCATED GENERAL’S SCHOOL, U.S. ARMY, LAW AND MILITARY OPERATIONS IN THE BALKANS 1995-1998: LESSONS LEARNED FOR JUDGE ADVOCATES (1998); THE CENTER FOR LAW AND MILITARY OPERATIONS, THE JUDGE ADVOCATE GENERAL’S SCHOOL, U.S. ARMY, LAW AND MILITARY OPERATIONS IN CENTRAL AMERICA: HURRICANE MITCH RELIEF EFFORTS, 1998-1999 (2000).

<sup>8</sup> Since 1998, CLAMO has included a Marine Corps JA in its ranks to assist with Marine Corps issues.

<sup>9</sup> FM 27-100, *supra* note 5, ¶ 1.1.

<sup>10</sup> *Id.* at Ch. 3.

resolved differently. This is merely recognition of the fact that all operations in Kosovo, legal operations included, benefited from longevity that allowed improvements to infrastructure—logistical, administrative, operational, and legal—and basic comfort.<sup>11</sup> The organization of this Book is also subdivided by operation. This organization has led to similar lessons arising in multiple chapters; however, the context in which the lessons arose provides distinctions justifying the duplication.

CLAMO's lessons learned methodology has not changed since the publication of its first lessons learned book, *Law and Military Operations in Haiti, 1994-1995*.<sup>12</sup> To write the Kosovo book, CLAMO gathered and analyzed information from a variety of resources:

- transcripts from the June, 2000, After Action Review (AAR) hosted by USAREUR and CLAMO and the materials presented during the March, 2001, AAR conducted via video teleconference with 1AD;<sup>13</sup>

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<sup>11</sup> See HAITI, *supra* note 7, at 33 (quoting the SJA, 10th Mountain Division and Fort Drum as saying, “[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.”).

<sup>12</sup> *Id.*

<sup>13</sup> In June 2000, CLAMO and USAREUR hosted a two-and-a-half day AAR in Heidelberg, Germany. During the AAR, participants in military operations during the various Kosovo missions presented materials for comment. The AAR participants were BG Thomas Romig, Assistant Judge Advocate General for Military Law and Operations; COL Warren Hall, Judge Advocate, United States Army Europe and Seventh Army; COL James Coyne, Deputy Judge Advocate, United States Army Europe and Seventh Army; COL Thomas McShane, Staff Judge Advocate, Southern European Task Force; COL John Phelps, Legal Advisor, Allied Forces South; LTC Richard Batty, United Kingdom; LTC Mark Cremin, Staff Judge Advocate, 1st Infantry Division; LTC Mark Martins, Deputy Staff Judge Advocate, 1st Infantry Division; LtCol James Meyen (USMC), Oceans Law and Policy Branch, Naval War College; Lt Col (USAF) Tony Montgomery (USAF), Deputy Staff Judge Advocate, European Command; LTC Mark Oswald, Deputy Staff Judge Advocate, Southern European Task Force; LTC Patt Prugh, Legal Advisor, Allied Forces South; LTC Maggie MacDonald, Canada, Supreme Headquarters Allied Powers Europe; LTC Richard Sprunk, Contract Law Division, United States Army Europe and Seventh Army; LTC Sharon Riley, Deputy Director, CLAMO; MAJ Tracy Barnes, 1st Infantry Division; MAJ Larrs Celtnieks, 1st Armored Division; MAJ Brian Goddard, United States Army Contracting Command, Europe; MAJ Michael Henry, 1st Infantry Division; Maj Brian Palmer (USMC), European Command; MAJ Pam Stahl, Deputy Staff Judge Advocate, 1st Armored Division; Maj. Will Ferrell (USMC), Marine Representative, CLAMO; CPT Peter Amuso, V Corps; CPT Jimmy Bagwell, 1st Infantry Division; CPT Teresa Blount, 1st Infantry Division; CPT Mary Card, 1st Armored Division; CPT Stephen Carpenter, 1st Armored Division; CPT Elizabeth Duffy, 1st Armored Division; CPT Kerry Erisman, V Corps; CPT Grace Gallagher, 1st Armored Division; CPT Larry Gwaltney, 1st Infantry Division; CPT Brian Heslin, 1st Infantry Division; CPT Chris Jacobs, 1st Infantry Division; CPT Charlie Kovats, 1st Infantry Division; CPT Jay McKee, United States Army Europe and Seventh Army; CPT Craig McNeil, 1st Infantry Division; CPT Charlie Poche, 1st Armored Division; CPT Carlos Santiago, V Corps; CPT Keith Moore-Erickson, V Corps; WO1 Gregory Salyards, Southern European Task Force; and SSG Michelle Browning, 1st Infantry Division. In March

- AARs from legal offices worldwide;
- interviews of JAs that participated in operations;
- materials from the Center for Army Lessons Learned;
- reports, critiques, and other relevant documents produced by the United Nations, Organization for Security and Cooperation in Europe, Joint Center for Lessons Learned, U.S. Army Peacekeeping Institute, and other organizations participating in the Kosovo mission.

As with any publication designed for a broad audience, some of what follows will seem oversimplified. This Book does not shy away from restating basic principles. This approach may provide some lessons that seem obvious to veterans of other U.S. deployments, but valid basic principles are important to emphasize and may be lessons of first impression for many JAs and legal specialists. In addition to basic principles, the Book highlights ongoing debates—providing citations to other sources for further study, but recognizing that final solutions may not yet exist. By not providing solutions to all problems addressed, this Book recognizes that issue spotting in itself is a lesson for future operations and hopes that the publishing of the issue spurs others, in a position to effect resolution, to consider answers prior to future U.S. operations.

This lessons learned Book is not a history of JAs involved in the Kosovo mission. However, an appreciation of the historical setting of the region which gave rise to the operation in Kosovo is necessary for two reasons. First, the history of the region provides the contextual background to understand the lessons learned. Second, the need to understand the history in order to provide proper counsel is, in itself, a lesson learned from operations in Kosovo. Accordingly, Chapter II of this Book provides a history of the region. It outlines the actions of the various organizations (e.g., UN, NATO) during the Kosovo conflict, recounts the post-conflict situation, and discusses the U.S. involvement through Operation Allied Force, Operation Joint Guardian, and Operation Provide Refuge. The remainder of the Book summarizes lessons learned. Chapters III, IV, and V capture the lessons of Operations Allied Force, the NATO bombing

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2001, CLAMO hosted a video teleconference with 1st Armored Division. Participants in the AAR were LTC John Kent, Staff Judge Advocate, 1st Armored Division; LTC Sharon Riley, Deputy Director, CLAMO; MAJ Dan Kelly, 1st Armored Division; Maj Will Ferrell (USMC), Marine Representative, CLAMO; MAJ Keith Puls, Graduate Course Student, The Judge Advocate General's School, U.S. Army; CPT Joe Berger, 1st Armored Division; CPT Paula Schasberger, 1st Armored Division; CPT Mike Forrester, 1st Armored Division; CPT Marie Anderson, 1st Armored Division; CPT Larry Gwaltney, CLAMO; and SSG Donnell McIntosh, 1st Armored Division.

campaign, Joint Guardian, the peacekeeping mission, and Provide Refuge, the immigration assistance mission at Fort Dix, New Jersey, respectively.

Publishing this Book is only one facet of the overall CLAMO mission to examine legal issues that arise during all phases of military operations and devise training and resourcing strategies to address those issues. In fulfilling its overall mission, the Center serves as a repository within the JAGC for all-source data and information.<sup>14</sup> Some of that raw data is included in this Book in the form of appendices. Other data is referenced within the footnotes to the lessons. Additional information, which may not have found its way into this Book may, nevertheless, be important for future operations. To provide all of this information to the largest military legal audience possible, CLAMO maintains vast databases with original documents, after action reports, standing operating procedures, operations plans, annexes, and training aids. These databases allow JAs to design and tailor deployment packages and gives them direct access to valuable resources. Access to these databases is obtained through the JAGCNET at [www.jagcnet.army.mil](http://www.jagcnet.army.mil). Additionally, members of the military legal community may contact the Center directly at [CLAMO@hqda.army.mil](mailto:CLAMO@hqda.army.mil) to request any of these materials.

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<sup>14</sup> The Center seeks to fulfill its mission in five ways. First, it is the central repository within The Judge Advocate General's Corps for all-source data, information, memoranda, after-action materials, and lessons learned pertaining to legal support to operations, foreign and domestic. Second, it supports judge advocates by analyzing all data and information, developing lessons learned across all military legal disciplines, and by disseminating these lessons learned and other operational information to the Army, Marine Corps, and Joint communities through publications, instruction, training, and databases accessible to operational forces, worldwide. Third, it supports judge advocates in the field by responding to requests for assistance, by engaging in a continuous exchange of information with the Combat Training Centers and their judge advocate observer-controllers, and by creating operational law training guides. Fourth, it integrates lessons learned from operations and the Combat Training Centers into emerging doctrine and into the curricula of all relevant courses, workshops, orientations, and seminars conducted at The Judge Advocate General's School. Fifth, in conjunction with The Judge Advocate General's School, it sponsors conferences and symposia on topics of interest to operational lawyers.

## II. THE MILITARY OPERATIONS AND THEIR CONTEXT: A HISTORY OF KOSOVO

*A page of history is worth a volume of logic.*

*Oliver Wendell Holmes, Jr.<sup>1</sup>*

### A. INTRODUCTION

*Being creatures of such a young nation, it's more than a little difficult for Americans to understand the conflict in Kosovo. Unlike American wars, Kosovo's armed conflict is not defined by a generation, it's an heirloom passed down from generation to generation. Today's conflict in Kosovo is a child of centuries of conflict. Kosovo is a chronicle of refugees fleeing and returning to the area over generations. There have been dozens of wars over hundreds of years. Each generation remembers the wrongs done to the last and passes the bitterness on to the next.<sup>2</sup>*

From time immemorial, the area that is modern-day Kosovo has been the home, be it temporary or for an extended period, to many different groups of people. For two of these groups, the Serbians and Albanians, the Balkan<sup>3</sup> province of Kosovo<sup>4</sup> holds a unique and profound historical significance.<sup>5</sup>

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<sup>1</sup> JOHN BARTLETT, FAMILIAR QUOTATIONS 543 (16th ed. 1992) (citing *New York Trust Co. v. Eisner*, 256 U.S. 345, 349 (1921)).

<sup>2</sup> Chicago-Kent College of Law, A Historical View of the Conflict in Kosovo, War Crimes Evidence Library 1, <http://pbosnia.kentlaw.edu/projects/warcrimes/history.html> [hereinafter War Crimes Library] (last visited 24 Aug. 2001).

<sup>3</sup> The term "Balkan" is derived from the Turkish word for mountain, or "chain of wooded mountains." WILLIAM T. JOHNSEN, DECIPHERING THE BALKAN ENIGMA: USING HISTORY TO INFORM POLICY 9 (1995) (a book prepared for the Strategic Studies Institute, United States (U.S.) Army War College). The Balkan countries include Albania, Bosnia and Herzegovina, Bulgaria, Croatia, the Federal Republic of Yugoslavia (FRY) (comprised of Kosovo, Montenegro, Serbia, and Vojvodina), Greece, the Former Yugoslav Republic of Macedonia (FYROM), Romania, Slovenia, and Turkey. The territory that became the Kingdom of Serbs, Croats, and Slovenes in 1918 ultimately became known as Yugoslavia in 1929. Yugoslavia ceased to exist in 1991, but both Montenegro and Serbia remain constituent republics in the FRY. *Id.* at 8.

<sup>4</sup> Present-day Kosovo is the southern province of the FRY. The FRY is approximately the size of the state of Kentucky (39,517 square miles), and the province of Kosovo is roughly the size of the state of Maryland (4,126 square miles). The FRY is bordered to the north by Hungary, to the east by Romania and Bulgaria, to the south by the FYROM and Albania, and on the west by the Adriatic Sea, Bosnia and Herzegovina, and Croatia. See Figure 4 (map of the Balkans) for greater detail on the location of each surrounding country. CENTRAL INTELLIGENCE AGENCY, THE FORMER YUGOSLAVIA, A MAP FOLIO 4 (1993).

<sup>5</sup> See ASSOCIATION OF THE UNITED STATES ARMY, INSTITUTE OF LAND WARFARE, AUSA BACKGROUND BRIEF: ROOTS OF THE INSURGENCY IN KOSOVO 1 (June 1999) [hereinafter AUSA BRIEF] (on file with CLAMO).

The Serbs perceive Kosovo as the birthplace of their civilization, their ancestral homeland. After the Serbs initially inhabited the area in the sixth century A.D., the province served as a European political and cultural center under the Serbian Nemanjic dynasty's control from the twelfth through the fourteenth centuries A.D.<sup>6</sup> It is the one true location in which Serbs can find the riches of their medieval religious and political heritage—that is, the scenes of the defining events and the places that connect them with their sense of nationhood.<sup>7</sup> Maintaining control over Kosovo as a Serbian province is a fundamental aspect of the Serbian national identity.<sup>8</sup>

Conversely, the Albanians claim Kosovo based on their status as direct descendants of the ancient Illyrian tribes which inhabited a considerable amount of land in the Balkans—to include Kosovo—over 2,000 years ago, prior to the Greeks and centuries before the Slavic people, including the Serbs, migrated south into the Balkans.<sup>9</sup> Toward this end, the Albanians point to their language, *Shqip*,<sup>10</sup> which linguistic experts have determined to be a derivative of the Illyrian tribal language and distinct from any other recognized language.<sup>11</sup> Moreover, evidence clearly indicates that

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<sup>6</sup> See CENTRAL INTELLIGENCE AGENCY, OFFICE OF DCI INTERAGENCY BALKAN TASK FORCE, KOSOVO: HISTORY OF A BALKAN HOTSPOT 1 (June 1998) [hereinafter BALKAN HOTSPOT] (an intelligence report prepared by the Office of the Director of Central Intelligence (DCI) Interagency Balkan Task Force) (on file with CLAMO).

<sup>7</sup> See AUSA BRIEF, *supra* note 5, at 1; Organization for Security and Cooperation in Europe (OSCE), Kosovo: The Historical and Political Background, Kosovo/Kosova: As Seen, As Told 1 (1999), <http://www.osce.org/kosovo/reports/hr/part1/ch1.htm> [hereinafter OSCE Brief]. Perhaps the most important of these events was the Turks' defeat of the Serbs on 28 June 1389 at the Battle of Kosovo Polje, on the plains that are west of what is now Pristina (or Prishtina). BALKAN HOTSPOT, *supra* note 6, at 1. See also *infra* notes 57–64 and accompanying text. Kosovo is also the site of numerous Serbian Orthodox monasteries and other locations that portray the rich Serbian cultural tradition. See generally War Crimes Library, *supra* note 2, at 1; ROBERT D. KAPLAN, BALKAN GHOSTS: A JOURNEY THROUGH HISTORY 35 (1993) (referring to the Serbian Orthodox medieval monasteries as "safeboxes of art and magic, most powerfully symbolized by Gracanitsa [Gracanica].").

<sup>8</sup> See AUSA BRIEF, *supra*, note 5, at 1. The Serbs, and their sympathizers, firmly believe that the Albanians were "imported *en masse* from the Caucasus, by the Ottoman Turks," long after the Serbs had settled the land, only then to have the Turks wrest it from their control. STEPHEN SCHWARTZ, KOSOVO: BACKGROUND TO A WAR 1-2 (2000).

<sup>9</sup> Centuries ago the Illyrians, or the primordial Albanians, conquered a much greater area than they were able to dominate later in time. The land that was Roman Illyricum included present-day western Slovenia, Croatia, Bosnia, all of Albania, and much of Serbia. See SCHWARTZ, *supra* note 8, at 12.

<sup>10</sup> Literally translated as the "speech of the eagles." *Id.* at 1.

<sup>11</sup> War Crimes Library, *supra* note 2, at 1. Illyrian lands were the most thoroughly "Latinized" areas within the region, although the native dialect persisted in the inaccessible southwestern valleys. The dialect also survived the later Slavic invasions and is spoken to this day by the Albanian people, with a heavy overlay of Latin, Greek, Slavic, and Turkish words. L.S. STAVRIANOS, THE BALKANS SINCE 1453, at 21 (1958). "The Danish scholar Kristian Sandfelt, founder of modern Balkan linguistics, traced the very name of

the massive Slavic invasions of the sixth century A.D. forced these Illyrian settlers out of Kosovo and into Albania, western Macedonia, and southeastern Montenegro.<sup>12</sup> Centuries later, after the Ottoman Turks drove the Serbs from Kosovo in the late fourteenth century, significant numbers of Albanians migrated back into Kosovo, the territory they perceived to be their homeland. The early twentieth century then saw numerous shifts in power within Kosovo, but today the Albanians represent a significant majority—almost 90%—of the province's population.<sup>13</sup> Thus, Albanians also hold a cultural, religious, and emotional attachment to the land, and maintaining control of Kosovo is absolutely vital to the Albanians as well as the Serbs.

As a result of cultural and religious differences, Kosovo, a microcosm of the Balkan region, has been the stage for scenes of distrust, strife, hatred, and violence among and between its inhabitants and neighbors throughout its existence. It is extremely difficult to accurately portray the magnitude and constancy of the violence that has engulfed the entire region over the past two millennia.<sup>14</sup> Nevertheless, as alluded to by the quotes at the outset of the chapter, comprehending the underlying history of a conflict is not only essential to understanding the conflict but also to placing our nation's related military operations into the proper context. Armed with the following historical backdrop of Kosovo and the surrounding region as it relates to Kosovo, one begins to better understand the source of the current tension and discord and the international community's response and involvement.

Thus, two themes are constant throughout this history: first, that the present crisis clearly finds its roots in events that occurred within the region centuries ago; and second, that Kosovo holds tremendous value for Serbs and Albanians alike. The recent bloodbath that is Kosovo only serves to underscore the overwhelming importance of the region to each respective culture. As such, neither ethnic group is likely to give up its claim to the province without a significant struggle. That each is so intent on maintaining its grasp on an area that is so inextricably intertwined with its

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Dardania, the Roman province that is now Kosovo, to the Albanian word *dardhe*, or pear; thus, 'the land of pear-trees.'" SCHWARTZ, *supra* note 8, at 12.

<sup>12</sup> See SCHWARTZ, *supra* note 8, at 12-13.

<sup>13</sup> War Crimes Library, *supra* note 2, at 2.

<sup>14</sup> See JOHNSEN, *supra* note 3, at 9.

past is demonstrative of the extraordinary effect that history has on the present.<sup>15</sup>

## B. KOSOVO IN THE EARLY YEARS

For centuries prior to the Roman conquest of the Balkans during the third and second centuries B.C., two non-Hellenic<sup>16</sup> people occupied the region—the Illyrians and the Thracians.<sup>17</sup> The Thracians settled the general area that is present-day Bulgaria and parts of Greece and Turkey.<sup>18</sup> The Illyrians consisted of numerous tribes that are believed to be the most ancient race in southeastern Europe. Initially settling most of what is present-day Yugoslavia, the Illyrians are the earliest-known inhabitants of Bosnia and Kosovo.<sup>19</sup> Many scholars believe that the Illyrian culture evolved from as far back as the Stone Age and ultimately manifested itself in the lands that now comprise Albania and the immediate surrounding region.<sup>20</sup> At its inception, the Illyrian kingdom was vast, encompassing

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<sup>15</sup> See CENTER FOR LAW AND MILITARY OPERATIONS, THE JUDGE ADVOCATE GENERAL'S SCHOOL, U.S. ARMY, LAW AND MILITARY OPERATIONS IN THE BALKANS, 1995-1998, LESSONS LEARNED FOR JUDGE ADVOCATES 28-42 (13 Nov. 1998) [hereinafter THE BALKANS].

<sup>16</sup> The first great civilization within the Balkans was the Greek civilization, which settled on the coastlines of present-day Greece and its islands, as well as the Aegean coast of what is today Turkey. The first great center of Greek culture was established on the island of Crete from 3400 B.C. to 1100 B.C. The Greeks called themselves "Hellenes," whereas the term "Greek" comes from Latin, the language of the later Romans. During the first millennium B.C., ancient Greek city-states led by Athens made tremendous advances in the areas of government, philosophy, and the arts. STAVRIANOS, *supra* note 11, at 15-17.

<sup>17</sup> *Id.* at 17. The Thracians were a large collection of unified tribes that initially settled in southeastern Europe at the end of the second millennium B.C. The formation of their tribal community "appreciably antedates the emergence of the other Indo-European communities," including Roman, Celtic, German, Slavic, and Scandinavian. Dimiter Markovski, The Thracians, *in* Bulgaria: A Brief History Outline 1, at <http://www.eunet.bg/books/history/thracians.html> [hereinafter Thracian History] (last visited 25 Oct. 2001). The early Thracians, or "Proto-Thracians," took part in the Trojan War and the famous expedition against the city of Troy in approximately 1200 B.C., a battle that has been memorialized in the *Iliad* by Homer. See STAVRIANOS, *supra* note 11, at 16; Thracian History, *supra*, at 1.

<sup>18</sup> The Thracians inhabited the area that extended from the Carpathian Mountains in the north to the Aegean Sea in the south, and from the Black Sea in the east to the Morava and Vardar Rivers valley in the west. Thracian History, *supra* note 17, at 1.

<sup>19</sup> See G. Richard Jansen, Albanians and Serbs in Kosovo, An Abbreviated History 1 (June 1999), <http://lamar.colostate.edu/~grjan/kosovohistory.html>; STAVRIANOS, *supra* note 11, at 17; Thierry Domin, NATO/SFOR Informer: History of Bosnia and Herzegovina, Ch. 1, at 1 (July 2001), at <http://hq.nato.int/sfor/indexinf/117/p03a/t0103a.htm>. During the first millennium B.C., the Greeks established a string of colonies on Illyrian lands, which allowed the Illyrians greater contact with a more advanced civilization, from which their tribes evolved both economically and politically. The Illyrians, A Brief History 2, at <http://www.albanian.com/main/history/illyrians.html> [hereinafter Illyrian History] (last visited 24 Oct. 2001). See also *supra* note 3 (containing a brief discussion on the history of Yugoslavia).

<sup>20</sup> See Illyrian History, *supra* note 19, at 2. All indications suggest that the Illyrians are descendants of the earliest Aryan immigrants. Domin, *supra* note 19, at 1.

Dalmatia,<sup>21</sup> Croatia, Bosnia and Herzegovina, Montenegro, and a sizeable portion of present-day Serbia and Kosovo.<sup>22</sup> The demise of the Illyrian kingdom can be traced to the fourth century B.C., when Philip II, the Macedonian king from 358-336 B.C., engaged and defeated many of the Illyrian tribes in an effort to expand Macedonia's empire.<sup>23</sup>

Alexander II, who subsequently became one of the few men in history to be referred to as "the Great," ascended the throne on his father Philip's death in 336 B.C. and served as king until his own death in 323 B.C. Alexander used the formidable Macedonian Army to consolidate his hold over Greece and end the age of the powerful Greek city-states in southeastern Europe.<sup>24</sup> Moreover, during his relatively short reign as king, he conquered territories from Italy to Mesopotamia to Persia to India, including Illyrian lands and present-day Kosovo.<sup>25</sup> Attempts to unify Macedonia's considerable empire died along with Alexander in 323 B.C. With his death, the region began to disintegrate into a period of continual

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<sup>21</sup> Dalmatia is the historic region of Croatia along the Adriatic Sea, extending from Rijeka to the Gulf of Kotor, with its provincial capital located in Split. It has long been the subject of disputes between neighboring lands over its sovereignty. Originally vanquished by the Romans in the first century A.D., it became a Roman province. It was subsequently conquered by the Ostrogoths in the fifth century A.D., the Byzantine Empire in the sixth century, and finally settled by the Slavic people in the seventh century. The kingdoms of Croatia and Serbia divided it north and south, respectively, in the tenth century. Control of Dalmatia continued to change hands numerous times from the thirteenth through twentieth centuries, finally becoming part of Yugoslavia as part of the treaties that arose out of World War II. Following Croatia's secession from Yugoslavia in 1991, many of the beautiful ports and harbors on the Dalmatian coast were shelled by the Yugoslavians, and Serbs and Croats engaged in brutal fighting in an attempt to regain control of various parts of Dalmatia. See BARBARA JELAVICH, *HISTORY OF THE BALKANS, EIGHTEENTH AND NINETEENTH CENTURIES* 23-25 (1983); Encyclopedia.com, Dalmatia, at <http://www.encyclopedia.com/articles/03406.html> (last visited 1 Nov. 2001).

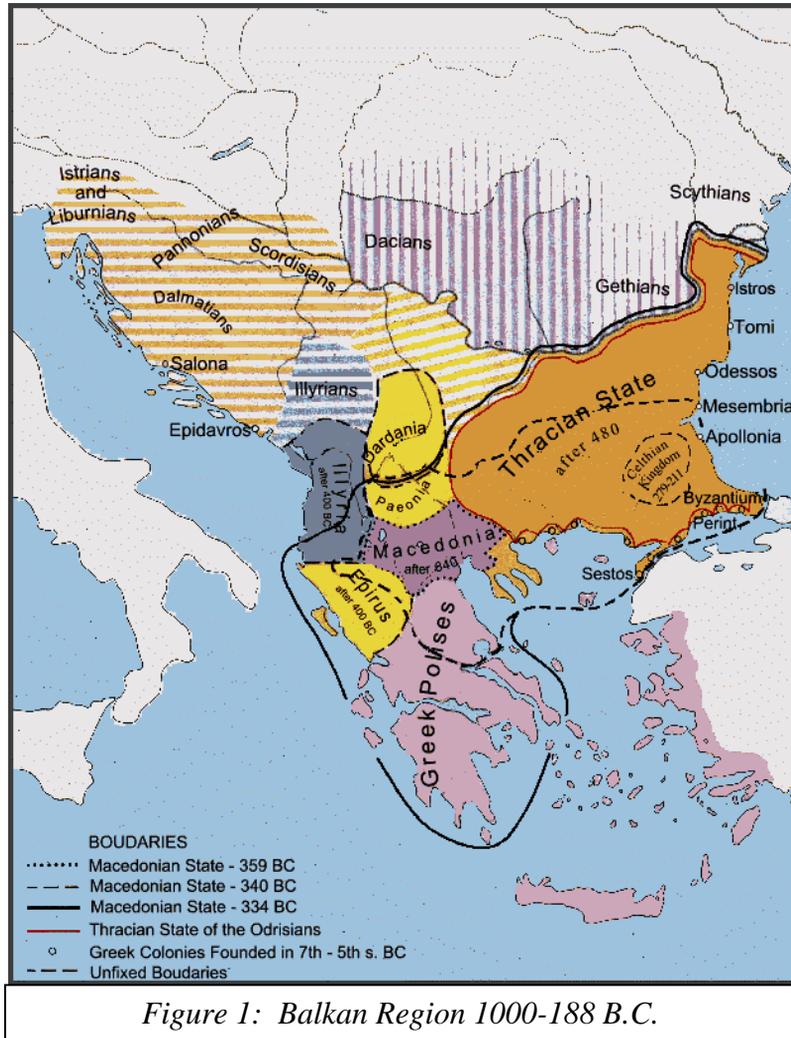
<sup>22</sup> See Illyrian History, *supra* note 19, at 1. The Illyrians were not a homogeneous unit of people but a collection of tribes that inhabited the Balkans. *Id.* Despite limited commerce with Greek colonies that had sprung up on the Dalmatian coast, "Illyria remained a comparatively self-contained and conservative region, with its tribes living in a state of intermittent warfare with their neighbors and one another." STAVRIANOS, *supra* note 11, at 18. However, the Illyrians comprised the core of the pre-Hellenic population inhabiting the southern portion of the Balkan Peninsula, extending into Thrace (which territories are now parts of modern-day Bulgaria, Greece, and Turkey, and lands east of Macedonia) and Italy. Domin, *supra* note 19, at 1.

<sup>23</sup> See STAVRIANOS, *supra* note 11, at 19. Philip, and his successor, Alexander II, also engaged the Thracians in an effort to subjugate these unruly tribes. *Id.*

<sup>24</sup> Both Philip and Alexander took advantage of Greece's weakened state, the result of outside invasions coupled with internal strife, in the form of the Peloponnesian Wars, which took place from 431-404 B.C. These wars pitted Athens and her allies against Sparta and her allies for control of the Greek states. See J.M. ROBERTS, *A SHORT HISTORY OF THE WORLD* 121 (1993).

<sup>25</sup> "By 324 B.C. . . . the entire world east of Rome, everything, was under the control of a single man, Alexander the Great." Richard Hooker, *Rome: The Conquest of the Hellenistic Empires* 1, at <http://www.wsu.edu:8080/~dee/rome/conqhell.htm> (last visited 24 Oct. 2001).

wars between the monarchies that developed in the wake of his passing.<sup>26</sup> The result of this internal strife was a thoroughly weakened set of ruling monarchies, ripe for the Roman legions to divide and conquer, which, for the Illyrians, began in 229 B.C.<sup>27</sup>



While their intermittent wars in the Balkans lasted for over three centuries, the Romans eventually conquered the Illyrians and all of the Balkans around the first century B.C.<sup>28</sup> Although under Roman rule from

<sup>26</sup> Alexander left no heir to assume his positions and, as such, his military generals soon began squabbling over the spoils. See ROBERTS, *supra* note 24, at 126.

<sup>27</sup> See STAVRIANOS, *supra* note 11, at 19.

<sup>28</sup> The Romans regarded the Illyrian territory as a unique bridgehead for Roman conquests east of the Adriatic. Illyrian History, *supra* note 19, at 2. Figure 1 depicts the Balkan region from 1000 B.C. to 188 B.C. Balcanica.org, History in Maps, at <http://www.balcanica.org/history/1000-188BC.html> (last visited 11 Dec. 2001).

this time through the second century A.D., Illyrians, Thracians, and Celts<sup>29</sup> continued to inhabit the general area now considered Kosovo,<sup>30</sup> while Rome completed the incorporation of what would become Yugoslavia into its empire.<sup>31</sup> Notably, while other cultures languished under the Romans' reign, the Illyrians thrived.<sup>32</sup> This period of *Pax Romana*<sup>33</sup> allowed different Balkan cultures to live together in relative harmony. Yet Rome's grip on the region was relatively short-lived. By the close of the third century A.D. it began to loosen. After a century or more of economic crises, internal dissent, and limited foreign invasions the Romans faced a deluge of new barbarian invasions at the close of the fourth century A.D.<sup>34</sup>

The West Goths, or Visigoths, traversed the Carpathian Mountains and crossed the Danube to lay siege to almost all of the Balkan Peninsula. In 410 A.D., they drove westward into Italy and eventually captured and sacked Rome.<sup>35</sup> Thereafter, Rome was overrun yet again, first by Attila the

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<sup>29</sup> The Celts were a group of tribal people who spoke an Indo-European dialect and initially settled in southwestern Germany and eastern France during the second millennium B.C. Using their superior warrior skills, iron weapons, and sleek horses, they continued to spread throughout Europe, into France, Italy, and Spain, and then into Asia Minor. They fought the Macedonians and raided Greek centers of culture. In the fourth century B.C., the Germanic tribes forced them out of Germany and northern Europe. Their culture then began to intermingle with the other cultures in southeastern Europe during the first few centuries A.D. See Encyclopedia.com, Celt, at <http://www.encyclopedia.com/articles/33033.html> (last visited 1 Nov. 2001).

<sup>30</sup> The area that is now considered Kosovo was the Roman province of Dardania. Jansen, *supra* note 19, at 1; SCHWARTZ, *supra* note 8, at 12.

<sup>31</sup> See BALKAN HOTSPOT, *supra* note 6, at 1. The Roman province of Illyricum included what is present-day western Slovenia, Croatia, Bosnia, all of Albania, and much of Serbia. SCHWARTZ, *supra* note 8, at 12.

<sup>32</sup> Under the Romans the Illyrian lands were able to rise from their former obscurity and backwardness and flourish. See STAVRIANOS, *supra* note 11, at 21. Latin civilization spread throughout the land, Illyricum served as fertile recruiting grounds for the Roman legions, and "more than one Illyrian soldier fought his way up from the ranks to the imperial purple." *Id.* Moreover, some of the most well known Roman Emperors were actually the offspring of Illyrian peasants. *Id.*

<sup>33</sup> The literal translation of the term means Roman power, or rule. "Roman power brought peace for longer periods of time to a larger area of the Mediterranean and Near East than ever before. . . . Before the Republic came to an end, it had created a political and military framework on a scale without parallel west of China and protected Hellenistic civilization. Many different cultures could live side by side within it and make contributions to the cosmopolitan whole." ROBERTS, *supra* note 24, at 132.

<sup>34</sup> See Hooker, *supra* note 25, at 1. With pressure from the invaders becoming excessive, Emperor Constantine vacated the imperial city of Rome for the old Greek colony of Byzantium (now Istanbul, Turkey), making it the new administrative capital of the Roman Empire. He promptly named the capital "New Rome," but it was instead popularly known as Constantinople—or, the "polis," or city, of Constantine. With the move of the empire's capital to the east, the Balkan Peninsula, over time, assumed increased importance over the western Roman territories. See also JOHNSEN, *supra* note 3, at 12-13 (indicating that the divisions between the eastern and western halves of the Roman Empire expanded quickly).

<sup>35</sup> See STAVRIANOS, *supra* note 11, at 22; Hooker, *supra* note 25, at 3. The Goths were a Germanic tribe that originated in southern Scandinavia. Population pressures forced them to move to new lands between the Oder and the Vistula Rivers, in what is now Poland. From there they apparently moved into the Ukraine, and subsequently swept south and southwest, crossing the Danube River and defeating the

Hun from 451-453 A.D., and then by the Vandals, another Germanic tribe, in 455 A.D.<sup>36</sup> The fall of the Roman Empire was inevitable when in 476 A.D. the barbarian chief Odoacer and his tribe deposed the Roman emperor—the boy-ruler Romulus Augustulus—and named himself emperor.<sup>37</sup> The beginning of the end of Roman rule had arrived,<sup>38</sup> and the Medieval Period, or Middle Ages, had begun.

The influx of the Slavic people into the Balkan Peninsula began in the fourth century A.D. with these invasions of Roman territories. Yet the arrival of the Slavs was more of a gradual drift or migration as opposed to a sudden invasion.<sup>39</sup> By the sixth century, these Slavic groups began to permanently settle in the region. Although the Huns and other ethnic groups marched into the region as well, they did not stay. Agriculturally minded Slavs, however, sunk roots in the Balkans making ownership claims that still exist to the present day.<sup>40</sup>

Over time, the region's Slavic tribes developed into three distinct groups—Croatians, Serbians, and Slovenians.<sup>41</sup> The Slovenians, or Slovenes, settled in the lands at the head of the Adriatic Sea. The Croatians generally landed in the area bounded by the Drava River and the Adriatic Sea. The Serbians became the dominant group in the lands now commonly recognized as the FRY—Serbia, Montenegro, and Kosovo—and in Bosnia and Herzegovina as well.<sup>42</sup> By the end of the eighth century, these Slavic

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Romans in numerous battles, and capturing their lands, during the third and fourth centuries A.D. The tribe was eventually forced into northern Italy by the advancing Huns. See The Goths, at <http://www.btinternet.com/~mark.furnival/goths.htm> (last visited 1 Nov. 2001).

<sup>36</sup> From 410-476 A.D. Rome was subjected to repeated attacks by additional German tribes, to include the Franks, East Goths, Angles, and Saxons. STAVRIANOS, *supra* note 11, at 22-23.

<sup>37</sup> *Id.* at 23.

<sup>38</sup> *Id.* This was primarily true for the western half of the Roman Empire. Although the barbarians assumed control of the western half, they still perceived the emperor at Constantinople as their sovereign, and called their own leader "patrician," a Roman term. Vestiges of Roman rule clearly remained in the eastern half, as the Roman emperor remained as the ruler over the Byzantine empire, or "Christendom," until 1453 A.D., when Constantinople finally fell. See Hooker, *supra* note 25, at 9; ROBERTS, *supra* note 24, at 134-35, 150-54.

<sup>39</sup> STAVRIANOS, *supra* note 11, at 23.

<sup>40</sup> *Id.*

<sup>41</sup> See BALKAN HOTSPOT, *supra* note 6, at 1. A fourth group, comprised of those Slavs not within one of the other three ethnic groups, moved southeast toward the Black Sea. They were soon conquered by the Bulgarians, a group related in some aspects to the barbarous Huns. In time, however, the Slavic culture overtook that of the minority Bulgarians, and that Slavic culture remains in Bulgaria today. See STAVRIANOS, *supra* note 11, at 24.

<sup>42</sup> See BALKAN HOTSPOT, *supra* note 6, at 1. Those Slavs settling in the region known as "Rashka," or "Rascia," which included the territory that is now Kosovo, took the name of the dominant Slav tribe, or "Serbs." OFFICE OF EXTERNAL AFFAIRS, SERBIAN ORTHODOX CHURCH IN THE U.S.A., KOSOVO IN THE

groups had become the region's permanent inhabitants, and the area became known as the Land of the Slavs (Slavinia), which evolved into modern-day Yugoslavia.<sup>43</sup> Although differing views exist as to exactly where each of these ethnic groups originated—perhaps the Ukraine, Russia, or any of the Nordic countries—each settled in a different location and different cultures evolved.<sup>44</sup> Nevertheless, it is important to note that Croats, Slovenes, and Serbs all share a common ancient Slavic heritage or origin.<sup>45</sup>

The continuous migration of the Slavs southward resulted in the assimilation or displacement of the Illyrian people, who moved south and eventually settled in what is present-day Albania.<sup>46</sup> Meanwhile, the Serbians established an emergent state in the lands they occupied within Yugoslavia. Late in the ninth century, however, the Bulgarian khan, or king, Khan Simeon, who ruled from 893 through 927 A.D., conquered the Serbian lands as part of an attempt to form a great Balkan Slavic empire. This was just one of a number of similar attempts aimed at conquering much sought-after Serbian territory. Kosovo and other Serbian lands were "repeatedly a point of contention among Bulgarian, Hungarian, Byzantine, and Roman leaders into the 12th century."<sup>47</sup>

At this juncture, it is necessary to pause for a moment and consider the importance and effect of the region's different religions on Kosovo's history. Christianity based on the Roman Catholic Church had been the prevailing religion during these early years. However, Constantine's transfer of the administrative capital of the Roman Empire had taken the seat of government to Constantinople but left the seat of the Roman Catholic Church in Rome. A conflict ensued between the two halves of the empire over control of the church. Over time, doctrinal differences between the eastern and western halves increased, culminating in the "Great Schism" of

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HISTORY OF THE SERBIAN CHURCH 2 (2000), available at [http://www.oea.serbian-church.net/kosovo\\_history.html](http://www.oea.serbian-church.net/kosovo_history.html) (last visited 24 Aug. 2001).

<sup>43</sup> See Domin, *supra* note 19, at 1. "Jug" in Serbo-Croatian, the Serbian language, literally translated means "south." As such, the translation of "Yugoslavia" is "Kingdom of the South Slavs." See THE BALKANS, *supra* note 15, at 30; ALESKA DJILAS, THE CONTESTED COUNTRY 2-3 (1991).

<sup>44</sup> See Domin, *supra* note 19, at 2. "[M]any of the Slav lands—notably in Russia—form part of the flat expanses where Europe and Asia meet; across them nomadic peoples had wandered for thousands of years and through them great folk movements had pushed time and again." ROBERTS, *supra* note 24, at 169-70.

<sup>45</sup> See Domin, *supra* note 19, at 2.

<sup>46</sup> STAVRIANOS, *supra* note 11, at 24, 32. The Thracians were also dispersed, many of them ending up north of the Danube River, comprising, in part, what is now Romania. See *id.* at 24.

<sup>47</sup> BALKAN HOTSPOT, *supra* note 6, at 1. At the outset of the twelfth century, Slavic tribes had inhabited most of the arable land within the region presently known as Northern Albania and Kosovo. Jansen, *supra* note 19, at 1.

1054 A.D. This schism resulted in two separate and distinct churches within the region—Roman Catholic and Eastern Orthodoxy. As time passed, the Croats and Slovenes, within the western half, remained steadfast to the church in Rome, while the Serbs remained loyal to the Orthodox church.<sup>48</sup>

As a direct result of its conversion to Eastern Orthodox Christianity and the related unity that such conversion created, the Serbians were able to coalesce numerous unaffiliated tribes into two nascent states within greater Serbia. The first state, Zeta, formed along the Adriatic coast and the second, Rashka (or Rascia), formed within the interior.<sup>49</sup> Thereafter, beginning in the twelfth century, Serbians enjoyed a unique independence under the Nemanjic dynasty, which produced some of Serbia's greatest rulers. Stephen (or Stefan) Nemanja ruled from 1169-1189, and his son and successor, Stephen Nemanja II, reigned from 1196-1228. Stephen Milutin's reign extended from 1281-1321 and Stephen Dushan's from 1331-1355. These rulers were known not as kings but as the "Great Zhupans of Rashka." These periods of Nemanjic rule are referred to with great pride by Serbians as the "golden eras" of Serbian history, as there was economic prosperity and political power on par with that of other European monarchies.<sup>50</sup> Kosovo had become the administrative and cultural center of the medieval Serbian state.<sup>51</sup> During his reign, Stephen Nemanja was successful in uniting a majority of the Serbian people and, as a result, was victorious in a number of wars during which he was able to expand the territory of what then became the Serbian kingdom.<sup>52</sup> Stephen Nemanja II was finally able to obtain complete Serbian independence as the result of the fall of the Byzantine Empire at the hands of the Crusaders at Constantinople in 1204.<sup>53</sup>

Serbian expansion continued into the fourteenth century with the defeat of the neighboring Bulgarians in 1330 under the reign of Stephen Milutin. In 1331, Stephen Dushan "the Mighty" began his reign as Serbia's ruler. Dushan sought first to strengthen Serbia's hold on Bulgaria, and then to assume control over Albania, Macedonia, Thessaly, and Epirus. Yet instead of consolidating his power after earning victories over these smaller

<sup>48</sup> See JOHNSEN, *supra* note 3, at 27-29.

<sup>49</sup> STAVRIANOS, *supra* note 11, at 27. Rashka formed the "nucleus of future Serbian greatness." *Id.*

<sup>50</sup> BALKAN HOTSPOT, *supra* note 6, at 1.

<sup>51</sup> Jansen, *supra* note 19, at 1. This powerful dynasty lasted 200 years and still today Kosovo is known by Serbians as "Old Serbia." *Id.*

<sup>52</sup> See STAVRIANOS, *supra* note 11, at 27. Stephen fought both Byzantium and Bulgaria, and was able to conquer all of Zeta and increase Rashka's territory. *Id.*

<sup>53</sup> See *id.*

empires, Dushan, like many before him, tried to overrun Constantinople and assume control of the reestablished Byzantine Empire. Dushan died on the march to do battle with Constantinople's defenders in 1355.<sup>54</sup> With Dushan's death came the end of the Nemanjic dynasty<sup>55</sup> and the resultant collapse of the Serbian kingdom. This collapse created a political vacuum within the Balkan region that was to be filled not by one of the remaining Balkan kingdoms, but by the Turks of the Ottoman Empire in 1459.<sup>56</sup>

Perhaps the most significant event and defining moment in Kosovo history, particularly from the Serbian perspective, was the Battle of Kosovo Polje<sup>57</sup> on 28 June 1389.<sup>58</sup> During this battle,<sup>59</sup> the invading Ottoman Army inflicted heavy casualties on the Serbian Army, to include the ceremonial beheading of the Serb leader, Knez ("Prince") Lazar, who thereafter became a martyr to the Serbian people.<sup>60</sup> As it has become such a central part of the

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<sup>54</sup> See *id.* at 28.

<sup>55</sup> Dushan's son, Uros, ascended the throne on his father's death, however, he was nothing close to the ruler that his father had been. Although he ruled until his death in 1371, Serbian feudal lords assumed greater power at Uros' expense during his reign and, with his death, placed Knez (Prince) Lazar in control of Serbia. See KAPLAN, *supra* note 7, at 36.

<sup>56</sup> See STAVRIANOS, *supra* note 11, at 28-29. Figure 2 depicts the Balkan region from 1335 to 1451 Balcanica.org, History in Maps, at <http://www.balcanica.org/history/1335-1451.html> (last visited 11 Dec. 2001).

<sup>57</sup> Serbians refer to this place of battle as "The Field of Black Birds." It was on this field that the Turks, after delivering the final defeat to the Serbs, left their bodies for "carrion birds to devour." KAPLAN, *supra* note 7, at 35. The battlefield is still regarded as a sacred monument to the Serbs who lost their lives in defense of what they perceive as their homeland.

<sup>58</sup> "Kosovo is known as the cradle of the medieval Serbian empire—the most powerful and civilized state in the Balkans. . . . This state was effectively annihilated on June 28, 1389, a day as important to the Serbs as July 4, 1776 is to Americans." War Crimes Library, *supra* note 2, at 1. "Because this [battle] marked the end of the glory days and the beginning of centuries of struggle against neighbors bent on dominating Serbia, no date is more significant and no place dearer to Serbians." BALKAN HOTSPOT, *supra* note 6, at 1. "In all of European history it is impossible to find any comparison with the effect of Kosovo on the Serbian psyche. The battle changed the course of Serbian history . . . ." Thomas Judah, *It is Better to Die in Battle Than to Live in Shame*, in THE SERBS: HISTORY, MYTHS, AND THE DESTRUCTION OF YUGOSLAVIA 22, 30 (1997).

<sup>59</sup> For various reasons, it is difficult for historians to determine the actual facts of this battle. However, the commonly accepted version indicates that the Serb Army assembled on Kosovo Field (Kosovo Polje) at dawn to wage war against an infinitely superior Turkish Army. The weight of the Serb forces' heavy armor, iron halberds, and maces created another significant disadvantage for the Serbian troops. During the battle, the more mobile Turkish cavalry shredded the Serbian Army and captured the Serbian leader, Prince Lazar, ultimately beheading him. See War Crimes Library, *supra* note 2, at 1.

<sup>60</sup> "Not kings Stefan Nemanja, Milutin, and Stefan Dushan, nor even Saint Sava, elicit the intense emotions among the Serbs that Knez Lazar does . . . ." KAPLAN, *supra* note 7, at 38. The famous Serbian poem, "The Battle of Kosovo," portrays Prince Lazar, albeit the leader of the losing forces, as a hero and a martyr. War Crimes Library, *supra* note 2, at 1; see *infra* Part IV, note 5. For a more detailed discussion of the Serbian legends surrounding Prince Lazar, see KAPLAN, *supra* note 7, at 36-41.

Serbian story, this battle has become a historical crossroads for the Serbs.<sup>61</sup> The outcome of the encounter was to effectively seal the fate of the Serbian



people and the entire Balkan Peninsula for centuries.<sup>62</sup> After the battle, the Moslem, Turk-dominated Ottoman Empire eventually occupied Kosovo. The victory also led to the subsequent conquest of all Serbia by the Ottoman Empire in 1459, driving many Serbs to seek refuge to the north and west in Vojvodina and Krajina.<sup>63</sup>

<sup>61</sup> See Judah, *supra* note 58, at 30.

<sup>62</sup> See KAPLAN, *supra* note 7, at 36.

<sup>63</sup> For the Turks, the battle did not hold as much significance. Kosovo had merely been the next step in the logical progression toward assuming control of Serbia and all of the Balkans. Following the Battle of the Maritsa River in 1371, in which Serbia suffered a significant defeat at the hands of the Turks, Serbia attempted to strike back at the raiding Ottomans, but to no avail, other than to focus the Turks' attention on Serbia. The decisive battle then occurred at Kosovo Polje in 1389. Thereafter, a Serbian state, called a

For the next few centuries, Ottoman rule meant harsh oppression, savage Serbian revolts, and brutal Turkish suppression of these revolts and any political dissent whatsoever.<sup>64</sup> Such harsh treatment and the near incessant violence resulted in droves of Serbs abandoning Kosovo for the relative safety of Serbia and adjoining lands.<sup>65</sup> Albanian Muslims sought to fill the void left by the fleeing Serbs and (with the encouragement of the Ottomans) repopulated Kosovo in considerable numbers up through the middle of the nineteenth century. At this point, the Serbs began the movement that would lead to regaining the lands lost to the Turks and occupied by the Albanians.<sup>66</sup>

The year 1878 proved to be another significant year in the region's history for both Serbs and Albanians alike. The Russo-Turkish War ended favorably for the Russians, who attempted to utilize the resultant peace negotiations and Treaty of San Stefano to settle the "Eastern [Balkan] Question." Only the intervention of the Great Powers in the ensuing Congress of Berlin kept any one state within the region from gaining too

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despotate, survived for another seventy years, until 1459, when Serbia finally fell to the Turks. The Turks had other threats with which to deal before turning their complete attention to Serbia. See Judah, *supra* note 58, at 30-32; BALKAN HOTSPOT, *supra* note 6, at 1.

<sup>64</sup> The violence that marked this period was particularly harsh, and set the tone for ensuing generations, such that the Balkans has remained the scene of continuous violence for the past six centuries. See JOHNSEN, *supra* note 3, at 13-15. Recent examples of atrocities within the region abound, from ethnic cleansing and genocide, to rape and robbery, to harassment in an effort to force people to flee, and all parties to the recent conflicts, to some degree, have been responsible for committing these atrocities. Note, however, that this Turkish oppression was not based on religious grounds. When they initially conquered the Balkans, the Turks introduced their Islamic faith, further confusing a religious landscape already in turmoil with the rift between Orthodoxy and Roman Catholicism. Yet the Turks were tolerant of these other religions and did not force conversion to the Islamic faith. They did welcome voluntary conversion to Islam and did not hesitate to discriminate against non-Muslims both economically and socially—non-Muslims were clearly an inferior class. *Id.* at 27-29. See generally JELAVICH, *supra* note 21, at 39-126 (discussing the Balkan Christians under Ottoman rule). The Albanians slowly migrated toward the Muslim faith to both avoid the Turks' discrimination and obtain the Turks' protection. The Albanian conversion rate to Islam was almost 70%. See CHARLES JELAVICH AND BARBARA JELAVICH, *THE BALKANS* (1965).

<sup>65</sup> See JOHNSEN, *supra* note 3, at 13-15. As a result, the Serbian "center of gravity" shifted, at least temporarily, from Kosovo to Belgrade, the capital of Serbia. Jansen, *supra* note 19, at 1. The massive migration of Serbs occurred immediately following unsuccessful uprisings, in 1689-90 and again in 1738. See BALKAN HOTSPOT, *supra* note 6, at 2. In 1690 the Serbian patriarch Arsenije III Carnojevic fled with more than 100,000 people to Austrian-ruled southern Hungary. The Austrian emperor allowed these people to practice their own religion and to elect their own military governor, or "vojvoda." The province where these Serbs settled eventually became known as Vojvodina. Yugoslavia: The Serbs and Serbia, Vojvodina, and Montenegro, at <http://lcweb2.loc.gov/cgi-bin.htm> (last visited 1 Dec. 2001).

<sup>66</sup> Toward this end, the Serbs opened up a seminary in Prizren in 1871, and began to aggressively encourage Serbs to migrate back into Kosovo to increase Serbian presence within the province. See Jansen, *supra* note 19, at 2. Conversely, the Ottomans encouraged Albanians to flood back into Kosovo to discourage Serbian expansion within the province. See BALKAN HOTSPOT, *supra* note 6, at 2.

much land or power.<sup>67</sup> Yet for the Serbs, the *de facto* independence that Serbia had earlier obtained with Russian support became *de jure* with the signing of these peace agreements, making Serbia an independent nation.<sup>68</sup> Although these agreements gave the Serbs two cities in Kosovo, Mitrovica and Pristina, the Ottoman leaders maintained ultimate control over Kosovo.<sup>69</sup>

As for the Albanians, those in Kosovo formed the first organized Albanian nationalist movement, the League of Prizren, in an effort designed in part to resist invasion by foreign powers. The Albanians not only sought protection and assistance from Ottoman leaders, but also sought reforms that would eventually lead to Albanian autonomy within the province.<sup>70</sup> Following the grant of independence to Serbia, the Serbs began expelling and killing Albanians as part of their plan to "ethnically cleanse" Serbian territory.<sup>71</sup> Thus began a trend that would set the stage for continued harassment and atrocities by both Serbians and Albanians throughout the twentieth century and up to the present day.

Meanwhile, Albanians in Kosovo were chafing under the Ottoman yoke and continuously sought methods of ousting the foreign rulers. As a result, in 1908 they allied with a liberal group of dissidents within the Ottoman government—known as the "Young Turks"—in a rebellion against

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<sup>67</sup> The Berlin Treaty, at <http://www.unet.com.mk/nian/berlin.htm> (last visited 1 Nov. 2001) [hereinafter Berlin Treaty]. Russia sought to pull the region within its sphere of influence with the signing of the Treaty of San Stefano of 1878. Pursuant to the Russian imposed terms of the treaty, Serbia, Romania, and Montenegro gained both territory and independence from the Ottoman Empire. Bulgaria was given significant amounts of territory—to include land in Serbia and Macedonia—and autonomy as well. The Great Powers (Austria-Hungary, France, Germany, Britain, and Italy) were dissatisfied with the treaty, and met in Berlin to determine how to force Russia to revise the terms of peace. The resulting Congress of Berlin in essence ratified the expansion of Serbia and Montenegro, gave Bosnia and Herzegovina to Austria-Hungary, left Macedonia temporarily under Ottoman rule (with terms promising Macedonian self-government in the future), and overturned the decision to grant land and autonomy to Bulgaria. Serbia had to remove its troops from portions of Kosovo. Neither the Macedonians, Bulgarians, Austro-Hungarians, nor Russians were satisfied with the eventual outcome, setting the stage for future conflict between the Great Powers and their satellite lands. *Id.*; JOHNSEN, *supra* note 3, at 16-18.

<sup>68</sup> See BALKAN HOTSPOT, *supra* note 6, at 2; Berlin Treaty, *supra* note 67, at 1-4. Serbia had initially gained its autonomy in 1830 due in large measure to support provided by Russia.

<sup>69</sup> Berlin Treaty, *supra* note 67, at 1-2; Jansen, *supra* note 19, at 2.

<sup>70</sup> See BALKAN HOTSPOT, *supra* note 6, at 2; AUSA BRIEF, *supra* note 5, at 1-2. The League of Prizren initially sought to work with the Ottomans. Over time, however, the focus of each changed and the League was ultimately shattered in 1881 by Ottoman military forces. *Id.*

<sup>71</sup> See AUSA BRIEF, *supra* note 5, at 2. Almost 60,000 to 70,000 Albanian refugees from Serbia entered Kosovo during this time frame. Meanwhile, Serbs were fleeing Kosovo upon the return of Albanians to certain areas. The term "ethnic cleansing" refers to the brutal methods used to create a shift in civilian populations to create ethnically pure areas. See The War in Bosnia, History of the Balkan Conflict, USA Today, at <http://www.usatoday.com/news/index/bosnia/nbos002.htm> (last visited 6 Nov. 2001).

Ottoman rule.<sup>72</sup> However, after the Ottoman Sultan was finally deposed, the Albanians found life under the Young Turks' rule no better and organized yet another rebellion in 1910.<sup>73</sup> The revolt was immediately suppressed and its leaders and many other Albanians punished and imprisoned. This did not prevent a second uprising in 1912 that was more successful, gaining Albania quasi-independence from the Ottoman Empire.<sup>74</sup> Seizing the opportunity created by the success of the Albanian insurgency, other Balkan states allied in an effort to achieve independence from the Turks, and so began the First Balkan War in 1912.<sup>75</sup>



Figure 3: Balkan Region 1908-1913

In the First Balkan War, Greece, Serbia, and Bulgaria were successful in jointly defeating and breaking away from Ottoman rule. The victors

<sup>72</sup> See Jansen, *supra* note 19, at 2-3; AUSA BRIEF, *supra* note 5, at 3.

<sup>73</sup> "The Young Turks were strongly opposed to nationalist tendencies within the Empire and worked toward centralization of power and authority and Turkification of all subjects in the Ottoman domain. As is the case in present day Serbia, the Ottomans strongly opposed the autonomy desired by Kosovars in general and Albanians in particular. This was one of many Albanian Kosovar disappointments through the years." Jansen, *supra* note 19, at 2.

<sup>74</sup> See AUSA BRIEF, *supra* note 5, at 2-3.

<sup>75</sup> See *id.* Figure 3 depicts the Balkan region between 1908 and 1913. CENTRAL INTELLIGENCE AGENCY, *supra* note 4, at 4.

quickly attempted to divide the spoils of the Ottoman Empire, namely Macedonia and Albania.<sup>76</sup> Serbia took distinct advantage of this opportunity and drove on through Kosovo, destroying Albanian villages, expelling their occupants, and attempting to remove all Albanian presence from the province.<sup>77</sup> Inexplicably, Bulgaria then turned on its former allies, attacking Serbia and Greece and thereby initiating the Second Balkan War in 1913. With surprising Ottoman assistance, Serbia and Greece defeated Bulgaria in short order, and peace negotiations encompassing the entire region ensued.<sup>78</sup>

Clearly concerned about the outcome of those negotiations, the Great Powers, as they had in 1878, again interceded to ensure that no one entity became too powerful within the region.<sup>79</sup> With Russian support, and notwithstanding Austro-Hungarian intentions, Serbia was able to regain control of Kosovo and parts of Macedonia. Serbians promptly returned to a campaign of harassment and deportation of Albanian occupants of Kosovo.<sup>80</sup> These violent regional disputes, coupled with the general dissatisfaction among many of the Balkan states over the Great Powers' intervention in what they perceived as purely Balkan affairs, made the region a veritable powder keg as the 525th anniversary of the Battle of Kosovo Polje approached in June 1914.

### C. KOSOVO IN RECENT YEARS

In Sarajevo on 28 June 1914, Gavrilo Princip, an ethnic Bosnian Serb nationalist intent on promoting a Bosnia and Herzegovina–Serbia union, assassinated Archduke Franz Ferdinand, heir to the imperial throne of the

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<sup>76</sup> See JOHNSEN, *supra* note 3, at 18-19. Again, the Western powers were not particularly anxious to see any one country assume too much power within the region, and they imposed their own peace settlement on the parties to the conflict. *Id.* at 19. At the Conference of Ambassadors in London in 1912, Serbia was granted sovereignty over Kosovo. It has retained that sovereignty to the present day. Jansen, *supra* note 19, at 2.

<sup>77</sup> See War Crimes Library, *supra* note 2, at 2. "Serbia viewed the subjugation of Kosovo in October 1912 as the fulfillment of a historic crusade." AUSA BRIEF, *supra* note 5, at 3. "Serbian atrocities committed against Albanians, especially those committed by paramilitary bands called 'chetniks,' suggested to some contemporary Western observers that Serbia was bent on a systematic extermination of Kosovo's Muslim population to transform the ethnic character of Kosovo." *Id.*

<sup>78</sup> See JOHNSEN, *supra* note 3, at 19. Bulgaria apparently felt isolated and threatened by its neighbors and "allies" and, as such, decided to "strike while the iron was hot."

<sup>79</sup> For a discussion of the Great Powers and their earlier involvement within the region see *supra* note 67 and accompanying text. Pursuant to the Treaty of Bucharest, the major Western powers denied Serbia the ability to obtain an outlet through Albania to the Adriatic, and instead nodded in approval of Albanian autonomy. See also AUSA BRIEF, *supra* note 5, at 3; JOHNSEN, *supra* note 3, at 19.

<sup>80</sup> See AUSA BRIEF, *supra* note 5, at 3; Jansen, *supra* note 19, at 2.

Austro-Hungarian Empire.<sup>81</sup> Princip and his fellow Serb nationalists were disturbed over Austria-Hungary's earlier annexation of Bosnia-Herzegovina. The assassination provided the spark that started the Third Balkan War or what eventually became known as World War I, and served to further increase centuries-old hatred and violence within the region. Austria-Hungary immediately assumed that the murder conspiracy was masterminded by the "Black Hand," a Serbian ultra-nationalist organization, and issued an ultimatum to the Serbs to apologize and permit investigators into Serbia to hunt for the Black Hand.<sup>82</sup> Serbia declined to comply with this ultimatum, and the stage was set for war.<sup>83</sup>

The ensuing conflict, horrific even to the most hardened observers, lasted over four years during which Serbia took a brutal pounding.<sup>84</sup> For a significant portion of the war, Austro-Hungarian and Bulgarian forces occupied Kosovo, which was the scene of vicious fighting. Albanians accompanied these "allies" into Kosovo and began establishing Albanian-occupied zones in an attempt to undermine the Serbian presence.<sup>85</sup> By the end of the conflict, however, the Austro-Hungarians were defeated, and in the wake of the Austro-Hungarians' retreat from Kosovo, the Serbs quickly

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<sup>81</sup> Archduke Ferdinand was the unpopular nephew of the well-respected Emperor Franz Joseph. As Ferdinand had taken a wife—countess Sophie Chotek, who died along with him—not considered of royal cloth, Ferdinand was ostracized and often traveled outside of the country with his wife to avoid close scrutiny and ridicule. This brought him to Sarajevo that fateful day, too close to the Serbian border. Princip was the member of a small group of Bosnian extremists who actually planned the Archduke's death, waiting along the route of the royal motorcade. Princip was the last of seven would-be assassins in line along the route. However, five of the first six were unable, for unknown reasons, to carry out the task. The sixth terrorist weakly threw a small bomb in the direction of the motorcade, but it did not detonate. As the sole assassin remaining, Princip waited for the vehicle to slow down, and then "stepped onto the [car's] running board and into history." Timothy Kutta, *Serbia in World War I*, COMMAND MAG., July-Aug. 1993, at 46-47.

<sup>82</sup> *Id.* at 47. The ultimatum demanded two items: 1) that Belgrade officially apologize for the deaths, thereby admitting guilt; and 2) that Belgrade allow Austro-Hungarian investigators into Serbia to track down the Black Hand organization. *Id.* Some argue that the Austro-Hungarians knew that Serbia could not comply with the ultimatum, and was merely looking for a pretext to declare war. In any event, Serbia declined and, after issuing a final ultimatum, Austria-Hungary declared war on Serbia.

<sup>83</sup> Although the Serbian Army was no match for the Austro-Hungarian Army, when the additional parties to the conflict aligned with their respective allies, the "plot thickened." If Serbia was attacked, Russia pledged to come to its aid, and France and Great Britain were allied with Russia. Similarly, Germany supported Austria-Hungary. Importantly, Albania sided with Austria-Hungary, and thousands of Kosovar Albanians joined the Austro-Hungarian Army. See Jansen, *supra* note 19, at 3.

<sup>84</sup> See *id.* at 3. What became known as Yugoslavia is reported to have endured almost two million deaths total, and losses of over one-half of the 700,000 men it sent into battle, or one-half of the young male population, which occurrence continues to have a ripple effect on today's Serbian population. JOHNSEN, *supra* note 3, at 20.

<sup>85</sup> See Jansen, *supra* note 19, at 3.

returned and exacted a full measure of revenge on the Albanians.<sup>86</sup> In response, the Albanians fled to the hills and formed armed guerilla organizations that continued to engage in limited and largely unsuccessful attacks on Serbs within Kosovo throughout the next few decades.

At the end of the war, Kosovo was incorporated into the Kingdom of Serbs, Croats, and Slovenes under the Treaty of Versailles and related international agreements. In 1929, a constitutional monarchy was established, and the Kingdom of Serbs, Croats, and Slovenes became known as Yugoslavia ("Kingdom of Southern Slavs").<sup>87</sup> The interwar years saw no respite from the turmoil and violence that had plagued the region for the preceding four decades. The Serbs embarked on a campaign seeking to bolster the Serbian population within the province, creating Serb colonies in what were Albanian-held lands, in a well-conceived "colonization" plan to force the Albanians to leave.<sup>88</sup> The Albanians attempted to "internationalize" their plight, taking their concerns over Serbian atrocities in Kosovo and Albania to the Paris Peace Conference and the League of Nations, but the Albanian pleas fell on deaf ears. The U.S. and others in the international community were relatively unsympathetic and declined to take any action.<sup>89</sup>

During this interwar period, neighboring Albania formed close ties with Italy and its fascist government under Mussolini, who sought to destabilize what he perceived as a Yugoslavia that was too powerful within the region. At issue was ultimate control of Albania. In 1939, Italy's concern over Yugoslavian intentions in Albania resulted in Italy's invasion of Albania, after which Mussolini installed a puppet fascist government. In 1941, Yugoslavia responded by attacking Italian forces stationed in

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<sup>86</sup> The Serbs reportedly massacred women and children, destroyed villages and homes, and quickly brought the province back under Serbian rule. *Id.*

<sup>87</sup> *Id.* at 3-4. Included within the new kingdom were Slovenia, Croatia, Serbia, Bosnia and Herzegovina, Montenegro, Macedonia, Kosovo, and Vojvodina. The capitol of the new kingdom resided in Belgrade. *Id.*

<sup>88</sup> Estimates indicate that between 1926 and 1941, more than half of all Kosovars—ethnic Albanians of Kosovo—may have emigrated, primarily to Albania and Turkey. See BALKAN HOTSPOT, *supra* note 6, at 2. The shifts in the population during this time period are a matter of great dispute. After 1912 significant numbers of Serb families were moved into Kosovo at the expense of wealthier Albanians already living there who were dispossessed by land reforms. Estimates also indicate that as many as half a million Albanians were expelled from their homes. Conversely, the Serbs claim that hundreds of thousands of Albanians moved into Kosovo between 1941 and 1945. See OSCE Brief, *supra* note 7, at 1.

<sup>89</sup> See AUSA BRIEF, *supra* note 5, at 3.

Albania.<sup>90</sup> Within one week, combined German and Italian forces had forced Yugoslavia into an unconditional surrender, and Kosovo was thereafter placed under the control of the Italian-sponsored Albanian government.<sup>91</sup> Kosovo had now entered World War II.

During the war, Kosovo was yet again occupied by several different armies—Germany, Bulgaria, and Italy at first, each sympathetic to the Albanian nationalist movement.<sup>92</sup> As the result of continued Albanian–Serb tensions, many Serbs fled the area, reversing the results of the Serbs' colonizing policies and raising the ethnic-Albanian proportion of the population to almost ninety percent. In 1945, upon the conclusion of World War II and the Allied victory over Germany,<sup>93</sup> Yugoslavia became a communist republic under Marshal Josip Broz Tito and became known as the Federal People's Republic of Yugoslavia. Marshal Tito organized a socialist state, comprising six federated “republics,” of which Serbia was one.<sup>94</sup> In September 1945, Kosovo was included within the Republic of Serbia as a semi-autonomous region.<sup>95</sup> The new republic's policies toward Kosovo following the war vacillated between appeasing the Kosovar Albanians and attempting to assimilate them into the republic, and suppressing any nationalistic tendencies that were anti-Communist.<sup>96</sup>

The imposition of Communist regimes in Albania, Yugoslavia, Romania, and Bulgaria following the war had a positive effect on the

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<sup>90</sup> See *id.* at 4. Yugoslavia initially entered into the Tripartite Pact (Germany, Japan, and Italy), but shortly thereafter, as the result of an anti-Axis coup, renounced their previous agreement. Germany followed this renunciation with its invasion of Yugoslavia. Jansen, *supra* note 19, at 4.

<sup>91</sup> See JOHNSEN, *supra* note 3, at 22-23 (citing MARTIN VAN CREVELD, *HITLER'S STRATEGY: THE BALKAN CLUE* (1973)).

<sup>92</sup> AUSA BRIEF, *supra* note 5, at 4. However, resistance to the hated German occupation was relentless, under the direction of General Mihailovic of the Loyalist Chetniks and head of the Communist Party Josip Broz, a Croat, of the Partisans. The resistance movement was relatively successful in that it became a stubborn thorn in Hitler's side within Yugoslavia. It was successful enough that the Allies began to support it, eventually casting their complete support to only Broz and the Partisans. This support subsequently allowed the Partisans to defeat the Loyalists in the civil war that raged within Yugoslavia—while the world war raged on all around it—and take control of post-war Yugoslavia. See Jansen, *supra* note 19, at 4.

<sup>93</sup> The conflict's effects on Yugoslavia cannot be overstated. Estimates place total Yugoslavian casualties at 1.7 million out of a total population of 16 million. "Coupled with the massive losses sustained in World War I, two generations of Yugoslavs effectively had been wiped out." JOHNSEN, *supra* note 3, at 23.

<sup>94</sup> The six republics consisted of the "usual suspects"—Slovenia, Croatia, Serbia, Bosnia and Herzegovina, Montenegro, and Macedonia. Theoretically, Vojvodina and Kosovo held autonomous status within the Serbian Republic. *Id.* at 55.

<sup>95</sup> See AUSA BRIEF, *supra* note 5, at 5. "In an attempt to recruit Albanian fighters, Yugoslavia's leader, Josip Broz, promised that, after the war, Kosovo would be permitted to join Albania. Sadly, for the mislead [sic] Albanians, this was yet another lie." War Crimes Library, *supra* note 2, at 2.

<sup>96</sup> See BALKAN HOTSPOT, *supra* note 6, at 2.

persistent conflict and violence that had beset the region for so long.<sup>97</sup> While Tito's authoritarian government quickly and brutally put down any serious resistance movements, the general fear also existed that any local conflict could again potentially involve the superpowers in another catastrophic war.<sup>98</sup> As a result of these two factors, the region stayed relatively calm from the close of the war through Tito's death in 1980. Prior to his death, however, Tito had begun to make ever-expanding concessions to the Kosovar Albanians,<sup>99</sup> culminating in the 1974 recognition of Kosovo in the Yugoslavian constitution as an autonomous province.<sup>100</sup> Then, as today, Kosovo had a large Albanian population, which only continued to increase as the result of the resurgence in Albanian nationalism following Tito's recognition of Kosovo's self-rule. Influenced by the Albanian majority, Kosovo exercised its newly granted autonomy by establishing Albanian language schools and officially observing Islamic holidays. Kosovo also allowed ethnic Albanians to use their language—Albanian, as opposed to Serb—within the local government, media, and educational system.<sup>101</sup> Not surprisingly, Serb resentment over Kosovo's autonomy grew more with each passing day.

With Tito's death in 1980, the relative calm that had pervaded Yugoslavia came to an abrupt end as ethnic and nationalist differences flared up yet again.<sup>102</sup> Initially, Kosovar Albanians rioted in 1981 over poor living,

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<sup>97</sup> The hostilities did not cease completely. Kosovar Albanians continued to demand autonomy or republic status within the federation, and revolutionary movements, complete with guerilla bands, organized and took action from time to time. Conversely, the Serbians mounted crackdowns, which included the search and arrest of suspected Albanian dissidents. Albanians continued to flee the province during this period—some estimates place the number of refugees from 1954-57 at close to 200,000. See BALKAN HOTSPOT, *supra* note 6, at 2; AUSA BRIEF, *supra* note 5, at 5.

<sup>98</sup> See JOHNSEN, *supra* note 3, at 23-24.

<sup>99</sup> Tito had long been concerned over Serbia's power within the federal republic. See OSCE Brief, *supra* note 7, at 2.

<sup>100</sup> "At least as a matter of constitutional theory, 1974 was the zenith of Kosovo's autonomous status." AUSA BRIEF, *supra* note 5, at 6. Due in large part to Tito's efforts, the 1974 Yugoslav Constitution, which remained in effect until the final collapse of the Yugoslav Federation, practically gave Kosovo equal status with Yugoslavia's six republics and its own direct representation in the main federal Yugoslav governing bodies. *Id.*

<sup>101</sup> War Crimes Library, *supra* note 2, at 2. "From 1974 until the late 1980's Albanians in Kosovo undoubtedly had enjoyed the most administrative and cultural autonomy in their history . . . but for the Kosovars that favored independence, it wasn't enough." Jansen, *supra* note 19, at 6. Moreover, despite these positive events on the political and social front, Kosovo remained an "economic backwater." BALKAN HOTSPOT, *supra* note 6, at 2. Both Serbs and Kosovars fled the province in droves from the mid-1960's through the mid-1980's—estimates place the numbers at almost 100,000—due to a lack of economic opportunities. *Id.*

<sup>102</sup> "Tito's death in 1980 set in motion the slow, painful demise of Yugoslavia." JOHNSEN, *supra* note 3, at 57.

economic, and educational conditions. Pristina University became a "hotbed of Albanian nationalism,"<sup>103</sup> and another mass exodus of Serbs and Montenegrins from Kosovo followed anti-Serb riots by the Albanian population.<sup>104</sup> In response, Serbian anger continued to increase as Serbs now saw themselves as the aggrieved, disadvantaged party.<sup>105</sup> By 1987, swelling Serbian resentment led to massive protest marches and rallies, paving the way for Slobodan Milosevic,<sup>106</sup> who surged to power on a platform of radical Serb nationalism.<sup>107</sup>

Milosevic's first guarantee was that he would protect ethnic Serbs from abuse in Kosovo. He then had the Serbian government outlaw school instruction in the Albanian language. In 1989, he succeeded in completely stripping Kosovo of its autonomy<sup>108</sup> and sent in the Serbian Army and Serbian police units to maintain order and discipline after rioting occurred in response to the constitutional amendments revoking Kosovo autonomy.<sup>109</sup>

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<sup>103</sup> Jansen, *supra* note 19, at 5.

<sup>104</sup> Official statistics place the number of Serbs leaving Kosovo prior to 1987 at 100,000. BALKAN HOTSPOT, *supra* note 6, at 2.

<sup>105</sup> As rumors of Albanian atrocities began to circulate within the Serb communities, Serbian nationalism increasingly expanded until March 1986 when the Serbian Academy of Arts and Sciences declared that the Serbs were the oppressed minority in Yugoslavia. JOHNSEN, *supra* note 3, at 57 (citing Sabrina Petra Ramet, *War in the Balkans*, 71 FOREIGN AFF. 82 (Fall 1992)). The Academy's memorandum, which among other things warned of the potential for Serbian genocide in Kosovo, was heavily publicized in mass circulation newspapers, and it served to galvanize Serbian resistance. See OSCE Brief, *supra* note 7, at 2.

<sup>106</sup> Milosevic, a product of the Yugoslav Communist system, was the former manager of a state-owned gas company who began his meteoric ascent to power when Tito died in 1980. He was the protégé of Ivan Stambolic, who became Prime Minister of Serbia after Tito's death. Milosevic eventually replaced Stambolic, became leader of the Serbian Communist Party, and ultimately assumed the position of Yugoslavian President. See Jansen, *supra* note 19, at 6.

<sup>107</sup> Clearly, 24 April 1987 was a significant date for Serb nationalism and Kosovo's future. Milosevic, a prominent figure in the republican communist party—known as the League of Communists of Serbia—traveled to Kosovo on that day to speak with the local Serbs about their grievances. While in Kosovo Polje/Fushe Kosove meeting local Serb representatives, he witnessed a large crowd that was demonstrating in their support being attacked and driven back by local police using riot batons. As the crowd fought back, Milosevic stepped outside to address them. He turned himself into an instant hero of the Kosovar Serbs, urging them in front of television cameras that "no one should dare beat you," and making their controversial nationalist agenda his own. By the end of the year, Milosevic was firmly in control of both the republican communist party and the Serbian government. See OSCE Brief, *supra* note 7, at 2-3. In 1989, on the 600th anniversary of the Serb's battle against the Turks at Kosovo Polje, Milosevic held a rally at the site of the battle, Kosovo Field, which was attended by nearly one million Serbs, who hailed Milosevic as the reincarnation of Prince Lazar. See War Crimes Library, *supra* note 2, at 2.

<sup>108</sup> "Milosevic professed a simple platform: unrestrained Serbian nationalism that sought to overturn the existing system and restore Serbs and Serbia to their 'rightful place.'" JOHNSEN, *supra* note 3, at 57-58. In his first two years, he had wrested control of his party, eradicated his rivals, gained the backing of his army, dismantled the governments of Kosovo, Vojvodina, and Montenegro, and revoked the autonomy granted to both Kosovo and Vojvodina. *Id.*

<sup>109</sup> The constitutional amendments that revoked Kosovo's autonomy also provided Serbia with control over the police, courts, and civil defense systems therein. AUSA BRIEF, *supra* note 5, at 6.

From 1989 through late 1992, Milosevic effectively enforced a state of emergency in Kosovo, in which Serbian "security" forces suppressed Albanian media, language education, protests, and strikes.

Kosovo and other Yugoslav republics evinced strong concerns over Milosevic's actions in short order. Albanian legislators met secretly in 1990, declared the Republic of Kosovo to be in existence, and created a "shadow" Kosovo government—the Democratic League of Kosovo (LDK)—led by Dr. Ibrahim Rugova.<sup>110</sup> In an effort to avoid being similarly swept up in Milosevic's centralization and nationalistic policies,<sup>111</sup> first Slovenia,<sup>112</sup> in 1990, and then Croatia,<sup>113</sup> in 1991, declared independence from Yugoslavia. Milosevic responded by sending Yugoslav tanks into Slovenia. As a result, Yugoslavia effectively ceased to exist as of 27 June 1991.<sup>114</sup>

By 1992 the situation within the region had deteriorated drastically. The Communist world in the Soviet Union and eastern Europe had collapsed and the call for revolution continued to drift across southern Europe and the Yugoslav republics. Already in dire straits as the result of a massive debt and triple-digit inflation and heavily dependent on Western aid, the Yugoslav economy bordered on collapse with the advent of an international economic embargo in late 1991 against Serbia and Montenegro. Slovenia had already achieved independence, and the bloody slugfest within Croatia

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<sup>110</sup> See *id.* at 6-7. The term "League" created an association with the First and Second Leagues of Prizren, historically significant entities to the Kosovar Albanians. Dr. Rugova sought a nonviolent, internationally backed response to Serbian efforts aimed at Kosovo, to include a general boycott of the Yugoslav-sponsored, Serbian-dominated local government. *Id.* See generally SCHWARTZ, *supra* note 8, at 130-32 (discussing Rugova and the LDK).

<sup>111</sup> Already discontent over their roles as Yugoslavian "bill-payers" due to their stronger economic condition, the two countries fretted over Milosevic's Serbian nationalistic rhetoric and his ability to utilize state power to repulse any anti-Serb movement, as he did in using the Yugoslav National Army (JNA) to quell riots in Kosovo. Throughout 1989, Serbian nationalists argued that the internal republic boundaries artificially separated the Serb nation, and that Serbia reserved the right to speak for Serbs everywhere, not just those living within Serbian boundaries. JOHNSEN, *supra* note 3, at 57-58.

<sup>112</sup> Slovenia was able to break away after a brief period of struggle, aided by the fact that over 90% of its population was composed of ethnic Slovenians. Serbia conducted a vastly different campaign against Slovenia than it did Croatia. Ultimately, after sporadic fighting on the shared borders, JNA forces withdrew from Slovenia pursuant to a negotiated settlement and the Slovenes were allowed to secede. See Steven W. Sowards, *The Yugoslav Civil War, The Balkans in the Age of Nationalism 4*, at <http://www.lib.msu.edu/sowards/balkan.lect25.htm> (last modified on 5 July 2000) (a series of twenty-five lectures on modern Balkan history, presented by Michigan State University).

<sup>113</sup> Croatia's population was over 15% Serbian. Moreover, the Croat-Serb relationship had soured during World Wars I and II when the Croats allied with the Habsburgs and the Germans and, as a result, had killed numerous Serbs. The Serbian memory was not short on this issue. Consequently, Yugoslavia/Serbia fought hard in a brutal war against Croatia's succession for the next four years. See ROBERTS, *supra* note 24, at 510; JOHNSEN, *supra* note 3, at 51.

<sup>114</sup> See JOHNSEN, *supra* note 3, at 58-59.

continued.<sup>115</sup> Macedonia declared independence in January 1992,<sup>116</sup> and Bosnia and Herzegovina followed suit in March 1992. However, this declaration of Bosnian independence from Yugoslavia led only to a violent struggle between the Bosnian Serbs, supported by Serbia, and the Bosnian Muslims. The Serbs sought to divide the country along ethnic lines and unite with a "Greater Serbia." In the midst of all of this, Serbia and Montenegro joined together to form the new Federal Republic of Yugoslavia (FRY) in April 1992, with Milosevic at the helm.

On one side of the Bosnian conflict were the Bosnian Serbs, led by Premiere Radovan Karadzic and General Ratko Mladic, and the "Chetniks."<sup>117</sup> They both had the support of Yugoslav National Army (JNA) units, and were intent on eradicating the Muslim population through terror tactics and a vicious ethnic cleansing program.<sup>118</sup> Pitted against them were

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<sup>115</sup> On 25 September 1991, the UN entered the Balkan conflict by establishing a weapons and military equipment embargo on the former Yugoslavia. See THE BALKANS, *supra* note 15, at 33 (citing S.C. Res. 713, U.N. SCOR, U.N. Doc. S/Res/713 (25 Sep. 1991)). In an effort to put an end to the warfare and ethnic cleansing in Croatia, a United Nations-brokered cease-fire took place on 2 January 1992. Nevertheless, smaller battles continued to occur for the next few years, especially in the province of Krajina. Estimates place the number of Serb refugees that fled from Croatia at anywhere from 200,000 to 400,000. Jansen, *supra* note 19, at 7-8.

<sup>116</sup> Concerned over the potential for spillover of the conflict into neighboring states, the UN became even more engaged in the region's crisis, establishing the UN Protection Force (UNPROFOR) on 21 February 1992 in UNSCR 743, and authorizing the full deployment of the force in UNSCR 749 on 7 April 1992. The largest, most expensive and complex peace operation in UN history, the force's mandate was to "create conditions of peace and security required for the negotiation of an overall settlement of the Yugoslav crisis." See UN Dep't of Public Information, *UN Protection Force, Former Republic of Yugoslavia* 1-2 (Sept. 1996), at [http://www.un.org/Depts/DPKO/Missions/unprof\\_b.htm](http://www.un.org/Depts/DPKO/Missions/unprof_b.htm). On 11 December 1992, UNSCR 795 authorized the establishment of the force's presence in FYROM. UNPROFOR's mandate was extended by subsequent resolutions through March 1995. The U.S. contribution to UNPROFOR was called Task Force Able Sentry (TFAS), which was established on 12 July 1993 at Camp Able Sentry (CAS), FYROM. On 31 March 1995, in UNSCR 983, the UNSC again extended the mandate of UNPROFOR, but determined that the force in FYROM would be thereafter known as the UN Preventive Deployment Force (UNPREDEP). This force's mandate was similar to that of its predecessor, namely, "to monitor and report any developments in the border areas, which could undermine confidence and stability in the FYROM and threaten its territory." See UN Dep't of Public Information, *UN Preventive Deployment Force, Former Yugoslav Republic of Macedonia* 1, 5-6 (16 Mar. 1999), at [http://www.un.org/Depts/DPKO/Missions/unpred\\_p.htm](http://www.un.org/Depts/DPKO/Missions/unpred_p.htm).

<sup>117</sup> Meaning "men in armed bands," the Chetniks were Loyalist Serbs who originally fought the German occupiers in WWII, and who also waged a civil war against Moslems, Croats (Ustashi), and the Partisans under Tito. General Mihailovic, their WWII leader, was tried for treason upon Tito's assumption of control and executed by firing squad in 1946. See Vern Liebl, *A Non-Partisan View of World War II Yugoslavia*, COMMAND MAG., May/June, 1993, at 131.

<sup>118</sup> Clearly, all parties to this conflict were guilty of atrocities against the opposing side. However, the Serbs appeared to be the primary culprits when it came to acts of terror, to include rape, mass killings, and the creation of concentration camps at which many of these horrific acts occurred. See Sowards, *supra* note 112, at 5. It was these atrocities that forced the international community to escalate its commitment to help resolve the conflict, with NATO military forces if necessary. *Id.* The JNA, the Yugoslav People's Army, was part of the regular armed forces in Yugoslavia. The successors to the JNA were the Army of

the Bosnian Muslims, who were merely attempting to hold on to as much territory as possible. To further complicate matters, however, the Bosnian Croats were also seeking to obtain Bosnian land for Croatia and were attacking Bosnian Muslims as well.



Figure 4: Balkan Region Recent Years

Early in 1993, peace talks in Geneva, Switzerland, ensued, but to no avail, and the fighting continued throughout the year.<sup>119</sup> Thereafter, in March 1994, the Bosnian Muslims and Croats were finally able to agree on a partition of the country that would end their conflict. Their agreement created the joint Muslim/Croat Federation of Bosnia and Herzegovina.

Yugoslavia (VJ) and the Army of the Serb Republic (VRS). See Center for Strategic and International Studies, *Yugoslav Military and Security Forces: Facts and Figures* (Apr. 22, 1999), at <http://www.csis.org/kosovo/yugoforces.pdf>.

<sup>119</sup> The most significant of these was the Anglo-American Vance-Owen proposal, which provided for a three-way partition of Bosnia that would separate the warring factions and hopefully end the fighting as well. Unfortunately, the proposal was unacceptable to all sides, especially the Muslims. See Sowards, *supra* note 112, at 5; Jansen, *supra* note 19, at 8.

Significantly, it allowed both sides to end their armed struggle against each other and concentrate their combined efforts against the Bosnian Serbs.

The Serbs then embarked on a ruthless campaign that included attacks on the previously declared "safe" areas within Bosnia, especially Sarajevo. These Serb attacks forced the international community to assume a greater role in the conflict. The U.S. and NATO threatened air strikes if the Serbs continued to attack recognized safe areas. The Serbs stopped attacks on Sarajevo but continued to target other safe areas. In 1995, the worst such attacks to date took place in Srebrenica and Zepa. These attacks resulted in almost 8,000 Bosnian Muslim fatalities.<sup>120</sup> Serbs then attacked the Krajina province yet again but were beaten back by combined Muslim and Croat forces that recaptured the province and immediately expelled all Serbs.<sup>121</sup> Upwards of 150,000 refugees fled Bosnia and flooded into Kosovo and neighboring locations.

The response of the international community was unprecedented as the U.S., with NATO support, pounded the Bosnian Serbs with air strikes. Ultimately, this military action brought all sides to the negotiating table in Dayton, Ohio, and led to the Dayton Accords. The Accords were agreed upon and signed in November 1995 by the presidents of the three warring factions—Milosevic for the FRY (Bosnian Serbs), Franjo Tudjman for Croatia (Bosnian Croats), and Alije Izebegovic for Bosnia and Herzegovina (Bosnian Muslims). The Accords divided Bosnia in half, giving 51% to the Muslim/Croat Federation, and 49% to the Serb-led *Republika Srpska*, or Serbia. The agreement also called for in excess of 60,000 UN Peacekeepers in Bosnia to enforce the agreement and prevent any further outbreaks of

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<sup>120</sup> Reportedly, these attacks included some of the conflict's worst ethnic cleansing and the Bosnian Serb Commander, General Ratko Mladic, was involved in bringing about this massacre of Bosnian Muslims. See Sowards, *supra* note 112, at 6-7. Both Mladic and Radovan Karadzic have been indicted by the International Criminal Tribunal for the Former Yugoslavia (ICTY) on charges of genocide stemming from the massacre in Srebrenica. See Indictment, The Prosecutor of the Tribunal Against Radovan Karadzic, Ratko Mladic, International Criminal Tribunal for the Former Yugoslavia, <http://www.un.org/icty/indictment/english/kar-ii951116e.htm> (indictment concerning Srebrenica); Indictment, The Prosecutor of the Tribunal Against Radovan Karadzic, Ratko Mladic, International Criminal Tribunal for the Former Yugoslavia, <http://www.un.org/icty/indictment/english/kar-ii950724e.htm> (sixteen-count indictment concerning the taking of UN peacekeepers as hostages, the sniping campaign in Sarajevo, and crimes against civilians and places of worship in Bosnia and Herzegovina). See also Karadzic, *Mladic Accused of Horrendous New War Crimes*, HOUS. CHRON., Nov. 16, 1995, at 1, available at <http://www.chron.com/content/chronicle/wprld/95/11/17/yugo.html>.

<sup>121</sup> During the period following their victory in Krajina, Croat forces embarked on a rampage through the region, burning and looting property and engaging in the mass killing of ethnic Serbs. See Raymond Bonner, *Conflict in the Balkans: The Overview; In Broad Attack, Croatia is Trying to Dislodge Serbs*, N.Y. TIMES, Aug. 5, 1995, at A1.

war.<sup>122</sup> Importantly, the Albanians viewed the Accords with disdain. They were embittered over their belief that the Accords failed to recognize and address the "Kosovo Question," or their quest for independence in Kosovo.<sup>123</sup>

While the Bosnian conflict and subsequent peace negotiations were occurring, the situation in Kosovo worsened. Rugova's policies of passive resistance increasingly came under verbal attack and were frequently replaced by violence. In May 1993, an armed ethnic Albanian group called the Kosovo Liberation Army (KLA)<sup>124</sup> was founded, replacing its underground predecessor, the National Movement for the Liberation of Kosovo.<sup>125</sup> In 1997, the political structure within Albania collapsed and civil war ensued, dimming prospects for Kosovar Albanians' ultimate unification in a "Greater Albania." Money and weapons began to flow out of Albania and into the hands of the KLA. Simultaneously, attacks in Kosovo against Serb police, border guards, and prominent figures increased, as momentum shifted away from Rugova and his nonviolent policies to the KLA and its radical approach. The KLA eventually admitted responsibility for these attacks and soon began to speak as the now radical voice for Albanian independence within the region.<sup>126</sup>

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<sup>122</sup> See General Framework Agreement for Peace in Bosnia and Herzegovina, Dec. 14, 1995, Rep. of Bosn. & Herz.—Rep. of Croat.—Fed. Rep. of Yugo. [commonly known as, and hereinafter, Dayton Peace Accords]. See also BUREAU OF PUB. AFF., U.S. DEPT OF STATE, SUMMARY OF THE DAYTON PEACE AGREEMENT (1995), available at <http://www.state.gov/www/regions/eur/bosnia/dayton.html>. See also Sowards, *supra* note 112, at 7.

<sup>123</sup> "The Dayton Accord had not only recognized *Republika Srpska*, but more importantly had shut the door to the Albanian Kosovar case by decreeing that no additional changes in borders within Yugoslavia would be sanctioned." Jansen, *supra* note 19, at 9. Many Albanian leaders cited to this as proof that nonviolent resistance to Serbian encroachment would never work. They noted that in the Dayton Accords, the Bosnian Serbs were apparently rewarded with a new territory for their cruel ethnic cleansing policy within Bosnia. See War Crimes Library, *supra* note 2, at 2; BALKAN HOTSPOT, *supra* note 6, at 2-3.

<sup>124</sup> The Albanian acronym for this organization is UCK, or "Ushtria Clirimtare e Kombatere." The UCK, or KLA, is a Kosovo Albanian paramilitary group formerly led by Hashim Thaci. The group's stated function is to resist Serbian rule and seek independence via armed conflict. Its targets are not limited to Serbs—Kosovar Albanians supporting Serbian authorities have also been subject to harsh attacks in the past. See OSCE Brief, *supra* note 7, at 4. See also Marlise Simons, *UN War Crimes Tribunal Steps Up Its Inquiry Into Kosovo*, N.Y. TIMES, Aug. 26, 1998, at A4 (indicating that the ICTY was investigating war crimes allegedly committed by the KLA during the fighting in Kosovo) Elizabeth Olson, *Crisis in the Balkans: Atrocities; Report Finds Shared Guilt Inside Kosovo*, N.Y. TIMES, Apr. 2, 1999, at A12 (indicating that a report to the UN Human Rights Commission accused both Serb and Albanian forces of committing numerous atrocities in Kosovo).

<sup>125</sup> Jansen, *supra* note 19, at 9.

<sup>126</sup> See *id.* at 9; AUSA BRIEF, *supra* note 5, at 7. The KLA also began to create areas that were completely free of Serbian presence, by forcing the Serbs out via threats of violence. See BALKAN HOTSPOT, *supra* note 6, at 3.

During 1998, a full-fledged civil war opened up between Serbia and Kosovo. In the battles between Serb military and police forces and the KLA, thousands died and hundreds of thousands sought refuge elsewhere.<sup>127</sup> Kosovo quickly became the foremost concern of the international community, posing grave humanitarian concerns and risking spillover into neighboring countries, which needed little to fan the existing embers of ethnic hatred and violence.<sup>128</sup> A six-country "Contact Group"<sup>129</sup> formed and initially called for negotiations on autonomy in place of armed conflict. Buttressed by internal support for his policies, Milosevic rejected the calls for Serbia to cease all military action in Kosovo. Instead, Milosevic sent more troops into Kosovo and escalated the level of fighting during the summer months of 1998. In response, the North Atlantic Council (NAC)<sup>130</sup> asked NATO to explore and assess numerous military options to end the crisis in Kosovo.<sup>131</sup>

Amid the unearthing of evidence of additional massacres and the continued rejection of peace overtures by Milosevic, the UN Security Council (UNSC) adopted Resolution (UNSCR) 1199 on 23 September

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<sup>127</sup> An estimated 400,000 people became refugees from the warfare during 1998. Trained Serb "security" forces in Kosovo responded to brutal KLA violence in kind with large-scale attacks in Drenica and other regions using military vehicles and weapons and vicious house-to-house raids in which Albanians were killed, beaten, or at the very least forced to leave their homes and/or families. See OSCE Brief, *supra* note 7, at 4-5; Background to the Conflict, at <http://kforonline.com/resources/intro.htm> (last visited 1 Dec. 2001).

<sup>128</sup> From late 1997 forward the UN, the North Atlantic Treaty Organization (NATO), the European Union (EU), and the Organization for Security and Cooperation in Europe (OSCE) all focused their attention on the developing situation in Kosovo. United Kingdom, Ministry of Defence, Kosovo: An Account of the Crisis—The Crisis Unfolds, at <http://www.kosovo.mod.uk/account/crisis.htm> (last visited 23 Oct. 2001) [hereinafter UK Account].

<sup>129</sup> The six-member group included representatives from France, Germany, Italy, Russia, the United Kingdom, and the U.S. It was established by the 1992 London Conference on the Former Yugoslavia, which sought to give the international community a "better foundation to defuse, contain, and bring to an end the conflict in the former Yugoslavia" by establishing "a new, permanent negotiating forum, cochaired by the United Nations and European Community." Press Release, Statement by Press Secretary Fitzwater on the London Conference on the Former Yugoslavia (Aug. 28, 1992), available at <http://bushlibrary.tamu.edu/papers/1992/92082802.html>. The U.S. sought an end to the bloodshed, the use of international observers within Kosovo, and an "enhanced" status for Kosovo within Serbia. See UK Account, *supra* note 128, at 1; Jansen, *supra* note 19, at 9. The international community as a whole threatened limited sanctions against Serbia, viewed by most as the aggressor. These sanctions and an arms embargo were ultimately imposed in March and April 1998, in response to Milosevic's blatant disregard of all diplomatic efforts, including those of the Contact Group.

<sup>130</sup> The NAC is the principal decision-making authority of the North Atlantic Alliance, containing representatives of all member nations and chaired by the Secretary-General. See NATO OFF. INFO. & PRESS, NATO HANDBOOK 278 (2001).

<sup>131</sup> See Background to the Conflict, *supra* note 127, at 1; UK Account, *supra* note 128, at 1. After producing the requested options, NATO began a series of military exercises focused on demonstrating to Milosevic the NAC's intentions if he refused to comply with international requests and demands. *Id.*

1998.<sup>132</sup> The resolution called for an immediate cease-fire, an international presence, and the immediate withdrawal of Serbian troops from within Kosovo.<sup>133</sup> Although the Serbs thereafter claimed to have complied, at least in part, the Contact Group observed no evidence of such compliance. Thus, while the Contact Group sent U.S. envoy Richard Holbrooke and others to Belgrade to obtain Milosevic's assurances of future compliance with the terms of the resolution, on 13 October 1998 NATO authorized air strikes in the event that Milosevic ultimately failed to comply.<sup>134</sup>

Under this threat of NATO air strikes, Milosevic finally agreed to withdraw troops from Kosovo, pursuant to the "Milosevic-Holbrooke Agreement."<sup>135</sup> The Serbs then temporarily discontinued their offensive and withdrew from Kosovo, NATO suspended the air strike activation order, and the Organization for Security and Cooperation in Europe (OSCE) sent in the Kosovo Verification Mission (KVM).<sup>136</sup> For almost two months, the situation appeared to be progressing; the KLA, however, took advantage of

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<sup>132</sup> S.C. Res. 1199, U.N. SCOR, U.N. Doc. S/RES/1199 (1998), available at <http://www.un.org/Docs/scres/1998/98sc1199.htm> [hereinafter UNSCR 1199]. The UNSC acted pursuant to its authority under Chapter VII of the UN Charter, and the vote was unanimous, with China abstaining. See OSCE Brief, *supra* note 7, at 5.

<sup>133</sup> UNSCR 1199, *supra* note 132. The resolution also "highlighted the impending human catastrophe" in Kosovo and expressed great concern over the Serbs' excessive use of force. *Id.*; UK Account, *supra* note 128, at 2.

<sup>134</sup> NATO's Secretary General Javier Solana, the Chairman of NATO's Military Committee, General Naumann, and the Supreme Allied Commander Europe, General Clark, all visited Belgrade with U.S. Envoys Holbrooke and Hill to meet with Milosevic and his representatives. See Background to the Conflict, *supra* note 127, at 2.

<sup>135</sup> This agreement was announced, but not published, on 16 October 1998, after numerous sessions primarily between Holbrooke and Milosevic in Belgrade. See OSCE Brief, *supra* note 7, at 5-6.

<sup>136</sup> Pursuant to the resolution and agreement, the hostilities ended, limits were thereafter placed on the total number of Serbian forces in Kosovo, and refugees returned to their homes. Additionally, the OSCE was to establish a "verification mission" on the ground—that is, a 2,000 member unarmed civilian force—and NATO was to create an aerial surveillance system, code-named Operation Eagle Eye, both of which would verify the Serbs' compliance. See *id.* at 6; Background to the Conflict, *supra* note 127, at 1. See also S.C. Res. 1203, U.N. SCOR, U.N. Doc. S/RES/1203 (1998), available at <http://www.un.org/Docs/scres/1998/98sc1203.htm> [hereinafter UNSCR 1203] (endorsing the establishment of the two missions and demanding that the FRY comply "fully and swiftly" with UNSCR 1160 and UNSCR 1199 and cooperate fully with the OSCE KVM). The KVM actually replaced the Kosovo Diplomatic Observer Mission (KDOM), which was established on 6 July 1998 in response to the Moscow Declaration by Serbian President Milosevic and Russian President Yeltsin on 31 March 1998. The KDOM consisted of members from the U.S., Russia, and member states of the EU and its mission was to monitor and report on the security and welfare of the people in Kosovo. To facilitate communications between the KVM and NATO, the Kosovo Verification Coordination Centre (KVCC) was established on 26 November 1998. Located at Kumanovo in FYROM, it conducted liaison, planning, coordination, and exchange of information with the OSCE KVM verifiers. It also served as the liaison with the FYROM government to coordinate all flights within FYROM airspace and as the link to the NATO forces identified to assist in the extraction of the KVM if necessary. NATO aerial surveillance and the KVM monitoring mission ceased all operations in March 1999.

the opportunity presented by the lull in Serb activity and intensified its military efforts with weapons smuggled from Albania. The Serbs responded by strengthening their forces in Kosovo and allowing the Serbian military and police to resume their "barbaric" tactics.<sup>137</sup> As the new year approached, it was clear that the cease-fire had ended, the verification force was in danger, and the refugees were not returning home due to continued violence.<sup>138</sup>

The Serb massacre of forty-five Albanians in the village of Racak on 15 January 1999<sup>139</sup> forced the international community's hand once again. NATO issued a "solemn warning" to both sides that it would resort to military force immediately if they did not again heed the terms of the cease-fire. In an effort to settle the rising tension, the Contact Group announced a peace conference in Rambouillet, France, near Paris, on 6 February 1999.<sup>140</sup> The warring parties received Western-drafted proposals on how to resolve the ongoing conflict and were "provided" a deadline by which they were to agree to the proposals.<sup>141</sup> Although the Serbs initially expressed a willingness to discuss the proposal's terms, they reneged at subsequent meetings held in Paris in mid-March. As a result, the negotiations ended,

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<sup>137</sup> See Jansen, *supra* note 19, at 9-10. Again, the Serbs were not alone in committing these acts of barbarity, as the KLA could be just as heinous as the opposition.

<sup>138</sup> In response, a 2,300-person NATO extraction force was established in neighboring FYROM in the event the KVM needed to be evacuated from Kosovo on short notice. OSCE Brief, *supra* note 7, at 6.

<sup>139</sup> See Press Release, Human Rights Watch, Yugoslav Government War Crimes in Racak (Jan. 29, 1999), available at <http://www.hrw.org/press/1999/jan/yugo0129.htm>. Some of those injured or killed—most of whom were shot in the head at close range, or in the back attempting to run away—were children. Many were tortured before they were killed. *Id.* at 3-4. Some critics have disputed the allegations that what occurred in Racak was a massacre. *Id.* at 4-5. However, their arguments appear to lack merit. Notably, after the leader of the OSCE's KVM accused the Serbs of responsibility for the massacre, Serbian authorities ordered him out of the country but he refused to leave, setting the stage for a final showdown between the international community and Milosevic. OSCE Brief, *supra* note 7, at 6.

<sup>140</sup> Present at the 6-23 February and 15-18 March 1998 conference, co-chaired by the UK and France, were members of the Contact Group, Serbian leaders, and representatives from both the LDK and UCK (KLA). See UK Account, *supra* note 128, at 3.

<sup>141</sup> *Id.*; See Rambouillet Accords: Interim Agreement for Peace and Self-Government in Kosovo, *unsigned*, Fed. Rep. Yugo.-Serb.-Kosovo, U.N. Doc. S/1999/648 (1999). The Rambouillet Accords were a three-year interim agreement designed to provide democratic self-government, peace, and security for all living in Kosovo. BUREAU OF EUROPEAN AFF., U.S. DEP'T OF STATE, UNDERSTANDING THE RAMBOUILLET ACCORDS (Mar. 1, 1999), available at [http://www.state.gov/www/regions/eur/fs\\_990301\\_rambouillet.html](http://www.state.gov/www/regions/eur/fs_990301_rambouillet.html). The Accords set forth a framework to transform Kosovo into an autonomous province within the Yugoslav Federation and to achieve a final settlement for Kosovo in three years. *Id.* at 1-2. Pursuant to the Agreement, the FRY would withdraw all of its forces from Kosovo, the KLA would disarm, and NATO troops would enter Kosovo to keep the peace. However, some viewed certain provisions within the Accords as more appropriate for an occupying force after an armistice than for a peace accord, in that they required the FRY to surrender "many aspects of its national sovereignty" to NATO. Jansen, *supra* note 19, at 10. The Albanians eventually signed the proposed peace agreement but the Serbs would not.

the violence in Kosovo intensified, the KVM withdrew, and NATO once again threatened a strong military response.<sup>142</sup>

On 22 March, Holbrooke attempted a "last-ditch" effort to convince Milosevic to sign the agreement and prevent a military confrontation. The international community hoped to avoid air strikes but nonetheless continued to plan them.<sup>143</sup> However, Holbrooke's efforts were ultimately unsuccessful. On 24 March, NATO forces began a campaign of air strikes—code-named Operation Allied Force—against FRY military targets to force the Serbs to cease hostilities and allow ethnic Albanian refugees to return to their homes in Kosovo.<sup>144</sup> Instead of immediately achieving the desired goals, however, the air strikes only led to the intensification of Serbian-led assaults on Albanians, with Serbian police and paramilitary units and the JNA razing villages and forcing residents to flee.<sup>145</sup> Thereafter, the bombing campaign lasted seventy-eight days and inflicted tremendous destruction within the region.<sup>146</sup>

Finally, on 3 June, Milosevic and the Serbian National Assembly accepted a peace plan that arose out of negotiations initiated by Russian Special Envoy Viktor Chernomyrdin.<sup>147</sup> On 10 June, after having received

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<sup>142</sup> Not only had Milosevic reneged on earlier promises to work toward a peaceful resolution but evidence depicted an increased intensity in Serbian-induced violence as well as a massive Serb security force buildup of almost 30,000 troops in and around Kosovo. On 20 March, obstructed by Serb forces and incapable of performing its mission, the KVM withdrew. See Background to the Conflict, *supra* note 127, at 2. Interestingly, subsequent revelations demonstrated that while Milosevic was feigning interest in a negotiated settlement, he was covertly developing a plan—code-named Operation Horseshoe—designed to drive Albanians from Kosovo in "scenes reminiscent of the 1930s and 1940s." UK Account, *supra* note 128, at 5.

<sup>143</sup> "In response to Belgrade's continued intransigence and repression, the Secretary General of NATO, to whom the North Atlantic Council had delegated on 30 January the authority to decide on air operations, is completing his consultations with the Allies to this end." Press Release, NATO, Statement by the North Atlantic Council on the Situation in Kosovo, (1999)038 (22 Mar. 1999), available at <http://www.nato.int/docu/pr/1999/p99-038e.htm>.

<sup>144</sup> See UK Account, *supra* note 128, at 4-5.

<sup>145</sup> Almost one million Kosovars fled, mostly due to Serbian atrocities or fear of them, but some because of the bombing campaign itself. Jansen, *supra* note 19, at 10. The UN High Commissioner for Refugees (UNHCR) put the number of refugees at just under one million, placing an extremely heavy burden on the neighboring countries of FYROM and Albania. Yugoslavia, at <http://info.lycos.com/ipa/a0772953.html> (last visited 22 Oct. 2001).

<sup>146</sup> During the campaign, NATO flew over 38,000 sorties, with over 10,000 of them being strike sorties. See NATO & Kosovo: Operation Allied Force, NATO's Role in Kosovo, A Historical Overview 1-2, at <http://www.nato.int/kosovo/kosovo.htm> (last visited 20 Nov. 2001).

<sup>147</sup> The international community desperately sought a political resolution to the conflict that would end the air strikes as well as the bloodshed on the ground. The G-8 group of industrialized countries—the Group of Seven and the Russian Federation—had adopted "general principles" upon which this political resolution would be based. The UNSC also adopted these principles, along with a paper drafted by Finnish President Marti Ahtisaari and Chernomyrdin. Both men presented the paper and principles to Milosevic in Belgrade

confirmation from SACEUR that Serb forces were withdrawing from Kosovo pursuant to the terms of a NATO–FRY Military-Technical Agreement (MTA) dated 9 June,<sup>148</sup> NATO officially halted the air strikes.<sup>149</sup> Also on 10 June, the UNSC passed UNSCR 1244, which welcomed the FRY's acceptance of the "principles on a political solution to the Kosovo crisis" and demanded the FRY's "full cooperation in their rapid implementation."<sup>150</sup>

Although 10 June brought an end to the military campaign, significant events occurred during the two-plus months of NATO military action. One week after the start of the campaign, the crisis in the region escalated when on 31 March Serbs captured three U.S. soldiers patrolling the FRY-FYROM border.<sup>151</sup> In April 1999 Serb troops were responsible for the massacre of at least forty-seven Albanian men, and the forced departure of thousands more, from the town of Djakovica.<sup>152</sup> In response, NATO intensified its campaign

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on 2 June, and the Government of the FRY accepted them on 3 June (both documents comprise annexes to the final UN Resolution, UNSCR 1244). S.C. Res. 1244, U.N. SCOR, U.N. Doc. S/RES/1244 (1999), available at <http://www.un.org/Docs/scres/1999/99sc1244.htm> [hereinafter UNSCR 1244]; Background to the Conflict, *supra* note 127, at 2.

<sup>148</sup> Military Technical Agreement between the International Security Force ("KFOR") and The Governments of the Federal Republic of Yugoslavia and the Republic of Serbia, 9 June 1999 [hereinafter MTA], available at <http://www.nato.int/kosovo/docu/a990609a.htm>. A copy of the MTA is included in Appendix IV-1. The MTA contemplated the deployment of the Kosovo Force, or KFOR, into Kosovo as soon as the UNSC adopted UNSCR 1244. The KFOR would "take all necessary action to establish and maintain a secure environment for all citizens of Kosovo" without hindrance from any party. *Id.* at art. I, ¶ 2. To accomplish this the MTA initially established both an Air Safety Zone (ASZ), which extended twenty-five kilometers beyond the Kosovo border into the remainder of the FRY, and a Ground Safety Zone (GSZ), which extended five kilometers beyond the Kosovo border and into the FRY. *Id.* at art. I, ¶ 3d-e. To "establish a durable cessation of hostilities," the Agreement then required all FRY and Serbian air and ground military forces to withdraw in phases from Kosovo and the GSZ and ASZ and remain outside of the zones, as applicable. *Id.* at art. I, ¶ 4a; art. II, ¶¶ 2-3.

<sup>149</sup> Once SACEUR, General Clark, confirmed that the withdrawal of Serb forces had begun, Secretary General Solana instructed Clark to suspend the air operations. See Background to the Conflict, *supra* note 127, at 2.

<sup>150</sup> UNSCR 1244, *supra* note 147, ¶ 2. Again the UNSC acted pursuant to Chapter VII of the UN Charter, and the resolution was unanimously adopted with one abstention (China). Among other things, as detailed later in this chapter, the resolution called for an immediate end to the violence and the FRY's withdrawal of its military, paramilitary, and police forces from Kosovo and the deployment of an international civil and security presence in Kosovo. *Id.* ¶¶ 3, 5, 7-11.

<sup>151</sup> On 31 March 1999, three U.S. soldiers, two sergeants and a specialist, were captured by Serbian forces just north of Algunja, FYROM. See John J. Cushman, Jr., *Crisis in the Balkans: The Ambush; 3 G.I.s Missing in Macedonia After They Reported Attack*, N.Y. TIMES, Apr. 1, 1999, at A1. On 2 May 1999, the three soldiers were released after the Reverend Jesse Jackson negotiated their return with Milosevic. See Charles M. Madigan, *Trip to Germany Ends Soldiers' Ordeal; Bombs Rain Amid Signs of Push for a Peace Settlement*, CHI. TRIB., May 3, 1999, at 1. See also *infra* Part III, notes 8-16 and accompanying text (providing a detailed discussion of the soldiers' status as a result of their capture).

<sup>152</sup> See Scene of Horror, ABC News.com/World News, [http://abcnews.go.com/sections/world/DailyNews/kosovo990625\\_moran.html](http://abcnews.go.com/sections/world/DailyNews/kosovo990625_moran.html) (an on-line interview with an ABC news correspondent at the scene of the massacre approximately two months later) (indicating that

of air strikes, bombing roads, bridges, oil production facilities, and other significant targets in the FRY. On 5 May an Apache helicopter, part of “Task Force Hawk,” crashed in Albania while on a training mission, causing two U.S. pilots to become the only NATO casualties during the air strikes.<sup>153</sup>

Additionally, on 6 May the first group of ethnic Albanian refugees from Kosovo arrived in the U.S. as part of Operation Provide Refuge, the U.S. humanitarian effort to relieve the overflow of Kosovar refugees into the FYROM.<sup>154</sup> On 7 May NATO bombs struck the Chinese embassy in Belgrade, killing three Chinese journalists and prompting massive protests in Beijing, where the American ambassador was trapped in the U.S. embassy for over forty-eight hours.<sup>155</sup> NATO also committed other errant bombings during the air campaign. In separate incidents in both April and May, NATO bombs struck what were mistakenly thought to be Serb military posts or vehicles but were actually Albanian villages or convoys, causing

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twenty people—twelve children, seven woman, and one man—were allegedly gunned down, burned, and their remains left for dogs to pick over). In addition to these atrocities, the UN and Human Rights Watch later reported that Serbian troops killed 200-300 men in the village of Meja on 27 April 1999. *See* UN Reports Massacre Evidence, ABC News.com/World News, [http://abcnews.go.com/sections/world/DailyNews/kosovo\\_main\\_990430.html](http://abcnews.go.com/sections/world/DailyNews/kosovo_main_990430.html). Serb forces have also been accused of using Albanians as human shields, raping women, burning and looting homes, destroying crops and livestock, and destroying many ethnic Albanians’ citizenship papers, etc., in an effort to suppress their identity, origin, and property ownership. The KLA was also guilty of similar atrocities and violations of human rights. *See* Carlotta Gall, *Belgrade Sees Grave Site as Proof NATO Fails to Protect Serbs*, N.Y. TIMES, Aug. 27, 1999, at A3 (on file with CLAMO).

<sup>153</sup> The helicopter, an AH-64 Apache, crashed during a training flight near Tirana, Albania, killing its two-man crew. This was the second Apache to crash during the operation, but the first did not involve any injuries. *See* U.S. Helicopter Crew Killed in Crash in Albania (May 5, 1999), *at* <http://cgi.cnn.com/US/9905/05/apache.crash.htm>. The helicopters were part of an overall force of approximately 2,000 U.S. troops sent to Albania as part of Task Force Hawk. The task force, an element of the larger Operation Allied Force, consisted of almost fifty helicopters (twenty-four Apache helicopters), a Multiple Launch Rocket System (MLRS) battalion (eighteen MLRS systems), an Infantry battalion (300 soldiers with M2 Bradley Fighting Vehicles and M1 Abrams tanks), a Deep Operation Control Center (DOCC) (coordination cell), and other support elements, providing NATO with a deep strike capability out of Albania into Kosovo. *See* Press Release, Public Affairs Office, U.S. Army, Army Sending Task Force to Albania (Apr. 5, 1999), *at* <http://www.dtic.mil/armylink/news/Apr1999/a19990405hawk.html>.

<sup>154</sup> *See infra* Part V (detailed discussion of Operation Provide Refuge).

<sup>155</sup> Amid Protests, U.S. Says “Faulty Information” Led to Chinese Embassy Bombing 1 (May 9, 1999), *at* <http://www.cnn.com/WORLD/europe/9905/09/kosovo.01/htm>. A critical mistake in properly identifying the target apparently led to the bombing, which killed three and injured twenty more, some critically, as many used knotted bed sheets draped out of the windows to escape the flames that engulfed the building. While many non-NATO countries condemned the attack and the U.S. and NATO apologized profusely, intense anti-U.S. protests took place in Beijing, China. Almost 20,000 protesters surrounded the U.S. Embassy, hurling rocks at the windows and scaling the walls in an attempt to gain entry to the compound. Most embassy workers were advised to remain in the relative safety of their homes, and the Ambassador did not leave the building. *Id.* at 3-4.

numerous Albanian casualties.<sup>156</sup> On 27 May 1999 the UN International Criminal Tribunal for the Former Yugoslavia (ICTY) unsealed an indictment accusing Milosevic and four other senior Yugoslav officials of committing numerous war crimes in Kosovo.<sup>157</sup>

In passing UNSCR 1244, the UNSC formally declared its adoption of the general principles upon which the political solution to the Kosovo crisis would be based<sup>158</sup> and announced its decision to deploy an international civil presence and an international security presence under UN auspices within Kosovo.<sup>159</sup> The international civil presence was entitled the United Nations Interim Administration Mission in Kosovo (UNMIK),<sup>160</sup> and the

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<sup>156</sup> See Michael R. Gordon, *Crisis in the Balkans: A NATO Account; NATO Admits Pilot Bombed 2d Convoy on Kosovo Road*, N.Y. TIMES, Apr. 20, 1999, at A12 (on file with CLAMO); Michael R. Gordon, *Crisis in the Balkans: The Attack; NATO Admits Village Attack and Casualties*, N.Y. TIMES, May 16, 1999, at A1. See also NATO in Kosovo: A Timeline 3 (Oct. 22, 2001), <http://infoplease.lycos.com/spot/kosovo-timeline1.html> [hereinafter NATO Timeline].

<sup>157</sup> See Press Release, The Hague, President Milosevic and Four Other Senior FRY Officials Indicted for Murder, Persecution, and Deportation in Kosovo (27 May 1999), available at <http://www.un.org/icty/pressreal/p403-e.htm>. The ICTY indicted and issued arrest warrants for Milosevic, the Serbian President, the FRY Deputy Prime Minister, the JNA Chief of Staff, and the Serbian Minister of Internal Affairs. *Id.* The indictment alleged murder, persecution on political, racial, and/or religious grounds, and deportation—all crimes against humanity. The indictment further alleged that between 1 January and late May 1999, Serb or FRY forces under the five individuals' control murdered 340 people (identified by name), persecuted the Kosovo Albanian population on political, racial, or religious grounds, and expelled over 750,000 Albanians from Kosovo. *Id.* These indictments are in addition to pending criminal charges against Milosevic and others stemming from the murders of hundreds of civilians and the expulsion of almost 200,000 non-Serbs from their homes and towns during the Serbs' war with Croatia. See The Charges Against Milosevic, BBC News, Europe 1-2, at [http://newsvote.bbc.co.uk/hi/english/world/europe/newsid\\_1402000/1402790.stm](http://newsvote.bbc.co.uk/hi/english/world/europe/newsid_1402000/1402790.stm). Finally, a new indictment was recently filed against Milosevic for war crimes, to include genocide, that are alleged to have occurred in Bosnia and Herzegovina from 1992 to 1995. The most recent indictment includes twenty-nine counts, the third count alleging genocide, under a superior authority theory. Ratko Mladic and Radovan Karadzic are named in the indictment as well. Prosecutors currently plan to merge all three indictments into one trial to eliminate overlapping testimony. See Bosnians Hail Milosevic Move, CNN.com/World News, at <http://www.cnn.com/2001/WORLD/europe/11/23/milosevic.genocide/index.html>.

<sup>158</sup> See *supra* note 147 and accompanying text. The general principles included, among others: an immediate and verifiable end of the violence and repression in Kosovo; withdrawal of all FRY military, police, and paramilitary forces; deployment of effective international civil and security presences, and substantial NATO participation in such presences along with unified command and control; establishment of an interim administration as directed by the UNSC; the safe and free return of all refugees and displaced persons; a political process providing for both substantial self-government in accordance with the Rambouillet Accords and the demilitarization of the KLA; and a comprehensive approach to the economic development and stabilization of the region. UNSCR 1244, *supra* note 147, at annexes 1-2; Background to the Conflict, *supra* note 127, at 2.

<sup>159</sup> UNSCR 1244, *supra* note 147, ¶ 10. The UNSC determined that the KFOR's responsibilities would include deterring renewed hostilities, demilitarizing the KLA, and establishing a secure environment for the safe return of the refugees and the safe operation of the international presences. Background to the Conflict, *supra* note 127, at 2.

<sup>160</sup> "The task before the international community is to help the people of Kosovo to rebuild their lives and heal the wounds of conflict." United Nations Interim Administration Mission in Kosovo (UNMIK),

international security presence was known as KFOR. On 12 June, synchronized with the departure of the FRY forces, the initial elements of KFOR rolled into Kosovo. This almost 50,000-member international force was to assume the critical peacekeeping mission in Kosovo—code-named Operation Joint Guardian.<sup>161</sup> The U.S. contribution to this force, "Task Force Falcon," operated within one of the five multinational brigades within Kosovo that comprised KFOR—the Multinational Brigade East (MNB(E)), located in southeast Kosovo, bordering the FYROM and the FRY.<sup>162</sup> By 20 June 1999 a majority of the FRY forces had vacated Kosovo, KFOR was well established, and NATO had formally terminated the air campaign.<sup>163</sup>

The NATO peacekeepers worked mightily to maintain the relative peace, although the violence continued within Kosovo. By January 2000, however, in the face of trade sanctions from the U.S. and other nations, the FRY economy continued to deteriorate and dissent within the region spread. Montenegro discussed separating from the FRY. Milosevic's popularity with many Serbs began to plummet over the loss of Kosovo. On 24 September 2000, elections were held in the FRY and opposition leader Vojislav Kostunica<sup>164</sup> emerged as the victor. Milosevic refused to release the complete results, however, and instead demanded a runoff election against Kostunica.<sup>165</sup>

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Bringing Peace to Kosovo: Mandate and Tasks 1, at <http://www.un.org/peace/kosovo/pages/kosovo12.htm> (quoting UN Secretary General Kofi Annan) (last visited 18 Nov. 2001). UNSCR 1244 gave UNMIK the mandate to establish an interim civilian administration [led by the UN] under which the Kosovo population could enjoy substantial autonomy. *Id.* The head of UNMIK is the Special Representative of the Secretary General for Kosovo. From 1999-2001, this was Dr. Bernard Kouchner of France, and currently Mr. Hans Haekkerup of Denmark holds the position. *Id.* at 2. See also *infra* Part IV (discussion of UNMIK's mission, responsibilities, regulations, and policies).

<sup>161</sup> See NATO's Role in Relation to Kosovo, NATO Fact Sheets, NATO On-Line Library 1-2, at <http://www.nato.int/docu/facts/2000/kosovo.htm> (last visited 20 Nov. 2001). KFOR consisted of five multinational brigades with personnel from all of the nineteen NATO-member nations and twenty other troop contributing nations (TCN). See also *infra* Part IV, notes 5-7 and accompanying text (detailed discussion of the composition and command and control of KFOR).

<sup>162</sup> The U.S. contribution to KFOR, TFF, was almost 8,100 soldiers, approximately 7,400 of which were located in Kosovo and the remainder at TFF (Rear) in FYROM. See Major General Ricardo S. Sanchez, Deputy Chief of Staff, Operations, United States Army Europe, Kosovo Scene Setting, PowerPoint presentation, briefing slide 5 (2001) (on file with CLAMO).

<sup>163</sup> Background to the Conflict, *supra* note 127, at 2.

<sup>164</sup> Kostunica was a former constitutional law professor, political outsider, and reluctant candidate, having been urged to run against Milosevic only when it was clear that the two other candidates opposing Milosevic had no chance of winning. See Vojislav Kostunica: Tough Intellectual, CNN.com/World News (Oct. 6, 2000), at <http://www.cnn.com/2000/WORLD/europe/10/05/etime/kostunica/>.

<sup>165</sup> See Steven Erlanger, *Milosevic Seeking a Runoff Election After His Setback*, N.Y. TIMES, Sept. 27, 2000, at A1 [hereinafter Runoff Election] (on file with CLAMO). See also Slobodan Milosevic, Former Yugoslav President, ABC News.com, at <http://www.abcnews.go.com/reference/bios/milosevic.html> (last

In response to Milosevic's refusal to step down, massive public protests and demonstrations took place within Serbia. A general strike was called, and over one million people flooded Belgrade, ultimately attacking the Parliament building. Serb security forces either joined the demonstrators or retreated. On 5 October 2000, Milosevic finally conceded the election and stepped down.<sup>166</sup> His Socialist Party, still maintaining a degree of political power, agreed to share power with two opposition parties.<sup>167</sup> Yet after thirteen cruel years and four more Balkan wars, Milosevic's reign had finally come to a close.

The international community's response to Milosevic's departure was swift—Russia and China immediately recognized the new government and the U.S. and EU quickly lifted economic sanctions against the FRY. However, Kostunica clearly asserted that he would not be a Western puppet. He recognized that his primary task was to rebuild a shattered FRY after years of turmoil and the recent NATO bombing campaign.<sup>168</sup>

On 1 April 2001 Milosevic was arrested by FRY authorities and charged with official corruption and abuse of power. In response, the U.S. released \$50 million in economic aid to the FRY. Milosevic was thereafter turned over to the ICTY in The Hague in June 2001 for prosecution on the war crimes indictments. The UNSC then lifted the arms embargo on the FRY in September 2001, the last remaining sanction against the embattled country.<sup>169</sup>

Currently, the international community considers Kosovo to be an autonomous province of the FRY, yet the Kosovar Albanians still seek complete independence from Serbian authority. As this Book went to press, under the watchful eyes of over 40,000 peacekeepers from over thirty different nations, residents of Kosovo went to the polls on 17 November 2001 to elect members of a 120-seat legislature. This legislature will in turn

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visited 27 Nov. 2001) [hereinafter Milosevic]. Milosevic claimed that although Kostunica had received more votes, the final count was so close that a runoff election was necessary.

<sup>166</sup> See Runoff Election, *supra* note 165, at A1; Milosevic, *supra* note 165, at 1-2. See also Steven Erlanger, *Showdown in Yugoslavia: The Overview; Milosevic Concedes His Defeat; Yugoslavs Celebrate New Era*, N.Y. TIMES, Oct. 7, 2000, at A1 (on file with CLAMO).

<sup>167</sup> Milosevic Party Agrees to Power Sharing Deal, CNN.com/World News (Oct. 16, 2000), at <http://www.cnn.com/2000/WORLD/europe/10/16/yugoslavia.government.02/index.html>.

<sup>168</sup> See Milosevic, *supra* note 165, at 5-6.

<sup>169</sup> *Id.* at 6.

select a Kosovo President and government to run the province, which is still under the overall control of the UN administration.<sup>170</sup> The Serbs in Kosovo, contrary to the predictions of many election monitors, did not boycott the election. Nevertheless, they continued to call for the safe return of over 170,000 Serbs driven from their homes in Kosovo during the UN air campaign and afterward.<sup>171</sup> In a fairly substantial victory, Dr. Ibrahim Rugova's moderate ethnic Albanian party, the Democratic League of Kosovo (LDK), still pursuing Kosovo independence through nonviolent means, was returned to power after years of violence had rocked the province.<sup>172</sup>

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<sup>170</sup> See Polling Stations Close in Kosovo, CNN.com/World News (Nov. 18, 2001), at <http://www.cnn.com/2001/WORLD/europe/11/17/kosovo.elex/index.html>.

<sup>171</sup> See *id.* Initially, voting in Serb enclaves was light. However, the Serb turnout surged as the day wore on, and many polls stayed open well past the designated closing time to accommodate the large numbers of voters standing in line. Many Serbs who did not vote indicated that they "did not want to legalize an Albanian government." *Id.* at 2. The Serbs were guaranteed at least ten seats in the new Parliament and as many as twenty if Serb voter turnout was high. *Id.*

<sup>172</sup> First Results Hand Rugova Victory, CNN.com/World News (Nov. 19, 2001), at <http://europe.cnn.com/2001/WORLD/europe/11/19/kosovo.elex/index.html>. Early analysis of 92% of the vote indicated that Rugova's LDK had obtained 46% of the vote, while Hashim Thaci's Democratic Party of Kosovo (DPK) had received only 25% of the vote. The results did not give Rugova a clear majority, meaning that he will not be able to rule alone but will need to form a coalition government. However, this did not deter Rugova from immediately calling for Kosovo independence. His calls were met with anger and dismay by representatives of the international community, who still believe that the best resolution to the Kosovo conflict is substantial autonomy for Kosovo within the Yugoslav Federation. *Id.* See also Press Release, NATO, Statement by NATO Secretary General, Lord Robertson, (2001)153 (17 Nov. 2001), at <http://www.nato.int/docu/pr/2001/p01-153e.htm> (discussing the success of the first free and democratic elections in Kosovo history).

### **III. OPERATION ALLIED FORCE/TASK FORCE HAWK/OPERATIONS AT CAMP ABLE SENTRY, FYROM**

#### **A. OPERATION ALLIED FORCE**

In 1989, Yugoslavian President Slobodan Milosevic revoked Kosovo's status as an autonomous province of the Federal Republic of Yugoslavia (FRY), annexing Kosovo into the FRY province of Serbia. In response, the Kosovo Liberation Army (KLA), a militant group comprised of ethnic Albanians, was founded in 1993, initiating a campaign of violence against the FRY government. In 1998, Milosevic sent Yugoslav troops into KLA strongholds and the conflict escalated. The United Nations (UN) Security Council called for a cease fire in UN Security Council Resolution (UNSCR) 1199 on 23 September 1998. The North Atlantic Treaty Organization (NATO) authorized air strikes against Serb military targets on 13 October 1998. As a result, Milosevic agreed to withdraw troops, to facilitate the return of refugees, and to accept international monitors. Despite these assurances, the violence continued to escalate.

In 1999, the political and military leaders from Kosovo, Serbia, and the Federal Republic of Yugoslavia (FRY) agreed to attend a peace conference in Rambouillet, France. The Kosovar Albanians signed the “Rambouillet Accords,” which specified that the province would remain a part of Serbia but be allowed to operate autonomously. Under the Accords, up to 30,000 NATO troops would have deployed to Kosovo to keep the peace. The Serbs refused to sign the Accords, objecting to various provisions, most notably elections that might potentially lead to Kosovo independence, and talks were suspended. Because the violence continued, NATO began air strikes against Serb targets in Serbia and Kosovo on 24 March 1999. The NATO air campaign, designated Operation Allied Force, lasted until 10 June 1999, when Milosevic agreed to withdraw Serb forces from Kosovo and permit the entry of the NATO Kosovo Force (KFOR) to keep the peace.<sup>1</sup>

#### ***1. Command and Control***

Allied Force was a NATO operation. Inserted into the NATO chain of command was a U.S. command component designated as Operation

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<sup>1</sup> For a more detailed discussion of the historical and contextual background leading up to Allied Force, see *supra* Ch. II.

Noble Anvil. The command relationships derived from this basic starting structure must be understood before proceeding into lessons learned.<sup>2</sup>

Without the insertion of the U.S. component, the NATO military chain of command for this Operation would have flowed from Supreme Headquarters Allied Powers Europe (SHAPE), to Allied Forces Southern Europe (AFSOUTH), to a task force headquarters created out of one or more of AFSOUTH's subordinate component commands: Allied Air Forces South (AIRSOUTH), Allied Naval Forces South (NAVSOUTH), Allied Naval Striking Forces South (STRIKFORSOUTH), and Allied Land Forces South (LANDSOUTH).<sup>3</sup>

However, with the insertion of the U.S. command component, U.S. forces did not simply fall in upon the extant NATO command structure. Instead, a joint task force was created—Joint Task Force Noble Anvil—directly subordinate to U.S. European Command (USEUCOM), the U.S. geographic combatant command. The chain of command for U.S. forces thus had a distinctly American flavor within the overall NATO command structure.<sup>4</sup>

## ***2. USEUCOM Lessons Learned***

Lawyers from the Army, Navy, Marine Corps, and Air Force served on the legal staff at USEUCOM during Operation Allied Force. Two broad lessons learned, while not necessarily unique to USEUCOM, are best viewed through a USEUCOM lens: the applicability of the Law of Armed Conflict (LOAC) and targeting at the operational and strategic levels.

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<sup>2</sup> In fact, a lesson learned is derived from this concept itself: Judge advocates must understand the command structure. *See infra* text accompanying notes 42-43.

<sup>3</sup> Looking at NATO more broadly, Supreme Allied Command Europe (SACEUR), located at SHAPE in Mons, Belgium, is one of two NATO strategic commands. The other is Supreme Allied Command Atlantic (SACLANT), located in Norfolk, Virginia. Through September 1999, AFSOUTH was one of three commands immediately subordinate to SHAPE. The other two were Allied Forces Northern Europe (AFNORTH) and Allied Forces Northwest (AFNORTHWEST). A major reorganization occurred in September 1999, aligning all NATO troops in Europe subordinate to SHAPE under two commands, Regional Command Allied Forces North (RCNORTH) and Regional Command Allied Forces South (RCSOUTH). For a more detailed description of the current NATO command structure, see North Atlantic Treaty Organisation, Military Command Structure, <http://www.nato.int/structur/struc-mcs.htm>.

<sup>4</sup> Adding to the confusion, many commanders held a NATO and a U.S. command title, or were "dual-hatted," commanding separate U.S. and NATO staffs. For example, SACEUR and CINCEUR were the same person (General Wesley Clark). The Commander in Chief AFSOUTH (CINCAFSOUTH) was dual-hatted as the Commander in Chief U.S. Naval Forces Europe (CINCUSNAVEUR) (Admiral James Ellis).

***a. Agreement Must Be Reached on the Applicability of the Law of Armed Conflict Prior to Commencement of Operations.***

Both prior to and during the early days of the air campaign, disagreement existed within U.S. and NATO political and legal circles over whether or not LOAC applied to Operation Allied Force.<sup>5</sup> Because LOAC applies to international armed conflicts,<sup>6</sup> the precise legal issue was whether

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<sup>5</sup> See CLAMO, Kosovo After Action Review Conference (12-14 June 2000); Transcript at 263-64 [hereinafter Kosovo AAR]. The issue of the applicability of LOAC to Operation Allied Force should not be confused with the legal basis for the NATO use of force during the Operation. The applicability of LOAC has a direct impact on JAs advising commanders at every level, squarely addressing the issue of what law governs the treatment of combatants and noncombatants in an operation. While of the utmost importance, the issue of the legal basis for the use of force is a separate analysis. This point, perhaps counterintuitive at first blush, is also made in Major Geoffrey S. Corn & Major Michael L. Smidt, "To Be or Not to Be, That is the Question:" *Contemporary Military Operations and the Status of Captured Personnel*, ARMY LAW., June 1999, at 1, 2. The tangible impact on JAs of the stated legal basis for the use of force is difficult to measure. In fact, while the topic was certainly discussed in the various AARs referenced by this Book, the link between any stated lesson learned for JAs and the legal basis for the use of force during the Operation seems tenuous at best. Lessons learned that are mentioned in the context of the legal basis for the use of force seem, upon closer analysis, to be products of a separate source—in this specific lesson of captured soldiers, LOAC. Accordingly, because this Book draws its lessons learned from the experiences of the JAs involved in the Operation, a detailed discussion and analysis of the legal basis for the use of force—perhaps the most important and intellectually stimulating legal issue to come out of Operation Allied Force—does not appear.

JAs should generally understand that the U.S. basis for the intervention in Kosovo is commonly referred to as the "factors approach." Memorialized in various documentary sources and official public comments, this approach justifies the use of force as the cumulative product of a series of factors: 1) preexisting United Nations Security Council Resolutions, taken pursuant to Chapter VII of the United Nations Charter, that recognized the situation in Kosovo as a threat to international peace and security and demanded that Serbia cease aggression; 2) the frequently expressed concern that the conflict could destabilize regional security by drawing in the former Yugoslav Republic of Macedonia (FYROM), Albania, Greece, and Turkey; 3) the humanitarian concern for the Kosovar Albanian civilian population and refugee flow into FYROM and Albania; 4) NATO's "special responsibility" in the Former Yugoslavia based on NATO's active presence there since 1992; 5) the multilateral nature of the action, comprising the united voice of all nineteen NATO members; 6) Serbian LOAC violations, most notably the January 1999 massacre of dozens of Kosovar Albanians at the hands of Serbian military forces in the town of Racak, Kosovo; and 7) the need to protect the Organization for Security and Cooperation in Europe (OSCE) observers in Kosovo. See, e.g., James P. Rubin, U.S. Dep't of State Daily Press Briefing (Mar. 16, 1999) ("We and other NATO allies have looked to numerous factors in concluding that such action . . . would be justified . . ."); Point Paper, NJAG10, subject: Legal Basis for the Use of Force in Former Republic of Yugoslavia (FRY—Serbia and Montenegro) (26 Mar. 1999) (on file with CLAMO). Sophisticated discussions of the legal basis for the use of force in Kosovo can be found in a rich and rapidly growing body of literature on the subject. See, e.g., Abraham D. Sofaer, *International Law and Kosovo*, 36 STANFORD J. INT'L L. 1 (2000); Ruth Wedgwood, *Editorial Comments: NATO's Kosovo Intervention: NATO's Campaign in Yugoslavia*, 93 AM. J. INT'L L. 828 (2000); Thomas D. Grant, *Extending Decolonization: How the United Nations Might Have Addressed Kosovo*, 28 GA. J. INT'L & COMP. L. 9 (1999).

<sup>6</sup> Common Article 2 of the Four Geneva Conventions of 1949 states that "the present Convention shall apply to all cases of declared war or of any other armed conflict which may arise between two or more of the High Contracting Parties." Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, Aug. 12, 1949, art. 2-3, T.I.A.S. 3362; Geneva Convention for the Amelioration of the Condition of Wounded, Sick, and Shipwrecked Members at Sea, Aug. 12, 1949, art. 2-

Operation Allied Force constituted an international armed conflict. It also seems apparent that political concerns entered the calculation.<sup>7</sup>

The debate proved more than academic when Yugoslav forces captured three U.S. soldiers conducting a security patrol along the border between the FRY and the former Yugoslav Republic of Macedonia (FYROM) on 31 March 1999, one week after NATO forces had dropped the first bombs of Allied Force.<sup>8</sup> At issue was the soldiers' legal status: were they prisoners of war entitled to full Geneva Convention<sup>9</sup> protections (as would be the case if LOAC applied); were they "detainees" entitled to some lesser status;<sup>10</sup> were they common criminals under host nation law; or were they something else? The immediate U.S. political response was that the soldiers had been "illegally abducted."<sup>11</sup> This position quickly evolved into a curious amalgam of prisoner of war language mixed in with demands for immediate return of the soldiers (although prisoner of war status affords protections under international law, it also allows the detaining power to hold the prisoner until the end of the conflict).<sup>12</sup>

The ultimate U.S. position was that LOAC applied to Operation Allied Force and, accordingly, that the soldiers were prisoners of war.<sup>13</sup> However, by not presenting an early, united front on the status of the

3, T.I.A.S. 3363; Geneva Convention Relative to the Treatment of Prisoners of War, Aug. 12, 1949, art. 2-3, T.I.A.S. 3364; Geneva Convention Relative to the Treatment of Civilian Persons in Time of War, Aug. 12, 1949, art. 2-3, T.I.A.S. 3365.

<sup>7</sup> See Kosovo AAR, *supra* note 5, at 257, 261.

<sup>8</sup> For a detailed discussion of this incident and an analysis of the status of captured personnel in modern military operations, see Corn & Smidt, *supra* note 5, at 1.

<sup>9</sup> Specifically, the Geneva Convention Relative to the Treatment of Prisoners of War, *supra* note 6.

<sup>10</sup> The initial NATO guidance was that "detainee" would be the appropriate term for a captured member of NATO forces. See Kosovo AAR, *supra* note 5, at 265.

<sup>11</sup> The phrase was used by both President Clinton and Secretary of Defense Cohen. See Guy Dinmore & Joan Biskupic, *Yugoslavia Opens Case Against 3 American Soldiers*, WASH. POST, Apr. 3, 1999, at A11.

<sup>12</sup> Department of State Spokesman James Rubin, at a press briefing held the day after the soldiers' capture, used a confusing mixture of terms, asserting that the soldiers were at once prisoners of war entitled to Geneva protections and "illegal detainees" who should be immediately released. James P. Rubin, U.S. Dep't of State Daily Press Briefing (Apr. 1, 1999).

<sup>13</sup> On the same day that Mr. Rubin made his confusing comments, Department of Defense Spokesman Kenneth Bacon articulated what soon became the official U.S. government position: "We consider them to be [prisoners of war]. . . . By international law the Geneva Convention applies to all periods of hostilities . . . . [T]he government has decided that the Geneva Convention applies." Kenneth H. Bacon, Off. of the Ass't Sec'y of Defense (Public Affairs), Dep't of Defense News Briefing (Apr. 1, 1999). Interestingly, despite the conclusion that the soldiers were prisoners of war and thus could be kept until repatriated at the end of the conflict, the Reverend Jesse Jackson was widely credited with securing the soldiers' 2 May 1999 release as a result of the private religious delegation that he led to Serbia. See Charles M. Madigan, *Trip to Germany Ends Soldiers' Ordeal; Bombs Rain Amid Signs of Push for a Peace Settlement*, CHI. TRIB., May 3, 1999, at 1.

captured soldiers, equivocation within U.S. policy channels potentially placed the soldiers in harm's way. For example, the Serbs might have agreed with early U.S. statements that made no mention of prisoner of war status, thereby concluded that the soldiers did not have combatant immunity, and then tried the soldiers for domestic crimes.<sup>14</sup>

The early confusion during Operation Allied Force over the applicability of LOAC raised grave concerns not only at USEUCOM, but with judge advocates (JAs) advising commanders and soldiers throughout the operational chain. Beyond the specific case of the three captured soldiers, the concerns ranged from targeting issues to rules of engagement to treatment of civilians.<sup>15</sup> It follows that resolution of LOAC applicability at the national level—an issue that JAs can vociferously raise, if not necessarily solve—should be a top priority before the commencement of any future operation.<sup>16</sup>

### ***b. Targeting***

The USEUCOM SJA (an Army JA) and Deputy SJA (an Air Force JA) both had direct involvement in targeting during the air campaign. Noble Anvil bombing missions concentrated on fixed targets using high-flying, high-speed aircraft. Several lessons emerged from the thought process that went into developing a target review methodology for the Operation and from the factors that went into the actual targeting decisions.

#### **1. The target review process developed during Noble Anvil should be considered for future operations.**

Planners expected the air campaign to force Milosevic to capitulate within a matter of a few days. Prior to the start of the campaign, a list of some forty targets had been meticulously analyzed and pre-approved using a

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<sup>14</sup> See Corn & Smidt, *supra* note 5, at 14-18.

<sup>15</sup> See Kosovo AAR, *supra* note 5, at 264.

<sup>16</sup> The Department of Defense has attempted to assuage the problem of determining what law applies at the operational and tactical level in the absence of strategic level guidance. See U.S. DEP'T OF DEFENSE, DIR. 5100.77, DOD LAW OF WAR PROGRAM (9 Dec. 1998) (requiring as a matter of policy that, unless directed otherwise by national level authority, DOD personnel follow the letter of the law of war during operations involving hostilities, and follow the "principles and spirit" of the law of war during operations not involving hostilities). Clearly the problem with the case of these captured soldiers was that national level authority gave conflicting initial guidance over the applicability of LOAC. For a thorough treatment of DOD Directive 5100.77 in the context of captured soldiers in modern military operations, see Corn & Smidt, *supra* note 5, at 7-16.

time-consuming and inefficient process. A proposed target would be staffed sequentially, via e-mail, to a lengthy list of key players throughout the chain of command and various supporting commands and agencies. Each staff member, such as the JA, provided input before sending the target to another e-mail destination for further review. Prior to the start of the campaign, the time from target proposal to target approval could last upwards of ten to fifteen days. Information flow was redundant and, most disturbing, sometimes resulted in a change to the desired target that was not rerouted to allow a review of the change by all members of the chain.<sup>17</sup>

When the campaign extended beyond initial assumptions and more targets needed expedited review, it became clear that the process needed to be somehow streamlined without sacrificing sufficiency of target analysis.<sup>18</sup> Through trial and error, a new process resulted that is worthy of description and consideration for use in future operations.

The new process called for bringing all relevant staff members together in a "collaborative session" via a classified "chat room."<sup>19</sup> During these sessions, all major participants were "on line" at one time, reviewing the same information. A computer program retained a record of the discussion for future reference.<sup>20</sup>

To explain in more concrete terms, the JA would access the Joint Analysis Center (JAC) classified web page prior to the session. The web page contained files for each target that included detailed pictures and descriptions of the target and surrounding area. The JA would use this information to do a preliminary legal analysis and develop questions and issues for discussion during the collaborative session. When the chat room

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<sup>17</sup> See Kosovo AAR, *supra* note 5, at 267-69.

<sup>18</sup> See *id.* at 275.

<sup>19</sup> See *id.* at 275-78. The list of represented staff sections was long, including, but not limited to, the Joint Analysis Center (JAC); the Combined Air Operations Center (CAOC); the Sixth Fleet Tomahawk Land Missile (TLAM) Strike Cell, Plans and Targets; the USEUCOM JA; the Defense Intelligence Agency (DIA)/Joint Staff (JS) J2T Washington, D.C.: Targets; the 32d Air Intelligence Squadron (AIS), Targets; Joint Task Force Noble Anvil; and the USEUCOM J35 (future operations). See *id.* For further discussion of the various members of the chat room and an explanation of the technology behind the process, see Gregory G. Chapin, Examining the Necessity and Benefits of Systems Engineering in the Trenches (unpublished paper), *at*

[http://www.mitre.org/support/papers/tech\\_papers99\\_00/chapin\\_examining/chapin.pdf](http://www.mitre.org/support/papers/tech_papers99_00/chapin_examining/chapin.pdf) (last visited 18 Sept. 2001).

<sup>20</sup> See Kosovo AAR, *supra* note 5, at 280.

convened, all participants were available electronically to analyze and discuss the target.<sup>21</sup>

Targets approved in the collaborative session would be placed on slides for the President of the United States ("POTUS slide"). The POTUS slide was forwarded through CINCUSEUCOM and the Joint Chiefs of Staff to the President. As the campaign progressed, authority to approve certain categories of targets was delegated down to the CINCUSEUCOM and sometimes JTF levels. After U.S. approval, the targets were forwarded to NATO for final approval.<sup>22</sup>

All told, the use of collaborative sessions in an electronic chat room paid significant dividends during Operation Allied Force. Targets could now be approved in a matter of two to three hours. Using parallel planning instead of sequential planning increased staff productivity, minimized redundant planning efforts, and solved the problem of changes in target aspect not being communicated to all staff members.<sup>23</sup> In the words of the USEUCOM Deputy JA, the process worked so well "that we are going to see it again."<sup>24</sup>

**2. Reemphasize that the infliction of collateral damage is not a per se violation of international law.**

JAs during Operation Allied Force were sensitive to the fact that some participants in the target review process might misunderstand the legal implications of collateral damage. In other words, the JAs wanted to ensure there was no misperception that the infliction of collateral damage was a per se violation of international law, and that the collateral damage analysis did not come at the expense of forgetting the military necessity analysis.<sup>25</sup>

The relevant concept of international law is the principle of proportionality. Proportionality is essentially a balancing test: the "loss of life and damage to property incidental to attacks [also known as collateral damage] must not be excessive in relation to the concrete and direct military

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<sup>21</sup> See *id.* at 275-80.

<sup>22</sup> See *id.* at 270, 274.

<sup>23</sup> See Chapin, *supra* note 19, at 7.

<sup>24</sup> See Kosovo AAR, *supra* note 5, at 276.

<sup>25</sup> See *id.* at 295.

advantage expected to be gained."<sup>26</sup> It follows that nothing stops a commander from placing a high premium on minimizing collateral damage. However, as the USEUCOM JAs point out, a necessary step in the equation is articulating the military advantage to be gained.<sup>27</sup> Disapproving targets based solely on collateral damage assessments without a discussion of military necessity raises the suspicion that an overly restrictive legal standard is being applied. JAs can serve a critical role by emphasizing to staffs and commanders that the infliction of collateral damage is only one side of the proportionality balancing test.

### **3. Understand the ongoing debate over targeting the will of the enemy.**<sup>28</sup>

The primary goal of Operation Allied Force was to compel Milosevic to capitulate to NATO's terms.<sup>29</sup> Accordingly, the air campaign was dual-pronged: 1) destroy Serbia's military capability, and 2) break the will of Milosevic and the Serb population.<sup>30</sup> Many of the targets that had the effect of satisfying the latter prong highlight the current debate over the lawfulness of targeting the will of the enemy.

The latest—and most pertinent to this discussion—effort to codify and reflect the law of targeting is Article 52(2) of Protocol I to the Geneva Conventions (GP I).<sup>31</sup> The Article states:

Attacks shall be limited strictly to military objectives. In so far as objectives are concerned, military objectives are limited to those objects which by their nature, location,

<sup>26</sup> U.S. DEP'T OF ARMY, FIELD MANUAL 27-10, THE LAW OF LAND WARFARE ¶ 41 (18 July 1956) (C1, 15 July 1976).

<sup>27</sup> See Kosovo AAR, *supra* note 5, at 295.

<sup>28</sup> CLAMO thanks Maj Jeanne M. Meyer, U.S. Air Force, for her assistance in developing this lesson learned.

<sup>29</sup> See Interview by PBS with Gen. Klaus Naumann, Chairman, NATO Military Committee (PBS television broadcast, Feb. 22, 2000), *available at* <http://www.pbs.org/wgbh/pages/frontline/shows/kosovo/interviews/naumann.html> (last visited 20 Sept. 2001) (stating that the Allied Force air campaign was intended "to go after those targets which really hit the opponent and force him to accept our will").

<sup>30</sup> See John A. Tirpak, *Victory in Kosovo*, 82 AIR FORCE MAG. 2, 5 (July 1999) (stating the dual goals of the air campaign as "destruction of Serb forces and enabling installations in Kosovo and attack of strategic targets within Serbia itself, which attacks were intended to diminish the will to resist of both Milosevic and the Serb population"). See also Kosovo AAR, *supra* note 5, at 287-90.

<sup>31</sup> Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts (Protocol I), *opened for signature* Dec. 12, 1977, 1125 U.N.T.S. 48.

purpose or use make an effective contribution to military action and whose total or partial destruction, capture or neutralization, in the circumstances ruling at the time, offers a definite military advantage.<sup>32</sup>

The U.S. has not ratified GP I, but it does view Article 52(2) as an accurate statement of customary international law.<sup>33</sup> There is some disagreement, however—not only between states,<sup>34</sup> but within U.S. legal circles<sup>35</sup>—over what exactly Article 52(2) encompasses. The plain language meaning of the Article is not settled, the dispute centering on the interpretation of what constitutes "a contribution to military action" and what provides a "military advantage."

During Operation Allied Force, it is a matter of public record that, in addition to strictly military targets, NATO aircraft targeted "dual-purpose" objects—that is, targets whose destruction had the simultaneous effect of damaging the enemy's military capability and dampening the morale of the civilian leadership and population. Such dual-purpose targets included bridges, highways, electrical power installations, and railroads. Few would question the lawfulness of striking these targets under the Article 52(2) standard.<sup>36</sup>

The selection of other targets, however, has spawned debate in the U.S. and international legal community. For example, NATO aircraft targeted television stations.<sup>37</sup> They also dropped dispensers of specially treated wire over electrical power sources designed to cut off power to seventy percent of the Serbian population for a period of roughly twenty-four hours.<sup>38</sup> Striking these targets undoubtedly contributed to the NATO goal of breaking the enemy's will to fight. However, some argue that these

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<sup>32</sup> *Id.* at art. 52(2).

<sup>33</sup> See Michael J. Matheson, *The United States Position on the Relation of Customary International Law to the 1977 Protocols Additional to the 1949 Geneva Conventions*, 2 AM. U. J. INT'L L. & POL'Y 419, 420 (1987).

<sup>34</sup> See Theodore Meron, *The Humanization of International Law*, 94 AM. J. INT'L L. 239, 276-77 (2000).

<sup>35</sup> See Kosovo AAR, *supra* note 5, at 291.

<sup>36</sup> See Meron, *supra* note 34, at 276.

<sup>37</sup> See Interview by PBS with Gen. Wesley Clark, Supreme Allied Commander, Europe (PBS television broadcast, Feb. 2, 2000), available at <http://www.pbs.org/wgbh/pages/frontline/shows/kosovo/interviews/clark.html> (last visited 22 Sept. 2001) (stating that the television stations "had a high political symbolism," and were used by Milosevic for "command and control" and to "inflame the passions of ethnic cleansing").

<sup>38</sup> Dana Priest, *The Commander's War: Bombing by Committee*, WASH. POST, Sept. 20, 1999, at A1, A10.

targets may not have been sufficiently military in nature and, accordingly, may have run afoul of a restrictive interpretation of Article 52(2).<sup>39</sup>

JAs should understand that varying interpretations of Article 52(2) exist, and familiarize themselves with the terms of this debate.<sup>40</sup>

### ***3. AFSOUTH Lessons Learned***

Two U.S. Army lawyers were involved in Operation Allied Force as members of the Allied Forces Southern Europe (AFSOUTH) staff. Drawing from a host of legal issues across a broad spectrum—particularly in the weeks and months leading up to Allied Force—four overarching lessons emerge.<sup>41</sup>

#### ***a. Many U.S. Judge Advocates Have an Inadequate Understanding of the NATO Command Structure.***

As eloquently stated in the AFSOUTH JA Allied Force After Action Report, generally speaking, "lawyers of the greatest military in the world know[ ] less about the Alliance structure than those lawyers aspiring for NATO membership."<sup>42</sup> Although learning the intricacies of the complex NATO command structure might be a daunting task, a firm grasp of the chain of command—particularly when operating in a joint or combined setting—is essential for any JA.<sup>43</sup> Not unique to AFSOUTH, this lesson recurs at various levels of command on such issues as ROE development, target approval authority, and criminal jurisdiction.

<sup>39</sup> See, e.g., Meron, *supra* note 34, at 276-77.

<sup>40</sup> Several terms have arisen in the context of describing targeting the will of the enemy, such as "regime targets," "influence net targets," "will of the people targets," and "patronage targets." See Kosovo AAR, *supra* note 5, at 287-89. For more detailed discussions of this debate, see, e.g., Meron, *supra* note 34; Tania Voon, *Pointing the Finger: Civilian Casualties of NATO Bombing in the Kosovo Conflict*, 16 AM. U. INT'L L. REV. 1083 (2001); Julie Mertus, *International Law Weekend Proceedings: The Impact of Kosovo on the Law of Humanitarian Intervention*, 6 ILSA J. INT'L & COMP. L. 527 (2000); Randy W. Stone, Comment, *Protecting Civilians During Operation Allied Force: The Enduring Importance of the Proportional Response and NATO's Use of Armed Force in Kosovo*, 50 CATH. U. L. REV. 501 (2001).

<sup>41</sup> LTC Virginia P. ("Patt") Prugh, former AFSOUTH Deputy Legal Advisor, AFSOUTH After Action Report (10 Sept. 2001) [hereinafter AFSOUTH AAR] (on file with CLAMO). The AFSOUTH AAR provides an excellent discussion of the background behind the lessons learned above, as well as several other issues that do not neatly fit under a lessons learned category.

<sup>42</sup> *Id.* at 17.

<sup>43</sup> For a discussion of the NATO command structure, see *supra* text accompanying notes 2-3.

***b. Staying Abreast of Rapidly Changing Diplomatic Efforts is Critical.***

United Nations Security Council Resolution 1199, adopted on 23 September 1998, declared that the deteriorating situation in Kosovo was a threat to regional peace and security and welcomed any diplomatic efforts to solve the crisis.<sup>44</sup> Three weeks later, on 13 October, U.S. Ambassador Richard Holbrooke announced that an agreement had been reached with Serbia allowing 2,000 observers from the Organization for Security and Cooperation in Europe (OSCE) to enter Kosovo.<sup>45</sup> NATO then stood up the Kosovo Verification Coordination Centre (KVCC), an organization which was to be comprised of 155 multinational personnel, tasked with the mission, among others, to monitor the OSCE observers.<sup>46</sup> The AFSOUTH Deputy Legal Advisor accompanied the Commander, KVCC (COMKVCC), a U.S. Marine Corps brigadier general, into FYROM to conduct initial liaison for insertion of the KVCC force.

Upon arrival in FYROM, COMKVCC met with the FYROM Minister of Defense to coordinate a location for the KVCC headquarters. The Minister of Defense queried if NATO had any intentions of expanding the KVCC force beyond the 155 personnel previously contemplated. COMKVCC replied that he knew of no such efforts. That same evening, U.S. Secretary of State Madeleine Albright publicly announced that NATO intended to insert an additional 2,000 troops as a contingency extraction force for the KVCC. COMKVCC's coordination efforts were consequently undermined by the loss of credibility in the eyes of the local FYROM leadership.<sup>47</sup>

This particular AFSOUTH experience highlights the broader lesson that rapid developments on the diplomatic front can have dramatic effects for commanders on the ground. JAs can serve a valuable role by not only recognizing the need to stay abreast of the latest diplomatic efforts, but also taking on the task of aggressively pulling this information from higher in the event that it is not being pushed down.

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<sup>44</sup> See *supra* Ch. II, text accompanying notes 132-134.

<sup>45</sup> See AFSOUTH AAR, *supra* note 41, at 4.

<sup>46</sup> For a more thorough discussion of the background behind the KVCC and its other missions, see *id.* at 4-5.

<sup>47</sup> See *id.* at 5.

***c. The Inability to Negotiate a Status of Forces Agreement Prior to the Arrival of Military Forces Creates Significant Problems.***

Supreme Headquarters Allied Powers Europe (SHAPE) did not authorize the KVCC Legal Advisor (KVCC-LA, the AFSOUTH DLA) to conduct any formal Status of Forces Agreement (SOFA) negotiations with the Macedonians.<sup>48</sup> The KVCC-LA was encouraged, however, to determine what the FYROM posture towards a SOFA and its provisions might be. Acting pursuant to this nebulous charter, the KVCC-LA was able to broker tentative agreements between relevant members of the KVCC staff and FYROM authorities on wide-ranging issues typically addressed in a SOFA. Such issues included tax exclusion, criminal and civil status of the members of the force and those accompanying the force, communications frequencies, road tolls, hiring procedures, foreign claims waivers, and airport access.<sup>49</sup>

At this point—late October 1998—the KVCC-LA reported to the "NATO Legal Advisor"<sup>50</sup> through SHAPE and AFSOUTH legal channels that all parties concerned were prepared to enter into a SOFA. The NATO Legal Advisor determined that an exchange of letters was more appropriate than a single-document SOFA.<sup>51</sup> The basic Exchange of Letters was not signed until 23-24 December 1998.<sup>52</sup>

The roughly two-month legal void between the first arrival of KVCC elements and the final signing of the Exchange of Letters led to significant interim problems. For one example among several,<sup>53</sup> NATO funds could not be obligated, absent a formal agreement, for facilities leasing and construction costs of the various troop contributing nations arriving in theater. Faced with the untenable situation of not having a signed agreement, yet needing to establish suitable headquarters facilities before the onset of cold weather, ad hoc informal agreements sprang up between NATO units and local FYROM army units. The resulting hodgepodge of agreements lacked uniformity and failed to address many key billing and

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<sup>48</sup> *See id.*

<sup>49</sup> *See id.*

<sup>50</sup> The attorney advising the private office of the NATO Secretary General.

<sup>51</sup> *See* AFSOUTH AAR, *supra* note 41, at 5-6.

<sup>52</sup> *See id.* at 7.

<sup>53</sup> Other examples included difficulties in securing the use of Skopje (Petrovec) Airport for NATO forces and the unwillingness of FYROM authorities to grant tax exemptions for construction efforts absent a formal agreement. *See id.* at 7-8.

cost-sharing concerns, contributing to a deterioration of relations between NATO and several ministries within the FYROM government.<sup>54</sup>

The lesson learned for JAs from this AFSOUTH experience can be separated into two parts. First, sending military forces into a host nation without the protections and procedures contained in a SOFA or like instrument is clearly problematic. The JA should voice this concern early and make every effort to facilitate expeditious SOFA negotiation. Second, the JA should actively seek the authority to negotiate SOFA provisions.<sup>55</sup> The fact that the KVCC-LA reports meeting prohibitive resistance when these steps were taken should not discourage future JAs from attempting the same.

***d. Be Prepared to Fulfill All Legal Missions Despite Inadequate Staffing and Resources.***

From the point of view of the AFSOUTH DLA, NATO as a whole did not have adequate legal staffing.<sup>56</sup> The numbers seem to support this opinion. NATO Headquarters had one lawyer, a civilian (the NATO Legal Advisor mentioned above). While SHAPE had several lawyers, farther down the chain neither AIRSOUTH nor NAVSOUTH nor STRIKFORSOUTH had a lawyer. As discussed above, the KVCC-LA was drawn without replacement from one of the two lawyers at AFSOUTH. Moreover, the KVCC-LA had no 71D support, and finding adequate workspace and office equipment was a continual challenge.<sup>57</sup> The KVCC-LA often borrowed services and equipment, such as Internet access, fax capability, and a car, from the contracting office.<sup>58</sup>

It goes without saying that JAs are expected to perform their legal missions despite personnel and resource shortages. JAs should always be prepared for less than adequate support and plan accordingly. JAs should not assume that the equipment and conditions they are accustomed to in a U.S. billet will necessarily be found in a NATO billet. Similarly, JAs should understand that voluntary U.S. contribution of additional lawyers may be

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<sup>54</sup> See *id.* at 7-8.

<sup>55</sup> Approval authorities and procedural requirements governing the involvement of DOD personnel in negotiating international agreements are delineated in U.S. DEP'T OF DEFENSE, DIR. 5530.3, INTERNATIONAL AGREEMENTS (11 June 1987) (C1, 18 Feb. 1991).

<sup>56</sup> See AFSOUTH AAR, *supra* note 41, at 11; see also Kosovo AAR, *supra* note 5, at 21-22.

<sup>57</sup> See AFSOUTH AAR, *supra* note 41, at 11.

<sup>58</sup> See *id.* at 12.

easier said than done, and that significant coordination must take place before more NATO legal billets are created.<sup>59</sup>

## **B. TASK FORCE HAWK**

*JAG involvement in fires was essential . . . .*<sup>60</sup>

### **1. Overview**

Task Force Hawk was a U.S. task force designed to provide support to Operation Allied Force, specifically, to address moving targets such as tanks. An Attack Helicopter Regiment of twenty-four AH-64 Apache helicopters and a reinforced Multiple-Launch Rocket System (MLRS) battalion formed the core of Task Force Hawk, which was complemented by a Corps Aviation Brigade Task Force with thirty-one aircraft, including UH-60 Blackhawk, CH-47 Chinook, and C-12 fixed-wing aircraft.<sup>61</sup> A Corps Support Group and a signal battalion supported these elements. Force protection was provided by a brigade headquarters and headquarters company, a mechanized infantry battalion, and an airborne infantry battalion. Lieutenant General (LTG) John W. Hendrix, the V Corps Commander, commanded Task Force Hawk, which was headquartered at Rinas Airfield in Tirana, Albania.

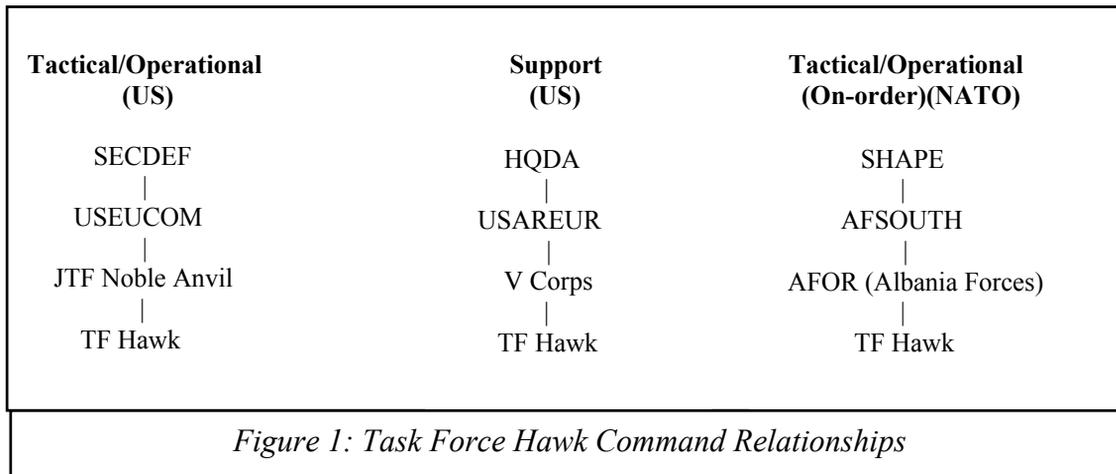
Because Task Force Hawk was a U.S. task force with an on-order NATO mission, there was a great deal of confusion regarding the chain of command. During the operation, the Task Force was prepared to answer to three different chains of command. (Fig. 1) The operational chain of command remained in U.S. channels, running from the President through the Secretary of Defense, through CINCUSEUCOM and JTF Noble Anvil to Task Force Hawk. Administrative support responsibilities did not change. They began with the Department of the Army and ran through U.S. Army Europe (USAREUR) and V Corps to Task Force Hawk. Task Force Hawk also had an on-order NATO chain of command that was never implemented. This chain ran from SACEUR through AFSOUTH through NATO's Albania Force (AFOR) (a NATO task force providing humanitarian relief to

<sup>59</sup> See Kosovo AAR, *supra* note 5, at 347-49.

<sup>60</sup> Lieutenant Colonel Peter W. Rose II & Major Keith Flowers, *Task Force HAWK Command and Control*, in JOINT CENTER FOR LESSONS LEARNED, BULLETIN, at 1, 8 (vol. II, iss. III, n.d.).

<sup>61</sup> See Center for Army Lessons Learned, *Introduction*, in CALL NEWSLETTER, TACTICS, TECHNIQUES AND PROCEDURES FROM TASK FORCE HAWK DEEP OPERATIONS: VOLUME I, at iii (no. 00-8, Aug. 2000).

Kosovar Albanian refugees in Albania) to Task Force Hawk. Although clear to delineate after the fact, the chain of command was not clear to the JAs and



senior officers in Task Force Hawk. Confusion arose concerning when, if ever, Task Force Hawk fell under the NATO chain of command.<sup>62</sup>

The V Corps SJA deployed in support of Task Force Hawk, accompanied by three JAs and two legal specialists. Space limitations and an initial force cap hindered the flow of legal personnel into the theater. After the Military Technical Agreement was signed ending the bombing campaign, two Task Force Hawk JAs moved to Camp Able Sentry (CAS) in FYROM to assist 1st Infantry Division (1ID) JAs with the deployment of Task Force Falcon to Kosovo.<sup>63</sup>

## 2. Lessons Learned

### a. Targeting

While Task Force Hawk did not execute deep operations, it conducted a series of Mission Rehearsal Exercises to prepare for combat. The Task Force Hawk Deep Operations Coordination Cell (DOCC) developed daily lists of targets for attack by Apache helicopters with supporting artillery. The DOCC also developed and forwarded targets to the Air Force for attack

<sup>62</sup> One JA noted during the AAR, “[f]ive different times in the first 20 days we completely switched chains of command. . . . [I]t was emphasized at a very high level AAR by General Hendrix. And General Hendrix said . . . ‘from one day to the next, I did not know who my chain of command was.’” Kosovo AAR, *supra* note 5, at 91.

<sup>63</sup> For a discussion of the Military Technical Agreement, see *infra* Ch. IV, text accompanying notes 12-14. For a thorough treatment of Task Force Falcon and the peacekeeping mission in Kosovo, see *infra* Ch. IV.

by fixed-wing assets. These operations allowed Task Force Hawk to develop new tactics, techniques, and procedures (TTPs) not found in existing doctrine.<sup>64</sup> A driving force behind the new TTPs was Mission/Enemy/Troops/Terrain-Time Available/Civilians (METT-TC) factors.<sup>65</sup> Unique factors included a dispersed enemy, the mountainous terrain of Kosovo, the large number of civilians on the battlefield, and the handling of SECRET/NOFORN intelligence in a coalition operation.<sup>66</sup>

### **1. Judge advocates must be in the Deep Operations Coordination Cell.**

It is crucial that JAs be located inside the DOCC.<sup>67</sup> JAs need access to the most up-to-date information, and must be available for “spur of the moment meetings,” such as when the commanding general calls a “quick huddle” to discuss the latest developments. Additionally, the DOCC issued its Air Tasking Order (ATO) ninety-six hours ahead of scheduled operations.<sup>68</sup> The targets had to be reviewed by the JAs early during the targeting process so that legal considerations were incorporated into the planning process rather than at the “go/no-go” execution meeting.<sup>69</sup> The legal review required “intensive, nonstop work” to review “over one hundred different targets at any one time.”<sup>70</sup> Changes in the intelligence picture required constant refinement of the Suppression of Enemy Air Defenses (SEAD) plan throughout the targeting process. Analyzing the SEAD plan and keeping up with the constant changes presented a bigger challenge than reviewing the targets in the Apache engagement area.<sup>71</sup>

The Task Force Hawk SJA placed two JAs in the Task Force DOCC full-time and added an SJA Appendix to the Deep Operations Annex of the V Corps Field Standing Operating Procedures (SOP). The SJA DOCC Appendix is included in Appendix III-1 of this Book. The SJA Appendix provided for twenty-four-hour JA coverage in the DOCC. The JA's role was

<sup>64</sup> See Major Mark S. Segovis & Captain Robert M. Salvatore, *Deep Operations Coordination Cell (DOCC)*, in CALL NEWSLETTER, *supra* note 61, at 19.

<sup>65</sup> See *id.* at 23.

<sup>66</sup> See *id.*

<sup>67</sup> See Kosovo AAR, *supra* note 5, at 122.

<sup>68</sup> See *id.* at 125.

<sup>69</sup> See *id.* at 121.

<sup>70</sup> *Id.*

<sup>71</sup> See Memorandum, Deputy Staff Judge Advocate, V Corps, to CLAMO, subject: Comments to Draft Lessons Learned Document (11 Sept. 2001) [hereinafter V Corps DSJA Memorandum] (on file with CLAMO).

to perform comprehensive legal reviews of all proposed target nominations and to identify potential legal issues as targets were developed. JAs involved in targeting required a top secret clearance to gain access to satellite imagery and to have access to the Analysis and Control Element (ACE).

The Center for Army Lessons Learned (CALL) developed *Tactics, Techniques, and Procedures from Task Force Hawk Deep Operations*, a publication that includes an appendix on DOCC organization, personnel, equipment, and functions.<sup>72</sup> This appendix states that a DOCC should include two JAs, each equipped with laptop computers and the Automated Deep Operations Coordination System (ADOCS).<sup>73</sup> The appendix further notes that the JA "[u]ses ADOCS to review targets for possible legal ramifications, develops Rules of Engagement and provides operational law expertise."<sup>74</sup> CALL also observed that the use of ADOCS "allowed members of the TF staff, who traditionally are left out of the targeting process (lawyers and civil affairs), to review targeting products and approve targets."<sup>75</sup> The Joint Center for Lessons Learned made the same observation, noting, "JAG involvement in fires was essential because attacking targets which violated the rules of engagement may have created adverse political ramifications, or caused more damage than the benefit derived from attacking the target."<sup>76</sup>

## **2. Develop a target review methodology and document decisions.**

The SJA Appendix to the Deep Operations Annex provided a list of twenty-six questions to be asked when evaluating targets. The list included questions regarding the size of the civilian population, the estimated number

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<sup>72</sup> See CALL NEWSLETTER, *supra* note 61, at app. C, C-1.

<sup>73</sup> *Id.* The ADOCS is a computer program that provides the user with an integrated set of tools for data management and analysis, along with mission planning, coordination, and execution. ADOCS uses Defense Mapping Agency products as well as digital terrain elevation data. Overlays of military units, facilities, platforms, mission plans, operational graphics, and no fire areas can be applied to a map at any scale. See Information Paper, Office of the Staff Judge Advocate, V Corps, subject: Automated Deep Operations Coordination System (18 Mar. 1999) (included in Appendix III-2). Similar systems are now being used in training. The XVIII Airborne Corps used a system called Falcon View® during its 2001 Warfighter.

<sup>74</sup> CALL NEWSLETTER, *supra* note 61, at app. C, C-2.

<sup>75</sup> Segovis & Salvatore, *supra* note 64, at 26.

<sup>76</sup> Rose & Flowers, *supra* note 60, at 8.

of civilian casualties, the importance of the target to the accomplishment of the mission, and the ability to mitigate the impact on the civilian population.

To accomplish the legal mission, JAs monitored the protected site list and the ADOCS. JAs used ADOCS, which contained the most up-to-date information, to screen for potential legal issues associated with deep operations early in the process. Specifically, they used ADOCS to view engagement areas and targets, track enemy movement, anticipate the potential for collateral damage, and monitor no-fire areas.

It was essential for the JAs to develop an understanding of Army weapons systems to render effective advice. For example, the Army Tactical Missile System (ATACMS) comes in three types and Army Howitzers fire eleven types of munitions with varying burst radii and potential for collateral damage.<sup>77</sup> JAs at Task Force Hawk coordinated with the V Corps Artillery Commander to have his staff develop a templated "footprint" for each weapon and munition that the JAs could apply to a map board to predict collateral damage when reviewing a proposed target.<sup>78</sup> This innovative approach to the legal review "gave the operators a completely different perspective on how they fire their weapons systems."<sup>79</sup>

This approach also placed the responsibility squarely upon the operators to predict the nature and extent of the damage that would be caused by firing a particular munition in a particular way. This information, along with intelligence concerning the presence or absence of noncombatants in the target area, provided the basis for JAs to conduct a legal analysis of the proposed target.<sup>80</sup>

The JAs also developed a "Target Analysis" form to document the advice provided. A sample "Target Analysis" form is included in Appendix III-3.

Dedicated JA support to the DOCC at Task Force Hawk continued the trend toward integration of JAs into battle staffs and validated existing JAGC doctrine.<sup>81</sup> JA integration ensures that legal advice is timely and

<sup>77</sup> See Kosovo AAR, *supra* note 5, at 136.

<sup>78</sup> See *id.* at 138. See also V Corps DSJA Memorandum, *supra* note 71.

<sup>79</sup> Kosovo AAR, *supra* note 5, at 138.

<sup>80</sup> See V Corps DSJA Memorandum, *supra* note 71.

<sup>81</sup> See U.S. DEP'T OF ARMY, FIELD MANUAL 27-100, LEGAL SUPPORT TO OPERATIONS ¶ 5.5.4 (31 Mar. 2000).

more effective, saving planning staff time and integrating legal considerations into the military decision-making process.

***b. Rules of Engagement***

In addition to the targeting issues discussed above, Task Force Hawk faced significant ROE development and interpretation issues. NATO had not addressed rotary-wing operations when preparing for Operation Allied Force. While Task Force Hawk was never under the operational control (OPCON) of NATO, the training and mission rehearsals anticipated Task Force Hawk becoming part of the larger NATO operation.

**1. Confusion over the chain of command has a direct impact on ROE development.**

Because of the confusion over command and control,<sup>82</sup> it was not clear to Task Force Hawk whether U.S. or NATO ROE applied. Further complicating the issue was the fact that the NATO air ROE contemplated high-flying, fixed-wing aircraft, not low-flying helicopters.<sup>83</sup> Requests for supplemental measures were submitted through both the NATO and U.S. chains of command.<sup>84</sup> In the end, Task Force Hawk JAs determined that NATO ROE governed the Apaches and U.S. ROE governed ground forces, reasoning that the use of Apaches for air operations in Kosovo would have constituted the use of force by NATO, while U.S. ground operations in Albania would be solely a U.S. component of the operation.<sup>85</sup>

Because Operation Allied Force focused on air operations, there was no ground ROE—despite the fact that Serb forces were massed at the border, with mortar positions aimed at U.S. forces.<sup>86</sup> Soldiers were briefed upon arrival that offensive operations were not authorized, that operations outside Albania were not authorized, and that no force had been declared hostile.<sup>87</sup> Soldiers received R-A-M-P training on the principles of hostile intent, hostile act, and minimum force.<sup>88</sup> Soldiers also received an "ROE Card"

<sup>82</sup> See *supra* text accompanying note 62.

<sup>83</sup> See Kosovo AAR, *supra* note 5, at 89.

<sup>84</sup> See *id.* at 92-93.

<sup>85</sup> See *id.* at 101-02.

<sup>86</sup> See *id.* at 90.

<sup>87</sup> See JAs, Task Force Hawk, Task Force Hawk Soldier In-Brief, PowerPoint presentation (n.d.) (included in Appendix III-5).

<sup>88</sup> See Major Mark S. Martins, *Rules of Engagement for Land Forces: A Matter of Training, Not Lawyering*, 143 MIL. L. REV. 1 (1994) for a discussion of R-A-M-P.

which summarized the ROE and included other "General Rules" concerning the treatment of detainees and EPWs and the collection and care of the wounded. The ROE card is included in Appendix III-4. In the absence of any mission-specific ground ROE, both the rules and the briefing were based on the Chairman, Joint Chiefs of Staff Standing Rules of Engagement.<sup>89</sup>

## **2. Expect disagreement over "templated" targets, counter-battery radar, and "observed" fires.**

One significant challenge the DOCC faced was the use of templated targets.<sup>90</sup> The Army develops templated targets to protect low-flying helicopters. The targets are "templated" based on terrain, other known enemy locations, and enemy doctrine. These targets are an "educated guess" at the location of enemy air defenses and include areas that provide concealment for shoulder-fired surface-to-air missiles.<sup>91</sup> To suppress these potential threats, the Army fires Suppression of Enemy Air Defense (SEAD) missions.

U.S. Air Force elements in the Combined Air Operations Center (CAOC) were unfamiliar with the term "templated target." To minimize collateral damage, the Air ROE required that all fires be "observed."<sup>92</sup> The Army had a difficult time convincing the CAOC that templated targets were observed or, for that matter, even necessary. According to one JA who served in the DOCC, the Air Force "could not even fathom us just firing at a piece of land."<sup>93</sup> Air Force lawyers at USEUCOM did come to understand the concept and later assisted in gaining approval of the Army's definition of observed fires from the DOD General Counsel.<sup>94</sup>

The Army argued that the targets were in fact "observed" because they were reviewed using unmanned aerial vehicle (UAV) photographs, as well as satellite imagery, to determine whether an area was inhabited. The imagery allowed Task Force Hawk to determine the location of villages and displaced persons to avoid collateral damage. Firing SEAD on the

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<sup>89</sup> CHAIRMAN, JOINT CHIEFS OF STAFF, INSTR. 3121.01, STANDING RULES OF ENGAGEMENT FOR U.S. FORCES (1 Oct. 1994) (partially classified document). The January 2000 revision to the Standing Rules of Engagement did not apply to Task Force Hawk at the time (3121.01A of 15 Jan. 2000).

<sup>90</sup> See Kosovo AAR, *supra* note 5, at 4.

<sup>91</sup> See *id.* at 127.

<sup>92</sup> See *id.* at 89.

<sup>93</sup> *Id.* at 128.

<sup>94</sup> See *id.* at 306.

templated targets was considered essential to protect the helicopters. As the issue was briefed to the DOD General Counsel, agreement was reached that the target to be fired could be considered “observed” if the area had been viewed within twelve hours of the mission.<sup>95</sup>

Another “observed” fire issue involved the use of the AN/TPQ-36 and Q-37 radar.<sup>96</sup> The Air Force initially determined that identification by these radar systems did not constitute observed fire. After lengthy discussions, Task Force Hawk received clarification that Q-36 and Q-37 radar identification did indeed constitute “observed” fire.<sup>97</sup>

***c. Be Prepared for PW Issues, Even if Not Engaged in Ground Combat.***

Perhaps another ramification of the single-minded focus on air operations, the Task Force Hawk order did not contain a discussion of prisoner of war (PW) issues. This became an issue when the KLA captured a Serb PW and turned him over to Task Force Hawk on 16 April 1999.<sup>98</sup> The SJA was not made aware of this until two days later when the Task Force Hawk Commander queried if the PW was being handled in accordance with international law.<sup>99</sup>

The SJA found a 6’3” prisoner being held in the back of a field ambulance. The PW had been handcuffed and blindfolded much of the time, but the PW was being treated by a doctor and had been allowed access to a chaplain. The SJA advised the Task Force Hawk Commander that the prisoner was not being held in compliance with the Geneva Conventions. The SJA assisted the staff in finding a room in which to hold the PW, and the PW was transferred to a small concrete room that day. Task Force Hawk notified the International Committee of the Red Cross (ICRC) about the PW,

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<sup>95</sup> *See id.*

<sup>96</sup> The Q-36 and Q-37 are counter-battery radar systems, medium-range and long-range, respectively, that can pinpoint locations of enemy artillery, mortars, and rocket launchers once fired. While range is a distinction, most see the Q-36 as being employed against high-angle mortar fire, and the Q-37 against low-angle artillery fire. For more detailed discussions, see <http://www.raytheon.com/es/esproducts/ses036/ses036.htm> and <http://www.raytheon.com/es/esproducts/ses037/ses037.htm> (last visited 23 Sept. 2001).

<sup>97</sup> *See* Kosovo AAR, *supra* note 5, at 89.

<sup>98</sup> *See* Stephen Lee Myers, *Serb Officer, Captured by Rebels, Held by U.S.*, N.Y. TIMES, Apr. 17, 1999, at A6.

<sup>99</sup> *See* Kosovo AAR, *supra* note 5, at 94. The debate over PW status and whether the Law of Armed Conflict applied to Allied Force had already been resolved with the capture of the three U.S. soldiers two weeks earlier. *See supra* text accompanying notes 5-16.

forthrightly revealing the initial treatment of the PW. The ICRC conducted an inspection and later filed a formal objection about the way the PW was initially handled.<sup>100</sup> U.S. forces eventually received another PW, with no problems being identified about his initial treatment.<sup>101</sup>

Several issues arose prior to moving these PWs out of Albania. First, the USAREUR JA had to find a place to house them. Mannheim Confinement Facility (MCF) was suggested, because it was only housing prisoners in a portion of the facility. The USEUCOM SJA raised concerns about housing the PWs in the MCF based on the Geneva prohibition against housing PWs alongside common criminals.<sup>102</sup> The USEUCOM Commander, however, believed that MCF provided the best available solution and directed the PWs be transferred. USAREUR gained approval of the German government to bring the PWs into the country. The PWs were transferred to the MCF. The MPs at the MCF segregated the PWs from the rest of the facility population and provided the PWs with separate recreational facilities and athletic clothing.<sup>103</sup> The ICRC visited the PWs, inspected the facilities, and approved the arrangement, eliminating the concern over co-locating the PWs with the prison population.<sup>104</sup>

MCF denied requests by the media to interview or photograph the PWs, forwarding the requests to the ICRC.<sup>105</sup> MCF provided Serbo-Croatian translations of the Third Geneva Convention and religious materials to the PWs. The Department of State and National Security Council proposed allowing the International Criminal Tribunal for the Former Yugoslavia (ICTY) to interview the prisoners. The ICRC objected, and the interviews did not take place.<sup>106</sup> Upon release of the PWs, the prisoners were flown from Heidelberg Army Airfield to Hungary, transferred to a waiting convoy, and driven to the Serbian border, where they were given to the ICRC for repatriation.<sup>107</sup>

<sup>100</sup> See Kosovo AAR, *supra* note 5, at 93-96.

<sup>101</sup> See *id.* at 44.

<sup>102</sup> Geneva Convention Relative to the Treatment of Prisoners of War, *supra* note 6, at art. 22.

<sup>103</sup> Military Police relied on existing Army standards to address PW issues. See U.S. DEP'T OF ARMY, REG. 190-8, ENEMY PRISONERS OF WAR, RETAINED PERSONNEL, CIVILIAN INTERNEES AND OTHER DETAINEES (1 Oct. 1997).

<sup>104</sup> See Kosovo AAR, *supra* note 5, at 42-43.

<sup>105</sup> See Geneva Convention Relative to the Treatment of Prisoners of War, *supra* note 6, at art. 13 (prisoners must be shielded from public curiosity).

<sup>106</sup> The ICRC was concerned that the PWs might face problems in Serbia when repatriated if they provided evidence to the ICTY. See Kosovo AAR, *supra* note 5, at 46.

<sup>107</sup> See *id.* at 43-44.

*d. Foreign Claims*

The Department of the Army has had Single Service Claims Responsibility (SSCR) for Albania since 1996.<sup>108</sup> The legal basis for the adjudication and payment of foreign claims in Albania derived first from the claims provisions of the NATO Status of Forces Agreement (SOFA),<sup>109</sup> as incorporated by the Partnership for Peace (PfP) SOFA.<sup>110</sup> On 8 April 1999, the North Atlantic Council (NAC) issued a decision waiving Albania's 25% cost-sharing contribution that had been required by the NATO SOFA.<sup>111</sup> As a practical matter, U.S. Army adjudication of foreign claims in Albania then fell under the provisions of the Foreign Claims Act,<sup>112</sup> as implemented by Army Regulation 27-20, *Claims*.<sup>113</sup> AFSOUTH published the "JFC Theatre Claims Policy" on 20 June 1999, containing supplemental claims processing guidance for Albania and FYROM.<sup>114</sup>

Three JA CPTs served successive terms as Foreign Claims Commissions (FCCs) under the FCA during the Operation. Their appointment letters authorized payment of foreign claims for amounts not exceeding \$15,000. Because the 1996 SSCR included all of Albania, the JAs were responsible for processing claims for both Task Force Hawk and Operation Shining Hope, the Air Force humanitarian relief mission co-

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<sup>108</sup> See Memorandum, MAJ Martin L. Sims, Acting Chief, U.S. Army Claims Service, Europe, to CPT Peter C. Amuso, subject: Appointment as a Foreign Claims Commissioner, and Claims Approval Authority under the Foreign Claims Act (FCA) (21 June 1999) (discussing Office of the General Counsel, DOD, decision of 12 March 1996 regarding SSCR assignment) (on file with CLAMO).

<sup>109</sup> Agreement Between the Parties to the North Atlantic Treaty Regarding the Status of Their Forces, June 15, 1951, 4 U.S.T. 1792.

<sup>110</sup> Agreement Among the States Parties to the North Atlantic Treaty and the Other States Participating in the Partnership for Peace Regarding the Status of their Forces, June 19, 1995, T.I.A.S. No. 12,666 [hereinafter PfP SOFA].

<sup>111</sup> FYROM had initially approached the NAC requesting a waiver of the cost-sharing contribution, citing a provision in the NATO SOFA that allowed a country to petition for relief if the burden of sharing claims costs became too great. For the first time in the fifty-year history of NATO, the NAC approved the request and, on its own, extended the waiver to Albania as well. See Kosovo AAR, *supra* note 5, at 31.

<sup>112</sup> 10 U.S.C. § 2734 (2000).

<sup>113</sup> U.S. DEP'T OF ARMY, REG. 27-20, CLAIMS (31 Dec. 1997) [hereinafter AR 27-20].

<sup>114</sup> At least one JA argues that the FCA was the sole legal basis for adjudication of claims in Albania because the International Agreement Claims Act, 10 U.S.C. § 2734a (2000), creates the general rule that the FCA will not apply in a foreign country with which the U.S. has an agreement requiring claims cost sharing. Accordingly, since the NAC waived Albania's cost-sharing obligation, the FCA would govern claims processing independent of the NATO SOFA as incorporated by the PfP SOFA. See Kosovo AAR, *supra* note 5, at 171-72.

located at Rinas Airfield. The JAs paid approximately 137 claims totaling nearly \$100,000.<sup>115</sup>

The JAs denied three claims locally, and forwarded one higher for adjudication and ultimate denial.<sup>116</sup> A JA denied an Albanian Air Force claim for \$2,500 for damage to a guard house because the NATO SOFA provision excluding claims by any party's armed forces still controlled. The Albanian Air Force also claimed \$31,000 for damage to Rinas Airfield. The JA forwarded the claim to U.S. Army Claims Service Europe (USACSEUR) because it exceeded the JA's local settlement authority; USACSEUR similarly denied the claim as damage to military property excluded under the NATO SOFA.<sup>117</sup> A JA denied a claim for damage to an olive grove as baseless, and denied a claim by a construction company for road damage because the company did not own the road.<sup>118</sup>

### **1. Coordinate procedures for reaching outlying claimants given the security and logistical constraints.**

Reaching claimants throughout the area of operations required prior coordination and creative planning. Force protection concerns<sup>119</sup> and logistical constraints limited the JAs' ability to travel the countryside extensively. Security requirements prevented Albanian citizens from entering the camp. The JAs coordinated with civil affairs (CA) to share tents that had been set up adjacent to the camp, and advertised times and dates to locals that claims would be received. Briefed by the JAs on claims procedures, CA personnel also agreed to receive and investigate some distant claims.<sup>120</sup> Close coordination with MPs resulted in vehicle and security support when the JAs traveled outside the camp.<sup>121</sup>

<sup>115</sup> Kosovo AAR, *supra* note 5, at 176.

<sup>116</sup> Memorandum, CPT Peter C. Amuso, Foreign Claims Commission, Task Force Hawk, to Chief, International and Operational Claims, U.S. Army Claims Services, Europe, subject: Final Claims Report (1 Aug. 1999) [hereinafter Amuso Memorandum] (on file with CLAMO).

<sup>117</sup> NATO subsequently resolved the airfield damage contractually. See Kosovo AAR, *supra* note 5, at 170-73.

<sup>118</sup> See Amuso Memorandum, *supra* note 116.

<sup>119</sup> One claimant actually threatened to throw a grenade into the compound if not paid. See Memorandum for Record, MAJ Tyler Randolph, CLAMO, subject: Interview with Captain Elizabeth G. Eberhardt, Albania, 30 April – 20 June 1999 (9 Aug. 1999) [hereinafter Randolph Memorandum] (on file with CLAMO).

<sup>120</sup> See *id.* at 2.

<sup>121</sup> See Kosovo AAR, *supra* note 5, at 173.

The last JA FCC faced the issue of reaching claimants who desired to file after Task Force Hawk stopped accepting claims on 1 August 1999. The JA coordinated transfer of claims intake responsibility to the U.S. Embassy in Tirana, and provided claims processing forms, which are included in Appendices III-6(a)-(c). After documenting the details of the claim, the Embassy then would forward the claims to CAS in FYROM for adjudication. This process eased the filing burden on claimants, who now had a local mailing address and point of contact for claims resolution. The Embassy also agreed to assist in disbursing payments to claimants.<sup>122</sup>

**2. Realize that local law may be difficult to ascertain and plan accordingly.**

Verifying property ownership in Albania proved difficult. The JAs quickly found that they needed to do considerable research to determine the governing property laws. The property records were a confusing remnant of the country’s monarchical and communist past. However, a crude system of property law and deeds registration was in place. To establish ownership and minimize fraudulent claims, JAs required claimants to either produce an official copy of a preexisting deed or register the property under the new Albanian recordation system.<sup>123</sup>

**3. Understand the unique role that village elders can play in claims adjudication.**

The typical Albanian village had little formal governmental structure, instead organizing itself as a “family” with the eldest male serving in almost a mayoral capacity, having power under Albanian law to sign official documents and perform notarial acts.<sup>124</sup> JAs had conflicting attitudes towards these elders. On the one hand, the elders could facilitate claims adjudication by signing claims paperwork when the claimant was not present—a common occurrence. On the other hand, one JA tried to avoid the elders, suspecting that they were taking portions of settlements before delivering the money to the rightful claimants.<sup>125</sup>

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<sup>122</sup> See Kosovo AAR, *supra* note 5, at 176-77.

<sup>123</sup> See Randolph Memorandum, *supra* note 119, at 2; *see also* Kosovo AAR, *supra* note 5, at 168-69.

<sup>124</sup> See Kosovo AAR, *supra* note 5, at 169.

<sup>125</sup> See Randolph Memorandum, *supra* note 119, at 2.

#### **4. Interpreters provide essential support for claims adjudication.**

Interpreters were a must for talking to and preparing documents for non-English speaking claimants. Additionally, interpreters proved valuable in less obvious respects. Interpreters helped filter out fraudulent claims by pointing out claimants who previously had asked the interpreter how to “get money” out of the JA.<sup>126</sup> Interpreters also helped translate relevant Albanian law.<sup>127</sup> Moreover, interpreters were a rich source of information on local customs and practices.<sup>128</sup>

#### **5. Paying legitimate claims can be a force multiplier.**

The JAs anecdotally attest that paying legitimate claims in Albania fostered goodwill with the local population and undoubtedly contributed to overall mission accomplishment. One JA recounted that by paying \$800 to a woman weeping over her destroyed crops, “we changed her life.”<sup>129</sup>

##### ***e. Fiscal Law—Donation of Property Must Be Analyzed on a Case-by-Case Basis.***

The most persistent fiscal law issue faced by Task Force Hawk involved the donation of Army property to the civilian population. The Purpose Statute provides that “[a]ppropriations shall be applied only to the objects for which the appropriations were made except as otherwise provided by law.”<sup>130</sup> Thus, expenditures must be authorized by law<sup>131</sup> or be reasonably related to the purpose of an appropriation in order to be lawful. Accordingly, a unit cannot donate to civilians property that was originally purchased for military use unless there is a statutory exception. One such exception is 10 U.S.C. § 2557 (previously 10 U.S.C. § 2547), *Excess Nonlethal Supplies: Humanitarian Relief*, under which the Secretary of Defense may make available for humanitarian relief purposes any DOD nonlethal excess supplies.<sup>132</sup>

<sup>126</sup> See Kosovo AAR, *supra* note 5, at 174.

<sup>127</sup> See *id.* at 168. One interpreter happened to be a law student. *Id.*

<sup>128</sup> See *id.*

<sup>129</sup> *Id.* at 177. Conversely, not all lawyers involved in theater, particularly advisors at higher levels of command, agreed that failing to pay claims would have been a mission detractor. See *id.* at 203.

<sup>130</sup> 31 U.S.C. § 1301(a) (2000).

<sup>131</sup> Such authority includes permanent legislation, annual appropriations and authorization acts, or case law.

<sup>132</sup> 10 U.S.C. § 2547 (2000).

“Nonlethal excess supplies” refers to property that is in Defense Reutilization and Management Office (DRMO) channels, and may include all property except real property, weapons, ammunition, and any other equipment or materiel designed to inflict bodily harm or death.<sup>133</sup> Property is “excess” if it is no longer required for the needs and discharge of responsibilities of the relevant military service. Excess supplies furnished by the military under authority of 10 U.S.C. § 2557 (previously 10 U.S.C. § 2547) are transferred to the Department of State (DOS), specifically, the U.S. Agency for International Development (USAID), which is responsible for the distribution of the supplies to nations targeted for humanitarian relief.<sup>134</sup> Should the need arise, funding authority for DOD transportation of the supplies may be provided under 10 U.S.C. § 2561 (previously 10 U.S.C. § 2551).<sup>135</sup>

As Task Force Hawk prepared to redeploy to Central Region (Germany) upon completion of Operation Allied Force, the fiscal law issue of property donation arose in several specific instances.

**1. Consider a third-party transfer using an Acquisition and Cross-Servicing Agreement to donate property that is not excess.**

Task Force Hawk had 80,000 gallons of aircraft fuel that were no longer needed once the mission ended. Task Force Hawk first sought permission to characterize the fuel as excess and donate it to the Albanian government rather than incurring the transaction costs of shipping it to Task Force Falcon, in Kosovo, or back to Germany. Because the fuel was still useful to the government and not truly excess, Task Force Hawk transported 30,000 gallons to Task Force Falcon and transferred the remainder to the Albanians as "payment-in-kind" for services provided by Albania to U.S. forces. The transfer of fuel to the Albanians was accomplished using what

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<sup>133</sup> See 10 U.S.C. § 2557 (previously 10 U.S.C. § 2547(d)).

<sup>134</sup> For more detailed guidance on nonlethal excess supplies, see U.S. DEP’T OF DEFENSE, MANUAL 4160.21-M, DEFENSE MATERIEL DISPOSITION (18 Aug. 1997) [hereinafter DOD MANUAL 4160.21-M].

<sup>135</sup> Transportation and Other Humanitarian Support, 10 U.S.C. § 2561 (2000) (previously 10 U.S.C. § 2551). Under the statute, DOD may transport humanitarian relief supplies using funds from the Overseas Humanitarian, Disaster, and Civic Assistance (OHDACA) appropriation. See Department of Defense Appropriations Act, 2001, Pub. L. No. 106-259, 114 Stat. 663 (providing \$55.9 million for all programs conducted under the authority of, *inter alia*, 10 U.S.C. § 2551 (Code now renumbered as 10 U.S.C. § 2551) during FY 2001 and 2002).

is commonly referred to as a "third-party transfer" under an Acquisition and Cross-Servicing Agreement (ACSA).<sup>136</sup>

An ACSA is an agreement with a foreign government or international regional organization that allows DOD to acquire and transfer logistical support without resorting to oftentimes slow and inflexible contracting procedures. Acquisitions and transfers are effected on a replacement-in-kind (RIK), equal value exchange (EVE), or cash reimbursement basis.<sup>137</sup> In this particular context of donating property that is not technically excess, the use of an ACSA can also be a mechanism to avoid violating the Purpose Statute.

At the time of the Operation, however, DOD did not have an ACSA with Albania.<sup>138</sup> Therefore, Task Force Hawk JAs, in close consultation with JAs at V Corps, USEUCOM, and USAREUR, devised a solution that involved utilizing the authority of the preexisting SACLANT ACSA.<sup>139</sup> Put simply, SACLANT and USAREUR entered into an agreement for the transfer of the fuel from Task Force Hawk to SACLANT, specifying the delivery point to be with the Albanians.<sup>140</sup> Thus, the issue of the fiscal authority to deliver fuel to the Albanians was resolved using a third-party transfer under an ACSA. It should be noted that third-party transfers under an ACSA are not routine, and must be first coordinated through the cognizant combatant command.

## **2. Consider classifying property as "consumed" by the operation.**

Task Force Hawk also sought to transfer wooden guard towers and wooden tables and chairs built on-site to the Albanian government. After coordinating with the USAREUR JA's office and USEUCOM, Task Force Hawk analogized to a similar situation confronted by the Air Force during

<sup>136</sup> See Kosovo AAR, *supra* note 5, at 178-79.

<sup>137</sup> See generally U.S. DEP'T OF DEFENSE, DIR. 2010.9, MUTUAL LOGISTIC SUPPORT BETWEEN THE UNITED STATES AND GOVERNMENTS OF ELIGIBLE COUNTRIES AND NATO SUBSIDIARY BODIES (30 Sept. 1988).

<sup>138</sup> The U.S. and Albania entered into an ACSA on 8 November 2000.

<sup>139</sup> For a discussion of where SACLANT falls within the NATO command structure, see *supra* note 3. JAs at SHAPE were not receptive to the idea of using the authority of the preexisting SHAPE ACSA. See E-mail from John J. Birch, Host Nation Support, USAREUR, to CPT Peter C. Amuso, Administrative Law Attorney, Task Force Hawk (21 July 1999, 09:04 CET) (on file with CLAMO).

<sup>140</sup> See E-mail from John J. Birch, Host Nation Support, USAREUR, to CPT Peter C. Amuso, Administrative Law Attorney, Task Force Hawk (21 July 1999, 07:58 CET) (on file with CLAMO). Of note, SACLANT desired that the Albanians hold SACLANT harmless from any liability regarding the quality of the fuel to be transferred. The Albanian Ministry of Defense drafted and signed a memorandum to that effect. See *id.*

Operation Shining Hope. When the U.S. military withdrew from Operation Shining Hope, the Air Force had sought permission to leave the tents they had erected as well as several small wooden structures they had constructed. The Air Force compared the cost of recovering and redeploying the tents and other materiel from Shining Hope to the cost of replacement. The materiel had a value of approximately \$6 million. Disassembling, packing, shipping, and transporting the items would have cost approximately \$8 million. The Shining Hope operations order also contemplated leaving the materiel in place. With these factors in mind, the Air Force, with the concurrence of the JCS legal office, decided to leave the materiel in place.<sup>141</sup>

Task Force Hawk applied the same principle to the donation of wooden guard shacks and tables and chairs constructed on site. The property was of minimal value, and, once disassembled, could not be reused. This analysis was apparently based on "common sense" and "best business practices" rather than specific legal authority. The materiel was considered "consumed" by the operation, since the recovery cost exceeded the value.<sup>142</sup>

### **3. Realize the difficulty of classifying staple items as excess.**

The donation of food proved more difficult. Task Force Hawk sought to donate food to a local orphanage prior to redeployment. Because the proposed donation (two tractor-trailer loads) exceeded a "de minimis" amount,<sup>143</sup> the JA consulted USAREUR and advised the command that the food could be donated if declared excess through proper channels. The potential donation included flour, milk, and bread.<sup>144</sup>

Prior to declaring the items excess, many legal obstacles would have to be negotiated. The Task Force Hawk property book officer would have to complete a DA Form 3161, "Return for Issue or Turn In," declaring the food

<sup>141</sup> See E-mail from LTC Roger Washington, Office of the Judge Advocate, USAREUR, to CPT Peter C. Amuso, Administrative Law Attorney, Task Force Hawk (15 July 1999, 15:17 CET) (on file with CLAMO).

<sup>142</sup> See E-mail from LTC Roger Washington, Office of the Judge Advocate, USAREUR, to CPT Peter C. Amuso, Administrative Law Attorney, Task Force Hawk (16 July 1999, 13:36 CET) (on file with CLAMO). Although the principle of "abandonment" was not applied, it arguably could have been, and certainly seems to contemplate a very similar commercial analysis of the costs and benefits of simply leaving materiel behind. See DOD MANUAL 4160.21-M, *supra* note 134, at ch. 8.

<sup>143</sup> Small unit commanders are generally authorized to give small amounts of food to the local populace.

<sup>144</sup> See E-mail from CPT Peter C. Amuso, Administrative Law Attorney, Task Force Hawk, to LTC Roger Washington, Office of the Judge Advocate, USAREUR (15 July 1999, 18:55 CET) [hereinafter Amuso Food Donation E-Mail] (on file with CLAMO).

excess. The veterinarian would then have to examine the excess food and determine whether the food was fit for human consumption. If the veterinarian determined that the food was fit for consumption, the form would have to be sent to USAREUR Food Service, which would determine whether other military units in USAREUR could use the food. If no other unit could use the food, USEUCOM would have to contact DOS, as required by 10 U.S.C. § 2547.<sup>145</sup> Faced with these requirements, the Task Force Hawk logistics section decided to send the food to Task Force Falcon, an act which itself demonstrated that there was a military use for the items.<sup>146</sup>

JAs should look closely at what is considered excess. Most staple items will be difficult to classify as excess unless they are very near their expiration date.

***f. Contract Law Support Is Required Immediately.***<sup>147</sup>

A contingency contracting team deployed with the first elements of Task Force Hawk. Contracting Command, Europe, (CCE) JAs provided contract law advice from Germany and later from FYROM, as space limitations prevented the deployment of an actual contract law attorney with Task Force Hawk. The contingency contracting team worked long hours to improve quality of life under harsh conditions. Deep mud and lack of infrastructure required immediate contracts for gravel and rock, wells, vehicles capable of operating in the environment, and port-a-lets. While logistics contractors quickly take responsibility for base camp construction, they require extensive government contracting support early in the deployment.

Requirements for rock to build roads and foundations for structures exceeded local transportation capabilities. Engineers established strict priorities for projects, and contracting officers sometimes rode with the delivery trucks to ensure the loads were not diverted to competing projects.

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<sup>145</sup> See Memorandum, CPT Peter C. Amuso, Administrative Law Attorney, Task Force Hawk, to G4, Task Force Hawk, subject: Charitable Donations of Food to Albanian Orphanage (n.d.) (on file with CLAMO).

<sup>146</sup> See Amuso Food Donation E-mail, *supra* note 144.

<sup>147</sup> The material in this section is drawn from the comments of an Army contracting officer who visited Task Force Hawk in May 1999. His comments are contained in E-mail from COL David E. Graham, Chief, International and Operational Law Division, Office of the Judge Advocate General, U.S. Army, to MAJ John W. Miller, Deputy Director, Center for Law and Military Operations, et al., subject: Task Force Hawk Contracting Issues (2 June 1999) (on file with CLAMO).

Three deep-water wells were installed under local contracts within thirty days to provide water for meal preparation and showers. Because the mud was too deep to allow toilet construction, port-a-lets were required immediately. Over 175 toilet units were procured in Italy, and contracts were formed for cleaning services. When the mud proved too deep for the trucks to reach the port-a-lets, contractors hired local nationals to move the port-a-lets to the trucks.

Experienced contract law support is required, either on the ground or from home-station, early in the deployment. CCE expertly provided this advice from a central location during operations in Bosnia, Albania, FYROM, and Kosovo. Because most corps headquarters do not have in-house contract law expertise, this support is essential.

*g. Military Justice*

**1. Expect a General Order Number One.**

U.S. Commander in Chief, U.S. EUCOM (CINCUSEUCOM), General Wesley Clark, approved "General Order 1 in Support of Allied Force and Humanitarian Efforts in the Balkans" on 12 April 1999.<sup>148</sup> The order is included in Appendix IV-30. The order addressed a variety of issues, including the possession of alcohol, weapons, war trophies or unexploded munitions, gambling, the exchange of currency, and the destruction of archaeological artifacts. The order delegated to JTF Commanders the authority to waive the alcohol prohibition when mission requirements permitted. General Order 1 required SJAs to provide written copies of the waivers to the USEUCOM SJA. The Commander, Task Force Hawk, published a separate General Order, emphasizing many of the provisions of the CINCUSEUCOM order, and adding provisions specific to the Task Force Hawk mission. The Task Force Hawk General Order is included in Appendix III-7.

**2. Documenting jurisdictional alignment requires meticulous attention.**

On 17 April 1999, USAREUR amended the V Corps Commander's General Court-Martial Convening Authority (GCMCA) to include all

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<sup>148</sup> Headquarters, USEUCOM, General Order Number 1 in Support of Allied Force and Humanitarian Efforts in the Balkans (12 Apr. 1999 as amended 29 June 1999).

soldiers in Task Force Hawk. The Corps Commander also retained court-martial authority over troops in Germany. The Task Force Hawk jurisdictional structure became effective when a unit or soldier deployed to a location at Task Force Hawk and ended when the soldier or unit redeployed. Provision was made for units not listed in the alignment to be attached for UCMJ purposes to the Commander, V Corps, Special Troops Battalion. The jurisdictional alignment is included in Appendix III-8. The most significant problem when addressing jurisdiction was ensuring the alignment included all slice elements. JAs sometimes found that walking around the camp to see which units were present was the best way to accurately identify all of these slice elements.<sup>149</sup>

### **3. Retaining jurisdiction over soldiers in the rear during a deployment will cause delays.**

At least one brigade commander retained Special Court-Martial Convening Authority (SPCMCA) jurisdiction over the portion of his brigade remaining in Germany. Other convening authorities designated a provisional unit (with separate Unit Identification Code) and appointed a rear commander. Split-based operations—that is, situations where a commander retains jurisdiction over a unit separated into two or more geographic locations—created logistical challenges. While most actions were completed satisfactorily, the delay in processing was significant. The JAs that deployed recommended against employing split-based UCMJ operations when possible. The Corps SJA believed it would have been necessary to separate the forward and rear military justice actions had combat operations ensued. Scanners and e-mail were essential to maintain split-based UCMJ operations.<sup>150</sup>

### **4. On-call Trial Defense Services requires coordination.**

The Trial Defense Service (TDS) did not deploy a defense counsel. Instead, TDS developed an on-call roster. A TDS attorney in Germany was designated each week to provide telephonic counseling for nonjudicial punishment. One TDS JA did visit Albania during an investigation. He agreed to counsel as many clients as possible during his visit. While TDS worked cooperatively with the unit, the telephone system and long duty day in Albania made contact more difficult. The JAs that

<sup>149</sup> See Randolph Memorandum, *supra* note 119, at 3.

<sup>150</sup> See Kosovo AAR, *supra* note 5, at 148-53.

deployed recommended for future deployments that TDS provide attorneys during extended hours and that telephonic counseling times be preestablished.

***h. Preparation, Personnel, and Equipment***

Deployment with Task Force Hawk reinforced the need for thorough preparation and training in basic soldier skills. Participants deployed four times on exercises prior to the short-notice deployment to Albania. Once deployed, austere conditions required all personnel, including the Corps SJA, to fill sandbags, prepare fighting positions, and assist in the process of digging in.<sup>151</sup> Personnel initially had to survive in the field with few amenities; they did not have showers, hot food, or laundry service for nearly a month.<sup>152</sup>

All legal personnel must also possess battle staff skills. Members of Task Force Hawk were required to serve as members of, or interact with members of, the battle staff. Skills such as map reading, radio use, and proper use of other military equipment were essential when operating as part of the battle staff. The legal team deployed to Albania also stressed the necessity for sufficient weapons training. According to two deployed captains, “JAs need more than the JAOBC familiarization and yearly qualifying at their post. How to properly clear and the proper way to assemble and disassemble weapons is a must.”<sup>153</sup>

The deployment team consisted of the Corps SJA accompanied by a lieutenant colonel, three captains, and two legal specialists. Two subordinate units also brought legal specialists. A fourth captain replaced the lieutenant colonel after one month. The Task Force Hawk legal team deployed with one HMMWV, at least one set of night vision goggles, and personal weapons.<sup>154</sup>

The SJA was initially given space in the Commanding General’s van. Eventually, the SJA office was established in a tent. Communications consisted of only Mobile Subscriber Equipment (MSE) telephone and e-mail. In Germany, the V Corps OSJA set up an MSE line to allow a direct

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<sup>151</sup> See *id.* at 80.

<sup>152</sup> See *id.* at 100.

<sup>153</sup> E-mail from CPT Kerry L. Erisman & CPT Peter C. Amuso, Operational Law Attorneys, Task Force Hawk, to CPT Tyler Randolph, CLAMO (9 June 1999) (on file with CLAMO).

<sup>154</sup> See Randolph Memorandum, *supra* note 119, at 1.

link. The “legal assistance office” took the form of two chairs outside the tent on “the porch.” Dust and dirt caused constant problems for the computer equipment. Cleaning supplies, such as compressed air, became important. Replacement equipment was shipped to the Task Force periodically from the rear OSJA. As in other recent deployments, the SJA office did get Internet and e-mail access quickly.<sup>155</sup>

### *i. Administrative Law*

Two Task Force Hawk helicopters crashed within a ten-day window in late April and early May 1999. Two pilots suffered minor injuries in the first accident. The second accident resulted in two pilot fatalities.<sup>156</sup> Both accidents required a series of investigations<sup>157</sup> from which two primary legal lessons emerge.

#### **1. Operational tempo and the deployed environment can make administrative tasks more difficult.**

The Task Force Hawk SJA opined that the most noteworthy legal lesson learned regarding the helicopter investigations was the difficulty of performing otherwise routine administrative tasks during a contingency deployment.<sup>158</sup> For one, at the time of the accidents the Task Force Hawk camp infrastructure was not fully developed; the primitive conditions had a direct impact on the ability of the legal staff to perform its missions. Secondly, the flurry of legal issues generated by the rapid operational tempo stretched the capabilities of the legal staff. Recognizing that the JA community advertises its ability to operate in an austere, fast-paced,

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<sup>155</sup> *See id.*

<sup>156</sup> For a discussion of both accidents, see Joseph Albright, *Conflict in the Balkans; Apache Crash*, THE ATLANTA J. & CONST., May 6, 1999, at 16A.

<sup>157</sup> Aircraft accidents require safety accident investigation reports. *See* U.S. DEP'T OF ARMY, REG. 385-40, ACCIDENT REPORTING AND RECORDS ¶ 1-7 (1 Nov. 1994) [hereinafter AR 385-40]. There may be other "collateral" investigations required or desired depending upon the specific circumstances surrounding the accident. These may include a report of survey, line of duty, litigation, disciplinary action, adverse administrative action, high public interest, or claims investigation. *See id.* ¶ 1-8. Collateral investigations do not necessarily have to be separate and may be accomplished by conducting one 15-6 investigation. *See* U.S. DEP'T OF ARMY, REG. 15-6, PROCEDURES FOR INVESTIGATING OFFICERS AND BOARDS OF OFFICERS (20 Sept. 1996) [hereinafter AR 15-6]. Any collateral investigation that might involve potential claims should follow the investigation procedures set forth in AR 27-20, *supra* note 113. *See* AR 385-40, ¶ 1-8(d). Otherwise, collateral investigations should follow the procedures set forth in AR 15-6. *See id.*

<sup>158</sup> E-mail from COL Nolon Benson, former Task Force Hawk SJA, to LTC Stuart Risch, CLAMO (23 Oct. 2001) [hereinafter Benson E-mail] (on file with CLAMO).

deployed environment,<sup>159</sup> JAs should anticipate these difficulties and plan accordingly.

**2. Emphasize to the investigating officer that legal advice provided during the conduct of the investigation does not constitute legal review.**

Task Force Hawk JAs provided legal advice to the investigating officers (IOs) for the helicopter accidents. One of the IOs conducting two separate investigations relating to the accidents mistook the legal advice he was receiving during the investigations as the legal review required upon completion of the investigations. For unexplained reasons, the investigations were subsequently lost. The Task Force Hawk legal office had not retained copies of the investigations because the JAs understood their role to be only advisory in nature. Similarly, because the IO—who had returned to his parent command in Germany—had not pursued a legal review, the parent command legal office did not have a copy of the investigations. The investigations had to be redone, causing embarrassment for the Task Force Hawk command and legal office.<sup>160</sup> JAs in the position of providing legal advice to IOs should emphasize that a separate legal review needs to be done after the investigation is complete. Furthermore, particularly when the IO is geographically removed, JAs should consider making a copy of the investigation for their own records.

**C. CAMP ABLE SENTRY, FYROM**

In February 1992, the UN Security Council established the United Nations Protection Force (UNPROFOR) as a peacekeeping force for the crisis in the former Yugoslavia. UNPROFOR had been a security presence in FYROM since December 1992, having first deployed to Croatia and later extending to Bosnia and Herzegovina. In March 1995, the UN Security Council replaced UNPROFOR with three separate but interlinked peacekeeping operations in the former Yugoslavia, one of which was the United Nations Preventive Deployment Force (UNPREDEP) in FYROM. The UN continuously extended the UNPREDEP mission until February 1999, when a Chinese veto prevented further extension.

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<sup>159</sup> See, e.g., U.S. DEP'T OF ARMY, FIELD MANUAL 27-100 ¶ 2.4.1, LEGAL SUPPORT TO OPERATIONS (1 Mar. 2000) ("Legal organizations provide OPLAW support throughout all stages of mobilization and operations in the deployment theater . . . [and] must be as capable as the units they support.").

<sup>160</sup> See Benson E-mail, *supra* note 158.

UNPREDEP's mission was to monitor and report activity along the FYROM/Serbian border. Twenty-seven countries supported UNPREDEP, with most of the troops coming from the U.S., Finland, Indonesia, Norway, Denmark, and Sweden. The U.S. Army contribution to UNPREDEP was called Task Force Able Sentry (TFAS) and was located at Camp Able Sentry (CAS), in FYROM.

After UNPREDEP disbanded, the U.S. mission was renamed Task Force Sabre. Task Force Sabre remained at CAS and was tasked to preserve the U.S. infrastructure there as a forward staging and logistics area for the future U.S. contribution to the NATO-led peacekeeping force in Kosovo. Upon completion of the Allied Force air campaign, Task Force Sabre merged into Task Force Falcon, the U.S. task force initially co-located at CAS responsible for the follow-on NATO peacekeeping mission in Kosovo. Operations at CAS became Task Force Falcon (Rear).<sup>161</sup>

Several legal lessons emerged from CAS during the period between the February 1999 disbanding of UNPREDEP and the completion of Operation Allied Force.

### ***1. Operating Without a Clearly Applicable Status of Forces Agreement Presents Legal Challenges.***

The end of the UNPREDEP mission meant the end of the UN status for U.S. TFAS forces which had been based on the relevant UN Status of Mission Agreement (SOMA).<sup>162</sup> At this point in time, the 23-24 December 1998 Exchange of Letters concerning the Basic Agreement between NATO and FYROM, previously discussed in the AFSOUTH section, only applied to the KVCC and its extraction force.<sup>163</sup> It was not until 21 April 1999 that the Exchange of Letters was extended to apply to all NATO forces in FYROM.<sup>164</sup> Thus, Task Force Sabre and Task Force Falcon operated without a SOFA or like instrument in place for nearly two months.

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<sup>161</sup> For a more detailed discussion of the historical background surrounding the establishment of CAS, see *supra* Ch. II, note 116 and accompanying text.

<sup>162</sup> See LTC Mark S. Martins, Deputy Staff Judge Advocate, IID, Task Force Falcon Interim After Action Review, Operational Law CLE, PowerPoint presentation, notes to briefing slide 24 (3 Dec. 1999) [hereinafter Martins Presentation] (on file with CLAMO).

<sup>163</sup> See *supra* text accompanying notes 48-52.

<sup>164</sup> See Information Paper, LTC Jeff McKittrick, International Law and Operations Division, USAREUR, subject: Agreements with Macedonia (2 Feb. 2000) (on file with CLAMO).

The lack of a SOFA resulted in a variety of challenges. Border crossing issues arose, from refusal to admit U.S. soldiers to demands for fees to preventing the movement of contractor vehicles.<sup>165</sup> Criminal jurisdiction issues were unclear.<sup>166</sup> Efforts to expand the CAS infrastructure into a more robust staging base met resistance.<sup>167</sup> Reaching agreement on runway usage fees and billing for utilities at CAS was a constant struggle.<sup>168</sup>

Army JAs attempted to fill this legal void by proposing that the Partnership for Peace (PfP) SOFA<sup>169</sup> applied and by negotiating a separate consignment agreement for CAS.<sup>170</sup> Although FYROM has been a PfP member since 1996, the fact that Task Forces Sabre and Falcon were on the ground without any specific agreement with FYROM regarding the U.S. military presence as a non-UN force called into question the applicability of the PfP SOFA by its very terms.<sup>171</sup> Nonetheless, Army JAs achieved a measure of success in arguing the PfP SOFA's applicability and hammering out the terms of the more detailed consignment agreement for CAS.<sup>172</sup>

JAs then faced an additional hurdle. Even though some level of consensus was reached that the PfP SOFA applied, this information did not always filter down to lower levels, such as to FYROM border guards who continued to demand fees and obstruct border crossings. As an example of a response to this problem, the Task Force Sabre Commander tasked a JA to accompany a particularly sensitive reconnaissance mission to ensure that the terms of the SOFA were communicated to the guards at a FYROM–Albania border station.<sup>173</sup>

Despite the efforts of JAs to apply the PfP SOFA and to negotiate a consignment agreement, and despite the later applicability of the theater-

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<sup>165</sup> See Martins Presentation, *supra* note 162, at notes to briefing slide 28.

<sup>166</sup> See *id.* at notes to briefing slide 24.

<sup>167</sup> See *id.*

<sup>168</sup> See E-mail from CPT James A. Bagwell, Operational Law Attorney, Task Force Falcon (Rear), to CPT Alton L. Gwaltney, III, CLAMO (31 Mar. 2000) (on file with CLAMO).

<sup>169</sup> See *supra* notes 109-110 and accompanying text.

<sup>170</sup> Accommodation Consignment Agreement for Army Compound "Strasho-Pindjur/Camp Able Sentry" at Petrovec Airfield, Skopje, U.S.–MK [FYROM Ministry of Defense], Apr. 19, 1999.

<sup>171</sup> See PfP SOFA, *supra* note 110, at para. 3.

<sup>172</sup> Lieutenant Colonel Mark Martins, the Task Force Falcon Legal Advisor and, at one point, the Task Force Falcon Chief of Staff, paints a vivid picture of just how these efforts transpired: "The last half of April for me was a series of smoke-filled rooms, Turkish coffee, and byzantine negotiations at the [FYROM] Ministry of Defense . . . ." Martins Presentation, *supra* note 162, at notes to briefing slide 24.

<sup>173</sup> See *id.* at notes to briefing slide 28.

specific Exchange of Letters, many key details, particularly in the realm of contractor support, were left unanswered. The most notable example was the omission of any language clarifying the status to be enjoyed by civilian contractors such as Brown & Root.<sup>174</sup> JAs argued, with varying degrees of persuasiveness, that the contractors should be considered members of the force under the PfP SOFA and, later, under the technical annexes of the Exchange of Letters.<sup>175</sup> As members of the force, civilian contractors would receive the same criminal procedural protections as U.S. soldiers and face less resistance—such as licensing requirements and fees—when crossing FYROM borders.

Operating in the absence of a clearly applicable SOFA—or with a SOFA that did not adequately address key issues—gave JAs the opportunity to display their legal mettle through a combination of creative arguments and persistent negotiations. Such legal skills will surely be needed the next time U.S. forces are called into a country where SOFA production lags behind military requirements.

## ***2. Humanitarian Assistance Fiscal Law Issues Underscore the Importance of JA Integration into the Staff and the Utilization of Technical Channel Support.***

During the conduct of the Allied Force bombing campaign—March through June 1999—hundreds of thousands of Kosovar Albanian refugees streamed into FYROM.<sup>176</sup> The flood of refugees quickly overwhelmed the ability of humanitarian aid organizations to provide food and shelter. To alleviate the problem, German forces began establishing a camp southwest of Skopje, with all of the NATO forces in FYROM contributing to the effort. NATO asked U.S. military forces in country to lend support, which in turn raised the U.S. domestic fiscal law question of the permissibility of providing humanitarian assistance.<sup>177</sup>

This situation underscores the importance of JA integration into the staff on two fronts. First, the close relationship of the JA to the commander and his staff enables the JA to fully understand the commander's intent. One

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<sup>174</sup> See Kosovo AAR, *supra* note 5, at 360-61. For a discussion of Brown & Root, see *infra* Chapter IV, note 114.

<sup>175</sup> See Kosovo AAR, *supra* note 5, at 361.

<sup>176</sup> See Martins Presentation, *supra* note 162, at notes to briefing slide 22.

<sup>177</sup> See *id.*

of the Commander's unwritten goals in this situation was to battle the perception that the U.S. was not fully committed to participate in KFOR once the bombing campaign ended.<sup>178</sup> The humanitarian crisis in northern FYROM presented an opportunity not only to provide necessary relief, but also to demonstrate U.S. resolve toward the KFOR planning effort.

Second, JA integration into the staff is critical because commanders and staffs may act without JA consultation, not realizing that they may be treading on thin legal ice. Given the pressure on a commander to act (as in this instance with the request from NATO to provide humanitarian assistance) and the common sense notion that certain expenditures (such as providing food and water to those in need) seem to be the right thing to do professionally and morally, the JA must be a key member of the planning process. If the JA is not involved, policing up fiscal law miscues after the fact will be extremely difficult.<sup>179</sup>

Incorporating the JA into staff planning affords the JA the lead time to translate the commander's intent into a legally defensible position. In this particular case, the JA leaned heavily upon technical channel support, obtaining counsel from JAs ranging from USAREUR to USEUCOM to OTJAG to CJSC. Additionally, the JA worked closely with the U.S. Ambassador to FYROM, the USAID representative in country, and the Office of the Defense Attaché.<sup>180</sup>

The extensive coordination with and robust support provided by the technical channel and embassy personnel resulted in the Ambassador declaring the humanitarian situation a "disaster."<sup>181</sup> The JA used this declaration as a springboard to argue that the "and other humanitarian assistance worldwide" language in 10 U.S.C. § 2551<sup>182</sup> provided a fiscal law justification to provide food and water to the refugees.<sup>183</sup> Another benefit of the extensive coordination was to build *a priori* consensus along the technical chain that this argument had merit.<sup>184</sup>

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<sup>178</sup> See Martins Presentation, *supra* note 162, at notes to briefing slide 22.

<sup>179</sup> See *id.*

<sup>180</sup> See *id.*

<sup>181</sup> See *id.*

<sup>182</sup> See *supra* note 135 and accompanying text.

<sup>183</sup> See Martins Presentation, *supra* note 162, at notes to briefing slide 22.

<sup>184</sup> See *id.*

### ***3. The Capture of the Three U.S. Soldiers Highlights the Need for a Senior and Impartial Investigating Officer.***

The 31 March 1999 capture of three U.S. soldiers by Serbian forces near the FRY–FYROM border<sup>185</sup> reinforced the importance of senior and impartial officers conducting sensitive investigations. The Commanding General, 1ID, the captured soldiers' unit, appointed an outside investigator, the Commander, 7th Army Training Command (ATC), to formally inquire into the circumstances of the case. The 7th ATC Commander received advice from a JA selected from his own staff. The selection of an independent and impartial investigating team arguably helped preempt any accusations or perceptions that the investigation was biased.<sup>186</sup>

Most importantly, the investigation proved to be thorough, accurate, and timely. The findings of the investigation were later supported by debriefings held with the three soldiers upon their release.<sup>187</sup> All told, the conduct of the investigation served to validate the guidance in service regulations of the need for a prompt, comprehensive, and independent investigation—particularly in the case of high-profile, sensitive matters.<sup>188</sup>

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<sup>185</sup> See *supra* text accompanying note 8.

<sup>186</sup> See Martins Presentation, *supra* note 162, at notes to briefing slide 21.

<sup>187</sup> See *id.*

<sup>188</sup> See, e.g., AR 15-6, *supra* note 157; U.S. DEP'T OF NAVY, JUDGE ADVOCATE GEN. INSTR. 5800.7C, MANUAL OF THE JUDGE ADVOCATE GENERAL (JAGMAN) ch. II (3 Oct. 1990) (C3, 27 July 1998).

#### IV. OPERATION JOINT GUARDIAN

*You can fly over a land forever; you may bomb it, atomize it, pulverize it and wipe it clean of life—but if you desire to defend it, protect it, and keep it for civilization, you must do this on the ground, the way the Roman Legions did, by putting your young men in the mud.<sup>1</sup>*

##### A. OVERVIEW<sup>2</sup>

The nineteen member nations of NATO, along with twenty other troop contributing nations (TCNs), combined to conduct Operation Joint Guardian, the NATO peacekeeping mission in Kosovo. Operation Joint Guardian began immediately after operation Allied Force, the seventy-eight day NATO air campaign suspended on 10 June 1999 after the North Atlantic Council (NAC) received confirmation that Yugoslav forces in Kosovo had begun to withdraw. The Yugoslav withdrawal was in accordance with the Military Technical Agreement (MTA) between NATO and the Federal Republic of Yugoslavia (FRY),<sup>3</sup> which was designed to establish a durable cessation of hostilities within Kosovo and provide the authorization for the deployment of an international security force into Kosovo.

On 10 June 1999, pursuant to Chapter VII of the United Nations (UN) Charter, the UN Security Council passed Resolution 1244 (UNSCR 1244)<sup>4</sup> welcoming the FRY acceptance of the framework for a political solution to the Kosovo crisis, including a withdrawal of military police and paramilitary forces. UNSCR 1244 also authorized the deployment of an international security force under UN auspices. Synchronized with the departure of Serb forces, the first elements of the Kosovo Forces (KFOR) entered Kosovo on 12 June 1999. Thus began the peacekeeping mission in Kosovo.

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<sup>1</sup> T.R. FEHRENBACH, THIS KIND OF WAR 427 (1963).

<sup>2</sup> For a complete discussion of the history of the Kosovo region see *supra* Chapter II.

<sup>3</sup> Military Technical Agreement between the International Security Force (“KFOR”) and The Governments of the Federal Republic of Yugoslavia and the Republic of Serbia, 9 June 1999 [hereinafter MTA], available at [www.nato.int/usa/policy/d990609a.htm](http://www.nato.int/usa/policy/d990609a.htm). A copy of the MTA is included in Appendix IV-1. For a discussion of the MTA see *infra* the text accompanying note 12.

<sup>4</sup> S.C. Res. 1244, U.N. SCOR, U.N. Doc. S/RES/1244 (1999) [hereinafter UNSCR 1244], available at [www.un.org/Docs/scres/1999/99sc1244.htm](http://www.un.org/Docs/scres/1999/99sc1244.htm) (last visited 25 Sept. 2001). A copy of UNSCR 1244 is included in Appendix IV-2. For a discussion of UNSCR 1244 see *infra* the text accompanying note 8.

The 1st Infantry Division (1ID) had been planning various Kosovo-related deployments for about eight months. The previous deployments centered on the reinforcement of the U.S. element of the United Nations Preventive Deployment Forces (UNPREDEP) in the former Yugoslav Republic of Macedonia (FYROM) and the safe extraction of the Kosovo Diplomatic Observer Mission (KDOM). The U.S. UNPREDEP mission was Task Force Able Sentry (TFAS), which had its main base of operations at Camp Able Sentry (CAS), Petrovec Airfield, FYROM. Designed to prevent the spread of hostilities from the Federal Republic of Yugoslavia into FYROM, the TFAS mission began as part of the UN Protection Force (UNPROFOR) in 1993, when Yugoslav republics began breaking away from the FRY.

While the seeds of the conflict in Kosovo may have been sewn thousands of years ago, Kosovo had enjoyed a high degree of autonomy and relative calm as a member of Yugoslavia from 1974 until 1989. In 1989, Serbian leader Slobodan Milosevic altered the status of Kosovo, removing regional autonomy and bringing the region under the direct control of Belgrade, the Serbian capital. Kosovar Albanians within Kosovo strenuously opposed Serbian rule, and, after a decade of aggression and intermittent fighting, open conflict eventually erupted between Serbia and Kosovo.

In February 1999, concerted international efforts to find a peaceful solution to the Kosovo problem culminated in negotiations in Rambouillet, France. In an effort to end the fighting between Serb troops and the “Ushtria Clirimtare e Kombatere” (UCK, also known as the Kosovo Liberation Army (KLA)), the contact group of five nations—U.S., U.K., Germany, Italy, and France—in conjunction with the Russians, developed a blueprint for peace in Kosovo. The Rambouillet framework restored some autonomy for the Kosovo province but kept Kosovo within the FRY. The framework also included the creation of a Kosovo force to implement the agreement. The role of a Kosovo force was prominent in the Rambouillet Accords, and from this beginning, the U.S. component was intended to be the bulk of only one multinational brigade (MNB) of a force that would have a distinctly European lead.

The breakdown of the Rambouillet negotiations and withdrawal of the KDOM observers, who had been in Kosovo under UN mandate since the fall of 1998, immediately preceded the Operation Allied Force air strikes, which

began on 24 March 1999. Increased Serbian military and police operations against ethnic Albanians in Kosovo led to a refugee humanitarian disaster marked by the expulsion of an estimated 1.5 million Kosovars from their homes by May 1999.

### 1. *Command and Control*

The NATO-led Operation Joint Guardian fell under the political direction and control of the North Atlantic Council (NAC). Military control of KFOR included a command structure that began with NATO’s Supreme Allied Commander, Europe (SACEUR), General Wesley Clark, who was dual-hatted as U.S. Commander-in-Chief, European Command (CINCEUCOM). SACEUR designated NATO’s Allied Rapid Reaction Corps (ARRC) Commander, Lieutenant General Sir Michael Jackson, from the United Kingdom, as the first Commander, Kosovo Forces (COMKFOR).

KFOR consisted of five MNBs with troops from all nineteen NATO member nations as well as twenty other TCNs. The French headed MNB



*Figure 1: Multinational Brigade Areas of Responsibility*

North (MNB(N)), which operated out of Mitrovica in the northeast corner of Kosovo. The Italians were responsible for MNB West (MNB(W)), which

was headquartered in Pec and included the area along the northwest Kosovo border with Montenegro and Albania. Germans commanded MNB South (MNB(S)) and operated out of Prizren in the southwest. MNB Center (MNB(C)), located in Pristina, was commanded by a British officer; and MNB East (MNB(E)), the U.S.-led “Task Force Falcon,”<sup>5</sup> operated in the southeast bordering FYROM and FRY. Figure 1 is a map of Kosovo depicting the multinational brigade areas of responsibility within Kosovo. A map of the southeastern corner of Kosovo, the Task Force Falcon area of operations, is included in Appendix IV-3.

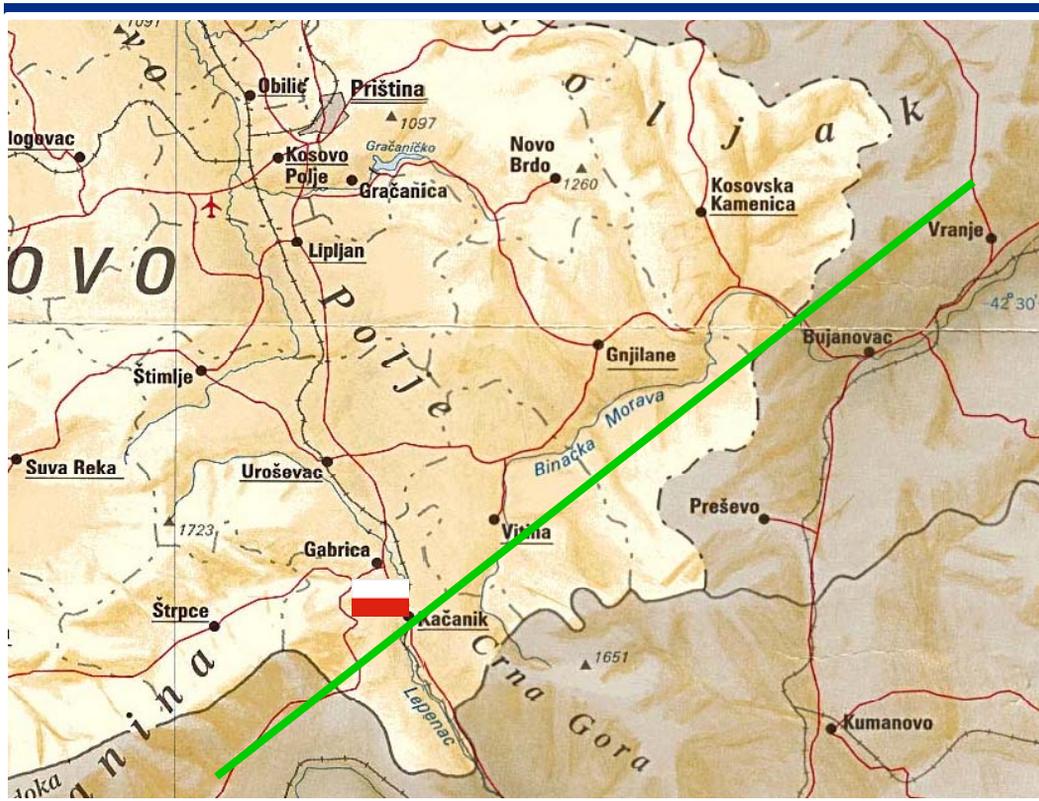
Troops from the 1st Armored Division (1AD) and 82d Airborne Division (82d) comprised the initial Army maneuver units of Task Force Falcon. These units had been part of the security force for Task Force Hawk in Albania. Marines from the 26th Marine Expeditionary Unit, Special Operations Capable (MEU(SOC)) rounded out the maneuver units of Task Force Falcon.<sup>6</sup> All of these forces were under the command of a headquarters element of 1ID. As elements of 2d Brigade, 1ID, began arriving in Kosovo, the forces of the 1AD and the 26th MEU left Kosovo. By 10 July 1999, the core of Task Force Falcon, formed around the 1ID, was

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<sup>5</sup> The name “Falcon” was selected from the old Serbian poem, “The Battle of Kosovo,” about Prince Lazar, the Serb leader whose 77,000 soldiers perished at the hands of the Ottoman Turks, in the Battle of Kosovo Polje in 1389. In the poem, Lazar dreams that a “great gray bird, a taloned falcon” bearing a swallow in its beak confronts Lazar with a choice—do you seek an earthly kingdom or a heavenly kingdom? If Prince Lazar chose the earthly kingdom, his troops would defeat the Turks, but if he chose a heavenly kingdom, he and his men would die. The legend says that Prince Lazar chose the heavenly kingdom, and, in the ensuing battle, was killed. For a further discussion of the history of the Kosovo region see *supra* Chapter II. A complete translation of “The Battle of Kosovo” is at [http://www.kosovo.com/history/battle\\_of\\_kosovo.html](http://www.kosovo.com/history/battle_of_kosovo.html) (last visited 24 Sept. 2001).

<sup>6</sup> The 26<sup>th</sup> MEU(SOC) left the United States on 16 April 1999 to begin a six-month deployment to the Mediterranean as the Landing Force, Sixth Fleet (LF6F). On 28 April, the MEU arrived on station in the Adriatic and assumed the Tactical Recovery of Aircraft and Personnel (TRAP) alert posture in support of Operation Allied Force. The MEU’s first active participation in Operation Allied Force was on 1 May when its AV-8B Harriers flew sorties in the Kosovo area of operations (AO). The 26<sup>th</sup> MEU(SOC) consisted of the MEU Command Element (CE), Battalion Landing Team (BLT) 3/8 as the Ground Combat Element (GCE), HMM-365 as the Aviation Combat Element (ACE), and MEU Service Support Group (MSSG) 26 as the Combat Service Support Element (CSSE). The GCE consisted of the 3<sup>rd</sup> Battalion, 8<sup>th</sup> Marines, reinforced with a light armored vehicle (LAV) detachment (16 LAVs), an amphibious assault vehicle (AAV) detachment (15 AAVs), and an artillery battery (six 155mm howitzers). The ACE was centered around HMM-365, a composite squadron consisting of 12 CH-46 medium lift helicopters, four CH-53E heavy lift helicopters, three UH-1N utility helicopters, four AH-1W attack helicopters, six AV-8B fixed wing attack aircraft, and two land-based KC-130 aerial refueler/transport aircraft. MSSG-26 provided the MEU combat service support with engineer, motor transport, supply, landing support, medical, and dental detachments. All information on Marine Corps operations was obtained from Memorandum, Staff Judge Advocate, 26th MEU(SOC), to Commanding Officer, 26th MEU(SOC), subject: Quick Look After Action Report Operation Joint Guardian (18 July 1999) [hereinafter MEU AAR] (on file with CLAMO), and the After Action Report, Staff Judge Advocate, 26th MEU(SOC), subject: MEU Lessons Learned (n.d.) (on file with CLAMO).

in Kosovo and troops from Greece, Jordan, Poland, Russia, the Ukraine, and the United Arab Emirates (UAE) augmented Task Force Falcon to form MNB(E), a multinational task force arrayed as represented in Figure 2.



*Figure 2: Multinational Brigade East Area of Responsibility*

Brigadier General (BG) John Bantz Craddock, the Assistant Division Commander (Maneuver), 1ID, became the first Task Force Falcon Commander. The NATO chain of command for MNB(E) passed through KFOR headquarters in Pristina to SACEUR. As the highest-ranking U.S. commander in Kosovo, BG Craddock, as Commander, USKFOR, fell under the Combatant Command of General Clark, CINCEUCOM. Administrative support for Task Force Falcon ran through U.S. Army Europe (USAREUR) to the Department of the Army. Finally, because the majority of the brigade combat team composing Task Force Falcon as well as substantial staff elements came from the 1ID, the Task Force Falcon chain of command also led to the Commander, 1ID. The MNB(E) Commander also had to be aware of the various national interests brought to Task Force Falcon, which was a

multinational task force. The chart included in Appendix IV-4 depicts the various chains of command the MNB(E) Commander had to consider.<sup>7</sup>

The first rotation of IID soldiers that deployed to Kosovo was commonly referred to as the “KFOR 1A” rotation. In October 1999, 2-505 Parachute Infantry Regiment (PIR), the light infantry battalion from the 82d, was replaced by 3-504 PIR, also from the 82d. 3d Brigade, 1ID, replaced 2d Brigade in December 1999 to start the KFOR 1B rotation. 3-504 PIR was replaced in March 2000 by 1-187 Infantry, which was replaced six months later by 2-327 Infantry. Both 1-187 and 2-327 were from the 101st Airborne Division (Air Assault). 1AD assumed command of Task Force Falcon in June 2000 for one year (KFOR rotations 2A and 2B). The 101st, as the headquarters for KFOR rotation 3A, assumed responsibility for Task Force Falcon in June 2001. The 101st Airborne Division commanded maneuver units from both the 101st and the 3d Infantry Division.

## ***2. International Framework***

While comparisons to the mission in Bosnia and Herzegovina are inevitable, the Kosovo mission is a different contingency operation with a very different framework. Unlike Bosnia, there is no recognized peace accord and no “zone of separation” between former warring factions in Kosovo. Serbs and other minorities live in small enclaves within the larger predominantly Kosovar-Albanian cities or within small Serb or Roma communities. Unlike Bosnia, Kosovo never had an integrated civil infrastructure, and when Task Force Falcon entered the Kosovo province, absolutely no government functions existed—no police, no postal system, no water, electric, or sewage services. Under one civil administrator, the Special Representative of the Secretary General (SRSG), and pursuant to a host of agreements, Kosovo began to rebuild in June 1999.

### ***a. United Nations Security Council Resolution 1244***

UNSCR 1244, enacted on 10 June 1999, provided the framework for the mission in Kosovo. The resolution delineated the responsibilities of the “international security presence” (KFOR) as well as the responsibilities of

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<sup>7</sup> MG Ricardo S. Sanchez, Deputy Chief of Staff, Operations, United States Army Europe, Kosovo Scene Setting, PowerPoint presentation, briefing slide 6 (2001) [hereinafter Sanchez Briefing] (on file with CLAMO).

the “international civil presence” (The United Nations Interim Administration Mission in Kosovo) (UNMIK).

KFOR’s responsibilities included:

- deterring renewed hostilities;
- demilitarizing the Kosovo Liberation Army (KLA) and other armed Kosovo Albanian groups;
- establishing a secure environment;
- ensuring public safety and order until the international civil presence could take responsibility for this task;
- supervising de-mining until the international civil presence could, as appropriate, take over responsibility for this task;
- supporting, as appropriate, and coordinating closely with the work of the international civil presence;
- conducting border monitoring duties as required; and
- ensuring the protection and freedom of movement for itself, the international civil presence, and other international organizations.<sup>8</sup>

UNMIK was responsible for:

- promoting the establishment, pending a final settlement, of substantial autonomy and self-government in Kosovo;
- performing basic civilian administrative functions where and as long as required;
- organizing development of provisional institutions for democratic and autonomous self-government (including elections);
- transferring administrative responsibilities to these institutions;
- facilitating a political process designed to determine Kosovo's future status, taking into account the Rambouillet accords;
- overseeing the transfer of authority from Kosovo's provisional institutions to institutions established under a political settlement;
- supporting the reconstruction of key infrastructure and other economic reconstruction;
- supporting, in coordination with international humanitarian organizations, humanitarian and disaster relief aid;

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<sup>8</sup> UNSCR 1244, *supra* note 4, ¶ 9.

- maintaining civil law and order, including establishing local police forces and deploying international police personnel;
- protecting and promoting human rights; and
- assuring the safe and unimpeded return of all refugees and displaced persons to their homes in Kosovo.<sup>9</sup>

UNMIK sought to accomplish these tasks through a four-pillared approach under the direction of the SRSG. Each pillar was headed by a different international organization as described below.<sup>10</sup>

- **Civil Administration**—under the UN: The civil administration pillar was responsible for governmental structures, public services, health services, energy, public utilities, post and telecommunications, and education.
- **Humanitarian Assistance**—led by United Nations High Commission for Refugees (UNHCR): The humanitarian assistance pillar oversaw the return of refugees, improving shelter and water conditions, and landmine and unexploded ordnance removal.
- **Democratization and Institution-Building**—led by the Organization for Security and Cooperation in Europe (OSCE): The democratization and institution-building pillar oversaw the rule of law, police education, media affairs, human rights, and elections.
- **Economic Reconstruction**—managed by the European Union: The economic reconstruction pillar assisted in humanitarian relief, reconstruction, and rehabilitation, and prepared economic, social and financial policies with the goal of creating a viable market-based economy.

### ***b. United Nations Mission in Kosovo Regulations***

UNSCR 1244 gave the SRSG tremendous authority. These powers included the ability to change, suspend, or repeal existing laws; appoint persons to perform functions within the interim administration; and issue

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<sup>9</sup> *Id.* ¶ 11.

<sup>10</sup> For additional information on the UNMIK mission see *United Nations Interim Administration Mission in Kosovo: Report of the Secretary General* (1999) at <http://www.un.org/Docs/sc/reports/1999/s1999779.htm> (last visited 1 Sept. 2001) [hereinafter UNMIK Report].

legislation in the form of regulations. During the first two years of the mission in Kosovo, the SRSG promulgated over one hundred regulations.<sup>11</sup>

These regulations addressed a broad spectrum of topics involved with running a government. Many of the regulations had legal implications and judge advocates (JAs) referred to them almost daily during the Kosovo mission. UNMIK Regulations addressed banking, the judiciary, police, utilities, vehicle registration, construction, property ownership, administrative appointments, and a variety of other issues.

### *c. The Military Technical Agreement*

The Military Technical Agreement between the International Security Force (KFOR) and the Governments of the Federal Republic of Yugoslavia and the Republic of Serbia (MTA) was signed on 9 June 1999.<sup>12</sup> Suspending the NATO bombing campaign, the MTA required all FRY military forces to leave Kosovo and pull five kilometers behind the Kosovo-Serbia border, beyond an area described as the “Ground Safety Zone” (GSZ). The agreement further required all FRY aircraft and air defense systems to remain at least twenty-five kilometers beyond the Kosovo border, creating an “Air Safety Zone” (ASZ).

Previously described in reviews of Bosnia operations as a “silver bullet clause,”<sup>13</sup> language in the MTA provided the KFOR Commander the authority to take all action necessary to establish and maintain a secure environment for all citizens of Kosovo.<sup>14</sup> Broad interpretation of this clause, originally intended for use against uncooperative FRY and Serb forces, provided the KFOR Commander flexibility in addressing a multitude of problems including Kosovar Albanian violence.

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<sup>11</sup> The complete collection of UNMIK Regulations is at <http://www.un.org/peace/kosovo/pages/regulations/regs.html> (last visited 4 Aug. 2001).

<sup>12</sup> MTA, *supra* note 3.

<sup>13</sup> THE CENTER FOR LAW AND MILITARY OPERATIONS, THE JUDGE ADVOCATE GENERAL’S SCHOOL, U.S. ARMY, LAW AND MILITARY OPERATIONS IN THE BALKANS 1995-1998: LESSONS LEARNED FOR JUDGE ADVOCATES 77 (1998) [hereinafter BALKANS].

<sup>14</sup> MTA, *supra* note 3, at app. B., ¶ 1.

#### ***d. The Undertaking of Demilitarization and Transformation of the UCK***

The Undertaking of Demilitarization and Transformation of the UCK (Undertaking) between the Commander, KFOR (COMKFOR), and the Commander, UCK, was signed on 20 June 1999.<sup>15</sup> It called for an immediate cease-fire and disengagement as well as an ongoing phased demilitarization and integration into society of UCK personnel. The demilitarization of the UCK began almost immediately after the cease-fire and was completed ninety days later, at which time members of the KLA were no longer allowed to wear uniforms or carry weapons. The Undertaking did not directly address the armed ethnic Albanian groups that formed during the two years after the signing of the Undertaking; however, the definition of “UCK” contained within the Undertaking was extremely broad.<sup>16</sup> The Undertaking required the UCK to abide by the spirit and promises made by the Kosovar Albanian delegation to the Rambouillet negotiation discussed below. The Undertaking also provided for the transformation of the KLA into a National Guard-like organization based on a future additional agreement. This agreement, called the Kosovo Protection Corps/Commander Kosovo Force’s Statement of Principles (Statement of Principles), created the *Trupat e Mbrojtjes se Kosoves* (TMK), or simply Kosovo Protection Corps (KPC).

#### ***e. Rambouillet Accords***

The Rambouillet Accords—Interim Agreement for Peace and Self-Government in Kosovo were the draft accords placed before representatives of the FRY, the Republic of Serbia, political leaders of Kosovo, and the KLA during talks in Rambouillet, France, in March 1999.<sup>17</sup> While the Accords were never signed or enacted, their “spirit” is a guide to the Kosovo mission as incorporated through UNSCR 1244<sup>18</sup> and the Undertaking.<sup>19</sup>

<sup>15</sup> Undertaking of Demilitarization and Transformation by the UCK, 20 June 1999, COMKFOR-UCK, available at <http://www.legacyrus.com/NewsReel/Kosovo/KLADisarmAgreement.htm> [hereinafter Undertaking]. A copy of the Undertaking is included in Appendix IV-5.

<sup>16</sup> *Id.* ¶ 5a.

<sup>17</sup> Rambouillet Accords: Interim Agreement for Peace and Self-Government in Kosovo, *unsigned*, Fed. Rep. Yugo.–Serb–Kosovo, U.N. Doc. S/1999/648 (1999) [hereinafter Rambouillet].

<sup>18</sup> UNSCR 1244, *supra* note 4, ¶ 11 (“[T]he main responsibilities of the international civil presence will include: Promoting the establishment, pending a final settlement, of substantial autonomy and self-government in Kosovo, taking full account of annex 2 and of the Rambouillet accords . . . and Facilitating a political process designed to determine Kosovo’s future status, taking into account the Rambouillet accords . . .”).

The Rambouillet Accords laid out the basic framework for the process of transforming Kosovo into an autonomous, but not independent, province within the FRY. JAs must remain aware of the principles contained in the Rambouillet Accords because the overall plan adopted by UNMIK during the interim government period is similar to the plan contained in the principles of Rambouillet.<sup>20</sup>

***f. The Kosovo Protection Corps/Commander Kosovo Force's Statement of Principles***

The Statement of Principles was the cornerstone document in the transformation of the KLA into the KPC.<sup>21</sup> The Statement of Principles provided the framework for a multidisciplinary, multi-ethnic, indigenous emergency service agency. The KPC was designed to provide disaster relief, conduct search and rescue operations, and assist in rebuilding the infrastructure in Kosovo. The KPC had no role in law enforcement, riot control, counter-terrorism, or any tasks involved in the maintenance of law and order. The KPC organized under one central headquarters and six regional headquarters and task groups. KPC 6th Regional Headquarters and the engineer headquarters were located in the U.S. AOR.

Former members of the KLA filled the KPC ranks. This fact, along with the leadership's desire to maintain an organized rank structure and wear military-styled uniforms, caused most to view the KPC with suspicion during the early days of its existence.<sup>22</sup> KFOR held 2,000 weapons in trust for the KPC should an event arise when the KPC would need them. The

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<sup>19</sup> Undertaking, *supra* note 15, ¶ 1.

<sup>20</sup> See UNMIK Report, *supra* note 10, for an overview of the plan to rebuild Kosovo.

<sup>21</sup> The Kosovo Protection Corps, Commander Kosovo Forces, Statement of Principles (20 Sept. 1999), available at [http://www.kforonline.com/resources/kpc/stmt\\_principles.htm](http://www.kforonline.com/resources/kpc/stmt_principles.htm) [hereinafter Statement of Principles]. The Statement of Principles is included in Appendix IV-6.

<sup>22</sup> There were other actions by KPC members that called into question the desire of the organization to demilitarize and reintegrate into normal Kosovo society. KFOR found weapons caches within KPC buildings and in other storage locations under KPC control. For an overview of allegations leveled against the KPC, see Terry Boyd & Scott Schonauer, *Members of Protection Corps Run into Problems Prompting Reprimand from U.S.*, STARS AND STRIPES, July 24, 2001, at <http://ww2.pstripes.osd.mil/01/jul01/ed072401i.html>. See also Terry Boyd & Scott Schonauer, *Accounts Vary about Kosovo Protection Corps' Role as Disaster Relief Group*, STARS AND STRIPES, July 24, 2001, at <http://ww2.pstripes.osd.mil/01/jul01/ed072401h.html>. The KPC also had considerable reservations about the policing restrictions placed on them by KFOR. During almost every early meeting with members of KFOR, KPC members raised issues about being able to serve in a police role. See, e.g., Memorandum, LTC Douglas E. Nash, Chief MNB(E) Joint Implementation Commission, to Commanding General, MNB(E), subject: Meeting with KPC Leadership 6 NOV 99 (7 Nov. 1999).

weapons could not be issued to KPC members without COMKFOR approval; however, 200 of the 2,000 weapons were constantly in use for KPC installation security.<sup>23</sup> Equipping and training the KPC, as discussed below, became a recurring issue within Task Force Falcon.

***g. Notice of COMKFOR's Intent Regarding Entry of FRY and Republic of Serbia Forces in GSZ***

To address the Ethnic Armed Albanian Groups (EAAG) operating within the GSZ, COMKFOR allowed a certain number of Serb military forces to patrol areas within the GSZ. The key framework document for this return was the Notice of COMKFOR's Intent Regarding Entry of FRY and Republic of Serbia Forces into GSZ Sector C (East) (COMKFOR Intent).<sup>24</sup> Under the provisions of the COMKFOR Intent, FRY forces were allowed into the MTA established GSZ but could not use tanks, rocket systems, anti-tank guns, aircraft, mines, or towed artillery within the GSZ. FRY patrols within one kilometer of the Kosovo-Serbia administrative boundary required separate COMKFOR approval.

Based upon the COMKFOR Intent, on 13 March 2001, Serb forces were allowed into a small area of the GSZ beginning at the Serbia-FYROM border and extending approximately five kilometers north. This area was known as GSZ Sector C (East). By 24 May 2001, Serb forces were allowed into all four sectors of the GSZ bordering the U.S. Area of Responsibility (AOR).<sup>25</sup>

### ***3. Mission***

The initial Task Force Falcon mission was four-pronged:

- to monitor, verify, and enforce as necessary the provisions of the MTA and the Undertaking to create a safe and secure environment;
- to provide humanitarian assistance in support of UNHCR efforts;
- to initially enforce basic law and order, transitioning this function to the to-be-formed designated agency as soon as possible; and,

<sup>23</sup> Statement of Principles, *supra* note 21, at art. 8, ¶ 1.f.

<sup>24</sup> COMKFOR, Notice of COMKFOR's Intent Regarding Entry of FRY and Republic of Serbia Forces into GSZ Sector C (East) (12 Mar. 2001) [hereinafter COMKFOR Intent].

<sup>25</sup> Additional information on the return of Serb forces to the GSZ is at [www.kforonline.com/news/releases/nrel\\_24may01.htm](http://www.kforonline.com/news/releases/nrel_24may01.htm) (last visited 24 Sept. 2001).

- to establish/support resumption of core civil functions.<sup>26</sup>

Every aspect of the Task Force Falcon mission was legally intensive. The first prong required the interpretation and enforcement of legal documents. The second prong expressly made Task Force Falcon responsible for providing humanitarian assistance in support of the UNHCR efforts. This second prong was a markedly broader mandate than peacekeepers in Bosnia faced.<sup>27</sup> JAs were going to be at the center of the effort to enforce law and order—the third prong—because of JA training and experience in the law. The final prong—to support resumption of core civil functions—would lead to numerous requests for Task Force Falcon assistance.

The legal support mission, as quoted below, nested with the Task Force Falcon mission.

The Task Force Falcon Legal Section integrates completely into Task Force operations, providing comprehensive legal support in Kosovo in order to:

- Ensure accurate interpretation of the Military Technical Agreement (MTA) and UCK Undertaking;
- Ensure that humanitarian assistance and civil function responsibilities remain within U.S. fiscal and procurement laws;
- Assist the command within areas of judge advocate expertise relating to law and order and detention until UNMIK can assume the law and order responsibility;
- Assist the command in maintaining discipline; and
- Provide individual soldiers client services.<sup>28</sup>

Set forth below are the lessons from this mission.

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<sup>26</sup> See LTC Mark S. Martins, Deputy Staff Judge Advocate, 11D, Task Force Falcon Interim After Action Review, Operational Law CLE, PowerPoint presentation, briefing slide 5 (3 Dec. 1999) [hereinafter Martins Presentation] (on file with CLAMO). LTC Martins was the former Legal Advisor and Chief of Staff of Task Force Falcon.

<sup>27</sup> The initial mission in Bosnia was to provide a secure environment for other organizations to provide humanitarian assistance. See generally BALKANS, *supra* note 13, at 42.

<sup>28</sup> Martins Presentation, *supra* note 26, at briefing slide 6.

## B. INTERNATIONAL LAW

*International law is the application of international agreements, international customary practices, and the general principles of law recognized by civilized nations to military operations and activities.*<sup>29</sup>

Within Kosovo, international law provided an extremely broad area of practice. Understanding the legal underpinnings of the international framework of coalition military operations pursuant to the UN Charter can be extremely difficult. In addition to the various agreements discussed above, JAs had to remain cognizant of treaty law and fundamental human rights law. The predominant law of peace theory, that a sovereign nation retains the right to apply its own law, further complicated the issues JAs faced when advising commanders, because JAs were now required to have some understanding of the legal codes of both the FRY and the Province of Kosovo.<sup>30</sup>

### ***1. Judge Advocates and Commanders Must Understand the International Legal Framework for the Military Mission.***

Commanders expected JAs to understand the international framework for the mission in Kosovo and to provide counsel on legal issues rarely faced in previous U.S. military operations. Commanders themselves had to understand the international justification for the U.S. presence in Kosovo because it drove the mission.<sup>31</sup> Moreover, commanders had to be prepared to explain the military's task and purpose to the press, nongovernmental, and international organizations operating in Kosovo.<sup>32</sup>

To assist commanders with this task, legal advisors conducted "Leader Teach" on the framework agreements and rules of engagement (ROE). The legal team also prepared legal guides that included full text

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<sup>29</sup> U.S. DEP'T OF ARMY, FIELD MANUAL 27-100, LEGAL SUPPORT TO OPERATIONS ¶ 3.4 (1 Mar. 2000) [hereinafter FM 27-100].

<sup>30</sup> JAs deployed to Kosovo believed that an understanding of civil law systems was important. One deployed JA was well-versed in civil law and comparative legal systems.

<sup>31</sup> As stated in JAGC doctrine, "the legal basis of the operation guides the commander in many ways. It may affect the operation's purpose, scope, timing, and ROE; the status of personnel; the command's relationship with military and nonmilitary organizations; and the applicable funding authorities." FM 27-100, *supra* note 29, ¶ 6.6.1.

<sup>32</sup> *See id.* (describing how a clear understanding of the legal basis promotes legitimacy and enables commanders to better structure public statements).

versions of the applicable agreements. The “Leader Teach” was designed to teach both commanders and senior leaders within the units (E-6 and above) the key points of the framework of the Kosovo mission. The legal guides were designed to give those in command the key documents for review prior to the mission. A copy of the slides from one of the “Leader Teach” sessions is included in Appendix IV-7.<sup>33</sup> Field grade officers preparing for deployment with 1AD were required to take a command-prepared written test on the applicable agreements and basic ROE provisions.<sup>34</sup> A copy of the unclassified component of the 1AD test with answers is included in Appendix IV-27.

## 2. Rule of Law

The importance of the “rule of law” in the Task Force Falcon mission is impossible to overstate.<sup>35</sup> One of the missions of the Task Force was to “enforce basic law and order.”<sup>36</sup> Consequently, the emphasis placed by the Task Force on policing and detention, a mission with significant legal implications, became the largest single issue to face the deployed JAs in Kosovo during the first year. Subsequent Task Force Falcon rotations faced similar detention issues posed by the need to provide a safe and secure environment through the use of “operational detention.” As the international security presence in Kosovo and the force initially given responsibility for law and order, KFOR, and the subordinate brigades, had considerable

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<sup>33</sup> See MAJ Tracy Barnes, Legal Advisor Task Force Falcon & CPT Alton L. Gwaltney, III, Deputy Legal Advisor, Task Force Falcon, 1st Infantry Division Leaders Legal Brief, PowerPoint presentation, briefing slides 3-25 (Sept. 1999) [hereinafter Leaders Legal Brief] (on file with CLAMO). The legal team preparing for the 1st Infantry Division deployment compiled a booklet of all the framework legal documents entitled, “Commanders’ Legal Guide to Kosovo.” The 1AD attorneys prepared a similar book entitled, “Critical KFOR Legal Documents.” These books were provided to all key leaders.

<sup>34</sup> The ROE test had a classified and an unclassified component. In addition to the unclassified issues, specific ROE provisions from the classified plans were tested in a separate exam. See E-mail from CPT Joseph B. Berger, former Deputy Legal Advisor, Task Force Falcon, to CPT Alton L. Gwaltney, III, CLAMO (18 June 2001) (on file with CLAMO); see also Memorandum, CPT Joseph B. Berger, former Deputy Legal Advisor, Task Force Falcon, to CLAMO, subject: Response to Draft Kosovo Lessons Learned (29 Aug. 2001) [hereinafter Berger memo] (on file with CLAMO).

<sup>35</sup> “Rule of law” as used in this publication parallels the definition in previous CLAMO publications. See THE CENTER FOR LAW AND MILITARY OPERATIONS, THE JUDGE ADVOCATE GENERAL’S SCHOOL, U.S. ARMY, LAW AND MILITARY OPERATIONS IN HAITI 1994-1995: LESSONS LEARNED FOR JUDGE ADVOCATES 1 n.2 (1995) [hereinafter HAITI]. “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.* (citing RUDOLPH B. SCHLESINGER, COMPARATIVE LAW: CASES, TEXT, MATERIALS 80 (Supp. 1994 to 5th ed.).

<sup>36</sup> See *supra* text accompanying notes 8 and 26 (discussing UNSCR 1244 and the Task Force Falcon mission).

interest in creating accountability for criminal action and in creating perceptions among all Kosovars that a new era had dawned in Kosovo where criminals would face consequences. Beyond criminal accountability, KFOR wanted to instill confidence that disputes were better handled through civil processes than self-help. These themes are most clearly seen in Task Force Falcon's detention mission, support to the International Criminal Tribunal for the Former Yugoslavia (ICTY), and the unique "property repatriation" program.

***a. Arrest, Investigation, Detention, and Trial of Non-Members of the Force.***

When Task Force Falcon entered the province of Kosovo in June 1999 as part of the larger Kosovo Force, it was confronted with a law and order mission not faced by U.S. forces since the post-World War II occupations of Germany and Japan.<sup>37</sup> KFOR and UNMIK, the international civil presence tasked with maintaining civil law and order, executed a law and order mission complicated by the absence of a functioning criminal justice system. KFOR's public security measures, intended to be short-term, continue, in one form or another, through the publishing of this Book.

The law and order mission was not a small task. The number of major crimes committed by the citizens of Kosovo during the first year of KFOR operations greatly exceeded that of the city of Los Angeles, California, an area with a population two times that of Kosovo.<sup>38</sup>

The KFOR mandate under UNSCR 1244 and the broad provisions of the MTA combined to provide the basis for the KFOR law and order mission. Contained within COMKFOR's order to all of the subordinate Multinational Brigades was the mission to "[i]nitially enforce basic law and

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<sup>37</sup> U.S. forces have faced numerous peacekeeping deployments with difficult law and order missions. See, e.g., Colonel F. M. Lorenz, *Law and Anarchy in Somalia*, PARAMETERS, Winter 1993-94, at 27; HAITI, *supra* note 35, at 63; BALKANS, *supra* note 13, at 109. Task Force Falcon legal section drew on all of these experiences when addressing the broad Kosovo law and order mission.

<sup>38</sup> The Los Angeles Convention Bureau reports the city's population at 3.6 million. Los Angeles Convention Bureau On Line at <http://www.lacvb.com/mod115/release25.html> (last visited 1 Aug. 2001). UNMIK Police report Kosovo's population at 1.8 million. See UNMIK Police, "UNMIK Police Strength" at [www.civpol.org/unmik/stats/2000/00ratiopopul.htm](http://www.civpol.org/unmik/stats/2000/00ratiopopul.htm) (last visited 24 Sept. 2001). In calendar year 1999, Los Angeles investigated 432 homicides and attempted homicides. See LAPD On Line, Crime Statistics, at [http://www.lapdonline.org/general\\_information/crime\\_statistics/2000\\_crime\\_summary.htm](http://www.lapdonline.org/general_information/crime_statistics/2000_crime_summary.htm) (last visited 24 Sept. 2001). From just July to December 1999, 454 murders were reported in Kosovo. UNMIK Police Crime Statistics, at [www.civpol.org/unmik/stats/1999/99whole.htm](http://www.civpol.org/unmik/stats/1999/99whole.htm) (last visited 8 Aug. 2001).

order, transitioning this function to the to-be-formed designated agency as soon as possible.”<sup>39</sup> The “designated agency” became a combination of U.N. Police (UNMIK-P) and locally recruited and trained Kosovars, (Kosovo Police Service (KPS)). Despite the U.N.’s urgent call for more than 3,100 international police to assist with the UNMIK mission, the international community did not meet the U.N.’s request for almost a year. By that time, the U.N. had increased its request to 4,700.<sup>40</sup>

UNMIK’s<sup>41</sup> efforts to establish a judiciary were hampered significantly by the scarcity of professional and lay jurists. Because of the exodus of Serbs from Kosovo, most of the Serbian-trained judiciary left the province. The few remaining Serb judges departed, ultimately, because of security concerns. The remaining legally trained Kosovar Albanian jurists were without judicial experience, because they had not been allowed to practice their profession since 1989.<sup>42</sup> Because of the ethnic Serbian civilians’ flight following KFOR’s arrival, UNMIK also had a very small pool from which to select Serb lay judges, the rough equivalent of a jury member in U.S. criminal law.

Delays in the deployment of adequate police to the region slowed the establishment of permanent prison operations. Within the U.S. AOR, the lack of an existing large prison facility exacerbated the detention situation. Only small detention centers attached to local police stations were available in the Task Force Falcon area.

KFOR’s guidance to subordinate brigades to enforce basic law and order, combined with UNMIK’s inability to establish the criminal justice systems necessary to assume the law and order mission, required Task Force Falcon soldiers and Marines to police criminal misconduct, provide judicial

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<sup>39</sup> Martins Presentation, *supra* note 26, at briefing slide 5.

<sup>40</sup> The build-up of international police can be traced by reviewing the archives of Kosovo News Archive, “UNMIK Latest Development ‘News Archive,’” at <http://www.un.org/peace/kosovo/news/99/kosarc.htm> (last visited 5 Aug. 2001).

<sup>41</sup> The responsibility to establish the judiciary fell to UNMIK’s Judicial Affairs (UNMIK-JA) section. UNMIK-JA had branches in each administrative region of Kosovo. UNMIK-JA hired, paid, and supervised all judges and prosecutors in Kosovo. *See generally* Memorandum, MAJ Daniel W. Kelly, former Legal Advisor, Task Force Falcon, to CLAMO, subject: Comments on CLAMO Kosovo Lessons Learned ¶ 6 (5 Sept. 2001) [hereinafter Kelly Memo 2] (on file with CLAMO). The OSCE monitored judicial operations.

<sup>42</sup> To address this issue, OSCE established the Kosovo Judicial Institute to “develop and facilitate the training of judges, public prosecutors and other relevant legal personnel.” *See* OSCE, Kosovo, A Review of the Criminal Justice System, 1 September 2000 - 28 February 2001, 40 (2001), at [http://www.osce.org/kosovo/documents/reports/justice/criminal\\_justice2.pdf](http://www.osce.org/kosovo/documents/reports/justice/criminal_justice2.pdf) [hereinafter OSCE 2001].

review for those arrested, and establish and run prisons. The ability of Task Force Falcon to execute a stop-gap law enforcement mission, a role that soldiers and Marines are not trained to undertake, illustrates the military's ability to adapt traditional combat roles to peacekeeping missions.

**1. Line units must be prepared to discharge the policing function in the event that a law enforcement vacuum exists.**

Within the U.S. KFOR AOR, UNMIK-P was not prepared to accept a substantial portion of the policing mission until a year after the U.S. entered Kosovo. Even then, UNMIK-P had to rely on U.S. troops in some outlying areas and there was continuing pressure for U.S. troops to continue large-scale policing.<sup>43</sup> On entry into Kosovo, Task Force Falcon Military Police (MP) and Criminal Investigation Command (CID) investigators were able to respond to only the most serious crimes; therefore, soldiers and Marines assigned to combat units were called on to conduct basic criminal investigations in conjunction with detentions and arrests.<sup>44</sup> These soldiers and Marines had little or no law enforcement or investigative training because the basic doctrine and mission essential tasks of combat units do not address law enforcement and criminal investigation.<sup>45</sup>

To assist the troops with these unfamiliar investigation missions, the first Task Force Falcon legal section created situational vignettes for basic

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<sup>43</sup> See Memorandum, MAJ Larrs Celtnieks, former Legal Advisor, Task Force Falcon, to CPT Alton L. Gwaltney, III, CLAMO, subject: KFOR AAR Comments, ¶ 8 (3 Aug. 2001) [hereinafter Celtnieks AAR] (noting increased pressure by KFOR, eight months after U.S. KFOR had transferred policing authority to UNMIK-P, for soldiers to perfect crime scenes, canvass witnesses, and testify at trial) (on file with CLAMO).

<sup>44</sup> Policy Letter 4, Commanding General, Task Force Falcon, subject: Policy Letter #TFF-04 Detention Processing, ¶ 5(b) (3 Aug. 1999) [hereinafter Detention Policy] instructed soldiers responding to crimes to establish control of the scene, notify the MPs, take statements from the victims and witnesses (sworn statements when possible), prepare a sketch of the scene, render personal statements, account for all physical evidence on a DA Form 4137, and bring the suspect(s) and all documents to the nearest MP sub-station. A copy of Detention Policy, *supra*, is included in Appendix IV-8. See also Executive Summary, COL John W. Morgan, III, Investigation Pursuant to AR 15-6 into the Unit Climate and State of Discipline of 3-504 Parachute Infantry Regiment, 8 (2000) [hereinafter EXSUM] (on file with CLAMO) (“...in the Kosovo operation it is difficult to draw a distinction between Military Police (MP) duties and the infantry soldiers’ on the ground. . . .”). The EXSUM is included in Appendix IV-9.

<sup>45</sup> “Mission essential tasks are collective tasks in which an organization must be proficient to accomplish some portion of its mission in a theater. . . . The Mission Essential Task List (METL) concept was conceived in recognition that units and organizations cannot achieve and sustain proficiency on every possible training task.” FM 27-100, *supra* note 29, ¶ 4.5.2. METL and METL development is fully discussed in U.S. DEP’T OF ARMY, FIELD MANUAL 25-101, BATTLE FOCUSED TRAINING (30 Sept. 1990) [hereinafter FM 25-101]. A typical infantry METL might include tasks such as perform tactical road march, occupy assembly area, defend, move tactically, attack/counterattack by fire, and assault. *Id.* at 2-5.

law enforcement training. The training vignettes covered the topics of arrest, search, use of force, probable cause, and basic investigative procedures. Soldiers were instructed to take statements and document evidence seized at crime scenes for further prosecution efforts. The IAD legal section prepared detailed fact sheets describing the procedures necessary to properly account for seized items.<sup>46</sup> Even with these efforts, basic law enforcement was a difficult task for KFOR soldiers.<sup>47</sup>

Mission rehearsal exercises for units deploying to Kosovo stressed the law enforcement role and provided training on basic law enforcement.<sup>48</sup> Soldiers were able to adopt existing forms and procedures from wartime roles to the peacekeeping mission.<sup>49</sup> After the first year, the law

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<sup>46</sup> A copy of the IAD guidance for seizing property during cordons and sweeps, at checkpoints, or during other operations is included in Appendix IV-10. JAs in IAD prepared this document after the Task Force had transferred most law enforcement roles, and the document was designed mainly to address property accountability.

<sup>47</sup> As an example, U.S. soldiers conducted large-scale raids on command posts, staging areas, and arms caches on 15 March 2000. During the raids the soldiers seized twenty-two crates of ammunition, twenty-eight hand grenades, 2 mortars, various other arms, and stockpiles of food and medical supplies. The troops arrested nine Kosovar Albanians during the raids. See Roberto Suro, *GIs Raid Militias in Kosovo*, WASH. POST, Mar. 16, 2000, at A1. At the completion of the operation, the Task Force Battle Captain sent out photographs of the seized items and asked how to dispose of the seized items properly. The Task Force Legal Advisor immediately responded that items seized during the raid must be treated as evidence in the criminal cases against the detained civilians. As evidence, the seized items could not be destroyed without the permission of the prosecutor and judge. See E-mail from MAJ Tracy Barnes, Legal Advisor, Task Force Falcon, to CPT Garth Case, Battle Captain, Task Force Falcon (16 Mar. 2000) (on file with CLAMO). While not unique, as presented in this context, the failure to recognize the need to perform basic law enforcement-like tasks with the seized items is noteworthy. At the time of this operation, IAD had been responsible for the Kosovo mission for nine months. The soldiers involved in the operations had been in Kosovo for over three months and had performed numerous detentions. Task Force policy letters discussed the need to document evidence, and the mission rehearsal exercises stressed the need to understand basic law enforcement concepts. Despite these efforts, the immediate reaction by the task force was to destroy the weapons and ammunition and to give away the food and medical supplies. This reinforces the lesson that JAs need to be involved in planning. This operation, unlike most, was planned outside the normal operations planning cell. The perceived need for secrecy concerning this operation led to a select group of members of the planning cell conducting all planning. This group did not include a JA.

<sup>48</sup> See, e.g., Legal Observer/Controller Report, 1-325 Airborne Infantry Regiment, Mission Rehearsal Exercise, 30 November – 7 December 2000, 2 (7 Dec. 2001) (on file with CLAMO) (noting “[g]enerally the legal tasks and subtasks were performed extremely well [during a cordon and search operation]. During one operation, an MP team followed the search teams to document all seized items. In addition to documenting serial numbers and descriptions of seized items, the team videotaped the search and was able to trace seized items back to detained persons.”) This training is in stark contrast to the finding of COL Morgan in his investigation into the activities of 3-504 PIR where he noted, “[T]he 3-504 soldiers were not adequately trained for the police mission that they were asked to execute.” EXSUM, *supra* note 44, at 8.

<sup>49</sup> For example, the soldiers used U.S. Dep’t of Army, DA Form 2665-R, Capture Card for Prisoner of War (LRA) (May 1982) to account for detainees. A copy of DA Form 2665-R is included in Appendix IV-11. The soldiers used U.S. Dep’t of Army, DA Form 4137, Evidence/Property Custody Document (July 1976) to account for evidence seized during operations.

enforcement role of MNB(E) was scaled back. Instructions to the Task Force were simply to secure crime scenes and contact UNMIK-P.<sup>50</sup>

## **2. Soldiers must have an arrest standard they can understand.**

While KFOR recognized that the powers of arrest and detention were generally to conform to the FRY standards,<sup>51</sup> the leadership also understood that KFOR was incapable of replicating the FRY legal infrastructure and criminal procedures for law and order. Copies of the FRY and Serbian legal codes were not available in English, and even if they had been, the task to replicate the civil-law based system of FRY would have been impossible to complete.<sup>52</sup> As a result, KFOR determined that internationally respected standards of law enforcement and detention, as found in the TCNs' own relevant procedures, would provide adequate due process protections to the citizens of Kosovo.<sup>53</sup>

Based on the KFOR guidance, Task Force Falcon instructed U.S. soldiers and Marines to detain persons who committed criminal misconduct under a familiar standard, the Uniform Code of Military Justice (UCMJ). This was the standard to be applied during each of the 1,300 patrols that U.S. soldiers conducted per week in Kosovo. If soldiers or Marines witnessed an act that would be a crime under the UCMJ, they arrested the wrongdoer.

<sup>50</sup> See Kelly Memo 2, *supra* note 41, ¶ 7(a).

<sup>51</sup> Because the deployment of forces into Kosovo, a province of the sovereign Federal Republic of Yugoslavia, was technically permissive, the body of international law applicable in wartime did not apply. Under prevailing peacetime international law, the law of a sovereign nation applies within its sovereign territory. See RESTATEMENT (THIRD) OF THE FOREIGN RELATIONS OF THE UNITED STATES § 206 cmt. b (1986). Although the KFOR mandate was not that of an occupier, had it been, the law of occupation also required the penal laws and tribunals of Kosovo to remain in force. See Geneva Convention Relative to the Protection of Civilians in Time of War, Aug. 12, 1949, art. 64, 6 U.S.T. 3518, 75 U.N.T.S. 290 U.S. The U.N. Secretary General reinforced this by stating, "UNMIK will respect the laws of the Federal Republic of Yugoslavia and of the Republic of Serbia insofar as they do not conflict with the internationally recognized human rights standards or with regulations issued by the Special Representative in the fulfillment of the mandate given to the United Nations by the Security Council." UNMIK Report, *supra* note 10, ¶ 36. The SRSG reinforced this standard with the promulgation of the first regulation. U.N. MISSION IN KOSOVO, REG. 1999/1, ON THE AUTHORITY OF THE INTERIM ADMINISTRATION IN KOSOVO § 3 (23 July 1999) [hereinafter UNMIK Reg. 99/1] (establishing the applicable law as that in force in the territory of Kosovo on 24 March 1999). This regulation was subsequently modified by U.N. MISSION IN KOSOVO, REG. 1999/24, ON THE APPLICABLE LAW IN KOSOVO § 1 (12 Dec. 1999) [hereinafter UNMIK Reg. 99/24] (mandating the applicable law in Kosovo as that which was in force on 22 March 1989).

<sup>52</sup> Copies of the FRY Code were not available, even in its native language, during the entire MEU deployment, from June to July 1999, to Kosovo. See MEU AAR, *supra* note 6.

<sup>53</sup> The KFOR law and order mission is fully documented in Annex Z to KFOR OPLAN 60507, Guidance on Law and Order in Kosovo, 10 June 1999 (classified NATO document) (on file with CLAMO).

COMKFOR and the SRSF augmented crimes under the military code with mission-specific unauthorized acts, such as weapons, uniform, and curfew violations.<sup>54</sup> Soldiers were also authorized to detain local citizens who were considered a threat to the military or to the overall mission.<sup>55</sup>

### **3. Prepare to operate a detention facility.**

Prior to the deployment, Task Force Falcon pressed KFOR to take advantage of a centrally located and established Kosovo prison for use as a multinational KFOR detention facility. In a detailed memorandum drafted by JAs, the Commander, Task Force Falcon, recommended that COMKFOR “consider planning for and resourcing a multinational detention facility in the vicinity of Pristina for the first 60 to 90 days that KFOR [was] on the ground in Kosovo.”<sup>56</sup> Despite the Task Force Falcon recommendation, KFOR did not address detention issues until after the signing of the MTA.

After the signing of the MTA, planners in Task Force Falcon continued to believe that a centrally run detention operation was in the best interest of the KFOR mission. The planners believed that a coalition detention facility would provide economies of scale that would free security assets for other missions. Additionally, the planners believed that one centrally run facility would be easier for UNMIK to take over once a sufficient number of officers were available.<sup>57</sup> In response, Task Force

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<sup>54</sup> See Detention Policy, *supra* note 44, ¶¶ 2(c)(3) (weapons violations), 2(c)(4) (UCK uniform violation), 2(c)(7) (establishing an unauthorized checkpoint), 2(d)(1) (curfew violations); see also Undertaking, *supra* note 15, ¶¶ 22-23 (detailing the demilitarization of the UCK); MTA, *supra* note 3, at art. II (explaining the cessation of hostilities and phased withdrawal of FRY forces), app. B, ¶ 5 (authorizing KFOR to compel removal, withdrawal, or relocation of weapons).

<sup>55</sup> Detention Policy, *supra* note 44, ¶ 2(a)(1); see also U.N. MISSION IN KOSOVO, REG. 1999/2, ON THE PREVENTION OF ACCESS BY INDIVIDUALS AND THEIR REMOVAL TO SECURE PUBLIC PEACE AND ORDER § 2 (12 Aug. 1999) [hereinafter UNMIK Reg. 99/2] (explaining right to detain civilians posing a threat to public peace and order); MTA, *supra* note 3, at app. B, ¶ 5 (allowing use of force to prevent acts that are considered a threat to KFOR or the KFOR mission); U.N. MISSION IN KOSOVO, REG. 2000/62, ON THE EXCLUSION OF PERSONS FOR A LIMITED DURATION TO SECURE PUBLIC PEACE, SAFETY AND ORDER § 2.1 (30 Nov. 2000) [hereinafter UNMIK REG. 00/62] (allowing authorities to issue an exclusion order requiring a person to leave and/or stay away from any area under their authority if there are grounds to suspect that such a person is or has been involved in the commission, preparation, or instigation of acts of violence which may affect public peace and order within or beyond the territory of Kosovo).

<sup>56</sup> Letter from BG Bantz Craddock, Commander, Task Force Falcon, to LTG Michael Jackson, United Kingdom, Commander, Allied Rapid Reaction Corps (25 Mar. 1999), summarized in e-mail from LTC Mark Martins, former Legal Advisor, Task Force Falcon, to CPT Alton L. Gwaltney, III, CLAMO (11 Jan. 2001) [hereinafter Craddock Letter] (on file with CLAMO).

<sup>57</sup> See E-mail from Legal Advisor, Task Force Falcon, to Staff Judge Advocate, U.S. European Command, ¶ 3 (12 July 1999) (“Compared notes today with Lt Col Redden, 5th UK (Abn) Bde Legal Advisor and his PM on detention and related issues. He is keen, as are we, to turn the jailing and detention process over to

Falcon drafted a complete plan for a centralized detention facility for KFOR.<sup>58</sup> As with policing and pretrial detention review, however, KFOR made detention facilities a decentralized issue, to be handled by the TCNs.<sup>59</sup>

In addition to the detention facility lessons discussed below, operating a detention facility will lead to a host of issues. Some of these issues are listed for consideration.

- Care for detainees with medical conditions (including pregnancy)
- Care for detainees with mental conditions
- Handling juvenile detention
- Force-feeding hunger-striking detainees
- Detainee escape, recapture, and misconduct
- Press interviews with detainees
- Access to detainees by family, local medical personnel, and local court personnel
- Religious accommodation
- Detainee labor
- Use of force within the detention facility<sup>60</sup>

#### **4. Review conditions of the detention facility .**

JAs regularly reviewed the detention facility to ensure detainees were being treated properly. The condition of the detainees was also reviewed by the International Committee of the Red Cross (ICRC), the OSCE, the United Nation's Children's Fund, Amnesty International, and other human rights organizations. JAs typically accompanied the representatives from these

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UNMIK. We have to try to use one of the hardened jails in the Pristina area and set up the provisional judges nearby in an office.”) (on file with CLAMO).

<sup>58</sup> Task Force Falcon, Draft Detention Facility Plan (13 June 1999) (on file with CLAMO).

<sup>59</sup> After two years, KFOR opened a detention facility to address TCNs' concerns about “operational detainees.” See UNMIK-KFOR-UNMIK Police Press-UNHCR Briefing, 21 May 2001, Temporary Detention Center at

<http://www.reliefweb.int/w/rwb.nsf/3a81e21068ec1871c1256633003c1c6f/ab71c0105274f97b85256a560048290f?OpenDocument> (last visited 24 Sept. 2001). Operational detainees are discussed *infra* text accompanying notes 76-85.

<sup>60</sup> See generally U.S. DEP'T OF ARMY, FIELD MANUAL 3-19.40, MILITARY POLICE INTERNMENT/RESETTLEMENT OPERATIONS, app. B (1 Aug. 2001) (containing rules for the use of force for Military Police in operating internment camps, including camps for EPWs).

organizations during the visits. Organizations generally gave the Task Force high marks for the care provided detainees.<sup>61</sup>

**5. Judge Advocates should be familiar with detention facility doctrine.**

The first detainee, taken four days into the Task Force Falcon mission, was housed initially in a small military tent surrounded by concertina wire. A HMMWV's headlights provided security lighting. The Task Force, required to care for the detainee at a level no less than that accorded a Prisoner of War, pieced together personal use articles, such as a razor, shaving cream, and a toothbrush, for the detainee.<sup>62</sup> The detainee was fed MREs and was dressed in a PT uniform, spray-painted with a mark on the back of his shirt to distinguish him from soldiers in PT uniforms.

From this Spartan beginning, Task Force engineers constructed a detention facility based on existing doctrine.<sup>63</sup> Operating on the belief that UNMIK would quickly take over detention operations, the initial detention facility was small, holding approximately fifty detainees. Upon the realization of the Task Force that UNMIK would not be able to assume the detention mission, a larger detention facility was constructed. When completed, this facility consisted of six, tier-three, GP medium tents, three GP small tents, a shower facility, visitation area, and court tent. A fence, concertina wire, and lights surrounded the entire compound. A diagram of the detention facility is included in Appendix IV-12.

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<sup>61</sup> This does not mean that the detention operation did not have occasional critics. OSCE criticized the use of the "COMKFOR hold" to detain suspected criminals ordered released by the judiciary. See OSCE, Kosovo, A Review of the Criminal Justice System, 1 February 2000 – 31 July 2000, 25 (2000) [hereinafter OSCE 2000] available at [http://www.osce.org/kosovo/documents/reports/justice/criminal\\_justice.pdf](http://www.osce.org/kosovo/documents/reports/justice/criminal_justice.pdf) (last visited 16 Sept. 2001). OSCE also criticized the detention of juveniles by US KFOR on suspicions that they were members of an EAAG. See OSCE 2001, *supra* note 42, at 29. The International Committee of the Red Cross and Amnesty International criticized aspects of the facility (such as detainee exercise and bathing opportunities) at various times. Task Force Falcon considered and addressed the complaints. Telephone Interview with COL John Phelps, Legal Advisor, Allied Forces South (2 Oct. 2001).

<sup>62</sup> See generally Geneva Convention Relative to the Treatment of Prisoners of War, Aug. 12, 1949, 6 U.S.T. 3316, 75 U.N.T.S. 135; North Atlantic Treaty Organization Standardization Agreement 2044, Standard Procedures for Dealing with Prisoners of War (6 Mar. 1957).

<sup>63</sup> See U.S. DEP'T OF ARMY, FIELD MANUAL 19-40, ENEMY PRISONERS OF WAR, CIVILIAN INTERNEES, AND DETAINED PERSONS (27 Feb. 1976) [hereinafter FM 19-40]; see also U.S. DEP'T OF ARMY, FIELD MANUAL 19-4, MILITARY POLICE BATTLEFIELD CIRCULATION CONTROL, AREA SECURITY AND ENEMY PRISONERS OF WAR OPERATIONS (7 May 1993).

An MP platoon operated the detention facility based on modified existing MP doctrine.<sup>64</sup> As detainees were brought into the facility, the MPs entered information into a detainee database, to include the circumstances surrounding detention, basic background information, a photograph, and a listing of personal items confiscated from the detainee. MP and CID investigators, as well as counterintelligence personnel, were able to interview the detainees upon their arrival at the detention facility.

The ethnic background and sex of the detainees dictated tent assignments. Detainees slept on cots with sleeping bags. They were dressed in orange uniforms and athletic shoes. In the winter, the detainees received winter coats and boots. All detainee support came from the Army's logistics system. Detainees could smoke, write letters, and exercise, as well as receive visits from family members and attorneys. Doctors examined detainees upon entry, and the detention facility was capable of dispensing medication and providing any necessary medical attention.

The detention facility at Camp Bondsteel processed approximately 1,800 detainees during the first year of operation. During the second year, the detention facility processed an additional 810. The largest population in the detention facility, at any one time during the first two years, was approximately 120 detainees.

## **6. Protect detainees' rights through a review process .**

When patrols arrested local citizens for committing criminal offenses, the patrols delivered initial criminal packets and evidence, along with the detainees, to the U.S. detention facility at Camp Bondsteel. Guidance from COMKFOR concerning "continued pre-trial detention" enabled Task Force Falcon to apply standards similar to those found in the UCMJ.<sup>65</sup> At Camp

<sup>64</sup> See Lieutenant Colonel Richard W. Swengros, *Military Police Functions in Kosovo*, MIL. POLICE BULL., May 2000, at 8.

<sup>65</sup> See MANUAL FOR COURTS-MARTIAL, UNITED STATES, R.C.M. 305(h)(2)(B) (2000) [hereinafter MCM]. These standards were similar to those used in detention hearings in Haiti. See HAITI, *supra* note 35, at 68-69. The standards also had a basis in the Criminal Code of the Federal Republic of Yugoslavia. See XV Criminal Code of the Federal Republic of Yugoslavia § 191(2) [hereinafter KZSRJ] (allows for continued pretrial detention if the following circumstances surround the grounds for custody:

1. If [the detainee] conceals himself or if his identity cannot be established or if other circumstances obtain which suggest the strong possibility of flight;
2. If there is a warranted fear that [the detainee] will destroy the clues to the crime or if particular circumstances indicate that he will hinder the inquiry by influencing witnesses, fellow defendants or accessories after the fact;

Bondsteel, a Task Force Falcon lawyer, called a “magistrate,” reviewed each detainee’s case within forty-eight hours. The magistrate would then recommend whether continued pretrial detention was warranted and ensure that the case file contained sufficient information to pass the cases to the civil prosecution system, once the system was established.<sup>66</sup>

In considering whether further pretrial detention was warranted, the magistrate would review the case file to determine whether:

1. An offense had been committed that would be triable by court-martial if it had been committed by a person subject to the UCMJ or if a mission-specific crime had been committed;
2. The person detained committed the offense; and,
3. Continued detention was required by the circumstances.

To determine whether detention was “required by the circumstances,” the magistrate would first have to determine whether:

1. The individual was armed and if release would threaten civic order;
2. The individual posed a threat to KFOR, other protected persons, key facilities, or property designated mission-essential by COMKFOR;
3. The individual had committed serious criminal acts (defined as homicide, aggravated assault, rape, arson, robbery, burglary, or larceny); or

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3. If particular circumstances justify a fear that the crime will be repeated or an attempted crime will be completed or a threatened crime will be committed;
  4. If the crime is one for which a prison sentence of 10 years or more severe penalty may be pronounced under the law and if, because of the manner of execution, consequences or other circumstances of the crime, there has been or might be such disturbance of the citizenry that the ordering of custody is [urgently] necessary on behalf of the unhindered conduct of criminal proceedings or human safety).

A copy of the detention operation SOP published by the KFOR 1B rotation in May 2000 is included in Appendix IV-13.

<sup>66</sup> See MCM, *supra* note 65, R.C.M. 305(h)(2)(A) (1998); *cf.* Riverside County v. McGlaughlin, 500 U.S. 44 (1991) (imposing a review within forty-eight hours of pretrial confinement); XV KZSRJ 192, 197, *supra* note 65 (requiring a review within twenty-four hours of pretrial confinement).

4. The individual had valuable information pertaining to individuals not yet detained to whom one or more of the above three stated grounds applied.<sup>67</sup>

The magistrate would also consider whether the detainee posed a risk to flee Kosovo to escape prosecution and whether the detainee would attempt to intimidate witnesses or obstruct justice.

Before and during the hearing, another JA collected information and articulated the detainee's argument against further detention. This JA, the "Command Representative for the Detainee," would assist the detainee in rebutting the command's grounds for continued detention. The JA did not form an attorney-client relationship, but served to ensure that the detainees understood the process and articulated the best case for release. The detainee was also given the opportunity to address the magistrate through an interpreter and to explain why continued detention was not warranted.

If the magistrate believed that continued detention was warranted, he would recommend that the Task Force Falcon Commander order continued detention.<sup>68</sup> If the magistrate believed the standards for continued detention had not been met, he recommended that the Task Force Commander order release. The Task Force Falcon Commander personally reviewed all continued detention hearing recommendations during the first month of the mission.

After one month, UNMIK established an Emergency Judicial System (EJS) to review pre-trial confinement. As the EJS became established, the Task Force pretrial confinement procedures experienced subtle changes. While continuing to protect the rights of detainees, the changes recognized

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<sup>67</sup> The entire process was stated in an SOP. See Task Force Falcon Legal Advisor, MNB-E Detention Process SOP, Office of the Staff Judge Advocate 3 (n.d.). The fourth provision for determining whether pretrial detention was required under the circumstances is a great expansion of MCM, *supra* note 65, R.C.M. 305. The fourth provision does have some basis in U.S. federal law. See 18 U.S.C. § 3144 (2000) (allowing for arrest of material witness); *United States v. Guadian-Salazar*, 824 F.2d 344 (5th Cir. 1987) (discussing the relationship between 18 U.S.C. § 3144, which authorizes the arrest of material witnesses and 18 U.S.C. § 3142, which provides conditions for release of persons detained); *In re Class Application ex rel. Material Witnesses*, 612 F. Supp. 940 (W.D. Tex. 1985) (discussing the competing constitutional interests of the material witnesses and the government).

<sup>68</sup> A copy of a magistrates' review memo is included in Appendix IV-14. The generic nature of the magistrate review memo was a product of necessity; however, as pointed out by JAs reviewing files six to twelve months after the magistrate review, the generic nature did not provide clear guidance into the rationale for continued detention or the basic circumstances surrounding arrests. See Berger Memo, *supra* note 34, ¶ g. For continuity, a more detailed review that is factually specific may provide a better product.

that local systems were coming into place that served to protect detainees' rights. The magistrate tasked with reviewing continued detention began conducting the initial hearings entirely on paper, because detainees would receive a hearing in front of a Kosovar Investigating Magistrate if the military magistrate considered further detention warranted.<sup>69</sup> The Commander's Representative for the Detainee was no longer necessary, as detainees had access to civilian defense attorneys. The Task Force Commander delegated his continued detention authority to the Chief of Staff and the Provost Marshal, depending upon the severity of the charges; however, the Commander maintained review authority over detainees suspected of war crimes and acts aimed at KFOR soldiers.<sup>70</sup> When it became apparent that criminal trials were not going to be conducted until some time in the significant future, detainees suspected of minor crimes could be ordered released prior to the magistrate conducting a review of the detainee's case.<sup>71</sup>

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<sup>69</sup> A copy of a magistrates' review conducted after the establishment of the Emergency Judicial System is included in Appendix IV-15.

<sup>70</sup> Initially, the basic criminal charges were broken into four categories. Category I crimes were hostile acts or threats toward KFOR and war crimes. Category II crimes were murder, rape, kidnapping, arson, aggravated assault, any crime involving a suspect that had been previously detained by KFOR, and any crime in which a weapon was used in the commission of the crime. Category III crimes were burglary/housebreaking, larceny/looting, weapons violations, UCK uniform violations, driving under the influence of alcohol or drugs, prostitution, establishing an unauthorized checkpoint, destruction of property, black-marketing, simple assault, harassment, use or possession of illegal drugs, possession of stolen property, and auto theft/carjacking. Category IV crimes were curfew violations and drunk and disorderly conduct. *See* Detention Policy, *supra* note 44, ¶ 2. The appropriate level for determining the release of detainees remains an area of debate. First identified in HAITI, *supra* note 35, at 71, the problems of access to the task force commander during operations weighs in favor of delegating all release authority to a lower level. The sensitivity of the decision to release or hold a detainee, understandably, has the task force commander's attention. As poignantly stated in HAITI, "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." *Id.*

<sup>71</sup> On-scene commanders had the authority to order the release of Category IV detainees to prevent transporting the detainee to Camp Bondsteel. Detention Policy, *supra* note 44, ¶ 3. This standard was changed to the Company Commander after approximately one year of operations. *See* Policy Letter 4, Commanding General, Task Force Falcon, subject: Detention Policy (24 July 2000) [hereinafter Detention Policy 2] (This detention policy substantially changed the detention procedures, recognizing that UNMIK-P had policing authority and removing JA review, relying instead solely on the Kosovo courts, and defining misconduct as either "unlawful" or "unauthorized." Unlawful conduct was criminal behavior defined by the laws of the Federal Republic of Yugoslavia, the Republic of Serbia, the province of Kosovo, or UNMIK regulation. These acts could be prosecuted in criminal court. Unauthorized conduct was defined by the MTA (threats to a safe and secure environment), the Undertaking (prohibited weapons), and KFOR directives (counter-barricades). Commanders and soldiers were authorized to enforce these rules, but Kosovar courts would not prosecute the misconduct unless there was an underlying criminal act. A copy of the Detention Policy 2, *supra*, is included in Appendix IV-16.). The Provost Marshal initially had the authority to release Category III or IV detainees prior to the case being sent to the military magistrate. *See* Detention Policy, *supra* note 44, ¶ 3. After the first year, the Provost Marshal no longer had the authority to order release. *See* Detention Policy 2, *supra*.

The EJS had to deliver all release orders to the U.S. magistrate for action. The magistrate reviewed all cases in which the EJS ordered release and made recommendations to the appropriate Task Force Falcon release authority. The U.S. military release authorities for EJS-ordered releases were the same authorities designated to review magistrate recommendations for release after initial detention hearings. In effect, once a detainee entered the Camp Bondsteel detention facility, Task Force approval was required for release.<sup>72</sup> In order to track the status of a detainee, both the detention facility and the magistrate maintained reports. The magistrate's report included the detainee's name and ethnicity, alleged offenses, the date detained, the date of the Kosovar Investigating Magistrate review, whether the detainee was indicted, whether the detainee was ordered to continued detention, and the date of the next hearing. A copy of a magistrate's report is included in Appendix IV-14.

In February 2000, UNMIK appointed a permanent judiciary for Kosovo. For the first months of permanent judicial operations, the review process by the Task Force did not change. As the Rule of Law systems matured over the next seven months, the Task Force began to transfer some of the responsibilities to the appropriate UNMIK organizations. Soldiers handed detainees over to UNMIK-P, which was running detention facilities in Gnjilane, Prizren, and Pristina. After soldiers turned detainees over to UNMIK-P, the Task Force did not conduct an independent review of the detainee's case and criminal detainees were processed entirely within the Kosovo judicial system.

After the first year, JAs remained active in the civilian detention system by reviewing the cases of detainees remaining in the Camp Bondsteel detention facility and by attending high-profile trials in the local courts; however, JAs no longer conducted any pretrial detention reviews. By late October 2000, it looked as though the Task Force Falcon detention mission was nearing completion.

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<sup>72</sup> A diagram of the initial Task Force Falcon release procedure is included in Appendix IV-17. CPT Alton L. Gwaltney, III, Multinational Brigade East Pre-trial Detention Process, PowerPoint presentation, briefing slide 2 (Jan. 2000). This procedure was applicable for the first year of Task Force operations. A diagram of the subsequent detention procedure is included in Appendix IV-18. Task Force Falcon Legal Section, Detention—General, PowerPoint presentation, briefing slide 1 (July 2000) (on file with CLAMO).

As the criminal detention mission waned,<sup>73</sup> a new detention mission based on operational necessity began to receive significant Task Force attention. As discussed further below, “operational detainees” were a subset of individuals who threatened the force and the safe and secure environment in Kosovo that KFOR was responsible for maintaining.

**7. Units must be prepared to detain individuals believed to be a threat to the force.**

In early planning for the Kosovo mission, members of the Task Force legal team recognized the need to be able to hold individuals who were threats to KFOR outside of whatever existing Kosovo legal system that was in place.<sup>74</sup> As the EJS took root, this issue presented itself when the Task Force Commander did not believe a detainee should be released prior to trial even though the EJS had so ordered.

To address this situation, JAs at the Task Force drafted petitions from the Task Force Falcon Commander to the KFOR Commander requesting that the KFOR Commander order the detainees held until trial. This procedure, developed by Task Force Falcon JAs, became known as the “COMKFOR hold.” KFOR determined that UNSCR 1244 and the MTA contained the authority to continue to hold detainees ordered released by a Kosovar magistrate.<sup>75</sup>

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<sup>73</sup> Planning began in late Fall 2000 to have all criminal detainees out of the Camp Bondsteel detention facility and into the Kosovo detention facilities by June 2001. See Letter from Commanding General, Multinational Brigade (East), to Special Representative of the UN Secretary General (1 Nov. 2000) (on file with CLAMO). By March 2001, all criminal detainees were transferred out of the Camp Bondsteel Detention facility. After March 2001, the Task Force held criminal detainees only at the request of COMKFOR. See Celtnieks AAR, *supra* note 43, ¶ 1.

<sup>74</sup> See Craddock Letter, *supra* note 56.

<sup>75</sup> See Memorandum, KFOR Legal Advisor to COMKFOR, subject: COMKFOR’s Authority to Overrule Judicial Release Order (30 July 1999) [hereinafter KFOR LEGAD MEMO] (on file with CLAMO). The KFOR legal advisor explicitly recognized that the law of the Federal Republic of Yugoslavia, as adopted by the SRSG in UNMIK Reg. 99/1, was the applicable law in Kosovo. However, UNMIK Reg. 99/1 “did not limit KFOR’s authority granted under the MTA or the UNSCR.” This authority included the ability to take “all necessary action to establish and maintain a secure environment,” MTA, *supra* note 3, at art. 1, ¶ 2; “take such actions as are required including the use of necessary force to ensure protection of [KFOR] . . . . *Id.* ¶ 4; and “do all that [the commander] judges necessary and proper, including the use of military force, to protect KFOR” *Id.* at app. B. The first case sent to COMKFOR for review involved two Serbian males who initiated a firefight with U.S. Marines. The Serbs continued the attack until they were seriously wounded (with another accomplice being killed). The investigating judge ordered the detainees released pending trial. See KFOR LEGAD MEMO, *supra*.

Within the request to COMKFOR was the factual background of the case, the procedural background, and a justification for why the detainee should not be released. The reasons for continued detention varied from the fact that a detainee had attacked a soldier to claims that the detainee was ordered released based on his ethnic background.

In late summer 2000, Task Force Falcon stopped conducting independent reviews of detainee cases and began relying solely on the Kosovo judicial system for release action. At the same time, action by insurgent Albanian groups began to increase along the southern border of MNB(E).

The need to hold persons declared a threat to the force or the mission presented itself again upon the emergence of various Ethnic Armed Albanian Groups (EAAG), the generic name given to all insurgency groups operating in the GSZ and Kosovo. The security situation in Kosovo grew tense in late 2000 with the activities in the Presevo valley of one EAAG known by the initials of its Albanian name UCPMB, *Ushtria clirimtare e Presheves, Medvegjes dhe Bujanovcit*, which translates into English as the Liberation Army of Presevo, Medvedjav, and Bujanovac.<sup>76</sup> The UCPMB was involved in violence, military training, and arms smuggling in the GSZ. Some of the violence was directed at MNB(E) soldiers. To prevent Kosovo being used as a staging ground or sanctuary for EAAG, MNB(E) conducted operations to interdict and obstruct EAAG activities in and near the GSZ. The Task Force operations resulted in the extrajudicial detention of persons suspected of being EAAG members involved in violence, training, or smuggling.<sup>77</sup>

Again faced with the need to provide procedural protections, this time for detainees held under suspicion of EAAG involvement, the Task Force legal section created a system to review continued “operational detention.”<sup>78</sup> The problem was that evidence rarely existed of EAAG members committing crimes in Kosovo. The violence and crimes were occurring in Serbia. Mindful of international detention norms, KFOR and MNB(E) used

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<sup>76</sup> The UCPMB wanted to join the southwesternmost tip of Serbia to Kosovo. Ethnic Albanians make up the majority of the population in three municipalities known as the Presevo valley, part of Serbia proper. See Jane’s Intelligence Review, KFOR Contains Conflict in Presevo, Zoran Kusovac, 8 Jan. 2001 at [http://www.janes.com/regional\\_news/europe/news/jir/jir010108\\_1\\_n.shtml](http://www.janes.com/regional_news/europe/news/jir/jir010108_1_n.shtml) (last visited on 5 Aug. 2001).

<sup>77</sup> UNMIK Report, *supra* note 10, at 3-4.

<sup>78</sup> These detainees may or may not have committed a crime in Kosovo. See Celtnieks AAR, *supra* note 43, ¶ 3.

UNSCR 1244 as authority for operational detention.<sup>79</sup> They also drew on UNMIK Regulation 2000/62<sup>80</sup> and certain Kosovo judicial standards as the foundation for the system. SACEUR granted COMKFOR the authority to order detention outside the criminal justice system.<sup>81</sup> COMKFOR retained long-term detention authority.

The procedures established for continued operational detention required review by an informal board—including a JA, the Provost Marshal, and an intelligence officer. The board reviewed the facts and circumstances of every operational detention and made specific findings, based on a preponderance of the evidence, on three specific questions:

1. What is the degree of an individual's association with other known EAAG members?

2. Does the individual pose a real and significant threat to KFOR's mission?

3. What are the relevant tactical and operational threats the individual poses?

Detainees were informed verbally that they were suspected of being an EAAG member involved in the violence. Although there was no formal hearing and the detainee had no right to counsel, detainees could present matters as to why continued detention was not warranted. The board used all available evidence in making its findings, including intelligence information and statements made or presented by the detainee.<sup>82</sup>

The board was also tasked with making recommendations about the duration of continued detention.<sup>83</sup> Following an initial review within seventy-two hours of detention, the Task Force reviewed all cases every thirty days to determine whether detainees should continue to be held.<sup>84</sup> The

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<sup>79</sup> See Task Force Falcon Legal Section, MNB-E Detention Board Process SOP, 2 (n.d.) [hereinafter Detention Board] (on file with CLAMO).

<sup>80</sup> UNMIK REG. 00/62, *supra* note 55 (extending UNMIK's authority to address acts committed beyond the territory of Kosovo that threatened the safe and secure environment of citizens in Kosovo).

<sup>81</sup> See FRAGO 997, 241615 MAR 01, KFOR, subject: Operation Consistent Effort (classified NATO document) (on file with CLAMO).

<sup>82</sup> The use of intelligence information poses potential problems. Some intelligence information is designated "U.S. only," and thus cannot be shared with allies within the coalition.

<sup>83</sup> Detention Board, *supra* note 79, at 5.

<sup>84</sup> Celtnieks AAR, *supra* note 43, ¶ 4.

cases of suspected EAAG members, who also were suspected of committing a criminal act in Kosovo, were transferred into the Kosovo criminal system for action. Recommendations of the board for suspected EAAG members who had not committed a criminal act were sent to the Task Force Commander for action. If the Commander believed continued detention was warranted, he forwarded a request for detention to COMKFOR.

If a detainee was determined not to be a threat on initial review or if a detainee was determined no longer to be a threat on subsequent review, the Task Force released him. If necessary, the Task Force Commander would issue an exclusion order under UNMIK Regulation 2000/62, ordering the detainee away from the GSZ. The Task Force transported the detainee to a place of his choosing, normally either his residence in Kosovo or the Kosovo/Serbia boundary, if he resided in Serbia. Minors were released to their parents, if the parents were available.

The welfare of detainees was monitored by various outside agencies, including the local courts, OSCE, ICRC, and UNICEF. The Task Force had an “open door policy” for monitoring agencies. Any international organization that wanted to tour the Bondsteel detention facility was allowed to do so. This policy helped clarify rumors of detainee mistreatment and mollify critics of the operational detention program.<sup>85</sup>

### **8. Independent evidence must be developed in addition to information gathered for intelligence purposes.**

Intelligence operations often provided information of criminal activities by Kosovars. The nature of some of the intelligence required that the information contain a security classification. The Task Force could not turn classified intelligence information over to prosecutors or allow the information to be introduced in court. While the Task Force developed excellent intelligence related to several crimes, the inability to develop independent evidence hampered prosecution and strained the relationship between the International Prosecutor and the JAs.<sup>86</sup>

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<sup>85</sup> *Id.* ¶ 5.

<sup>86</sup> Memorandum, MAJ Daniel W. Kelly, former Legal Advisor, Task Force Falcon, to CLAMO, subject: Comments on CLAMO Kosovo Lessons Learned ¶ 6 (12 Sept. 2001) [hereinafter Kelly Memo 3] (on file with CLAMO); Celtnieks AAR, *supra* note 43, ¶ 8 (commenting that the international prosecutor wanted *carte blanche* to review intelligence).

## **9. The criminal justice system can be manipulated by citizens to further ethnic bias.**

Competing ethnic groups may be able and willing to use the judicial process as a weapon for ethnic intimidation. Ethnic minorities can be subject to continued pretrial detention, exorbitant fines, or lengthy jail sentences while members of the ethnic majority can act with impunity, hiding behind court protection. Reviews of the OSCE quarterly reports of the Kosovo judicial system provide numerous examples of ethnic bias within the Kosovo courts.<sup>87</sup> JAs must be prepared to monitor decisions and sentences made by fledgling courts. JAs who perceive judicial bias should confront judges and consider options to combat perceived judicial misconduct. Task Force Falcon JAs monitoring court actions were able to forcefully argue that COMKFOR should be allowed to continue to exercise extrajudicial detention authority in countering opinions by NATO and the KFOR legal advisor that court action should be final.<sup>88</sup>

### ***b. Support to the International Criminal Tribunal for the Former Yugoslavia***

Within two weeks of entering Kosovo, Task Force Falcon discovered the first major war crime scene in MNB(E). Though much smaller in terms of body count than sites in the German and Italian areas, the level of atrocity and tragedy involved captured the imagination of the media,<sup>89</sup> and the

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<sup>87</sup> See OSCE, Development of the Kosovo Judicial System (10 June through 15 December 1999) (1999) at <http://www.osce.org/kosovo/documents/reports/justice/report2.htm> (last visited 16 Sept. 2001); OSCE 2000, *supra* note 61; OSCE 2001, *supra* note 42.

<sup>88</sup> Kelly Memo 2, *supra* note 41, ¶¶ 2, 4.

<sup>89</sup> JAs who visited the scene and took photographs saw houses and livestock buildings burned and bulldozed. Visible on the ground in one of the former rooms of the house was a pair of garments, with bones protruding. Also on the ground, on top of a piece of stove wreckage, were several bones. The story of the Vlastica massacre was related to the Task Force and the International Criminal Tribunal for the Former Yugoslavia (ICTY) through a thirteen-year-old girl, Vlora Shabani, who survived the incident. She stated that on the afternoon of 30 April 1999, she and her family were in and around her house. Many families in the town of Vlastica had already left the town. In fact, Nehat Shabani, a cousin in the neighboring house, had taken his family and had moved to Slatina to evade Serbs. The family unit living in Vlora's house consisted of five people: Vlora, as well as Rifat Shabani, Vlora's grandfather, Selami Shabani, Vlora's father, Zjavere Shabani, Vlora's mother, and Fisnik Shabani, Vlora's two-year-old brother. Vlora's father was giving something to the cow in the livestock building. Two men came to the house. Vlora said that one man was in a uniform, which, by her description, was a Serbian military (VJ) uniform. The two men walked past the buildings and into the backyard. They then threatened Selami Shabani, Vlora's father, and told him to go into the house. The two men then went up the street to another of the few Vlastica houses in which people continued to live and ordered the inhabitants of those houses out into the street and then into Vlora's house. There were fourteen people moved from the village into Vlora's house. The two men ordered the group into the downstairs room of Vlora's house. They ordered

potential for linkage to higher level criminal wrongdoing interested the prosecutor for the International Criminal Tribunal for the Former Yugoslavia (ICTY).<sup>90</sup>

Within the first six months, the number of potential war crimes sights grew to over 120. Investigators from around the world, including U.S. Federal Bureau of Investigation (FBI) agents, supported the ICTY mission in Kosovo. MNB(E) was initially supported by an investigative and forensic team sent by the Royal Canadian Mounted Police. Task Force Falcon also received investigators from Denmark, Switzerland, Austria, and Iceland to support the investigative effort.

### **1. Expect initial ICTY investigative teams to arrive with no support.**

Task Force support to the war crimes investigative teams in MNB(E) was modest but constant. It amounted to a dedicated squad, with a lieutenant or a senior NCO, several vehicles, a GP medium tent, a generator, and a laboratory tent with running water at Camp Bondsteel.<sup>91</sup> Even after

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the men to go to the side of the room near the stove and the women to the side of the room near the window. Then the man wearing the uniform began shooting the men (mostly firing at their heads at close range) with an automatic weapon. After shooting and killing most of the men, he began shooting the women. The older man wearing the uniform shot and killed the four members of Vlora's family as well as nine of the fourteen that had come from the other house. The gunman injured at least three others, including Vlora. Vlora had been standing behind her mother, who was holding two-year-old Fisnik, when her mother and Fisnik were shot. Vlora was holding her left cheek with her left hand, and both were hit by a bullet. Vlora and fourteen-year-old Imer Hyseni ran for help. The men had reportedly stated after the executions, "Look at your people—they're all dead." One of the motives for leaving survivors is that they could spread the horror of the event and perhaps keep the areas free of Albanian resettlement. Martins Presentation, *supra* note 26, at notes accompanying briefing slides 30-31. See also David Finkel, *UP AGAINST THE WALL; For Generations, Serbs and Albanians Coexisted in Kosovo. Then Came the Killing. And Now Former Neighbors must Face Not Only Their Separate Scars and Memories, But Also Their Hatred*, WASH. POST, Dec. 12, 1999, at Mag., p. W09.

<sup>90</sup> The ICTY indictment against Slobodan Milosevic specifically referred to events that took place within the area occupied by U.S. forces prior to the start of the peacekeeping mission. See International Criminal Tribunal for the Former Yugoslavia, Indictment against Slobodan Milosevic, Milan Milutinovic, Nikola Sainovic, Dragoljub Ojdanic, and Vljako Stojiljkovic available at <http://www.un.org/icty/indictment/english/mil-ii990524e.htm> (last visited 2 Oct. 2001).

<sup>91</sup> Veterans of the Bosnia peacekeeping mission may be surprised at the level of support provided to the ICTY as the Bosnia mission did not contain such authorization. The NATO OPLAN for Operation Joint Guardian required Task Force Falcon to establish liaison and support to the ICTY. As the SJA at EUCOM explained, "I think support is mandated—and if relief is sought it would certainly be considered—but not sure it would be approved." See E-mail from MAJ Mark Martins, Deputy Staff Judge Advocate, 11D, to MAJ Michael Henry, Legal Advisor, Task Force Falcon (13 Aug. 1999) (quoting in part E-mail from COL Faggioli, Staff Judge Advocate, EUCOM, to COL Benson, Staff Judge Advocate, V Corps (23 July 1999)). Emphasis on investigating war crimes in Kosovo was significant. The United States provided eighty FBI

being provided this support, the ICTY investigative teams often wanted additional support beyond the means and capabilities of the Task Force. For example, the investigators wanted an engineer company to excavate a well.<sup>92</sup> The JAs assisting the ICTY were aware of an NGO capable of supporting the request and were able to link the NGO with the ICTY.

## **2. Provide a single point of contact to the ICTY.**

As the ICTY began its work in Kosovo, the investigators would request support from any available JA. These ad hoc requests led to multiple JAs attempting to assist the ICTY without an overall coordinated effort. The JAs quickly realized that one point of contact to collect information and coordinate assistance was a better solution. This one JA took in the information from the ICTY, coordinated with the G-3 when U.S. Army support was allowable, coordinated with the G-5 to provide outside support, prepared FRAGOs to assist the G-3 in tasking units as needed, and provided information to the staff and throughout the chain of command about the ICTY's progress.<sup>93</sup> After the first year, all ICTY coordination occurred directly with the G-3.

## **3. Devise a system to track and report war crimes locations within the Area of Responsibility.**

Information about potential war crimes sites often came from soldiers patrolling the cities and towns of Kosovo in reports to the G-3. To track war crimes sites as they were reported, JAs developed a database, in conjunction with CID, the MPs, and the ICTY. The database helped the ICTY rank order the crimes in an effort to prioritize efforts.<sup>94</sup> The database also helped the JAs track ongoing investigations and provided information to the numerous people within the chain of command interested in the ICTY's

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agents to assist the ICTY, and the U.S. and NATO relied on potential war crimes as one justification for the air campaign. *See supra* Ch. III, note 5.

<sup>92</sup> CLAMO, Kosovo After Action Review Conference (12-14 June 2000); Transcript at 400 [hereinafter Kosovo AAR] (on file with CLAMO).

<sup>93</sup> In the early stages of the KFOR mission, the investigations by the ICTY were extremely important. The investigations were constantly in the news, and the Commander, Task Force Falcon, wanted information briefed nightly at the Battle Update Briefing. This information included where bodies were discovered, how the people were killed, what the investigation showed, and what type of support the U.S. was providing. *See id.* at 400.

<sup>94</sup> The ICTY was not capable of investigating all of the potential war crimes sights. They focused mainly on areas supporting the existing indictment against Yugoslav president Slobodan Milosovic.

work.<sup>95</sup> A copy of the database is included in Appendix IV-21. A copy of the ICTY SOP is included in Appendix IV-22.

***c. Rule of Law Contains a Civil Component—“Property Repatriation”***

Within the opening days of the operation, the Commander, Task Force Falcon, accompanied by 9-10 others, including the legal advisor, was returning from Gnjilane toward Camp Bondsteel. As they drove through the Serb town of Klokot, they noticed young Kosovar Albania men jumping out of windows on the second floor of a Serb home. The men were carrying valuables from the home. Kosovar Albania refugees were returning home, and looters were becoming a problem because many Serbs had fled following KFOR arrival.

The command group stopped and instructed the Kosovar Albanians to drop the loot. The soldiers then noticed, coming down the main road, a whole convoy of primitive tractor-pulled carts loaded down with washing machines, furniture, satellite dishes, carpets, TV sets, and refrigerators. Old men and women were driving these carts, and entire families were on the trailers. The soldiers stopped all of these vehicles, which included about 100 people in total and 10 large truckloads of property, and told the Kosovars, through the interpreters, to unload the items into a parking lot.

A small percentage of these folks were opportunistic criminals who had no connection to the property. Many of these people, however, were crying and emotionally stating that the property they were carrying belonged to them and had been taken by either VJ or MUP or by Serb citizens of Klokot. According to the Kosovar Albanians, the Serb homes were gorged with stolen property.

The command group calmed the crowd down and told the crowd that the Task Force needed to make sure that people were rightfully carrying away the property. The Commander asked them to return the next morning with proof of ownership but to go back to their villages for the night. Task

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<sup>95</sup> In addition to reporting to the Task Force Commander, JAs had to meet a reporting requirement pursuant to Message, 082155 (CET) MAY 99, USCINCEUR, subject: War Crime Reporting in Kosovo and the Surrounding Region (requiring reports of “alleged violations within the jurisdiction of the ICTY committed by the VJ/MUP or UCK personnel in or around the territory of the former Yugoslavia.”). This report was called a “Paragraph 7” report. A copy of one Paragraph 7 report is included in Appendix IV-20.

Force Falcon surrounded the parking lot with concertina wire and guarded the property overnight.

When the command group got back to Camp Bondsteel, the JAs were tasked to prepare the FRAGO to hold a personal property claims court the next day in the parking lot where the items were left by the Kosovar Albanians. The next day, about 100 people showed up at the parking lot. Initially, three JAs served as adjudicators, but they quickly trained line officers to do the adjudication with some simple forms the JAs drafted and had translated.<sup>96</sup> The JAs were initially concerned that most of the people were not going to be able to prove ownership, but the majority of people could.<sup>97</sup>

The model of U.S. soldiers serving as adjudicators—impartial but authoritative referees—was something that applied across the MNB(E) area many times a day. Soldiers were breaking up arguments and stopping violence, working out sensible arrangements for the manning of economic activities like bottling factories, helping concerned citizens briefly set aside hatreds to get the electricity running again or to harvest the wheat from the fields. In all of these situations, the KFOR soldier, as a symbol of the rule of law, had credibility and authority from the perspective of all sides, and it made an enormous difference.<sup>98</sup>

### ***3. Despite Operating Under Consent-Based Agreements, Expect No SOFA.***

Even though operations in Kosovo were framed under consent-based agreements, there was no SOFA between the U.S. and the FRY. Within FYROM, where all U.S. forces passed on the way to and from Kosovo, SOFA protections were tenuous and constantly tested.<sup>99</sup> Commanders want to know the status of soldiers serving in a foreign country, especially the protections for both soldiers and civilians accompanying the U.S. forces when faced with criminal allegations.

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<sup>96</sup> A copy of the forms in English, Serb-Croatian, and Albanian is included in Appendix IV-23.

<sup>97</sup> One story of proof of ownership related by the JAs at the scene bears repeating. The first lady to claim an item of property walked up and said that a particular stove was hers. The JAs asked her how she knew it was hers, and she said that in the grease drip pan area was an x-ray of her son's tooth. The JAs looked and the x-ray was in the pan. See Martins Presentation, *supra* note 26, at notes accompanying briefing slide 39.

<sup>98</sup> *Id.* at notes accompanying briefing slide 40.

<sup>99</sup> For a discussion about SOFA issues in FYROM see *supra* Ch. III, text accompanying notes 48-54, 162-175.

Despite the MTA's reference to a "to be negotiated" SOFA, no SOFA existed through the first two years of the operation. KFOR and UNMIK, through guidance included in a classified declaration, set forth SOFA-like provisions for soldiers and civilians performing the KFOR mission in Kosovo.<sup>100</sup> In August 2000, 14 months after the start of the mission, the SRSG promulgated regulatory guidance concerning the status of soldiers.<sup>101</sup>

#### ***4. Joint Implementation Commission Operations***

Both the MTA and the Undertaking refer to a Joint Implementation Commission (JIC), an organization designed to ensure compliance with various security agreements, investigate actual or threatened breaches of the agreements, and undertake tasks in the interest of maintaining the cessation of hostilities.<sup>102</sup> JICs were organized at KFOR Headquarters and at the various MNBs. The JIC typically included one senior officer, one company grade officer, and a senior NCO. As needed, other staff sections supplemented JIC operations. The JIC closely resembled the Joint Military Commission (JMC) used for similar purposes in Bosnia.<sup>103</sup>

While important to the overall KFOR mission, JIC operations and experiences within Kosovo did not mirror those of the JMC in Bosnia. The agreements framing the mission in Kosovo were designed to remove the military organizations operating within Kosovo. Thus, a military coordination mechanism, such as the one in Bosnia, was unnecessary. The JIC facilitated removal of military organizations by operating as the commander's liaison with the Serb Army as it withdrew from Kosovo and with the KLA as it demilitarized. Once the KLA demilitarized, the JIC's function shifted to implementing the Statement of Principles by coordinating the activities of the KPC.

The early stages of the JIC operation required significant legal support. One JA provided that support on an as-needed basis. Eventually,

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<sup>100</sup> Joint Declaration, Commander, KFOR, UN SRSG, Kosovo (17 Aug. 2000) (classified NATO document).

<sup>101</sup> See U.N. MISSION IN KOSOVO, REG. 2000/47 ON THE STATUS PRIVILEGES AND IMMUNITIES OF KFOR AND UNMIK AND THEIR PERSONNEL IN KOSOVO (18 Aug. 2000), available at <http://www.un.org/peace/kosovo/pages/regulations/reg047.html> (last visited 5 Oct. 2001).

<sup>102</sup> See MTA, *supra* note 3, at art. IV; Undertaking, *supra* note 15, ¶¶ 20-21.

<sup>103</sup> See BALKANS, *supra* note 13, at 80-90.

one legal NCO was tasked to the JIC full time to assist in the mission. This tasking lasted for about the first 180 days of the operation.

***a. Use the JIC Proceedings to Establish Legitimacy.***

When Task Force Falcon conducted a JIC meeting with members of the KLA, it was, in the words of one JA, “impressive and awe inspiring.”<sup>104</sup> Prior to the meetings, a maneuver unit would secure the building selected to host the event. Explosive Ordnance Disposal units would sweep the building for bombs. Soldiers manned checkpoints controlling access to and from the meeting area. The meeting had an air of formality and grandeur that conveyed messages of Task Force Falcon power and control.<sup>105</sup> These were important messages in the early days of the Task Force mission.

***b. Review Taskings from Multinational Higher Headquarters for Compliance with U.S. Law.***

After KFOR JIC meetings, the five MNBs would often receive taskings to implement issues covered during the JIC. JAs working in the JIC ensured that these taskings did not run afoul of U.S. law. For example, the KFOR JIC, in an effort to support KLA demilitarization, agreed to provide clothes, food, and water to members of the KLA. While ultimately Task Force Falcon provided limited support for these tasks, fiscal constraints prevented Task Force Falcon from adopting the entire mission.<sup>106</sup>

Training the KPC provided numerous legal challenges for Task Force JAs. Through JIC channels, KFOR tasked subordinate brigades to develop training advisory teams to facilitate direct contact between KFOR and the KPC.<sup>107</sup> The training advisory teams had a large list of tasks, both to ensure compliance and to provide assistance to the KPC. Among these tasks were the requirements to develop a comprehensive training system on various equipment, train the KPC in civil emergency response, and provide basic training for KPC recruits.<sup>108</sup>

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<sup>104</sup> Kosovo AAR, *supra* note 92, at 377.

<sup>105</sup> *See id.* at 379.

<sup>106</sup> *See id.* at 380.

<sup>107</sup> Memorandum, Chief of Staff, KFOR, to Subordinate Brigade Commanders, subject: KFOR Directive to Establish KFOR Training Advisory Teams to the Kosovo Protection Corps (5 Oct. 1999) (on file with CLAMO).

<sup>108</sup> *Id.* ¶¶ 10a(5), b(1)(4), (6).

Although the KLA had demilitarized, significant concerns about training former KLA members, now new KPC members, in emergency response tasks arose because of the appearance of training a “foreign military.”<sup>109</sup> The suspicions concerning the true KPC motives had to be balanced against the desire to engage the former KLA members in meaningful work for the good of the KFOR mission. Legal advisors during the first rotations encouraged the MNB(E) Commander to adopt a more distant approach to the KPC, focusing more on the compliance enforcement tasks rather than the training assistance tasks. The JAs supported this guidance with reference to the Foreign Assistance Act (FAA) and security assistance programs under the FAA which require State Department coordination and approval.<sup>110</sup>

As the mission in Kosovo matured, the Task Force began small-scale assistance in first aid and vehicle maintenance. This assistance was not considered foreign assistance training. Instead, it was justified by interoperability, safety, and familiarization information exceptions, which are not considered security assistance training, and by allowing KPC members to view Army training that was conducted for the primary purpose of training U.S. soldiers.<sup>111</sup>

***c. If the JIC is Responsible for Ensuring Compliance with an Agreement, Use a Success Matrix to Track Compliance Issues.***

From the start of the Kosovo mission, the Task Force Falcon JIC used a “measures of success matrix,” designed by JAs, to convey the Task Force

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<sup>109</sup> The training of foreign military forces should occur through the International Military Education and Training Program (IMET), 22 U.S.C. §§ 2347-47a-d (2000), Foreign Military Sales (FMS) Programs, 22 U.S.C. §§ 2761-62 (2000), or other Congressionally authorized program. *See, e.g.*, 22 U.S.C. § 2779a (2000) (authorizing reciprocal training). Operations and Maintenance funds cannot be used for training foreign military forces.

<sup>110</sup> Foreign Assistance Act (FAA) of 1961, 22 U.S.C. §§ 2151-2431 (2000). The FAA charged the State Department with the responsibility of providing guidance for FAA programs. While the military is heavily involved in FAA activities, it is always under the lead role of the State Department and using State Department (Title 22) funds. Through coordination with a State Department representative operating in Pristina, the Task Force legal office learned that the State Department provided funding for some KPC activities through UNMIK Headquarters and not directly to the regional level. *See* E-mail from Larry Rossin, Head of Mission, to CPT Alton L. Gwaltney, III, Deputy Legal Advisor, Task Force Falcon (Jan. 2000) (copy lost).

<sup>111</sup> Minor amounts of interoperability, safety, and familiarization information do not constitute training as used in the context of security assistance. *See The Honorable Bill Alexander, House of Representatives, B-213137, Jan. 30, 1986* (unpublished GAO opinion). *See also* Memorandum, Command Judge Advocate, Task Force Falcon, to 40th Engineer Battalion, subject: Request for Legal Review—KPC Training (31 Jan. 2001) (on file with CLAMO).

Falcon Commander's guidance and track the KLA's progress in meeting that guidance. During each JIC meeting, the measures of success would be discussed. The matrix contained a list of issues and next to each issue on the list was a red, yellow, or green bullet to assess the progress of the KLA in addressing the issue. Typically, the commander would meet with the KLA commanders individually at some time prior to or after the meeting to further discuss the issue so as not to embarrass the KLA leader at the JIC. A copy of the measures of success matrix is included in Appendix IV-24.

*d. The JIC Can Provide Valuable Assistance to JAs.*

KFOR JIC's liaison with Serb authorities provided valuable assistance in locating witnesses for criminal trials in Kosovo. The KFOR JIC was able to orchestrate the return of Serb witnesses, who once resided in Kosovo, for trial dates. The MNB(E) JIC also assisted in spreading the task force "rule of law" message to the community through established relationships with the TMK. General and specific information about pending trials was disseminated into the Kosovo community and the TMK through the JIC.<sup>112</sup>

**5. Brown & Root Operations and Status**

JAs must remain aware of the issues concerning the status of contractors providing logistical support.<sup>113</sup> To address significant delays and holdups on the route to Kosovo, NATO negotiated a transit agreement for a bypass around a main border crossing in Blace, between FYROM and Kosovo. This agreement allowed NATO vehicles to bypass the long lines at the border crossing point and continue into Kosovo without having to stop. The transit agreement failed to include Brown & Root Services,<sup>114</sup> the

<sup>112</sup> See Kelly Memo 3, *supra* note 86, ¶ 4.

<sup>113</sup> See BALKANS, *supra* note 13, at 78 ("Whether LOGCAP personnel were covered by the various SOFAs remained in doubt for much of the operation."). The Army policy concerning contractors on the battlefield acknowledges that existing SOFAs may not appropriately address LOGCAP personnel. See Memorandum, Kenneth J. Oscar, Acting Assistant Secretary of the Army, to Distribution List, subject: Policy Memorandum—Contractors on the Battlefield (12 Dec. 1997); see also U.S. DEP'T OF ARMY, FIELD MANUAL 100-21, CONTRACTORS ON THE BATTLEFIELD (26 Mar. 2000) [hereinafter FM 100-21]. The Army is currently revising FM 100-21. See Memorandum, BG Henry W. Stratman, Deputy Chief of Staff for Doctrine, U.S. Army, to Distribution List, subject: Revised Program Directive, FM 3-100.21-X *Tactics, Techniques and Procedures (TTP) for Contractors on the Battlefield* (18 Jan. 2001) (on file with CLAMO).

<sup>114</sup> GOV'T. ACCT. OFF., THE ARMY SHOULD DO MORE TO CONTROL CONTRACT COST IN THE BALKANS, GAO/NSIAD-00-225 (Sept. 2000). Beginning in 1995, logistical support in the Balkans was provided under the existing LOGCAP contract. The LOGCAP contract expired in 1997. Upon expiration, the Balkan support requirements were removed from the LOGCAP Statement of Work and placed under a new contract, the Balkans Support Contract. The outgoing LOGCAP contractor, Brown & Root Services, was

contractor that provided U.S. logistics support, from transiting on the bypass. The importance of Brown & Root operations to the U.S. mission is not fully understood by our coalition allies.<sup>115</sup> JAs must be prepared to advise U.S. allies about treatment of contract logistics personnel and to argue that these personnel are a crucial extension of the military force.

Criminal jurisdiction over logistics personnel was also a point of concern for the JAs.<sup>116</sup> When the civilians providing logistics support committed minor criminal misconduct, the contractors were quick to fire the suspected employees and remove them from Kosovo. The concern of the Task Force was how to handle allegations of serious criminal misconduct. Arguably, the civilians were subject to the dysfunctional Kosovo criminal system—a position no one wanted to take. At the same time, the thought of returning a suspect of a serious crime back to the U.S. with no possibility for prosecution, because there was no jurisdiction for U.S. courts, was equally unpalatable. The Task Force never faced this difficult determination, and the U.S. Congress subsequently passed the Military Extraterritorial Jurisdiction Act to fill this jurisdictional gap.<sup>117</sup>

## ***6. Interagency Relationships***

The relationships developed between nongovernmental organizations (NGOs) and the U.S. military during peacekeeping operations can be difficult to characterize, and the sheer numbers of NGOs involved in a peacekeeping mission can make generalizations impossible. When mission success hinges on a particular interim task or operation being handed from the military to an international organization (IO) or NGO, it is in the military's best interest to see that those organizations succeed. Often, however, merely because the military has undertaken a task, even on an interim basis, can prove to be a disincentive for an NGO to commit its limited resources to that task.

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awarded a sole-source contract for two years. In May 1999, the Army competitively awarded the Balkans Support Contract to Brown & Root Services. *Id.* at 5-6.

<sup>115</sup> See Kosovo AAR, *supra* note 92, at 493.

<sup>116</sup> See Kelly Memo 3, *supra* note 86, ¶ 5.

<sup>117</sup> 18 U.S.C. §§ 3261-3267 (2000). See also Captain Glenn R. Schmitt, *The Military Extraterritorial Jurisdiction Act: The Continuing Problem of Criminal Jurisdiction over Civilians Accompanying the Armed Forces Abroad—Problem Solved?*, ARMY LAW., Dec. 2000, at 1.

***a. Expect NGOs to Criticize Decisions.***

An NGO may bring an agenda to a peacekeeping mission that is not always in concert with other NGOs or the military's stated mission. Some NGOs may be quick to claim as a success a program designed, implemented, and run by the military; other NGOs may just as quickly pass failures off to the military. NGOs are constantly looking for information about ongoing operations. Unfortunately, this information is often used to criticize the military's actions.<sup>118</sup> Because of this, JAs must ensure that the Task Force makes decisions that are principled and well-grounded in U.S. law and policy, international law, and the legal framework of the mission. Once these decisions are made, the U.S. military can robustly defend the decisions and procedures. JAs dealing with these issues in Kosovo agreed that criticism of NGOs was better left to private conversation and could be counterproductive if aired publicly.<sup>119</sup>

***b. Expect to Mentor Interagency Actors on the Mission and Possibly Their Roles.***

Members of NGOs tasked to serve important roles in the Kosovo interim government had little experience in what should have been an area of expertise. For example, the OSCE was responsible for monitoring the interim judges and pretrial court procedures. The monitors came from countries across Europe and around the world. Some of the monitors had no criminal law or trial experience, yet they were tasked with reviewing criminal proceedings. JAs had to explain basic trial procedures, under both the U.S. detention review system and Kosovo law, to the monitors. The high rate of turnover of the judicial monitors required JAs to repeat these explanations.<sup>120</sup>

***c. Coordinate with NGOs for Joint Humanitarian Projects.***

The limited ability of the military to provide humanitarian support, and the restrictions placed on the limited support the military can provide, placed the onus on the NGOs operating in Kosovo to provide humanitarian relief. Monetary restrictions placed on humanitarian projects conducted by U.S. forces required undertaking certain projects with the assistance of

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<sup>118</sup> See Kosovo AAR, *supra* note 92, at 392-94.

<sup>119</sup> See *id.* at 391-95.

<sup>120</sup> See *id.* at 394.

NGOs. Understanding which NGOs are operating within a task force area allows JAs to provide a better range of options when reviewing humanitarian projects. Civil Affairs (CA) sections maintain a list of NGOs and the types of aid the NGOs provide. JAs should coordinate with CA to review the NGO list.<sup>121</sup>

### C. RULES OF ENGAGEMENT

*[Rules of Engagement are] directives issued by competent military authority that delineate the circumstances and limitations under which the United States forces will initiate and/or continue combat engagement with other forces encountered.*<sup>122</sup>

The rules of engagement (ROE) for Operation Joint Guardian were promulgated in an ROE implementation message and published in Appendix 1 to Annex R to Allied Rapid Reaction Corps Operations Plan 60507 (classified) dated 10 June 1999. 1ID received the ROE on 11 June 1999 and requested modifications on 12 June 1999.<sup>123</sup> The Commander disseminated unclassified portions of the ROE to troops on an ROE card. The ROE card is included in Appendix IV-25. The ROE included sections addressing both self-defense and mission accomplishment, which were delineated in a weapons release authority matrix. Soldiers assigned to Task Force Falcon Rear at Camp Able Sentry (CAS) did not fall under the NATO ROE in OPLAN 60507, instead operating under the Chairman of the Joint Chiefs of Staff Standing ROE (SROE). The CAS ROE card is included in Appendix IV-26. ROE lessons learned stem from the nature of coalition operations, difficulties in training mission-specific ROE that are received immediately prior to executing a mission, and having to address multiple ROE.

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<sup>121</sup> For a complete discussion about the funding provided for direct humanitarian assistance by the task force see *infra* text accompanying notes 229-232.

<sup>122</sup> JOINT CHIEFS OF STAFF, JOINT PUB. 1-02, DEPARTMENT OF DEFENSE DICTIONARY OF MILITARY AND ASSOCIATED TERMS 371 (12 Apr. 2001).

<sup>123</sup> Memorandum, BG Bantz Craddock, Commander, Task Force Falcon, to Commander, KFOR, subject: Request for Changes to Rules of Engagement (ROE) (12 June 1999) (classified document) (on file with CLAMO).

***1. Expect Difficulties with ROE in Coalition Operations.***

The ROE for the Kosovo mission required the consensus of all NATO member nations through the approval of the NAC.<sup>124</sup> Nineteen independent governments reaching consensus on political guidance necessary to draft the ROE was not simple. Interpretation of ROE provisions was subject to the laws and experiences of the interpreting country. Army JAs must remain aware of NATO ROE procedures, the TCN's interpretative foundations, and U.S. policy when operating in a coalition.

***a. Modifications to the ROE Will Be Difficult to Obtain.***

The nature of the ROE approval process dictates that changes will be difficult to obtain. Requests for modifications to the ROE that have to be forwarded to the NAC require all NATO members to agree on the modification. This process can be extremely slow and often unworkable. Requests for modification to the ROE that are submitted immediately on receipt of the ROE are more likely to be approved than requests submitted once the operation begins. The higher HQ will likely question the necessity of the request if the Task Force has been able to operate without the requested measure for some length of time.<sup>125</sup>

***b. Requests for Modification to the ROE Should Be Submitted Through Both the Operational and National Chains of Command.***

To ensure that requests for changes to the ROE received appropriate visibility, while understanding that approval authority rested with NATO, Task Force Falcon forwarded the ROE Request (ROEREQ) through both the U.S. chain of command<sup>126</sup> and the NATO chain of command.<sup>127</sup> As other ROE issues arose once the Operation commenced, Task Force Falcon also

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<sup>124</sup> NATO ROE procedures are detailed in North Atlantic Military Committee, MC 362 encl. 1, NATO Rules of Engagement (9 Nov. 1999). The North Atlantic Council consists of representatives from all NATO member nations. The NAC is chaired by the NATO Secretary General. The NAC is the principal decision-making authority of the North Atlantic Alliance. All decisions by the NAC require consensus. See NATO, NATO HANDBOOK, ch. 13, available at <http://www.nato.int/docu/handbook/2001/hb1301.htm> (last modified 30 May 2001).

<sup>125</sup> See E-mail from LTC Mark Martins, Deputy Staff Judge Advocate, IID, to CPT Charles Kovats, Task Force Falcon JA (2 Sept. 1999) (on file with CLAMO). An exception to this is a post-incident request for a permanent change to the ROE based on the facts of the incident.

<sup>126</sup> At that time, the U.S. chain of command was IID, V Corps, and USAREUR, who, as the Army forces in Europe, would forward the request to CINCEUCOM.

<sup>127</sup> The NATO chain of command was KFOR(ARRC), AFSOUTH, SHAPE. See Kosovo AAR, *supra* note 92, at 413.

sent requests for clarification through both chains of command. This method was effective in notifying U.S. commanders, outside the NATO approval chain, that the Commander, Task Force Falcon, believed certain ROE provisions were overly restrictive.

***c. Actions in Self-Defense by U.S. Soldiers Are a U.S. Issue and Interpretations of Self-Defense Issues Should Remain in U.S. Legal and Operational Channels.***

*U.S. forces always retain the right to use necessary and proportional force for unit and individual self-defense in response to a hostile act or demonstrated hostile intent.*<sup>128</sup>

**1. Out-of-Sector Exercises and Operations**

Planning for contingencies while in Kosovo led to exercises among the coalition partners. When planning for exercises outside the U.S. area of operations, operators and legal staff must remain aware that some aspects of self-defense remain open to interpretation by the participating countries. These interpretations cannot infringe on the U.S. service member's right of self-defense as stated in the SROE.

During the planning for one out-of-sector exercise involving French and U.S. forces in the French sector of Kosovo, a member of the French staff distributed a memorandum addressing the "Rules of Engagement (ROE) for Attack Helicopters (AH)." The memorandum discussed the basis for self-defense under the MNB(N) ROE, and the memorandum stated that to fire in self-defense, "the hostile act must have already begun (not an intention but reality)."<sup>129</sup> When pressed by the U.S. representatives, including a JA, a member of the French staff explained that if an individual deployed an SA-

<sup>128</sup> CHAIRMAN, JOINT CHIEFS OF STAFF, INSTR. 3121.01A, STANDING RULES OF ENGAGEMENT FOR U.S. FORCES, encl. A, ¶ 1.c.(1) (15 Jan. 2000) (partially classified document, enclosure A is not classified) [hereinafter SROE]. The previous version of the SROE, which was in force for the first seven months of the Kosovo peacekeeping operation stated, "U.S. forces will be assigned and remain OPCON to a multinational force only if the combatant commander and higher authority determine that the ROE for that multinational force are consistent with the policy guidance on unit self-defense and with the rules for individual self-defense contained in this document." CHAIRMAN, JOINT CHIEFS OF STAFF, INSTR. 3121.01, STANDING RULES OF ENGAGEMENT FOR U.S. FORCES, encl. A, ¶ 1.c.(2) (1 Oct. 1994) (partially classified document, enclosure A is not classified).

<sup>129</sup> Memorandum, CPT William Schmittel, Task Force Falcon JA, to Commander, MNB(N), subject: Rules of Engagement for U.S. Forces Participating in OPLAN 21410, Operation Resolve (12 Jan. 2000) [hereinafter Schmittel Memo] (quoting translation of MNB(N) FRAGO 388) (on file with CLAMO).

7<sup>130</sup> visible to U.S. Apaches, the Apaches would not be able to engage the individual until he fired the SA-7. The U.S. JAs explained that U.S. forces must be allowed to engage such a target under the U.S. understanding of “hostile intent” and that U.S. forces must use the U.S. definition of self-defense. After the meeting ended, the JAs drafted a letter that was ultimately sent to both the Commander, MNB(N), and Commander, KFOR, restating the U.S. position, quoting the KFOR ROE allowing for TCNs to follow domestic laws when the NATO ROE was inconsistent with the TCNs’ domestic laws, and stating that U.S. forces would not be able to participate in exercises or operations that infringed on the right of self-defense.<sup>131</sup> Ultimately, all parties agreed that the U.S. soldiers and aviators would be able to defend themselves in accordance with U.S. policy. Two months later, KFOR tasked the U.S. to participate in operations in Mitrovica, located in the French sector. Because of the earlier successful efforts, which clarified U.S. self-defense concerns, there were no ROE issues delaying U.S. support to the operation.

## **2. Current Operations and Training**

Not long after the start of the Kosovo mission, MNB(E) was faced with someone regularly firing a mortar into Serbian villages. Addressing the threat of the “mad mortarman,” as he came to be dubbed, was a Task Force priority. Task Force Falcon drafted situational training vignettes to address potential confrontations by U.S. forces faced with the mad mortarman. One particular mad mortarman training vignette caused considerable disagreement within various coalition legal channels, including KFOR HQ.<sup>132</sup>

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<sup>130</sup> The SA-7 is a man-portable, shoulder-fired, surface-to-air missile which uses an optical sight and tracking device with an infrared seeking mechanism to strike flying targets. Its maximum effective range is approximately 6,125 meters and maximum effective altitude is approximately 4,300 meters. *See* United Nations Office for Drug Control and Crime Prevention, *at* [http://www.undcp.org/terrorism\\_weapons\\_conventional.html](http://www.undcp.org/terrorism_weapons_conventional.html) (last visited 2 Oct. 2001).

<sup>131</sup> Schmittel Memo, *supra* note 129.

<sup>132</sup> The training vignette, as finally drafted, is reprinted below.

**SITUATION:** 1<sup>st</sup> Infantry Division is deployed on a peacekeeping operation to keep Kosovo Albanian separatists and Serb nationalists from resuming hostilities. Organized forces of Kosovar Albanians have signed 2 separate agreements for demilitarization banning all crew-served weapons (allowing only a small number of side arms). KLA hard-liners have resisted demilitarization. All organized Serb military has withdrawn from the U.S. sector. Over the last 2 months, cities that were predominantly Serbian have become predominantly Albanian, sometimes overnight. This has oftentimes been accomplished through the murder of Serbian civilians and the burning of Serbian homes. Over the last month, there have been 4 mortar strikes on Serbian neighborhoods within

The contentious issue in the original training vignette occurred at the point of confrontation between U.S. forces and the mad mortarman, who, after being told to halt, turned and fled. Foreign attorneys at KFOR HQ reviewing the vignette believed that deadly force was not authorized to stop the mad mortarman. The KFOR analysis was heavily weighted on mission accomplishment ROE serials and stated that the mortarman was “actively running away,” implying that this was somehow inconsistent with hostile intent.

U.S. lawyers reviewed the mad mortarman vignette and proposed response and the U.S. JAs concluded that this vignette should be framed solely as a self-defense issue rather than a mission accomplishment issue. The mad mortarman had been firing into villages patrolled by U.S. forces, and rounds had landed within 100 yards of U.S. soldiers. Using an analysis that stressed looking at the totality of the circumstances and incorporating all known intelligence and actions by the mortarman led to the conclusion that

the U.S. sector. On 2 occasions, Q-36 has acquired a point of origin for the mortar fire, but patrols were unable to locate the mortars. On one occasion, the mortar round fell within 100 meters of U.S. troops patrolling in the area. Crater analysis on previous attacks indicates that the rounds are 82 mm.

EVENT: You are on patrol on the outskirts of Donja Budriga. You hear an explosion and are soon notified that a Q-36 has acquired a point of origin of mortar fire near your location. You are given the grid coordinate, which is located on an old logging trail on a wooded hillside. As you approach the location, you see 3 men loading a mortar tube into a truck just off the logging trail. Your squad sets up blocking positions on the road, and you issue a verbal warning for the 3 men to halt. They drop the tube and 2 mortar rounds and take off running into the woods. You are authorized to fire a warning shot, but the warning shot does not stop the men.

CONSIDERATIONS: Key RAMP principles are “Anticipate Attack” and “Measure Force.” You do not need to receive fire before firing. You are allowed to use force, up to and including deadly force, when you have clear indicators of hostile intent. Here the soldier can conclude that the 3 men’s intentions are hostile. The Hand SALUTE factors support this conclusion. Note that the men’s activities are extremely serious in nature and are likely to recur. The men are located at the Q-36 grid point of origin of the recent attack just minutes from the last mortar attack, and they are operating a crew-served mortar. Each of the RAMP rules supports a decision to fire. A finding of hostile intent is further supported by the recent mortar attacks and by the fact the men have ignored your verbal warnings and warning shot by running away, providing them with the ability and opportunity to fire again. These are indications that the men intend to continue conducting hostile acts. Because the lives of soldiers patrolling the villages and the lives of villagers are at risk, you can protect human life with deadly force. You must measure the amount of force. Under these facts, lesser VEWPRIK measures have failed (verbal warning; warning shot).

SUGGESTED RESPONSE: Fire aimed rounds at the fleeing mortar men and report the activity higher.

the man could be shot while fleeing.<sup>133</sup> As a result of framing the problem in terms of self-defense, guidance from KFOR became irrelevant, as self-defense issues are a national prerogative.

***2. Individual and Leader ROE Training Must Be Done Before the Mission Rehearsal Exercise; Individual Training Should Focus on Self-Defense.***

MREs conducted at the Combat Training Centers are excellent collective situational training in preparation for peacekeeping operations.<sup>134</sup> Does the individual pose a real and significant threat to KFOR’s mission? For the MRE to be effective, units must complete both individual and leader training on the ROE prior to the MRE.<sup>135</sup> Training for the Kosovo mission incorporated ROE classroom briefings with training vignettes, individual training, collective training during a MRE, and separate leader training.<sup>136</sup>

The ability of U.S. soldiers to defend themselves should be a battle task.<sup>137</sup> Effective individual training for the first units deploying to a peacekeeping mission should emphasize self-defense rather than mission accomplishment, because the latter may not be fully understood until just prior to the operation. Later rotations to the same peacekeeping theater must incorporate current intelligence, SOPs, and Tactics, Techniques, and

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<sup>133</sup> U.S. attorneys also noted that the U.S. Constitution’s Fourth Amendment, while not binding on U.S. soldiers operating in Kosovo, did not prohibit shooting a “fleeing felon.” See *Tennessee v. Garner*, 471 U.S. 1 (1985) (stating that the Fourth Amendment would not prohibit the use of deadly force to prevent the escape of a suspected felon when the officer has probable cause to believe that the suspect poses a significant threat of death or serious physical injury to the officer or others); cf. SROE, *supra* note 128, at encl. A, ¶ 8(3)(b) (allowing U.S. troops to “pursue and engage hostile forces that continue to commit hostile acts or exhibit hostile intent”).

<sup>134</sup> See generally E-mail from CPT Coby Langley, Legal Advisor, Task Force 1-325 Airborne Infantry Regiment, to LTC Renn Gade, Staff Judge Advocate, 82d Airborne Division (16 Feb. 2001) [hereinafter Langley E-mail] (on file with CLAMO) (stating “the effectiveness of the MRE cannot be understated - simply put, our troopers were set up for success.”).

<sup>135</sup> Individual training would focus on self-defense principles while leader training would address additional mission-specific issues that commanders and small unit leaders need to understand. See THE CENTER FOR LAW AND MILITARY OPERATIONS, THE JUDGE ADVOCATE GENERAL’S SCHOOL, U.S. ARMY, RULES OF ENGAGEMENT HANDBOOK FOR JUDGE ADVOCATES, 2-2 to 2-11 (CLAMO 2000) for general ROE training principles; see also Major Mark Martins, *Rules of Engagement for Land Forces: A Matter of Training, Not Lawyering*, 143 MIL. L. REV. 3 (1994) [hereinafter *A Matter of Training*].

<sup>136</sup> See, e.g., Sanchez Briefing, *supra* note 7, at briefing slide 16 (The KFOR 1B Training Cycle).

<sup>137</sup> A battle task is a “task which must be accomplished by a subordinate organization if the next higher headquarters is to accomplish a mission essential task. Battle tasks are selected by the senior commander from the subordinate organization’s METL.” FM 25-101, *supra* note 45, at glossary 2.

Procedures (TTPs) into the MRE.<sup>138</sup> Self-defense training must be incorporated into other mission-specific or MOS-specific training.<sup>139</sup> Training self-defense in accordance with the principles in the SROE adequately prepares soldiers for peacekeeping missions and helps overcome inherent delays in receiving the mission-specific ROE during coalition operations.

### ***3. ROE Training Should Continue During the Mission and Should Incorporate Current Intelligence and Tactical Situations.***

ROE training for the Kosovo mission continued after deployment and sought to incorporate current key events and intelligence. For example, as discussed above, JAs in the first rotation to Kosovo drafted training vignettes to address the “mad mortarman.” JAs during the KFOR 1B rotation taught refresher ROE monthly to aviation units using recent operations as the basis for situation vignettes. JAs in the third rotation to Kosovo developed what they titled an “ROE Azimuth Check” to disseminate current ROE questions and answers. The Azimuth Check was a one-page, eye-catching flyer distributed with FRAGOs to update soldiers on ROE issues. Examples of the Azimuth Check are included in Appendix IV-28. One unit made ROE briefings a part of their precombat drills before patrolling or conducting operations.<sup>140</sup> JAs deployed during the KFOR 2B rotation assisted in preparing the Task Force soldiers for the return of Serb forces into the GSZ—a mission that included a concurrent amnesty program for Albanian insurgents desiring to disarm and return to Kosovo. Task Force JAs developed training scenarios to assist the soldiers in assessing hostile intent during this tense period.<sup>141</sup> All of these methods effectively focused soldiers on current ROE issues.

### ***4. Soldiers and Marines Will Have to Understand Multiple ROE.***

In addition to understanding the ROE applicable for the mission in Kosovo, all soldiers deploying to Kosovo passed through an Initial Staging

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<sup>138</sup> See EXSUM, *supra* note 44, at 7. COL Morgan’s investigation into the accusation of excessive force by members of 3-504 PIR found, in part, that the unit’s High Intensity Conflict (HIC) focus during predeployment training did not adequately prepare them for Peace Support Operations (PSO).

<sup>139</sup> See *A Matter of Training*, *supra* note 135.

<sup>140</sup> See Langley E-mail, *supra* note 134 (Stating, “LTC Owens has stressed that no matter how monotonous troopers may feel it is, it [the ROE] will be briefed prior to every mission, every patrol, no matter how frequent.”).

<sup>141</sup> See Celtnieks AAR, *supra* note 43, ¶ 6.

Base (ISB) at CAS in Skopje, FYROM. The NATO ROE applicable in Kosovo were not applicable within FYROM, so soldiers had to understand that self-defense rules, as stated within the SROE, were the only applicable ROE until they entered Kosovo.<sup>142</sup>

Soldiers who accompanied equipment being shipped from their home stations into Kosovo faced various rules for up to six different host nations during transit.<sup>143</sup> Each country through which the U.S. shipped equipment was responsible for the protection of the U.S. soldiers and military equipment.<sup>144</sup> Each country had different rules for how or whether soldiers could be armed and when they could respond with deadly force to particular threats to property. These differences posed a significant challenge for the JAs drafting the “Rail Security ROE.”<sup>145</sup> These JAs had to consider SOFAs, supplemental agreements, transit agreements, and various other international agreements when drafting and training ROE for the transit guards.

Marines were also subject to multiple ROE. In addition to having to travel through Greece and FYROM to enter Kosovo, thus facing issues similar to those faced by the Army, the Marines faced multiple ROE while at sea. When the 26th MEU was operating in the Adriatic Sea as a part of the Sixth Fleet, it operated under the U.S. SROE. When the MEU’s Harriers began flying bombing missions in support of Operation Allied Force, the aircraft fell under NATO ROE once they left the deck of the ship. This situation also applied if the MEU was called to perform a Tactical Recovery of Aircraft and Personnel (TRAP) mission to rescue a downed NATO pilot. Once the TRAP package left the ship, they were subject to NATO ROE.<sup>146</sup>

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<sup>142</sup> See Memorandum, CPT Jimmy Bagwell, JA, Task Force Falcon (Rear), to MAJ Tracy Barnes, Legal Advisor, Task Force Falcon, subject: After Action Review (20 Apr. 2000) [hereinafter Bagwell AAR] (on file with CLAMO).

<sup>143</sup> The KFOR 1B/2A rotation between 11D and 1AD shipped equipment by rail between Germany and FYROM. The rail route passed through Austria, Hungary, Romania, Bulgaria, and Greece.

<sup>144</sup> This is a delicate issue. Based upon Status of Forces Agreements (SOFAs), receiving states are often responsible for the protection of all members of sending states, just as they are responsible for the security of their own citizens. Commanders obviously consider force protection imperative when planning the mission. This would include protecting the force not only once in the theater of operations but also in transit, through countries with which we have SOFAs. The friction created by these often competing interests placed commanders in the difficult position of having unarmed troops traveling through foreign countries, many of whose citizens did not always support U.S. intentions and ideals. See generally E-mail from CPT Mike Roberts, Oplaw JA, USAREUR, to CPT Alton L. Gwaltney, III, Chief, International and Operational Law, 11D (19 Oct. 1999) (on file with CLAMO).

<sup>145</sup> See E-mail from CPT Elizabeth Duffy, Chief International and Operational Law, 1AD, to LTC Mark Martins, Deputy Staff Judge Advocate, 11D (22 Mar. 2000) (on file with CLAMO).

<sup>146</sup> MEU AAR, *supra* note 6, ¶ 14.

***5. Be Prepared to Articulate Rationale for Use of Riot Control Means and Plan for Alternatives.***

Lessons under this heading cannot be appropriately addressed in this unclassified forum. A discussion of these lessons is included on CLAMO's secure database or can be obtained by contacting CLAMO and asking for an electronic copy sent to a secure e-mail account.<sup>147</sup>

***6. JAs Must Know the "Peace Operation" Variation to the Code of Conduct for Training.***

Training for a peacekeeping operation usually includes some combination of Law of Armed Conflict training, ROE training, and Code of Conduct training. Code of Conduct training for peacekeeping operations is a modified form of Code of Conduct training for wartime missions.<sup>148</sup> For example, Article III of the Code of Conduct requires prisoners of war to make every effort to escape. In a peacekeeping operation, the provisions of the Geneva Conventions affording prisoner of war protections may not apply. As a result, U.S. soldiers detained by a force during a peacekeeping mission may be subject to the domestic criminal laws of the detaining nation. Because escape from government detention is a crime in most countries, a failed escape attempt may provide the detaining country with further justification to prolong detention by adding additional criminal charges. Because of the potential for additional criminal charges and prolonged detention, escape from detention is discouraged except under unique or life-threatening circumstances under the Peace Operation variation to the Code of Conduct.<sup>149</sup> JAs must understand these distinctions and be prepared to conduct the necessary training.

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<sup>147</sup> CLAMO's secure database is accessed through Army Knowledge Online Secret (AKO-S) at <https://www.us.army.smil.mil>. Users must first register with AKO-S. After approval to enter AKO-S is granted, users must then register with CLAMO's secure knowledge center by following the link from AKO-S.

<sup>148</sup> See U.S. DEP'T OF DEFENSE, INSTR. 1300.21, CODE OF CONDUCT (CoC) TRAINING AND EDUCATION ¶ E3.3 (8 Jan. 2001) [hereinafter DODI 1300.21]; See generally U.S. DEP'T OF DEFENSE, DIR. 1300.7, TRAINING AND EDUCATION TO SUPPORT THE CODE OF CONDUCT (CoC) (8 Dec. 2000).

<sup>149</sup> See DODI 1300.21, *supra* note 148, ¶ E3.10.5.

## D. MILITARY JUSTICE

*Military Justice is the administration of the Uniform Code of Military Justice (UCMJ), and the disposition of alleged violations by judicial (courts-martial) or nonjudicial (Article 15, UCMJ) means.*<sup>150</sup>

Within the first two years of the Kosovo operation, both 1ID and 1AD addressed high-profile courts-martial. 1ID tried the case of *United States v. SSG Frank J. Ronghi*. SSG Ronghi pled guilty to murder, forcible sodomy, and indecent acts with a child, and a panel of military officers sentenced him to life imprisonment without the possibility for parole.<sup>151</sup> 1AD tried *United States v. PFC Nicholas E. Young*, in which PFC Young was ultimately acquitted of negligent homicide and dereliction of duty.<sup>152</sup> Both 1ID and 1AD preferred charges against other soldiers.<sup>153</sup> Additionally, the two rotations prepared almost 700 nonjudicial punishment actions during the first two years of the Kosovo operation.<sup>154</sup>

### 1. Establishing Jurisdictional Alignment

Jurisdiction over all conventional soldiers within Kosovo and CAS fell to the General Courts-Martial Convening Authority (GCMCA) of the division responsible for the Task Force Falcon headquarters. 1ID exercised GCMCA for the first year; 1AD exercised jurisdiction for the second year. Special Court-Martial Convening Authority fell to the brigade commander

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<sup>150</sup> FM 27-100, *supra* note 29, ¶ 3.3.

<sup>151</sup> SSG Frank J. Ronghi was found guilty of premeditated murder, forcible sodomy, and indecent acts with a child. On 13 January 2000, the accused left his unit and went into an apartment building in Vitina, Kosovo. The accused saw eleven-year-old Merita Shabiu enter the apartment, took her to the basement of the apartment building, committed the sexual acts and killed her. He later returned and removed the girl's body, dumping it in the countryside outside of Vitina. A fellow soldier, not knowing what the accused was doing, accompanied the accused outside of Vitina to dump the body. This soldier turned the accused into authorities.

<sup>152</sup> PFC Young was acquitted of dereliction of duty and negligent homicide for the shooting death of a five-year-old Kosovo boy. PFC Young was on a mission to a Kosovo school that his unit regularly visited. While in the turret of a HMMWV, PFC Young accidentally discharged an M-249, squad automatic weapon, killing Gentril Rexhepi.

<sup>153</sup> 1ID preferred charges against six other soldiers. 1AD preferred charges against two soldiers in addition to Young.

<sup>154</sup> See Kosovo AAR, *supra* note 92, at 509; see also CPT Alton L. Gwaltney, III, Deputy Legal Advisor, Task Force Falcon, Multinational Brigade (East) Legal Operations Overview (USKFOR 1B), PowerPoint presentation, briefing slide 11 (2000) (documenting 345 Article 15s) (on file with CLAMO); 1AD Mil. Justice Section, Task Force Falcon Article 15 Stats, Jun 00-May 01 (n.d.) (documenting 343 Article 15s) (on file with CLAMO).

of the brigade supplying the Task Force Falcon headquarters. The brigade commander was also the Deputy Task Force Commander. Assistant Division Commanders exercised command over Task Force Falcon but did not exercise UCMJ convening authority. Jurisdictional alignment was detailed in both Memorandums and Task Force FRAGOs. Summary Courts-Martial jurisdiction ran generally within command lines despite the fact that most of the units came from Germany where area jurisdiction was predominant<sup>155</sup> and that often slices of one commander's soldiers were under the operational control of a different commander. Both JAs and commanders agreed that command line jurisdiction worked well under these circumstances.<sup>156</sup>

Jurisdictional alignment in a task force can be difficult to establish. JAs in both of the first two rotations asked the personnel section (G-1) to identify all of the units within Task Force Falcon. In both circumstances, the G-1 was unable to account for all of the units represented in Kosovo. Eventually, the JAs and 71Ds had to call every battalion commander within the Task Force to determine which elements of the battalion were deployed and which elements remained behind.<sup>157</sup> JAs discovered that the operations section (G-3) had much better visibility on units within Task Force Falcon than the G-1 and relied on the G-3 documentation and extensive coordination with commanders of non-organic battalions to assist in jurisdictional preparation.<sup>158</sup>

The jurisdictional document must contain a "catchall" phrase that accounts for slice units or individual soldiers that may have been missed in the jurisdictional document.<sup>159</sup> Because the entire Task Force did not rotate in and out of Kosovo at the same time, and because some units were on

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<sup>155</sup> Area jurisdiction assigns UCMJ convening authority based on a unit's physical location. Units within the same military community will generally fall to the same convening authority whether the units are within the same organization or not. See U.S. ARMY, EUROPE, REG. 27-10, MILITARY JUSTICE ¶ 12 (1 Feb. 2001), available at <http://www.aeaim.hqusaureur.army.mil/library/home.htm>.

<sup>156</sup> Kosovo AAR, *supra* note 92, at 502; CLAMO, Kosovo After Action Review Video Teleconference with 1AD (19 Mar. 2001); Read Ahead Packet at § III, ¶ B (2001) [hereinafter 1AD AAR] (on file with CLAMO).

<sup>157</sup> See Kosovo AAR, *supra* note 92, at 500.

<sup>158</sup> See 1AD AAR, *supra* note 156, § III, ¶ B.

<sup>159</sup> See Kosovo AAR, *supra* note 92, at 501. A sample jurisdiction memo from USKFOR 1B rotation is included in Appendix IV-29. The catchall phrase, as noted in the USKFOR 1B jurisdiction document, was "[a]ll soldiers assigned to units not specifically mentioned in this jurisdictional memorandum are attached for UCMJ purposes to HHC, 3d Brigade until the unit can be incorporated into a subsequent memorandum."

shorter or longer rotations to Kosovo, the jurisdictional documents had to be reviewed and updated every six to eight weeks to remain current.<sup>160</sup>

## ***2. On-Call Trial Defense Service Support Can Be Effective.***

The Region VIII Regional Defense Counsel,<sup>161</sup> in coordination with the Task Force Legal Advisors and SJAs, determined that the defense counsel workload at Task Force Falcon was not sufficient to support a full-time Trial Defense Service (TDS) attorney in theater.<sup>162</sup> TDS support for soldiers deployed to Kosovo was provided through a 71D liaison to an on-call TDS JA. Soldiers in need of TDS assistance would speak to a JA on the telephone. If needed, TDS JAs would deploy to Kosovo to represent clients.<sup>163</sup> During the first rotation, a separate tent was set up for TDS assistance. During the later rotations, Task Force Falcon designated a separate office facility in a Southeast Asia (SEA) Hut<sup>164</sup> for TDS support.

For an on-call system to be successful, TDS attorneys must be willing to treat issues arising during the deployment as a priority. Soldiers attempting to receive Article 15 counseling over the phone must be able to reach the on-call attorney, and the on-call attorney must be able to assist the soldiers, who remain involved in an ongoing operation, as soon as possible.

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<sup>160</sup> KFOR 1A updated the Task Force base jurisdictional alignment three times in six months. KFOR 1B amended the jurisdictional alignment twice in six months.

<sup>161</sup> A Regional Defense Counsel is an Army JA responsible for the performance of the U.S. Army TDS mission within a geographical area designated by TJAG. *See* U.S. DEP'T OF ARMY, REG. 27-10, MILITARY JUSTICE ¶ 6-3 (20 Aug. 1999).

<sup>162</sup> The legal advisor concluded that there was sufficient work only if the TDS counsel could also provide assistance with certain legal assistance clients. Trial Defense Service JAs are allowed to perform nondefense duties in accordance with Army Regulation. *See id.* ¶¶ 6-8(a)-(e) (20 Aug. 1999). Nondefense duties might include assistance with “cases involving such administrative matters as reports of survey, evaluation report rebuttals or appeals, traffic violations, or administrative letters of counseling or reprimand.” *Id.* ¶ 6-8(a). These types of cases are normally seen by legal assistance attorneys. *See* U.S. DEP'T OF ARMY, REG. 27-3, THE ARMY LEGAL ASSISTANCE PROGRAM ¶ 6(g)(4) (21 Feb. 1996).

<sup>163</sup> One TDS attorney commented that his experiences “demonstrated the critical importance of TDS attorneys being prepared to deploy on short notice to investigate cases.” This counsel noted the difficulty of contacting witnesses by telephone when the witnesses were participating in an ongoing mission that took them “out in sector” for days at a time. E-mail from CPT Peter Amuso, Defense Counsel, to CPT Alton L. Gwaltney, III, CLAMO (7 Sept. 2001) (on file with CLAMO).

<sup>164</sup> The SEA Hut was originally designed and used in Southeast Asia, hence the name. Each SEA Hut is a prefabricated wooden structure comprised of approximately 3,000 sq. feet. In each SEA Hut are five sleeping rooms that accommodate six people each. All SEA Huts are equipped with heating and air-conditioning, and showers and toilets. In addition to providing sleeping quarters, the SEA Hut was also used to provide workspace on U.S. base camps. Additional information is available at [http://www.kforonline.com/chronicle/chronicle\\_1\\_1999/p12.htm](http://www.kforonline.com/chronicle/chronicle_1_1999/p12.htm) and at <http://www.wood.army.mil/ENGRMAG/PB5994/finney.htm> (both web sites last visited 6 Sept. 2001).

Deployed soldiers will need access to a fax machine to send copies of statements and other documents to TDS counsel.

The task force also plays a large role in the success of an on-call TDS mission. Command emphasis is required to ensure TDS attorneys receive support when they are within the AOR for military justice matters. TDS attorneys will need a place to work, a telephone, and the ability to conduct legal research through the use of the Internet.

TDS visits in Kosovo were treated like any other military operation.<sup>165</sup> Units were tasked to provide vehicular support to outlying areas for the attorney to conduct witness interviews and crime scene visits. Units were further tasked to make witnesses available to meet with the attorneys during a particular time and at a particular location. The camp mayor was tasked to provide logistical support for housing. The signal officer was tasked to provide telephone and Internet support to the TDS counsel's living and work areas. A well-coordinated visit can allow the TDS attorney to accomplish all that needs to be done in a quick and efficient manner.

Attorneys providing TDS support to the Kosovo mission always understood that they were a part of an ongoing U.S. Army mission. The TDS attorneys had to attend all the necessary predeployment training, qualify on their assigned weapons, and arrive in Kosovo with the appropriate basic military personal equipment. The TDS attorneys supporting the mission understood that getting into and out of Kosovo was a time-consuming challenge and that without prior coordination, the visits to Kosovo would not be successful. The combination of command emphasis placed on TDS support, soldier support to TDS, and TDS attorneys' understanding of the working environment led to a largely successful on-call TDS mission.<sup>166</sup>

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<sup>165</sup> See, e.g., 1AD AAR, *supra* note 156, § III, ¶ (b) ("All movement in Kosovo, to include TDS attorneys working on behalf of their clients, had to be coordinated with tactical units.").

<sup>166</sup> Legal advisors to the first three rotations thought that the TDS system worked well. See Kosovo AAR, *supra* note 92, at 512-13; 1AD AAR, *supra* note 156, § III, B. JAs assigned to base camps were not as enthusiastic about the TDS system. See Kosovo AAR, *supra* note 92, at 486; Bagwell AAR, *supra* note 142, ¶ 5b.

### ***3. Violations of General Order Number 1 and Negligent Discharges Dominate the Military Justice Workload.***

Violations of General Order Number 1 (GO 1) for drinking and negligent discharges of weapons were the two most common offenses occurring within the task force.<sup>167</sup> Commanders handled these offenses through nonjudicial punishment and administrative letters of reprimand. Soldiers would often attempt to use exceptions within GO 1 to justify drinking.<sup>168</sup>

There is some indication that command emphasis on the alcohol prohibitions of GO 1 can lead to decreases in the number of alcohol violations of GO 1.<sup>169</sup> For example, during the KFOR 1B rotation, the Commander required all exceptions to GO 1 to be in writing and approved prior to the event.<sup>170</sup> Additionally, the Commander stated that he did not intend to grant himself the exception, and the Commander made it clear to local leaders that neither he nor his staff would drink during meetings or events. Violations of GO 1 for drinking during the KFOR 1B rotation, the second six-month rotation, were drastically lower than during the KFOR 1A and 2A rotations, the first and third six-month rotations.

### ***4. JAs Must Be Aware of the Potential Problems Caused by a Lack of Unity of Command and Unity of Effort.***

*Seek unity of effort in every operation.*

*Unity of effort emphasizes the need for directing all means to a common purpose.*<sup>171</sup>

The command of Task Force Falcon fell to an Assistant Division Commander from the divisions responsible for the Task Force. The Task Force staffs were formed from a combination of deputy staff officers from the division headquarters and from officers outside the division. At various

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<sup>167</sup> Headquarters, EUCOM, General Order Number 1 in Support of Allied Force and Humanitarian Efforts in the Balkans (12 Apr. 1999) (amended 29 June 1999) [hereinafter GO1]. A copy of GO1 is included in Appendix IV-30. Kosovo AAR, *supra* note 92, at 498, 508-09.

<sup>168</sup> GO1 stated that individuals were authorized to consume alcoholic beverages, e.g., toasts, whenever refusal to do so would offend host nation military or civilian officials. GO1, *supra* note 167, ¶ 5b.

<sup>169</sup> See Kosovo AAR, *supra* note 92, at 506-07.

<sup>170</sup> Headquarters, Task Force Falcon, Commanding General Policy Letter #5, subject: General Order Number 1—Alcohol Consumption ¶ 2 (21 Dec. 1999).

<sup>171</sup> U.S. DEP'T OF ARMY, FIELD MANUAL 100-23, PEACE OPERATIONS 16 (30 Dec. 1994).

times, the Task Force itself was comprised of soldiers, sailors, airmen, and Marines.

Although he had elements of all services under his command, the Commander, Task Force Falcon, was not a JTF Commander<sup>172</sup> and therefore did not have authority under the UCMJ.<sup>173</sup> Additionally, unlike military operations in Haiti, where the JTF Commander retained court-martial jurisdiction over troops assigned to his own corps or division, the Commanders of Task Force Falcon, as Assistant Division Commanders, brought with them no UCMJ jurisdiction and none of the other powers associated with holding UCMJ authority. The Division Commanders of the Division responsible for the Task Force Headquarters retained GCMCA over the Division troops assigned to Task Force Falcon. The Division Commander also gained jurisdiction over other Army troops attached to the Task Force from units outside the Division. The Division Commander did not gain jurisdiction, however, over all U.S. troops within the Task Force—meaning no commander had unity of general courts-martial jurisdiction.<sup>174</sup>

Additionally, no one had unity of effort over administrative actions. Officer evaluation chains branched outside the Task Force back to staff principals or separate brigade commanders located outside Kosovo. This complicated unity of effort within Task Force Falcon.

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<sup>172</sup> “A joint task force (JTF) is a joint force that is constituted and so designated by the Secretary of Defense, a combatant commander, a subordinate unified command commander, or an existing joint task force commander.” JOINT CHIEFS OF STAFF, JOINT PUB. 0-2, UNIFIED ACTION ARMED FORCES (UNAAF) GL-9 (10 July 2001).

<sup>173</sup> A commander of a unified or specified command may convene courts-martial over members of any of the armed forces. MCM, *supra* note 65, R.C.M. 201(e)(2)(A). The Secretary of Defense may empower any commanding officer of a joint command or joint task force to convene courts-martial. *Id.* R.C.M. 201(e)(2)(B). Once empowered to convene courts-martial, a joint task force commander may convene a court-martial over a member of any branch of the armed service. *Id.* R.C.M. 201(e)(3)(A). An accused from of one branch of the service may also be tried by a court-martial convened by a member of another armed force when the accused cannot be delivered to the armed force of which the accused is a member without manifest injury to the armed forces. *Id.* R.C.M. 201(e)(3)(b). Manifest injury does not mean minor inconvenience or expense. Examples of manifest injury include direct and substantial effect on morale, discipline, or military operations, substantial expense or delay, or the loss of essential witnesses. *Id.* Discussion R.C.M. 201(e).

<sup>174</sup> The 11D and 1AD Commanders, in addition to having GCMCA over all of the soldiers assigned to their units located in Kosovo, also had jurisdiction over soldiers in the separate battalions from the 82d and 101st Divisions. The 11D and 1AD Commanders did not exercise court-martial jurisdiction over Army special operations and civil affairs forces, and they had no jurisdiction over service members from other branches of service. For a discussion about unity of command and military justice, see Major Michael J. Berrigan, *The UCMJ and the New Jointness: A Proposal to Strengthen the Military Justice Authority of Joint Task Force Commanders*, 44 NAVAL L. REV. 59 (1997).

The effect the lack of unity of command had on the mission in Kosovo is difficult to assess.<sup>175</sup> However, JAs must remain aware of potential problems. One problem is the potential for disparate treatment of members of the task force accused of the same misconduct. Another problem is that a task force commander without UCMJ authority cannot punish disobedience to his own orders. Should these potential problems become realized, soldier discipline may decline and mission accomplishment may suffer.

### ***5. Trying Courts-Martial in a Deployed Environment Presents Numerous Challenges.***

Numerous issues arise during the investigation and prosecution of U.S. soldiers accused of committing crimes in which the victims and witnesses are members of the host nation. Unlike serious criminal cases arising in garrison, where criminal charges may gain local or statewide notoriety, similar cases against U.S. soldiers arising during a deployment gain international exposure.<sup>176</sup> Many of the lessons provided by these types of cases are factually driven and are not deployment specific. The lessons of a more universal nature for future deployments are discussed below.

#### ***a. Judge Advocate/Public Affairs Coordination is Vital.***

*A . . . Total Army force of Public Affairs professionals . . . [will] conduct operations in peace, conflict and war and maintain a timely flow of accurate, balanced information to the American public, the Army and other key audiences.*<sup>177</sup>

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<sup>175</sup> The Task Force JAs coordinated with Navy and Air Force commanders when disciplinary cases arose. Typically, Navy and Air Force commanders took action similar to actions taken by Army commanders in Kosovo. Often, these commanders would report actions taken to the Task Force Falcon legal advisor. See Kosovo AAR, *supra* note 92, at 507. The most glaring exceptions to this involved civil affairs and special operations soldiers who were often merely returned to their home station with no action taken. See Interview with LTC Mark Martins, former Legal Advisor, Task Force Falcon, in Charlottesville, Va. (11 June 2001).

<sup>176</sup> See, e.g., CNN, *Army Sergeant Sentenced to Life Without Parole for Murder of Girl in Kosovo* (Aug. 1, 2000) at <http://europe.cnn.com/2000/LAW/08/01/kosovo.soldier.sentence.01/index.html> (last visited 24 Sept. 2001); CNN, *Soldier Cleared over Kosovo Killing* (Mar. 13, 2001), at <http://www.cnn.com/2001/LAW/03/13/germany.soldier> (last visited 24 Sept. 2001).

<sup>177</sup> Chief of Public Affairs, U.S. Dep't of Army, *Vision 2000/Public Affairs Into the 21<sup>st</sup> Century* (April 1994).

*Unfavorable news will be released with the same care and speed as favorable news. Candor is essential in dealing with the public.*<sup>178</sup>

Public affairs officers (PAO) receive significant training in conveying Army news, both the good and the bad news. Typically, PAO training encourages the quick and complete release of information. While it is impossible to sit mute while a criminal case is breaking during a deployment, JAs must vigilantly ensure that the information given to news agencies is accurate and does not harm the accused's right to a fair trial. JAs must review all press releases and answers to press queries about an ongoing criminal investigation or court-martial. Such reviews must consider the effect of the release of information on various audiences, such as commanders who have not acted on the case, witnesses, and future panel members.

SJAs should appoint a JA to assist public affairs detachments with the procedural and technical aspects of the UCMJ. This JA needs to have experience in prosecuting courts-martial,<sup>179</sup> and must remember to address the narrow issues concerning the procedural posture of the case and not the underlying facts. The JA spokesman must make sure the press does not view the answers he provides as the government's position on the charges or as infringing on the commanders' roles in the court-martial process.

***b. Maintain a Media Log.***

The legal staff should collect all news stories concerning pending trials. Public affairs detachments can assist in gathering the news articles, and the Internet provides ready access to news. If the investigation garners both print and video media attention, JAs must be prepared to collect the videotaped news segments about the case. These materials will be critical for a variety of purposes, including voir dire, motions practice, witness examination, and presentencing.

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<sup>178</sup> U.S. DEP'T OF ARMY, REG. 360-5, THE ARMY PUBLIC AFFAIRS PROGRAM ¶ 1-4b (9 Sept. 2000).

<sup>179</sup> The three different spokesmen for *United States v. Ronghi* all had previous trial experience. CPT Bill Schmittel, the spokesman in Kosovo, had previously been a TDS attorney. CPT Lisa Gossart, the spokesman for the second Article 32 investigation, held in Vilseck, Germany, had been both a TDS attorney and a trial counsel. CPT Chris Jacobs, the spokesman during the trial in Wuerzburg, Germany, had also been both a TDS attorney and a trial counsel.

***c. Insulate the Trial Counsel from Distractions.***

The intense media scrutiny can be distracting to the trial counsel attempting to investigate and ultimately prosecute the case. By appointing other JAs to handle media issues, witness travel arrangements, requests for information from outside the command, and other mission-specific duties, the trial counsel can better focus on case preparation.<sup>180</sup>

***d. Carefully Consider Trial Location.***

Of the nine cases referred to General and Special Courts-Martial during the first two years of the Kosovo operation, only one was tried in Kosovo.<sup>181</sup> Factors to consider when determining whether to try a case in the deployed environment or elsewhere include:

- the effect a trial would have on the overall mission;
- the length of the deployment and its effect on witness availability;
- timing of the court-martial and the effect of units rotating into and out of the deployed environment;
- significant leave time allowed soldiers returning to home station and potential for significant delay;
- whether victims and witnesses from the host nation are capable of traveling;<sup>182</sup>
- the ability to accommodate potential media interest;
- court reporter and judge availability;
- host nation concerns; and
- the base camp infrastructure, and whether it is capable of supporting a court-martial, including witness and panel living areas, waiting rooms, and MP guards and bailiffs.<sup>183</sup>

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<sup>180</sup> See E-mail from CPT Marie Anderson, Trial Counsel, 1AD, to CPT Alton L. Gwaltney, III, CLAMO (31 July 2001) (on file with CLAMO).

<sup>181</sup> *United States v. SFC Reynaldo Medina*. SFC Medina pled guilty to a violation of GO1 by drinking alcohol, dereliction of duty by leaving patrol and drinking alcohol, drunk on duty, and assaulting a staff sergeant and a private. He was sentenced to a reduction to the grade of E-3, forfeiture of \$670 pay per month for 6 months, and a reprimand.

<sup>182</sup> For cases arising out of Kosovo, the passport issue was time consuming. Citizens of the province of Kosovo needed a passport from the federal government, the Federal Republic of Yugoslavia. While the FRY maintained a passport office in Pristina, this office was not processing passport applications. UNMIK, the provisional government, was incapable of providing a FRY passport, but could provide “travel papers.” Some foreign governments, but not all, honored these papers.

<sup>183</sup> Much like the command emphasis necessary to ensure that on-call TDS operations function properly, the commander’s full support is necessary to conduct a trial in a deployed environment. Most administrative and support issues surrounding a court-martial are transparent to commanders in garrison.

## E. ADMINISTRATIVE LAW

*Administrative law is the body of law containing the statutes, regulations, and judicial decisions that govern the establishment, functioning, and command of military organizations.*<sup>184</sup>

JAs deployed to Kosovo continued to address many of the administrative law issues faced by JAs in garrison. Deployment specific issues, like those discussed below, supplemented routine garrison issues.

### ***1. Be Prepared to Provide Legal Support to Public Affairs, Psychological Operations, and Other Aspects of Information Operations.***

One unique area within the administrative law discipline faced by JAs within Task Force Falcon was the support required by information operations (IO). In addition to participating in the IO working groups, Task Force Falcon JAs were regularly called on to review products intended for the public—both international and local—prepared by the PAO office and the psychological operations detachment. Extensive coordination between IO cells and JAs occurred during significant events, such as the high-visibility trials of Kosovars detained by U.S. forces, the Task Force plan to address militant groups operating in the GSZ, high-profile U.S. criminal cases, and the status of investigations of international interest.<sup>185</sup> The IO section often needed detailed information on the legal issues surrounding these high-profile situations to produce an effective command message. JAs played a critical role in IO by tailoring the information to the appropriate audience, while ensuring that all products were legally and factually accurate.

To provide timely advice to IO, JAs must be aware of the methodology applied in the IO field.<sup>186</sup> Understanding how an IO cell operates allows JAs to provide advice while time exists to pursue alternate

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While deployed, the administrative and support issues of a court-martial are not merely visible but conspicuous. *See* Memorandum, CPT Paula Schasberger, former Deputy Legal Advisor, Task Force Falcon, to CLAMO, subject: Comments to AAR for Kosovo, ¶ 1(g) (n.d.) [hereinafter Schasberger Memo] (on file with CLAMO).

<sup>184</sup> FM 27-100, *supra* note 29, ¶ 3.5.

<sup>185</sup> *See* 1AD AAR, *supra* note 156, § 3, ¶ D.

<sup>186</sup> *See* U.S. DEP'T OF ARMY, FIELD MANUAL 100-6, INFORMATION OPERATIONS (27 Aug. 1996).

courses of action, if necessary. Additionally, understanding the language and decision-making process of the IO cell gives the JA additional credibility with the members of the IO cell.

***2. Understand the Distinction Between War Trophies and Historical Artifacts and Be Prepared to Address Unit Desires to Retain Historical Artifacts.***

Under international law, materiel captured from an enemy during an armed conflict becomes the property of the government of the capturing force. Title to the seized property passes by convention.<sup>187</sup> Various Army regulations allow the seized property to be used for intelligence, reutilization, training, and historical purposes.<sup>188</sup> Units can request to retain property seized during an armed conflict as an historical artifact; additionally, confiscated enemy property may be retained by individual soldiers if the property is properly designated as a war trophy in accordance with law and regulation.<sup>189</sup>

In operations other than war, property recovered from a host nation does not become the property of the seizing government. A limited exception exists when the property was obtained through donation or purchase, was abandoned, or was originally U.S. property.<sup>190</sup>

Two Army regulations, AR 870-29, *Historical Activities: Museums and Artifacts*, and AR 608-4, *Control and Registration of War Trophies*, address obtaining artifacts. However, these two regulations do not provide specific guidance for retaining property confiscated during peacekeeping operations as historical artifacts. After discussion with the Center for Military History (CMH), USAREUR decided the best approach to address the desire of units to retain historical artifacts was to submit requests from

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<sup>187</sup> See Annex to Hague Convention No. IV Embodying the Regulations Respecting the Laws and Customs of War on Land, art. 23, ¶ g (1907).

<sup>188</sup> See, e.g., U.S. DEP'T OF ARMY, REG. 870-20, ARMY MUSEUMS, HISTORICAL ARTIFACTS (11 Jan. 1999) [hereinafter AR 870-20].

<sup>189</sup> See National Defense Authorization Act of 1994, § 1171, 10 U.S.C. § 2579 (2000). For an item to be declared a war trophy, it must have first been seized in a combat zone and within a proscribed period of time. See U.S. DEP'T OF ARMY, REG. 608-4, CONTROL AND REGISTRATION OF WAR TROPHY AND WAR TROPHY FIREARMS ¶ 4(b) (28 Aug. 1969). There was no designated combat zone during Operation Joint Guardian.

<sup>190</sup> See AR 870-20, *supra* note 188, ¶ 2-5; see also E-mail from David C. Cole, Associate Chief Curator, Center for Military History, to CPT Alton L. Gwaltney, III, Chief of Operational Law, IID (28 Oct. 1999) (on file with CLAMO).

the Task Force, through the chain of command, to USAREUR for review and recommendation. USAREUR would then forward the requests to the CMH for action as an exception to the current policy. Because of the sensitive nature of these requests, the CMH decided to forward all requests to the Vice Chief of Staff of the Army for review.<sup>191</sup>

Processing unit requests to retain seized items for historical purposes consumed JA time on each of the first four rotations to Kosovo. Marines in Kosovo during the first month of the operation were unable to resolve the issue prior to redeployment.<sup>192</sup> At the Task Force level, JAs were responsible for drafting and disseminating the implementing procedures of the USAREUR policy for units within the Task Force. In conjunction with the G-4, JAs detailed the internal procedures for requests in a FRAGO to units in the Task Force.<sup>193</sup> Exceptions to the policy were processed slowly. The Task Force did not receive a final decision on the requests until nine months after the request was submitted. By that time, the units were out of Kosovo and providing the historical items to the units became extraordinarily difficult.

### ***3. Standardize Administrative Investigative Procedures.***

The current version of AR 15-6 requires all investigating officers to meet with a legal representative prior to beginning an investigation.<sup>194</sup> This requirement can make properly advising the numerous administrative investigating officers appointed during a deployment an overwhelming task.<sup>195</sup> Standardizing the pre-investigative briefing allows any JA or legal specialist to provide the initial advice. Investigative packets designed to address a specific issue can also be helpful in streamlining investigations. JAs in the 1AD designed a special “Weapons Discharge Investigation” worksheet, included in Appendix IV-31. This worksheet was particularly helpful in addressing a recurring issue requiring investigation.

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<sup>191</sup> See E-mail from John Alva, USAREUR, ODCSLOG, to MAJ Steve Russell, XO, 1-26 Infantry (30 May 2000) (on file with CLAMO).

<sup>192</sup> See MEU AAR, *supra* note 6, ¶ 4.

<sup>193</sup> A copy of the internal processing procedures as provided by the 11D JAs is included in Appendix IV-32.

<sup>194</sup> U.S. DEP'T OF ARMY, REG. 15-6, PROCEDURES FOR INVESTIGATING OFFICERS AND BOARDS OF OFFICERS ¶ 3-0 (20 Sept. 1996).

<sup>195</sup> JAs deployed during each of the four rotations of the first two years of the mission to Kosovo commented on the large number of administrative investigations conducted by the Task Force. It was common to have four or five investigations pending at any one time. See Kosovo AAR, *supra* note 92, at 517-18; 1AD AAR, *supra* note 156, § III, ¶ D; Telephone Interview with MAJ Rob Jefferson, former Legal Advisor, Task Force Falcon (23 July 2001) (notes on file with CLAMO).

#### ***4. Design a Method to Ensure Mandatory Investigations Are Promptly Completed.***

JAs should consider advising commanders to mandate reporting to the tactical operations center (TOC) certain incidents requiring investigation. JAs need to further ensure that the Battle Captain knows to report the information to the legal staff to initiate appointment of investigating officers. The types of incidents requiring investigation typically include the death or injury of a soldier, death of a civilian through U.S. action, or accidents requiring safety investigations such as aircraft accidents or those causing damage in excess of \$2,000.<sup>196</sup> Two years into the Kosovo mission, USAREUR mandated Commander's Assessments be performed any time U.S. troops used lethal force that resulted in injury.<sup>197</sup> A copy of the implementing memorandum and Commander's Assessment Guide are included in Appendix IV-33.

JAs must track the progress of the investigations and ensure that they are completed in a timely manner. Stresses of the mission and the high tempo of deployment can cause delays in completing these investigations. JAs need to relay the importance of these investigations to the investigating officer and be prepared to update the command on the status of the investigations. Because of the high volume of investigations that occur during a deployment, JAs should maintain a database tracking the status of the investigation from appointment to final action.

#### ***5. Be Prepared to Advise Counterintelligence Units.***

Because most deployed task forces will have significant outside intelligence assets, JAs must be prepared to provide intelligence law advice during operational deployments. This will include advising counterintelligence units about limitations on information collection and

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<sup>196</sup> See U.S. DEP'T OF ARMY, REG. 385-40, ACCIDENT REPORTING AND RECORDS ¶ 1-1 (1 Nov. 1994) (“[A]n Army accident is defined as an unplanned event, or series of events, that results in injury/illness to either Army or non-Army personnel, and/or damage to Army or non-Army property as a direct result of Army operations (caused by the Army). In addition, a recordable accident (over \$2,000 damage to Army property, or a workday lost by Army personnel when there is no degree of fault by the Army (military or civilian)), will be reported . . .”).

<sup>197</sup> See Memorandum, GEN Montgomery C. Meigs, Commander, USAREUR, to Distribution List (A), subject: Commander's Assessment of Lethal Force Resulting in Personal Injury During Peace Operations (7 May 2001).

searches of U.S. persons.<sup>198</sup> Applicable directives and regulations prohibit physical surveillance of U.S. persons abroad to collect foreign intelligence, except to obtain significant information that cannot be reasonably acquired by other means.<sup>199</sup> The applicable directives and regulations also prohibit intelligence assets from conducting nonconsensual searches of U.S. persons without Attorney General approval.<sup>200</sup> JAs must also be prepared to give advice on issues regarding the interrogation of detainees pending criminal trial, intelligence contingency funds, low-level source operations, and the role of the G-2X.<sup>201</sup> To appropriately advise CI assets, a JA will need to hold a Top Secret security clearance.

## F. CIVIL LAW

*Civil law is the body of law containing the statutes, regulations, and judicial decisions that govern the rights and duties of military organizations and installations with regard to civil authorities.*<sup>202</sup>

All JAs participating in the KFOR mission agreed that it was critical to have subject matter experts available for assistance in civil law matters.<sup>203</sup> JAs face contract and fiscal law issues almost daily while deployed.

### 1. Contract Law

*Contract law is the application of domestic and international law to the acquisition of goods, services, and construction.*<sup>204</sup>

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<sup>198</sup> See Exec. Order No. 12,333, 3 CFR 200 (1981) [hereinafter Exec. Order No. 12,333]; U.S. DEP'T OF DEFENSE, DIR. 5200.27, ACQUISITION OF INFORMATION CONCERNING PERSONS AND ORGANIZATIONS NOT AFFILIATED WITH THE DEPARTMENT OF DEFENSE (7 Jan. 1980); U.S. DEP'T OF ARMY, REG. 381-10, U.S. ARMY INTELLIGENCE ACTIVITIES (1 July 1984) [hereinafter AR 381-10].

<sup>199</sup> See Exec. Order No. 12,333, *supra* note 198, ¶ 2.4(d); AR 381-10, *supra* note 198, ¶ 2(D), 9(C)(2).

<sup>200</sup> See Exec. Order No. 12,333, *supra* note 198, ¶¶ 2.4(b), 2.5; AR 381-10, *supra* note 198, ¶ 7(C)(2)(b).

<sup>201</sup> Schasberger Memo, *supra* note 183, ¶ 1(i).

<sup>202</sup> FM 27-100, *supra* note 29, ¶ 3.6.

<sup>203</sup> From an early stage in the operation, Contracting Command, Europe (CCE), and the Office of the Judge Advocate, USAREUR, supported the mission to Kosovo with an attorney well-versed in contract and fiscal law. Typically serving ninety days in theater, these attorneys would travel between CAS and Camp Bondsteel. This position is now filled as a one-year PCS assignment. When not in the area, the CCE attorneys remained available through e-mail and telephone contact to assist the deployed JAs. See Kosovo AAR, *supra* note 92, at 534-35 (describing these attorneys as “heroes” to the deployed JAs).

<sup>204</sup> FM 27-100, *supra* note 29, ¶ 3.6.

***a. JAs Must Have a Basic Understanding of the Brown & Root Sustainment Contract.***

Brown & Root provided sustainment services to troops deployed to FYROM and Kosovo under the Balkans Support Contract,<sup>205</sup> similar to the Logistics Civil Augmentation Program (LOGCAP).<sup>206</sup> When the operation was in its nascent stages, there was no Administrative Contracting Officer (ACO) and no attorney from Contracting Command or the Corps of Engineers permanently in theater to monitor the contract, so JAs were required to fill the gap by providing contracting advice to the command.<sup>207</sup> Even after operations were well established, the Task Force command section looked to the JAs within the Task Force headquarters to assist with contract interpretation and enforcement. JAs faced various issues arising from the sustainment contract, ranging from issues about the quality of the TOC door locks<sup>208</sup> and general base camp construction, to food and laundry services.

***b. Acquisition and Cross-Servicing Agreement Operations Have Matured to a Level Where Few Issues Arise, but JAs Must Remain Prepared.***

The multinational coalition of forces in Kosovo required an extensive use of Acquisition and Cross-Servicing Agreements (ACSAs)<sup>209</sup> for logistics support by and to the U.S. For example, all coalition countries drew fuel supplies from the French. While JAs were prepared to address ACSA issues based on previous lessons learned,<sup>210</sup> the operations ran smoothly at the Task Force level and required little JA involvement. The G-4 section identified an ACSA point of contact, and the predeployment training prepared the Task Force to address ACSA issues. While legal sections for each rotation had an

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<sup>205</sup> See *supra* note 114 for a discussion about the Brown & Root Balkan sustainment contract.

<sup>206</sup> See U.S. DEP'T OF ARMY, REG. 700-137, LOGISTICS CIVIL AUGMENTATION PROGRAM (LOGCAP) (16 Dec. 1985).

<sup>207</sup> See Kosovo AAR, *supra* note 92, at 490-91.

<sup>208</sup> After moving into the permanent Task Force Falcon TOC, many of the door locks broke. JAs took a particular interest in this issue—during one rotation, a lock broke while the Task Force Falcon legal advisor was in the latrine, forcing him to climb out the latrine window.

<sup>209</sup> ACSAs allow DOD to enter into agreements with other eligible countries for the reciprocal provision of logistics support. Acquisitions and transfers are on a cash-reimbursable, replacement-in-kind (RIK), or equal value exchange (EVE) basis. 10 U.S.C. §§ 2341-2350 (2000). Lists of current ACSA agreements within the European Community and ACSA training slides are at <http://www.odcsrcm.hqusareur.army.mil/rmbud/acsahp1.htm> (last visited 2 Oct. 2001).

<sup>210</sup> See BALKANS, *supra* note 13, at 152-53.

identified POC for ACSA issues, few issues arose.<sup>211</sup> However, prior to trained logisticians arriving to provide ACSA support and accounting, JAs need to be prepared to advise the command on ACSA issues.<sup>212</sup>

***c. Be Prepared to Provide Logistical Support Through Agreements Other than ACSAs.***

There is no legal authority to provide free logistical support to foreign militaries. This axiom was severely tested when troops from the United Arab Emirates (UAE) and the Ukraine arrived to participate in KFOR.

For political reasons, there was a great deal of interest at the National Command level to have the UAE and the Ukraine participate in KFOR. USAREUR faced the challenge of providing logistical support to troops from the UAE and the Ukraine, even though neither country had an ACSA with the U.S.<sup>213</sup> USAREUR was tasked to review all logistical support requirements for the two countries' task forces. The support included billeting, meals, communications, quality of life, and, for the UAE, AH-64 aviation parts and maintenance facilities. Ultimately, the support was provided through Foreign Military Sales (FMS) cases, as discussed below. For the Task Force, the everyday approach to capturing the costs and forwarding the amounts to higher headquarters was the same as if the support was provided pursuant to an ACSA.

**1. Support can be provided through a Foreign Military Sales Case, with specifics detailed in a memorandum of agreement.**

In August 1999, the Defense Security Cooperation Agency prepared two FMS cases for the UAE. FMS cases are normally used to provide military hardware and equipment to foreign nations, but in this instance they were tailored to provide logistical support to the UAE while serving as part

<sup>211</sup> See 1AD AAR, *supra* note 156, § III, ¶ E.

<sup>212</sup> See Kosovo AAR, *supra* note 92, at 361 (noting “[t]he agreement is just the first step. What doesn’t happen a lot of times [early in the deployment] is you don’t have the trained, the school-trained logistics personnel who know how to collect and who know how to account for the stuff the other services are getting from you or you’re getting from the other services. In some areas it worked well . . . but there were a lot of other areas where I didn’t see the tough accounting occurring.”) (quoting LTC Mark Martins, Deputy Staff Judge Advocate, 11D).

<sup>213</sup> The U.S. and the Ukraine entered into an ACSA on 19 November 1999.

of Task Force Falcon.<sup>214</sup> The UAE funded the FMS cases with \$11.3 million and received support pursuant to the FMS case.<sup>215</sup> The UAE's participation in KFOR was unique in that their troops were not only part of KFOR, but they also served as part of Task Force Falcon. It was therefore necessary to prepare a Memorandum of Agreement (MOA) with detailed command and control, training, aircraft configuration, and claims provisions.<sup>216</sup> USAREUR prepared this MOA at the same time the FMS cases were being prepared, with the expectation that both documents would be signed before the UAE began putting troops on the ground. The MOA also specified the types of logistic support, by class, that USAREUR and Task Force Falcon would provide.

The Ukrainian forces arrived for the Kosovo mission with short notice to DOD officials, and before any support agreements were in place.<sup>217</sup> The day after the Ukraine contingent arrived in theater, U.S. Army Security Assistance Command initiated three FMS cases in support of the Ukrainian deployment. The FMS cases were funded with \$700,000 from Foreign Military Financing (FMF) funds.<sup>218</sup> Essentially, the U.S. funded the Ukraine deployment, and the \$700,000 was expended prudently to provide basic life support for as long as possible.

**2. The U.S. cannot give free logistical support and should explain the anticipated costs associated with U.S. logistical support.**

Both the UAE and the Ukraine were offered a “menu” of logistic support options, ranging from basic support to the same level and quality of support provided to U.S. soldiers. Both countries chose the same level of

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<sup>214</sup> The Foreign Military Sales Program is a security assistance method by which the U.S. provides defense articles and training to further national policy. Eligible governments purchase defense items based on contracts managed by DOD as an FMS “case.” 22 U.S.C. §§ 2761-62 (2000).

<sup>215</sup> See Kosovo AAR, *supra* note 92, at 556.

<sup>216</sup> The MOA is included in Appendix IV-34.

<sup>217</sup> When the Ukrainian advance party showed up with little notice, USAREUR instructed Task Force Falcon to provide the minimum level of support necessary (water, food, shelter), and track the costs. When the FMS cases were completed, the accumulated costs were rolled into the FMS cases. E-mail from LTC Richard Sprunk, Office of the Army General Counsel, to Maj Cody Weston, CLAMO (16 Oct. 2001) [hereinafter Sprunk E-mail] (on file with CLAMO).

<sup>218</sup> Foreign Military Financing is one security assistance method by which the U.S. provides defense articles and training to further national policy. Eligible governments receive congressional appropriations to assist in purchasing U.S. defense items. 22 U.S.C. §§ 2363-64. The U.S. added another \$4.3 million in FMF funds to the Ukraine's FMS case after the Ukrainian troops arrived in Kosovo.

support provided to U.S. soldiers and balked at the amount of money they were paying for logistical support.

The UAE was most vocal about the price they were paying for support and regularly sought ways to reduce costs. One politically troubling issue was their request for a free helicopter maintenance clamshell, in consideration for the amount of money they were paying to live in SEA Huts. They then wanted to return some of the SEA Huts they owned and use the “residual value” to pay for the clamshell. The UAE also proposed renting the SEA Huts rather than buying them, but because the SEA Huts were not excess to U.S. needs, the U.S. could not lease the SEA Huts.<sup>219</sup> This controversy went on for several months. The experience made it clear that the MOA should restate U.S. law concerning the provision of goods and services, and that during MOA negotiations it be made clear that the U.S. must capture all support costs and bill them to the country provided the support.<sup>220</sup> JAs should remember that the terms of the FMS case will control the transaction, and that the MOA is a supporting instrument.

After several months, the Ukraine’s FMS case began to run out of funds, and no additional FMF funds were available to fund it. The Ukrainians began looking for ways to economize and extend their participation in KFOR. After about one year, they moved off Camp Bondsteel and relocated to a camp occupied by the Polish Battalion operating in the U.S. sector. Task Force Falcon determined it had a need for the Ukraine’s SEA Huts, and purchased them for their residual value; the funds were then put back into the Ukraine’s FMS case.<sup>221</sup> The U.S. continued to provide some logistical support to the Ukraine after they left Camp Bondsteel, but at a significantly reduced level. For example, because the Ukrainians were not availing themselves of all the logistic support available at Camp Bondsteel,<sup>222</sup> their costs were expected to shrink to about \$40,000 a month, down from approximately \$350,000 a month.

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<sup>219</sup> See 22 U.S.C. § 2796 (2000). The statute requires the President to determine that the defense articles to be leased are “not for the time needed for public use.” If the Task Force had existing SEA Huts previously constructed, but no longer needed to support the Task Force, they might have been determined to be available for lease, but this was not the situation in Kosovo.

<sup>220</sup> See Kosovo AAR, *supra* note 92, at 557.

<sup>221</sup> USAREUR required Task Force Falcon to pay for the SEA Huts out of the Task Force’s allotted CONOPS funds. See Sprunk E-mail, *supra* note 217.

<sup>222</sup> For example, base camp maintenance, laundry, food and food preparation, bottled water, class III (bulk petroleum) storage and distribution, all MWR activities, HAZMAT removal, bulk water transportation, and all Brown & Root Services management overhead.

*d. Be Prepared to Advise the Joint Acquisition Review Board.*

The Task Force ran a Joint Acquisition Review Board (JARB) to review all requirements that cost more than \$2,500. JAs working in the Task Force attended the twice-a-week JARB meetings as nonvoting advisors. The JARB was responsible for validating proposed requirements, making a source selection utilizing the best value to the U.S., ensuring that inappropriate or unauthorized purchases were not processed, and documenting the validation and source selection process.<sup>223</sup>

When attorneys from Contracting Command Europe (CCE) participated in the JARB, Task Force JAs often served as a liaison between the Task Force and the CCE attorney to ensure that the CCE attorney had all the necessary information to advise the JARB. Because the CCE attorney was responsible for operations in Kosovo and FYROM, Task Force JAs would have to advise the JARB when the CCE attorney was absent.

**2. Fiscal Law**

*Task Force Falcon attorneys faced a steady stream of fiscal law questions from commanders and staff. Commanders occasionally became unpleasant when JAs had to say “no” to a proposed project . . . ; our lack of fiscal law experience aggravated these minor confrontations.*<sup>224</sup>

*[Fiscal law] is an area that most JAs do not have enough training in and we need more training in it.*<sup>225</sup>

*Fiscal law is the application of domestic statutes and regulations to the funding of military operations, and support to non-federal agencies and organizations.*<sup>226</sup>

Commanders and staffs deployed on peacekeeping missions face enormous pressure to act in support of the numerous requests for

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<sup>223</sup> JARB Operations within USAREUR-commanded areas are now guided by “Contingency Operations Financial Management Implementing Instructions,” included in Appendix IV-35. See Memorandum, Deputy Commanding General USAREUR, to Distribution List, subject: Contingency Operations Financial Management Implementation Instructions (23 Apr. 2001) (on file with CLAMO).

<sup>224</sup> 1AD AAR, *supra* note 156, § III, ¶ E.

<sup>225</sup> Kosovo AAR, *supra* note 92, at 519.

<sup>226</sup> FM 27-100, *supra* note 29, ¶ 3.6.

humanitarian and civil support. Commanders' training and beliefs tell them that providing support to those in need is the right thing to do. U.S. law, however, may not permit the support because it requires that funds be spent in a manner consistent with congressional appropriations and authorization.

A key point to remember is that money appropriated for contingency operations (CONOPS),<sup>227</sup> when transferred into other DOD accounts, takes on the character and restrictions placed on those accounts. CONOPS is not a magic funding source without restriction. CONOPS funds are primarily placed in Operations and Maintenance Accounts (OMA); those CONOPS moneys take on the purpose, duration, and amount requirements of normal OMA dollars.<sup>228</sup>

In addition to CONOPS/OMA money, operations in Kosovo received funds from the appropriation for Overseas Humanitarian, Disaster, and Civic Aid (OHDACA). Early in the operation, the Commander, Task Force Falcon, also drew on his inherent authority to protect the force to justify a transfer of fuel to firefighters and farmers in Kosovo. The issues and lessons discussed below are a small representation of the numerous fiscal law issues that arose in Kosovo.

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<sup>227</sup> "CONOPS" is the vernacular term used to refer to funding from the Overseas Contingency Operations Transfer Fund (OCOTF) appropriation. DOD Appropriations Act for FY 2001, Pub. L. No. 106-259, 114 Stat. 661. OCOTF funds are "no-year" funds intended to reimburse DoD and the military departments for unprogrammed contingency operations that occur during a given FY. OCOTF funds are now available for transfer into OMAs, working capital funds, the Defense Health Program account, procurement accounts, research, development, test and evaluation (RDT&E) accounts, and military personnel accounts. For FY 2001, Congress appropriated \$3.94 billion in no-year funds "for expenditures directly relating to Overseas Contingency Operations by U.S. Military Forces." See also U.S. DEP'T OF DEFENSE, REG. 7000.14-R, DOD FINANCIAL MANAGEMENT REGULATION, vol. 12 (Special Accounts and Programs), ch. 23 (Contingency Operations) (Feb. 2001). The National Defense Authorization Act for 2001 expanded the utility of the OCOTF. Prior to FY 2001, OCOTF funds were available for transfer only into OMAs, working capital funds, and the Defense Health Program account. The National Defense Authorization Act for 2001 permitted DOD to transfer contingency funds into procurement accounts, but there has been a marked reluctance to do so. See Sprunk E-mail, *supra* note 217.

<sup>228</sup> During the first FY of a new contingency, DoD and the military departments must fund the operation with funds currently available. Once Congress takes action, either on an annual appropriation, or supplemental appropriation, Congress may designate certain contingencies to receive funding from the OCOTF. Once Congress has designated the new contingency in an appropriation act, DoD may then access the OCOTF to fund the contingency. After the legislative designation, the forces executing the contingency will request the type and amount of funds necessary to fund the contingency. OCOTF funds may now be requested for transfer into the following appropriations: O&M accounts, working capital funds, the Defense Health Program account, procurement accounts, RDT&E accounts, and military personnel accounts. Once transferred, the OCOTF funds take on the character of the fund into which they have been transferred. At the time operations began in Kosovo, OCOTF funds were only available for transfer to O&M accounts, working capital funds, and the Defense Health Program account.

***a. Humanitarian Assistance Projects Should Be Centrally-Managed and Reviewed to Ensure Expenditures Are in Compliance with the Appropriation.***

Task Force Falcon received \$5 million in a two-year appropriation for urgent humanitarian assistance.<sup>229</sup> The JCS and EUCOM placed numerous restrictions on the use of these funds. These restrictions included project cost limitations, limits on the types of projects the Task Force could undertake, and a requirement to use certain legal authorities for the expenditures. After some trial and error, the Task Force developed a system whereby the CA staff section prepared each potential humanitarian assistance project with cost estimates, photographs, and project details. The project was reviewed by a group of staff officers, including a JA, before being sent to the Commander for action. The JA's review included consideration of the restraints of the OHDACA appropriation.<sup>230</sup> Even with this system in place, problems with OHDACA spending still arose.

***b. Make Sure Contractors Understand That They Are Limited to Payment Only for Contracted Work.***

While this lesson may sound obvious, problems arose when contractors performed work beyond that for which the Task Force contracted. For example, a contractor working on roof repairs to a school—a project allowable under the OHDACA appropriation and approved by the Task Force Commander—was contacted by the school administrator and asked to add new ceilings or new lights to the school. The Task Force did not request these repairs, and, in some circumstances, the work exceeded the rudimentary repairs authorized by the DOD policy governing the use of

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<sup>229</sup> See Message, 131310Z AUG 99, USCINCEUR, subject: USKFOR Program Approval and Funding for Urgent Humanitarian Needs. The following messages implemented the OHDACA program: Message, 201153Z Aug 99, CDR USAREUR DCOPS, subject: USKFOR Funding for Urgent Humanitarian Needs; Message, 101424Z SEP 99, USCINCEUR, subject: USKFOR Program Approval for Urgent Humanitarian Needs; Message, 291337Z NOV 99, USCINCEUR, subject: USKFOR Urgent Humanitarian Needs Program; Message, 011254Z DEC 99, subject: USCINCEUR, USKFOR Urgent Humanitarian Needs Program. All messages are included in Appendix IV-36.

<sup>230</sup> Understanding the operations of the numerous NGOs within Kosovo aided in the overall quality of the legal review. JAs knowledgeable in the available NGO resources and understanding the legal restrictions placed on spending were able to provide better advice on the overall handling of humanitarian assistance projects. For example, because funding categories for humanitarian assistance by military forces were limited, some projects could only be undertaken by a joint NGO/Task Force effort. See Schasberger Memo, *supra* note 183, ¶ 1(f).

OHDACA funds.<sup>231</sup> The contractor would make the repairs and attempt to bill the Task Force for the repair work, but such requests for additional payments were denied.<sup>232</sup>

*c. Understanding the Mission and the Legal Framework of the Operation Can Lead to Fiscal Justification for Expenditures.*

Deployment into and out of Kosovo posed a logistical hurdle for U.S. KFOR planners.<sup>233</sup> Many existing lines of communication were unable to support the movement of U.S. heavy equipment. One such logistical issue arose with the need to improve a railroad loading dock in Gerlick, Kosovo, to support a palletized loading system to offload U.S. goods shipped into Kosovo by rail. The U.S. could not get approval from Serbia for the necessary repairs because this immediately followed the Allied Force bombing campaign. The UNMIK government was not in a position to assist with property ownership issues at the early stages of the mission. JAs attempting to determine an appropriate authority to improve the railroad facility looked to the MTA. In the MTA, Kosovo forces were given the authority to “take all necessary action” to carry out the mission. The U.S. used this language as a rationale for making the necessary improvements to the rail station.

The transportation of Serb schoolchildren in HMMWVs and nontactical vehicles to and from school also hinged on the interpretation of the SACEUR Operational Plan to determine whether such transportation was a necessary and incident expense to meet the requirements of the Purpose Statute.<sup>234</sup> SACEUR, in an NCA-approved mission plan, directed Task Force Falcon to observe and prevent interference with the movement of

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<sup>231</sup> One such “mission expansion” project included adding a new boiler to a school for heating. The boiler was not compatible with the pipes in the school and when the boiler was fired, all the pipes blew apart. Other examples included adding indoor bathrooms to schools that previously had no indoor plumbing; re-tiling floors; and purchasing and installing electrical substation transformers, thus improving the electrical system beyond preconflict condition.

<sup>232</sup> See MAJ Brian Goddard & LTC Richard Sprunk, Operation Joint Guardian: Contract and Fiscal Law Issues, PowerPoint presentation, notes accompanying briefing slide 15 (2000) (on file with CLAMO).

<sup>233</sup> The acting Operations Officer for Military Traffic and Management Control is quoted as saying, “[Kosovo] has got to be one of the hardest places to get to in the world.” John R. Randt, Landing the Kosovo Force, at <http://www.almc.army.mil/alog/JanFeb00/MS519.htm> (last visited 8 Sept. 2001).

<sup>234</sup> 31 U.S.C. § 1301(a) (2000). See also Memorandum, Deputy Legal Advisor, Task Force Falcon, to Resource Management, Task Force Falcon, subject: Serb Escort Missions (17 Mar. 2000) [hereinafter Serb Escort Memo] (on file with CLAMO). The fact-specific determinations frequent in fiscal law opinions often lend themselves to disagreements over appropriate use of funds. E-mails sent to various JAs asking for their technical expertise with this issue led to entirely different responses.

civilian populations and to respond appropriately to deliberate threats to life and property as part of the overall Task Force Falcon mission. Task Force Falcon thought it necessary to transport Serb schoolchildren because of recent attacks on Serb convoys, including the intentional bombing of a Serb shopping convoy.<sup>235</sup> Based on these facts, the JA opined that the support was appropriate.<sup>236</sup> In this particular instance, the “third-party tasking” fell within the scope of the NCA-directed mission. U.S. forces cannot simply execute third-party taskings without determining that such taskings fall within the scope of the NCA-directed mission, or determining an independent U.S. legal authority for executing the particular tasking.

***d. Support to the UN Requires Reimbursement.***

Issues of support to the UN presented themselves in a variety of ways. Often there were direct requests for support from UN representatives; other times, KFOR taskings would contain embedded support requirements. One tasking, which was part of a KFOR and UN Office for Project Services Memorandum of Understanding (MOU), would have required the U.S. to expand the size of the Task Force ammunition holding area to accommodate the requirements of the MOU addressing demining activities.<sup>237</sup> Another KFOR tasking would have required Task Force Falcon to transfer C4 explosive, blasting caps, detonation cord, and time fuses on a reimbursable basis to a civilian demining organization working under UN guidance.<sup>238</sup> JAs rightly saw these as legally objectionable taskings from KFOR.

There were also constant issues over use of dining facilities, medical facilities, and the Army and Air Force Exchange Service (AAFES) by UN workers—particularly Americans working with the UN. UN representatives would often question the Task Force Commander directly on U.S.

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<sup>235</sup> Because Kosovar Serbs were not able to move freely around Kosovo, U.S. forces accompanied convoys of Kosovar Serbs to the Kosovo-Serbia border so the Kosovar Serbs could shop for groceries and other items in Serbia. The convoys typically ran two times a week.

<sup>236</sup> Serb Escort Memo, *supra* note 234, ¶ 3a. The JA noted that this support could not be without end: “[T]he ultimate goal is to transfer these types of actions to the United Nations Mission in Kosovo (UNMIK). Additionally, the Task Force, through the G-5, could attempt to coordinate with Non-governmental Organizations for support for these missions until UNMIK is prepared to take responsibility.” *Id.* ¶ 4(i).

<sup>237</sup> See Memorandum for Record, Operational Law Attorney, Task Force Falcon, subject: Legal Review of MOU between KFOR and UNOPS (9 Mar. 2000) (on file with CLAMO).

<sup>238</sup> See Memorandum, Deputy Legal Advisor, Task Force Falcon, to Assistant Task Force Engineer, Task Force Falcon, subject: Transfer of Explosives to Civilian Demining Companies (15 Aug. 2000) (on file with CLAMO).

support.<sup>239</sup> Although an ACSA is authorized by statute,<sup>240</sup> there is no ACSA between the U.S. and the UN, and there is no other source for reimbursement between the UN and the U.S. Army in Kosovo.<sup>241</sup> With no mechanism for reimbursement, UN workers could not just “sign in” to the dining facilities as members of the forces of other countries were allowed to do. USAREUR required UN workers to pay for meals when eating in the U.S. dining facility.<sup>242</sup> Even though some American police members of UNMIK-P stated they were promised medical care at the U.S. facility as part of their employment contract, U.S. physicians could only treat UN workers in cases where there was a danger of loss of life, limb, or eyesight. The USAREUR Commander granted UN workers access to AAFES in accordance with AR 60-20.<sup>243</sup>

***e. A Commander’s Force Protection Obligation May Provide the Basis for Expenditures That Might Appear To Be Humanitarian Aid.***

The early days of the mission in Kosovo led to urgent requests from the local population to prevent the precarious situation from slipping into an even greater humanitarian disaster. Almost immediately upon KFOR’s entry into Kosovo, the 800,000 Kosovar refugees in camps in Albania and FYROM flooded back into the Kosovo province.<sup>244</sup> Clashes between

<sup>239</sup> See E-mail from Legal Advisor, Task Force Falcon, to Chief, International and Operational Law, USAREUR, (20 Sept. 1999)(on file with CLAMO).

<sup>240</sup> See 10 U.S.C. § 2341-42 (2000).

<sup>241</sup> Support to the UN may be provided in a variety of ways. As mentioned in the text, support may be provided through an ACSA; however, the UN has chosen not to enter into an ACSA with the U.S. Support may be provided through the UN Participation Act, 22 U.S.C. § 287d (2000), which allows the President to authorize personnel, supplies, services, and equipment for noncombat UN activities. Support may be provided through the Foreign Assistance Act, section 607, 22 U.S.C. § 2357 (2000), which allows the U.S. to provide support on an advance of funds or on a reimbursable basis to friendly foreign countries and the UN. Support may also be provided through the Arms Export Control Act, 22 U.S.C. § 2761-62 (2000) and through the Economy Act, 31 U.S.C. § 1535 (2000). None of these provisions were applicable to the UN operations in Kosovo. An outline for fiscal law in military operations is provided in Appendix IV-37. Teaching Outline, General Officer Legal Orientation, MAJ Kevin Walker, Contract and Fiscal Law Department, The Judge Advocate General’s School, U.S. Army, Fiscal Law in Military Operations (May 2000).

<sup>242</sup> See E-mail from CPT Eric Young, Operational Law Attorney, USAREUR, to CPT Alton L. Gwaltney, III, CLAMO (20 June 2001) (on file with CLAMO).

<sup>243</sup> U.S. DEP’T OF ARMY, REG. 60-20, ARMY AIR FORCE EXCHANGE SERVICE OPERATING POLICIES ¶ 2-11(b)(4) (15 Dec. 1992).

<sup>244</sup> The United Nations High Commissioner for Refugees estimates that there were 445,000 refugees in Albania, 345,000 refugees in FYROM, and 70,000 refugees in Montenegro. ASTRI SUHRKE ET AL., THE KOSOVO REFUGEE CRISIS: AN INDEPENDENT EVALUATION OF UNHCR’S EMERGENCY PREPAREDNESS AND RESPONSE ¶ 31 (Jan. 26, 2000), at <http://www.unhcr.ch/evaluate/kosovo/toc.htm> (last visited 27 Sept. 2001). The total number of refugees from Kosovo between March and June 1999 topped one million. See

Kosovar Albanians and Serbs were not uncommon, and some groups of Kosovar Albanians resorted to arson to force Serbs to leave Kosovo.<sup>245</sup> Local fire departments did not have fuel for trucks to respond to the arson calls. KFOR was already concerned about adequate shelter for all Kosovars for the winter before the rash of arson attacks made the situation critical.<sup>246</sup>

In addition, crops planted in the spring, before the NATO bombing campaign, were ripe and going to spoil if not harvested. There was no fuel to enable the farmers to harvest their crops. The Task Force viewed the employment of field workers as crucial to force protection and securing the Kosovo community, because workers in fields would not be burning homes and formulating plans to remove Serbs from Kosovo.

The Task Force Falcon Commander felt that the situation was so dire that failing to act would lead to a widespread disaster and continue to threaten the safety of U.S. troops. Because no humanitarian funding was available, the commander acted under his inherent authority to protect the force and his authority to establish a secure environment in Kosovo and distributed approximately 12,000 gallons of fuel over a period of two weeks.<sup>247</sup> This type of factually specific decision should not be made prior to coordinating with higher headquarters. DOD eventually approved the use of OHDACA funds for this purpose based on the Task Force request.<sup>248</sup>

***f. Gifts for Visitors Are a Recurring Issue.***

The Task Force Falcon Joint Visitors Bureau (JVB) maintained a robust schedule of visitors to the Task Force. The hundreds of visitors included the President of the United States, leaders of foreign countries, military leaders, and entertainers. JAs were constantly facing issues involving gifts—from coins, posters, hats, and jackets to bronze Falcon statues—for these visitors. Commanders and staffs regularly desired to use appropriated funds, either directly or under the Brown & Root contract, to

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*Federal Republic of Yugoslavia: Kosovo*, UNHCR Web page, at <http://www.unhcr.ch/world/euro/seo/kosovo.htm> (last visited 2 Oct. 2001) [hereinafter UNHCR].

<sup>245</sup> See UNHCR, *supra* note 244.

<sup>246</sup> Based on surveys done between June and September 1999, UNHCR estimated that 128,105 homes were damaged. See UNHCR, *Housing Damage June 1999* (1999), at

<http://www.unhcr.ch/world/euro/seo/maps/koshousing99.gif> (last visited 27 Sept. 2001).

<sup>247</sup> See Martins Presentation, *supra* note 26, at notes to briefing slide 23. See also Memorandum, Commander, Task Force Falcon, to Commander, JTF-Noble Anvil, subject: Emergency Fuel Distribution (15 July 1999) (on file with CLAMO).

<sup>248</sup> See *supra* text accompanying notes 229-232.

purchase these gifts. While JAs vigilantly explained the gift-giving rules in a variety of formats, including information papers, legal reviews, e-mails, charts, and personal counseling, the message required constant repeating.

Unit coins and certificates may be purchased with OMA funds and awarded for unique contributions to a mission. These items must be given as an award to soldiers or DOD appropriated fund civilian employees but must not be given as a token to all mission participants. Coins and certificates purchased with O&M funds may not be given to superiors, foreign officers, or as gifts.<sup>249</sup> Gifts presented to authorized guests in connection with official courtesies may be purchased with Official Representation Funds (ORF).<sup>250</sup> An authorized guest is one whose rank, position, function, or stature justifies entertainment. Authorized guests include distinguished citizens, military personnel, and government officials meeting regulatory criteria.<sup>251</sup> Generally, DOD personnel are not considered authorized guests, unless listed in the governing regulations.<sup>252</sup> Finally, commanders may always use personal funds to purchase gifts for Task Force visitors.

***g. Know When to Ask for Procurement Funds.***

The expense/investment threshold requires that items costing in excess of \$100,000 and items that are centrally managed, whether in excess of \$100,000 or not, be purchased with procurement appropriations rather than OMA.<sup>253</sup> Proposed purchases during the deployment often conflicted with this threshold. There were several requirements for radios and warning systems that were centrally linked through some type of base station. JAs

<sup>249</sup> See U.S. DEP'T OF ARMY, REG. 600-8-22, MILITARY AWARDS (25 Feb. 1995).

<sup>250</sup> Representational funds are a subcategory of funds called "Emergency and Extraordinary Expenses" (E&E). 10 U.S.C. § 127 (2000). E&E funds are an "earmarked" portion of the annual OMA appropriation of DOD and each of the military departments. As such, the earmarked funds represent a formal subdivision of funds. E&E funds are tightly controlled by the Secretary concerned. See generally U.S. DEP'T OF DEFENSE, DIR. 7250.13, OFFICIAL REPRESENTATION FUNDS (23 Feb. 1989); U.S. DEP'T OF ARMY, REG. 37-47, REPRESENTATION FUNDS OF THE SECRETARY OF THE ARMY ¶ 2-3 (31 May 96) [hereinafter AR 37-47]; U.S. DEP'T OF AIR FORCE, INSTR. 65-603, OFFICIAL REPRESENTATION FUNDS: GUIDANCE AND PROCEDURES (1 Nov. 1997); U.S. DEP'T OF NAVY, SEC'Y OF THE NAVY INSTR. 7042.7, GUIDELINES FOR USE OF OFFICIAL REPRESENTATION FUNDS (5 Nov. 1998).

<sup>251</sup> AR 37-47, *supra* note 250, ¶ 2-3.

<sup>252</sup> *Id.* ¶ 2-4.

<sup>253</sup> This limitation is established by annual legislation. See The Department of Defense Appropriations Act, 2001, Pub. L. No. 106-259, § 8043, 114 Stat. 656, 682 (2000). See also U.S. DEP'T OF DEFENSE, REG. 7000.14-R, DEPARTMENT OF DEFENSE FINANCIAL MANAGEMENT REGULATION, vol. 2A, ch. 1, ¶ 010201 (June 2000); and U.S. DEFENSE FINANCE AND ACCOUNTING, MANUAL 37-100-FY, app. A (2000).

reviewing these types of purchases considered many possible alternatives to assist the Task Force in fulfilling the requirements. JAs recommended leasing some of the equipment because leases do not fall under the same investment threshold requirements and they can be funded with OMA. JAs also encouraged the Task Force to review the requirements, in an effort to bring the purchase price below the \$100,000 threshold.<sup>254</sup> Additionally, JAs were involved in finding alternate sources of equipment that cost less than the threshold and did not have to be centrally operated.<sup>255</sup>

JAs should be aware that it is extremely difficult for task forces and higher commands to get procurement funds for contingency operations. On rare occasions, DOD or DA provided small amounts of procurement funds (typically for force protection measures) to Task Force Falcon when USAREUR made a request through resource management channels, but the vast majority of the requests for procurement funds were denied.<sup>256</sup> Therefore, JAs need to be vigilant and ensure that requirements are properly described to keep them under the expense/investment threshold, and if that is not possible, counsel their commanders to lease what they need.

## G. CLAIMS

*The Army Claims Program investigates, processes, adjudicates, and settles claims on behalf of and against the United States world-wide “under the authority conferred by statutes, regulations, international and interagency agreements, and DOD Directives.”*<sup>257</sup>

Task Force Falcon, through the first two years of the mission, did not pay foreign claims in Kosovo.<sup>258</sup> The MTA specifically provided that neither the “International Security Force (‘KFOR’) nor any of its personnel

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<sup>254</sup> This was the method used to approve the purchase of fifty radios and a repeater system to connect all the radios to the same secure system. The JA advised separating the radios, which would operate independently from each other, and the base from the remaining items forming the system, and purchasing those without the repeater station. See Kosovo AAR, *supra* note 92, at 548.

<sup>255</sup> This occurred when a JA reviewed the Task Force proposal to purchase an early warning system that outfitted all of the living quarters and the guard towers with sirens, lights, and video cameras, and which were all connected to a central computer monitoring system. The total cost of the system was \$1.5 million. Because no procurement funds were available, the Task Force purchased tornado warning horns mounted on poles as a warning system until procurement funds became available. *Id.*

<sup>256</sup> Sprunk E-mail, *supra* note 217.

<sup>257</sup> FM 27-100, *supra* note 29, ¶ 3.7.

<sup>258</sup> The U.S. and NATO paid claims in FYROM.

or staff shall be liable for any damages to public or private property that they may cause in the course of duties related to the implementation” of the MTA.<sup>259</sup> The largest practical impediment to the payment of claims was the almost total absence of legitimate proof of ownership documents for automobiles and real property. Without such proof, there was no way to determine if the claimant was actually entitled to payment.<sup>260</sup>

Potential claimants were informed of the claims policy, asked to fill out a basic claims information form, and told that if the policy were to change, they would be able to file a claim at that time. Soldiers distributed the basic claims information forms when they were involved in an accident but told potential claimants about the current policy.<sup>261</sup> The JAs briefly reviewed the claims and filed information that had been provided by the potential claimant. They also prepared SOPs for adjudicating and paying foreign claims. U.S. Army Claims Service, Europe, prepared to augment the Task Force to catch up on what was anticipated to be a large backlog of claims should the policy change.

Problems occasionally arose when commanders promised claims repayment for damages the Task Force was incapable of reimbursing. Making clear the claims posture in predeployment briefings may be the only way of ensuring the correct information is disseminated to locals.

To engender goodwill without the claims program, soldiers were authorized, in some circumstances, to perform minor repairs to items the military damaged.<sup>262</sup> For example, if a tracked vehicle backed into a wall and knocked it down, engineers might return to rebuild the wall. However, many circumstances that otherwise would have given rise to compensable claims went unpaid because of this policy.

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<sup>259</sup> MTA, *supra* note 3, at app. 3, ¶ B.

<sup>260</sup> E-mail from MAJ Martin L. Sims, former U.S. Army Claims Service Europe Deputy, to CLAMO (6 Sept. 2001) (on file with CLAMO).

<sup>261</sup> See Kosovo AAR, *supra* note 92, at 528.

<sup>262</sup> See E-mail from Legal Advisor, Task Force Falcon, to Judge Advocates, Task Force Falcon (4 Mar. 2000) (on file with CLAMO).

## H. LEGAL ASSISTANCE

*Legal assistance is the provision of personal civil legal services to soldiers, their family members, and other eligible personnel. The mission of the Army Legal Assistance Program is “to assist those eligible for legal assistance in a timely and professional manner . . . .”*<sup>263</sup>

### 1. Tailor Legal Assistance Support to the Client.

Tailoring legal assistance to support the client begins with appropriate home station briefings. Legal offices supporting a unit preparing for deployment can practice extensive preventive legal assistance. JAs and legal specialists need to ensure that soldiers take the few minutes available during the predeployment processing to think about personal finances, leases, court appearances, and any other potential issues that may arise during the length of the deployment. If soldiers will be deploying during tax season, JAs should inform the soldiers of the various ways to file income taxes, either in the deployed theater or in the rear through a power of attorney.<sup>264</sup>

Soldiers distracted by legal problems can be a mission detractor and become a command discipline problem. This legal assistance problem can be exacerbated when the program designed to assist soldiers is not “user friendly.” JAs realized this and addressed it in many ways.

Task Force Falcon JAs set legal assistance hours to conform with normal business hours in the U.S. During each rotation, one battalion was CONUS-based. Additionally, many of the issues that arose from Germany-based soldiers could only be resolved by making contact with individuals and businesses in the U.S. Convenient legal assistance hours prevented clients from having to return twice for no reason other than timing.

As operations within Kosovo became stable, the legal assistance attorney ran “Legal Assistance Road Shows” to remote locations throughout the sector. The NCOIC of the tax program during the first year used the

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<sup>263</sup> FM 27-100, *supra* note 29, ¶ 3.8.

<sup>264</sup> See E-mail from SGT Stephanie Suski, former NCOIC Income Tax Program, Task Force Falcon, to CPT Alton L. Gwaltney, III, CLAMO (8 June 2001) [hereinafter Suski E-mail] (on file with CLAMO).

road show in early 2000 with great success.<sup>265</sup> The road show was adopted for all legal assistance issues by the fall. Each road show brought services to a relatively small number of clients, but it brought services to soldiers who would otherwise have had to use free time during recovery periods at the main base camp to address legal assistance matters.<sup>266</sup>

## ***2. Get Authority for Responsible Legal Specialists to Perform Notary Services.***

Absence of the JAs in the Task Force Legal Section from Camp Bondsteel often left legal specialists not permitted automatically by Army regulation to perform notary services as the sole soldier support to the legal assistance mission.<sup>267</sup> SJAs may grant authority to legal specialists in the grades of E-3 and E-4 to perform notary services if the legal specialists possess appropriate judgment and maturity, serve under the supervision of a JA, and complete notary training.<sup>268</sup> An extra notary can be a valuable legal assistance asset.

## ***3. Be Prepared to Provide Advice on Imminent Death Situations.***

A tragic consequence of any military action is the death of soldiers. Commanders rely on JAs to provide advice on survivor benefits in situations where a soldier is wounded seriously and may soon die. The core legal issue is whether the soldier should die on active duty or be medically retired. In most circumstances when death is imminent, retirement for physical disability provides greater benefits; however, due to variables that affect benefits, an exact monetary comparison of benefits between death on active duty and death in a retired status is impossible to discuss in this Book. To assist JAs on future deployments, an information paper is included in Appendix IV-38.

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<sup>265</sup> See *id.* Starting in January 2000, the Task Force Falcon legal section offered income tax assistance, to include electronic filing of tax returns from Kosovo. This represents a vast advance in the JAGC's ability to provide legal services to deployed soldiers. See, e.g., HAITI, *supra* note 35, at 123 n.405 (discussing that soldiers deployed to Haiti had to mail tax returns because electronic filing capability was hindered due to the inadequacy of telephone lines.).

<sup>266</sup> See 1AD AAR, *supra* note 156, § III, ¶ G.

<sup>267</sup> See U.S. DEP'T OF ARMY, REG. 27-55, NOTARIAL SERVICES ¶ 2-2a(2) (10 Apr. 1997) (gives notary power to noncommissioned officers performing in the 71D MOS).

<sup>268</sup> *Id.* ¶ 1-6.

## I. BASE CAMP OPERATIONS

Task Force Falcon occupied Camp Bondsteel as its headquarters. This is where the majority of legal assets were located. JAs were also located at Camp Monteith, about twenty miles from Camp Bondsteel, in the city of Gnjilane, Kosovo, and CAS in FYROM.<sup>269</sup> Three CONUS infantry battalions also brought JA support during three separate rotations to Kosovo.<sup>270</sup> These JAs were located outside both Camps Bondsteel and Monteith. JAs faced many issues unique to base camp operations.

### 1. *Give Careful Consideration to the Base Camp Assignment.*

The nature of operations at a base camp requires both the JA and legal specialist to handle issues arising across the core legal disciplines. Being separated from the legal support of the headquarters requires the JA to be proficient in all areas of military law. The legal specialist assigned to the base camp must be able to run an office when operations require the JA to leave the base camp.<sup>271</sup> To be successful in providing legal support to a remote base camp, the JA and legal specialist will have to exercise sound, mature judgment, often beyond that expected of those holding similar rank or time in service.

### 2. *Remain Constantly Aware of the Potential for Conflicts of Interest.*

JAs at a base camp often perform legal assistance<sup>272</sup> and provide advice to the command. The JA and legal specialist constantly have to screen clients and issues for potential conflicts of interest. These conflicts will most often arise in the context of reports of survey, where the JA could be called on to advise a survey officer or a respondent, but the conflicts could also arise in any circumstance where a soldier and the soldier's

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<sup>269</sup> After the first year, the U.S. regularly supplied a JA to KFOR headquarters in Pristina. Additionally, JAs from AFSOUTH and Contracting Command Europe regularly visited Kosovo to address specific concerns. After the first year of operations, a full time contracting attorney operated out of CAS to address contracting and fiscal issues in both FYROM and Kosovo.

<sup>270</sup> 1-187, Infantry Battalion, 101st Airborne (Air Assault) Division; 2-327 Infantry Battalion, 101st Airborne (Air Assault) Division; and 1-325 Airborne Infantry Battalion, 82d Infantry Division.

<sup>271</sup> "Competent, trustworthy 71D's are an indispensable asset in a deployed environment. In addition to relieving the JAs of many administrative burdens, such as weekly reporting and ministerial office functions, a knowledgeable 71D may also prove valuable in providing . . . procedural advice to soldiers in the attorney's absence." Bagwell AAR, *supra* note 142, ¶ 3.

<sup>272</sup> The JAs operating out of base camps performed considerable legal assistance. See Kosovo AAR, *supra* note 92, at 489 (estimating 75% of time performing legal assistance).

command are in conflict.<sup>273</sup> The JA operating at a base camp legal office must ensure that there is a plan to address conflicts so that all parties requiring legal advice are able to get advice in a timely manner.<sup>274</sup>

### ***3. Expect Confusion if Base Camps Are Located in a Different Country.***

CAS, located in FYROM, served as the intermediate staging base (ISB) for operations in Kosovo. A battalion of infantry soldiers along with a Rear Area Operations Command (RAOC), medical, aviation, and other support organizations occupied CAS. All soldiers heading into or out of Kosovo passed through CAS. Despite being considered Task Force Falcon (Rear), CAS's mission, ROE, and relationship with the host nation were distinctly different than those of Task Force Falcon.

Soldiers operating out of CAS fell under the Chairman of the Joint Chiefs of Staff Standing Rules of Engagement rather than the mission specific ROE of soldiers in Kosovo. This distinction required different ROE cards and training for the soldiers of CAS, and it required soldiers transiting between Kosovo and CAS to remain aware of the change in ROE when in FYROM.

The distinction between the ROE also affected one significant operation at CAS. Approximately one week before the one-year anniversary of the initiation of the air campaign in Kosovo, the head of security for the U.S. Embassy in Skopje requested that CAS provide a security detail in the event that planned demonstrations turned violent. The battalion commander at CAS requested from the Task Force Falcon Commander in Kosovo the release of certain weapons, the use of which the ROE for the Kosovo mission restricted. The Task Force Falcon Commander granted this release. JAs learned about the mission five days before the mission was to occur. After asking a few background questions, the JAs realized that no one in the appropriate chain of command was aware of this tasking, which had come directly from the head of security at the Embassy to the battalion commander. The JA also realized that the battalion was operating under the belief that the ROE for the Kosovo mission was applicable for the Embassy mission. Recognizing these problems, the legal advisors were able to

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<sup>273</sup> This could include debt counseling, spousal or child support, administrative investigations recommending nonpunitive actions, and early criminal investigations.

<sup>274</sup> Within Task Force Falcon operations, conflict cases were referred to the Camp Bondsteel main legal office. See, e.g., Bagwell AAR, *supra* note 142, ¶ 3.

coordinate within legal channels for the battalion to receive authorization from the proper approval authorities before mission initiation.<sup>275</sup>

The JAs assigned to CAS, which was located in a NATO Partnership for Peace Country,<sup>276</sup> had to address claims and SOFA issues.<sup>277</sup> The JAs involved in operations at CAS also had to address concerns of a functioning host nation government and understand additional bilateral and multilateral agreements affecting military operations.<sup>278</sup>

## J. PERSONNEL, TRAINING, AND EQUIPMENT

Kosovo operations confirmed the validity of past lessons learned under this heading.<sup>279</sup> Determining appropriate personnel for a deployment is driven by the mission and nature of the operation. Operations in Kosovo again saw the need to assign JAs to base camps where less than a brigade of soldiers operated. To successfully accomplish the mission, certain JAs needed Top Secret security clearances and the ability to communicate by secure means. Focused training, in both soldier and legal skills, remains a key to success.

Other lessons, not highlighted in previous Lessons Learned, arose during operations in Kosovo with implications for future legal operations. Legal offices in the rear supplemented operations with the use of temporary civilian employees. While deployed, JAs realized the value of having U.S. JAs occupy billets in higher headquarters. Training for the Kosovo mission highlighted the need to understand the complex political and social environment in which the deployed personnel would be operating.

### *1. A Successful Deployment is a Team Effort.*

It is difficult for a legal office in a deployed environment to accomplish its mission without assistance from every level of the JA chain

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<sup>275</sup> *Id.* ¶ 2.

<sup>276</sup> Partnership for Peace (PFP) is the basis for practical security cooperation between NATO and individual partner countries. Activities include defense planning and budgeting, military exercises, and civil emergency operations. There are now twenty-six members of the PFP program. Additional information on the PFP is available at <http://www.nato.int/pfp/pfp.htm> (last visited 24 Sept. 2001).

<sup>277</sup> Agreement Among the States Parties to the North Atlantic Treaty and the Other States Participating in the Partnership for Peace Regarding the Status of their Forces, June 19, 1995, T.I.A.S. No. 12,666 [hereinafter PFP SOFA].

<sup>278</sup> For a discussion about these issues see *supra* Ch. III, text accompanying notes 48-54, 162-175.

<sup>279</sup> See HAITI, *supra* note 35, at 158-66; BALKANS, *supra* note 13, at 187-98.

of command and from subject matter experts at The Judge Advocate General's School, U.S. Army (TJAGSA). For a deployed JA, understanding when to seek assistance is important. Taking issues outside the task force can be viewed as “disloyal” or “chain of command jumping” if not done judiciously. Informing the Chief of Staff or the Commander prior to taking an issue to an outside headquarters may be prudent depending on the sensitivity of the issue.

Making the deployment the priority of effort for offices in the rear takes clear guidance from the SJA.<sup>280</sup> JAs deployed to Task Force Falcon cited examples of JAs, NCOs, and DA civilians, at the Division, Corps, USAREUR, and EUCOM levels who were willing to stop what they were doing to support the deployment. Throughout Germany, the Judge Advocate General's Corps assisted with training, planning, and resourcing for the mission to Kosovo.<sup>281</sup>

***a. Deploy the Minimum Staffing Necessary to Accomplish the Essential Legal Mission and Retain Surge Capability.***

*There were times when I would walk in the office and say [to a judge advocate], “What are you doing tomorrow? . . . Nope. You’re going to Kosovo.”<sup>282</sup>*

Commanders and staff often covet the skills that JAs bring to a deployment. The ability to sort through a myriad of factual details while understanding the overarching political considerations and the international legal framework for a mission is a valuable staff skill that someone with legal training is capable of performing. When performing a troop-to-task analysis to determine the appropriate mix of legal talents necessary to support a task force, an SJA should strive to provide the minimum staffing to accomplish the legal mission. This level of staffing might not equal all of the requests from commanders who believe they can gainfully employ a JA,

<sup>280</sup> As described by the SJA, 11D, “In the Central Region, everybody in my office knows that the priority mission is to take care of [our deployed JAs]. If they call on any question, you don’t go to sleep until you’ve either given them the answer or you’ve told them when you can give them the answer and it’s within a suspense date they can live with.” Kosovo AAR, *supra* note 92, at 337.

<sup>281</sup> V Corps provided JA support to each rotation in Kosovo. 1AD JAs commented that training provided by 11D JAs on Kosovo situational and legal awareness was a positive influence on the 1AD preparation for the Kosovo mission. 1AD AAR, *supra* note 156, § 5, ¶ A. 11D JAs cited 1AD’s willingness to provide Observer/Controller augmentees as a positive influence on 11D’s predeployment training. Kosovo AAR, *supra* note 92, at 330.

<sup>282</sup> Kosovo AAR, *supra* note 92, at 332 (quoting LTC Mark Cremin, Staff Judge Advocate, 11D).

but could require assigning a JA down to battalion level to provide appropriate support.<sup>283</sup>

When providing staffing at a level to support only the essential legal mission, SJAs must be able to furnish additional support when necessary. When 1ID was faced with the preliminary murder investigation in *United States v. Ronghi*, while concurrently investigating allegations of abuse by members of 3-504 PIR, the 1ID SJA quickly deployed two additional JAs and a court reporter to assist. V Corps also deployed an additional JA to assist. When faced with a two-month National Guard lapse in legal coverage at CAS, another JA from 1ID was quickly deployed. When JAs recognized the need for U.S. JA support at KFOR headquarters in Pristina, 1ID deployed a captain for six weeks. To provide officers and soldiers when needed, everyone must remain aware of the ongoing situation and be prepared to deploy.<sup>284</sup>

***b. Consider Using Civilian “Over Hires” in Rear Offices, but Realize it Takes Planning and Time.***

Unlike recent USAREUR experiences with peacekeeping in Bosnia, the mission to Kosovo did not include authorization for reserve augmentation for legal offices in Germany.<sup>285</sup> It is now axiomatic that a deployment does not necessarily lead to a decrease in legal issues in the rear.<sup>286</sup> To fill the gap left by the deployment, 1ID OSJA was able to temporarily hire four extra attorneys, have them certified by the TJAG,<sup>287</sup> and employ them in legal assistance and claims positions. Processing a civilian hiring action takes time, so for this hiring to be successful, it requires forethought and planning.<sup>288</sup>

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<sup>283</sup> Three battalion-sized units deployed to Kosovo had a dedicated JA. Another JA operated at Camp Monteith, the location of two battalion headquarters. There was also a JA at CAS, the location of less than a battalion of troops.

<sup>284</sup> See Kosovo AAR, *supra* note 92, at 331-32.

<sup>285</sup> See BALKANS, *supra* note 13, at 188.

<sup>286</sup> See FM 27-100, *supra* note 29, ¶ 3.3 (“The SJA should expect an increase in the home station military justice workload, and must ensure that resources are properly allocated between the deployment theater and home station.”).

<sup>287</sup> See U.S. DEP’T OF ARMY, REG. 690-200, GENERAL PERSONNEL PROVISIONS, ch. 213, subch. 4, ¶ 4-3 (C7, 3 Sept. 1993); U.S. DEP’T OF ARMY, REG. 27-1, JUDGE ADVOCATE LEGAL SERVICES 2-1(x) (30 Sept. 1996).

<sup>288</sup> See Kosovo AAR, *supra* note 92, at 342, 344.

***c. A U.S. Judge Advocate Needs to Be in the Key Decision Centers.***

For large segments of time during the first year of the mission, there was not a U.S. JA at KFOR Headquarters.<sup>289</sup> JAs from Task Force Falcon would visit KFOR Headquarters in Pristina once a month for the legal advisors meeting, but there was no one in the legal department at KFOR pushing issues the U.S. Task Force raised. Because of the nature of the decisions made at the KFOR level, and because of the liaison between KFOR and the UNMIK, a U.S. JA would have been invaluable. This was particularly important during the first year of the operation while the mission was starting.<sup>290</sup> U.S. JAs from various branches of the armed services deployed for short rotations to KFOR Headquarters after the first year of the mission and remedied this problem.

Within Task Force Falcon, attorneys were involved in all of the key decision-making processes. Attorneys attended all planning meetings, IO working groups, force protection working groups, daily battle updates, command and staff meetings, JIC meetings, and the daily Analysis and Control Element (ACE) intelligence updates. To provide assistance in these areas, JAs must “speak the language” of the operators. The JAs must understand the military decision-making process;<sup>291</sup> they must understand the “decide, detect, deliver, and assess” methodology involved with targeting;<sup>292</sup> and they must understand staff functions.<sup>293</sup>

***d. Expect to Have Units Attempt to Prevent Legal Specialists from Working in a Consolidated Legal Center.***

Within Germany, most legal specialists assigned to battalions work within a consolidated community legal center. This practice leverages economies of scale that allow units without assigned legal assets to receive the same timely legal services as units that do have assigned legal specialists. Even with this arrangement at the 71D’s home station, many units wanted to retain the legal specialists at the unit during the deployment.

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<sup>289</sup> See The notable exception being EUCOM’s deployment of Maj. Brian Palmer, USMC to KFOR during the early stages of the mission and IID’s deployment of CPT May Nicholson from May to June 2000.

<sup>290</sup> See Kosovo AAR, *supra* note 92, at 347-48.

<sup>291</sup> See U.S. DEP’T OF ARMY, FIELD MANUAL 101-5, STAFF ORGANIZATION AND OPERATIONS ch. 5 (31 May 1997); for a brief synopsis of the Military Decision Making Process, see FM 27-100, *supra* note 29, ¶ 4.2.3.

<sup>292</sup> See U.S. DEP’T OF ARMY, FIELD MANUAL 6-20-10, TACTICS, TECHNIQUES, AND PROCEDURES FOR THE TARGETING PROCESS (8 May 1996).

<sup>293</sup> Kosovo AAR, *supra* note 92, at 353, 401; 1AD AAR, *supra* note 156, § 2, ¶ B.

More often than not, the units looked at the legal specialist as another guard, driver, radio operator, or personnel asset.<sup>294</sup> Prior coordination between the Chief Legal NCO, SJA, task force legal advisor, and battalion command group to define the roles and responsibilities of 71Ds once deployed can prevent these issues from arising once in theater.

***e. Certain Judge Advocates Will Need Top Secret Clearances.***

Daily operations of Task Force Falcon required members of the legal section to possess Top Secret security clearances. Every day, the Commanding General received an ACE intelligence briefing. Numerous topics, including significant detention facility issues, requiring JA input arose during these briefings. Access to the ACE briefing required a Top Secret clearance. Any JA directly involved with advising the Task Force Commander should possess a Top Secret clearance to ensure access to all necessary information. Additionally, the JA tasked to assist operational planners should also possess a Top Secret clearance. In Task Force Falcon, this included the legal advisor, deputy legal advisor, and operational law JA.

***2. Training***

***a. Proficiency in Basic Soldier Skills Is Critical to Success in the Early Stages of a Mission.***

Deployment to an austere environment requires all members of a legal team to understand basic soldier skills. Reading a map, raising a tent, operating a stove, using a radio, firing a weapon, and driving a HMMWV must be trained well in advance of deployment notification so that upon notification, training can focus on mission-specific responsibilities.<sup>295</sup> In addition to basic soldier skills, legal section soldiers involved in the initial deployment need to deploy someone with automation expertise to assist in set up.<sup>296</sup>

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<sup>294</sup> This is not to say that legal NCOs and specialists should not pull guard duty or be exempt from their unit's duty roster. Every rotation worked out agreements with the 71D's units to facilitate accomplishing both the legal mission and the unit's missions.

<sup>295</sup> See Kosovo AAR, *supra* note 92, at 354; 1AD AAR, *supra* note 156, § V, ¶ A.

<sup>296</sup> See Kosovo AAR, *supra* note 92, at 432.

***b. Training Should Include Basic Country Background Material and Political Information.***

Predeployment training should include country overviews and political assessments.<sup>297</sup> All deployed JAs worked closely with the Task Force political advisor when advising the commander and staff. To advise the Task Force, JAs need to understand both U.S. and local political issues involved with the mission.<sup>298</sup>

***c. Continue Training in Theater.***

Once deployed, training for members of the legal task force should continue as the mission allows. Being in a location with all members of a combat team provides fertile ground for training opportunities. The members of Task Force Falcon were eager to explain to the members of the legal section how their weapons systems worked, what their mission in Kosovo entailed, and what their mission in wartime would be.

***3. Equipment***

***a. The Rucksack Deployable Law Office Concept Is Sound.***

The first legal assets in Kosovo deployed with the doctrinally prescribed Rucksack Deployable Law Office and Library (RDL).<sup>299</sup> With the RDL, the legal advisor was capable of sustained legal operations for weeks into the deployment. The legal team used all capabilities within the RDL, and occasionally, the legal section was the only staff section with the ability to perform certain functions like printing or copying. Later-deploying assets augmented the RDL with desktop computers and laser

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<sup>297</sup> 1AD AAR, *supra* note 156, § II, ¶ D. JAs received training on Kosovo history and political background of the region from a civil affairs officer during preparation for the MRE at Hohenfels, Germany. *See* Combat Maneuver Training Center, Country Overview, PowerPoint presentation (1999). A copy of the slides is included in Appendix IV-39.

<sup>298</sup> This lesson is not restricted to the legal community. Understanding the political situation in which the Task Force operated was important to all members of the Task Force. The investigation into 3-504 PIR suggests that a lack of understanding of the operating environment contributed to the problems faced by A Company, 3-504 PIR, in Vitina, Kosovo. In his conclusion to the 15-6 investigation, COL Morgan wrote, "Although the allegations of misconduct and excessive use of force appear isolated to A/3-504 located in Vitina, I found this was due to the ethnic mix in Vitina (approximately 30% Serbian; 70% Albanians). Given the battalion and company commander's propensity towards Serb favoritism . . . , Vitina was the natural focal point for abuses and excessive use of force against the Albanians." *See* EXSUM, *supra* note 44, at 9.

<sup>299</sup> FM 27-100, *supra* note 29, ¶ 4.4.1.

printers. When combined with Internet access, the RDL is a powerful legal resource. Once the Task Force became established, a large purchase of computer equipment allowed the equipment initially brought to Kosovo to be returned to Germany.

Training on the use of the RDL before the deployment to ensure compatibility with other equipment used by the Task Force is crucial. Additionally, preventive maintenance, such as the use of compressed air dusters and keyboard covers, expand the lifespan of the RDL system in harsh, dusty environments. Even with attempts to prevent deterioration caused by the environment, initial RDLs deployed and remaining in Kosovo past the initial six-month rotation were inoperable by the end of the eighth month.

Property accountability during deployments can be an overwhelming task. The rapid development of a deployment can lead hand receipt holders to lose accountability of assigned property. Proper accountability, through sub-hand receipts, is essential, and deployed property should be hand receipted to a deploying soldier and not left on the hand receipt of someone remaining in the rear.

***b. Access to a Secret Internet Protocol Router Network Is Required in Today's Operating Environment***

Secure e-mail and telephone capabilities are essential for both deployed JAs and JAs in the rear. The nature of military operations requires JAs to be able to communicate over secure means. Initially, the JAs in 11D in Germany could receive secure e-mail only through the Division Headquarters about a mile away. This proved to be unworkable, and a secret Internet protocol router network (SIPRNET) was installed within the OSJA. In addition, there were levels of command within the operation that conducted all military business, classified or not, on secure systems. To communicate with those conducting business solely on secure networks, JAs must have access to the same.<sup>300</sup>

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<sup>300</sup> See Kosovo AAR, *supra* note 92, at 353.

***c. Obtaining Military Equipment to Accomplish the Legal Mission Will Require Persistence and a Strong NCOIC Relationship with the HHC.***

Current Army Military Tables of Organization and Equipment (MTOE) do not provide adequate vehicles and radios for a legal section to accomplish its mission.<sup>301</sup> Attending court hearings, investigating criminal cases, providing legal assistance, and accomplishing the various additional tasks required to complete the legal mission requires mobility and communication. Without appropriate allowance for material on the MTOE, obtaining HMMWVs and radios can be a factor of personality. A strong relationship between the NCOIC and the headquarters company commander and first sergeant is often crucial in the attempt to obtain equipment necessary to accomplish the legal mission.<sup>302</sup>

***d. Standing Operating Procedures Are Critical for Future Mission Success.***

To successfully capture how a legal team is accomplishing its mission, the JAs involved must take time to update the Standing Operating Procedures (SOPs) under which they are working. Preparing work product not directly related to the mission at hand can be distracting, but, if the procedures are not captured contemporaneously, they are frequently incapable of being reproduced. SOPs provide a product invaluable to replacement JAs.<sup>303</sup>

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<sup>301</sup> See 1AD AAR, *supra* note 156, § II, ¶ B; Kosovo AAR, *supra* note 92, at 445-46. The typical Staff Judge Advocate section of an infantry division has three HMMWVs and no radios. See U.S. DEP'T OF ARMY, MILITARY TABLE OF ORGANIZATION AND EQUIPMENT, HHC INF DIV (MECH) line 36 (Apr. 2001), available at <https://www.usafmsaridd.army.mil/toe.cfm?toenumber=87004A200> (last visited 27 Sept. 2001); see also FM 27-100, *supra* note 29, ¶ 4.4.2 (stating a commander should dedicate four HMMWVs, one five ton truck, and four cargo trailers to a division SJA section).

<sup>302</sup> See Kosovo AAR, *supra* note 92, at 435.

<sup>303</sup> See Schasberger Memo, *supra* note 183, ¶ 1(d) (it is easy to lose continuity from one rotation to the next if appropriate emphasis is not placed on preparing SOPs).

## V. OPERATION PROVIDE REFUGE

“Operation Provide Refuge”<sup>1</sup> was the U.S. humanitarian effort to relieve the overflow of Kosovar refugees into the former Yugoslav Republic of Macedonia (FYROM) and to provide for their resettlement in the U.S. from temporary FYROM facilities.<sup>2</sup> Task Force Provide Refuge (TFPR), an interagency team headed by the U.S. Department of Health and Human Services (DHHS), contained a military component of U.S. Army Reserve (USAR), Active Duty (AD), and New Jersey Army National Guard (NJ ARNG) soldiers. Several government agencies and nongovernmental organizations (NGOs) and the Fort Dix, New Jersey (Fort Dix), team of civilians, contractors, and military personnel came together to complete TFPR and execute Operation Provide Refuge.

U.S. participation was part of a multinational effort to assist Kosovo and neighboring countries that received refugees forced out of Kosovo.<sup>3</sup> Appendix V-1 lists the countries that supported the Kosovar refugees. The resettlement operation at Fort Dix was a response to the burden that the Kosovar mass exodus placed on the FYROM government and international relief operations.<sup>4</sup> On 21 April 1999, Vice President Gore announced the U.S. commitment to relocate up to 20,000 Kosovar refugees to the U.S.<sup>5</sup> President Clinton's authorization, Presidential Determination No. 99-23, is included in Appendix V-2.<sup>6</sup> The Department of State (DOS) expected that

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<sup>1</sup> Operation Provide Refuge was called "Operation Open Arms" until 10 May 1999. See E-mail from William S. Spraitzar, Army War College, to COL John E. Baker, Fort Knox, Ky. (11 May 1999) (on file with CLAMO).

<sup>2</sup> See generally Fact Sheet, Bureau of Population, Refugees, and Migration, U.S. Dep't of State, U.S. Support for Balkan Refugees (May 17, 1999), [http://www.state.gov/www/global/prm/fs\\_990517\\_balkan\\_aid.html](http://www.state.gov/www/global/prm/fs_990517_balkan_aid.html) [hereinafter Balkan Refugees Fact Sheet]; see also Joint Task Force Provide Refuge, Standard Operating Procedures, Joint Information Bureau, annex C (Prepare Briefings, Briefers and Interviewees), app. 2 (Briefing/Interview Preparation Guide), Tab A (Sample Questions and Answers) (16 May 1999) [hereinafter JIB SOP] (on file with CLAMO). Macedonia was not the only country to receive a flood of Kosovar Albanians. A significant number of Kosovar Albanians also fled to Albania. As of May 1999, 282,000 Kosovar refugees were living with 47,700 Albanian families (7% of all Albanian families); 45,000 additional refugees were housed in various Albanian collection centers; and another 76,600 refugees were spread across thirty Albanian refugee camps. Balkan Refugees Fact Sheet, *supra*.

<sup>3</sup> See Fact Sheet, Bureau of Population, Refugees, and Migration, U.S. Dep't of State, Admission Program for Kosovar Albanians (April 29, 1999), <http://www.fema.gov/nwz99/ks429.htm>.

<sup>4</sup> See Headquarters, U.S. Army, Fort Dix, Force Projection Directorate, Operations Order 99-005 ¶ 1 (25 May 1999) [hereinafter OORDER 99-005] (on file with CLAMO).

<sup>5</sup> See Balkan Refugees Fact Sheet, *supra* note 2.

<sup>6</sup> Presidential Determination No. 99-23, The White House, Memorandum for the Secretary of State, Subject: Determination Pursuant to Section 2(c)(1) of the Migration and Refugee Assistance Act of 1962,

most refugees would want to return to Kosovo after the air campaign and that the U.S. would assist refugees in returning when it was safe to do so.<sup>7</sup> Refugees choosing to stay in the U.S. would remain at Fort Dix temporarily, completing the admissions process and receiving services until placement with sponsoring families. DOS anticipated the temporary stay to be about two weeks.

The primary plan for moving refugees into the U.S. was to complete refugee processing and documentation in FYROM, with the refugees then traveling directly to their sponsorship site. Because of delays in establishing a processing system in FYROM, the U.S. used the secondary plan of establishing a center in the U.S. to process and temporarily house refugees.<sup>8</sup>

The Department of Defense (DOD) supported DHHS, the lead federal agency (LFA), in the resettlement of 4,049 Kosovar refugees. The primary DOD operational force for the mission was Joint Task Force 350, commonly referred to as “Joint Task Force Provide Refuge” (JTF PR).<sup>9</sup> The JTF PR mission was to establish a welcome center supporting DHHS in the reception of the Kosovar refugees to facilitate their link-up with relatives or sponsors in the U.S.<sup>10</sup> A Memorandum of Agreement between DOD and DHHS (hereinafter referred to as DOD/DHHS MOA), effective 4 May 1999, was valid through 30 September 1999.<sup>11</sup> The DOD/DHHS MOA is included in Appendix V-3.

Fort Dix was the temporary processing center until refugee service agencies identified sponsor families. U.S. Atlantic Command (USACOM) alerted U.S. Army Forces Command (FORSCOM) in early April 1999 to review and update mass immigration plans.<sup>12</sup> The initial planning focus was

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as Amended (May 18, 1999), <http://clinton6.nara.gov/1999/05/1999-05-18-presidential-determination-on-kosovar-refugees.html> [hereinafter PD 99-23].

<sup>7</sup> See Balkan Refugees Fact Sheet, *supra* note 2.

<sup>8</sup> See U.S. Army Forces Command, After Action Review, Operation Provide Refuge, <http://freddie.forscom.army.mil/macaword/jtpraar.doc> [hereinafter FORSCOM AAR] (last visited 2 July 2001).

<sup>9</sup> See Directorate of Information Management, Fort Dix, N.J., After Action Review, Operation Provide Refuge, Phase I (June 3, 1999) [hereinafter DOIM AAR] (on file with CLAMO).

<sup>10</sup> See 1079th U.S. Army Garrison Support Unit, After-Action Report on Utilization and Involvement of the 1079th USA Garrison Support Unit in Support of Joint Task Force Operation Provide Refuge (22 July 99) [hereinafter 1079<sup>th</sup> AAR] (on file with CLAMO).

<sup>11</sup> See Message, 121700 (EDT) May 99, JTF Provide Refuge, subject: JTF Provide Refuge SITREP 10 [hereinafter SITREP 10] (on file with CLAMO).

<sup>12</sup> See FORSCOM AAR, *supra* note 8, at 4. Pursuant to CHAIRMAN, JOINT CHIEFS OF STAFF, UNIFIED COMMAND PLAN 1999 (7 Oct. 1999) (classified document) [hereinafter UCP 99], the Chairman, Joint

on identifying suitable sites for resettlement operations. FORSCOM evaluated potential sites based upon two criteria:

- the resettlement operation would not be a tent operation; and
- the site should be east of Chicago, Illinois.<sup>13</sup>

The criteria narrowed the viable installations to two U.S. Army Reserve Command (USARC) installations: Fort Dix and Fort McCoy, Wisconsin (Fort McCoy).<sup>14</sup> General Thomas A. Schwartz, Commanding General, FORSCOM, selected Fort Dix because of the following:

- proximity to ethnic Albanian populations;
- availability of adjacent McGuire Air Force Base (AFB);
- barracks facilities that could be readily modified for refugee housing; and
- availability of contractor support.<sup>15</sup>

The initial Fort Dix housing area was called the “Village,” and held 3,000 refugees. An expansion, called the “Hamlet,” increased capability to 4,200. The refugees were housed in “dormitories,” which were former Army barracks. To make it look like a “village,” Fort Dix put up a wooden garden fence around the dormitories and planted new shrubs and flowers.

The first refugees, a total of 453, arrived at McGuire AFB on 4 May 1999.<sup>16</sup> The 453 refugees quickly became 454 with the birth of a child. The refugees were medically triaged at the airfield. Three refugees were evacuated to the U.S. Public Health Service (PHS) for more extensive medical treatment, and the remaining refugees were transported to the Village for in-processing. The longest in-processing period was about eight hours for Flight #2, and eventually in-processing time was reduced to less than three hours.<sup>17</sup>

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Chiefs of Staff (CJCS), reassigned geographical responsibilities for the commanders of the various combatant commands. In UCP 99, the CJCS also renamed Atlantic Command as Joint Forces Command.

<sup>13</sup> See FORSCOM AAR, *supra* note 8, at 4.

<sup>14</sup> Because Fort McCoy is west of Chicago, the requirement that the installation be east of Chicago apparently was not mandatory.

<sup>15</sup> See FORSCOM AAR, *supra* note 8, at 4.

<sup>16</sup> Message, 061700 (EDT) May 99, JTF Open Arms, subject: JTF Open Arms SITREP 4 [hereinafter SITREP 4] (on file with CLAMO).

<sup>17</sup> *Id.* See also E-mail from LTC Willis C. Hunter, Staff Judge Advocate, JTF Provide Refuge, to MAJ Patrick E. Koepf, Office of the Staff Judge Advocate, U.S. Army Forces Command (17 May 1999) (on file with CLAMO).

PHS worked processing issues with the refugee service agencies that had agreements with DOS. These agencies, through their networks of more than 400 local affiliates, ensured that the refugees were properly resettled. To accomplish this, the agencies offered a wide variety of assistance, such as enrolling children in school, obtaining medical attention, applying for work, and receiving language training.<sup>18</sup> Appendix V-4 lists the refugee service agencies involved in Operation Provide Refuge. Immigration & Refugee Services of America (IRSA) was designated the Joint Volunteer Agency (JVA), serving as the designated spokesman for the other service agencies.

The DOS goal was to bring only refugees who had sponsoring family members in the U.S. However, many refugees brought to the U.S. as part of Operation Provide Refuge did not have sponsor families. In a concerted effort with DHHS and DOS, refugee service agencies identified U.S. families with relatives in FYROM and recruited additional sponsoring families.

Once refugees arrived at the Village and had an opportunity to rest, they underwent additional medical screening and sponsorship processing. Medical personnel observed conditions including diarrhea, uncontrolled hypertension, tuberculosis, lice, and pulmonary emboli.<sup>19</sup> PHS placed two families in a separate area because of possible pulmonary tuberculosis.<sup>20</sup> To satisfactorily address concerns about tuberculosis, PHS met with over 300 private contractors, U.S. Immigration and Naturalization (INS) staff, and the local refugee council.<sup>21</sup> Once in-processing was complete, DOD transported families to communities where official sponsorship had been arranged.

By 6 July 1999, JTF PR combined with subordinate operations centers to reduce manpower requirements.<sup>22</sup> The Director of Military Support (DOMS), the executive agent charged with processing all Military Assistance to Civil Authorities requests, directed that the support capacity for refugees be reduced from 4,200 to 3,000, enabling closure of the

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<sup>18</sup> See Balkan Refugees Fact Sheet, *supra* note 2.

<sup>19</sup> See SITREP 10, *supra* note 11.

<sup>20</sup> See Message, 271700 (EDT [Eastern Daylight Time]) May 99, JTF Provide Refuge, subject: JTF Provide Refuge SITREP 25 [hereinafter SITREP 25] (on file with CLAMO).

<sup>21</sup> See Message, 281700 (EDT) May 99, JTF Provide Refuge, subject: JTF Provide Refuge SITREP 26 [hereinafter SITREP 26] (on file with CLAMO).

<sup>22</sup> See Message, 061700 (EDT) July 99, JTF Provide Refuge, subject: JTF Provide Refuge SITREP 65 [hereinafter SITREP 65] (on file with CLAMO).

Hamlet.<sup>23</sup> Twenty-four-hour operations ceased on 15 July 1999.<sup>24</sup> On 15 July 1999, Brigadier General (BG) James R. Helmly, Commander, JTF PR, conducted a news conference and reported to the media:

*As of this moment, there is one Kosovar refugee guest left at Fort Dix. I would like to report through you to the people of the U.S., "mission accomplished." Your Army, in conjunction and cooperation with a truly professional team of 5 other Federal agencies, 18 volunteer agencies, and the great State of New Jersey, have provided refuge, security, care, compassion, and hope to a group of brutalized people who were formerly in despair and desperation. A total of 4049 refugees arrived here and not one has left without hope and words of praise and thanks for America.*<sup>25</sup>

By 16 July 1999, all refugees had been placed with sponsoring families. JTF PR ceased operations on 30 July 1999.

## **A. COMMAND AND CONTROL**

### ***1. Lead Federal Agency***

It is important to emphasize from the outset that DOD performed a support role during Operation Provide Refuge. Overall control and operational oversight was the responsibility of DHHS as the "lead federal agency" (LFA). DHHS had a senior representative at JTF PR directing the mission.<sup>26</sup> DOD was only one of a multitude of other support agencies, such as INS, DOS, American Red Cross (ARC), NJ ARNG, and IRSA (the JVA).<sup>27</sup> Appendix V-5 provides an exhaustive listing of the support agencies who comprised TFPR.

DOD had responsibility for management of the physical infrastructure. Appendix V-6 lists DOD and DHHS responsibilities for

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<sup>23</sup> See Message, 151700 (EDT) June 99, JTF Provide Refuge, subject: JTF Provide Refuge SITREP 44 [hereinafter SITREP 44] (on file with CLAMO).

<sup>24</sup> See Message, 151700 (EDT) July 99, JTF Provide Refuge, subject: JTF Provide Refuge SITREP 74 [hereinafter SITREP 74] (on file with CLAMO).

<sup>25</sup> *Id.* (quoting BG Helmly).

<sup>26</sup> See Message, 051700 (EDT) May 99, JTF Open Arms, subject: JTF Open Arms SITREP 3 [hereinafter SITREP 3] (on file with CLAMO).

<sup>27</sup> See Balkan Refugees Fact Sheet, *supra* note 2.

support services. Fort Dix performed all budgeting and cost capturing for JTF PR.<sup>28</sup>

## 2. Department of Defense

*"[B]ear in mind the philosophy . . . encapsulated in the acronym 'TIPS.' TALK to the refugees; reassure them at every opportunity. Keep them INFORMED. Work to provide a steady stream of information about what is happening in their homeland, about what will occur in the welcome center at Fort Dix, and about what to expect in America. Help make their lives more PREDICTABLE by explaining the requirements for processing and the steps and time required to obtain sponsors. In all things, be SENSITIVE to their needs and anxieties. In essence, we treat the refugees with dignity and respect."<sup>29</sup>*

The Army was in direct support of DHHS and provided limited support to the other agencies participating in the operation.<sup>30</sup> Organizational relationships, however, continued to be redefined and refined during the early days of the Operation.<sup>31</sup>

Planning for "Operation Open Arms," the initial name for the Operation, commenced on 22 April 1999.<sup>32</sup> The Commander, USARC, nominated BG Mitchell M. Zais, the USARC Chief of Staff, to be the Commander, JTF PR.<sup>33</sup> General Schwartz approved the nomination. The 300th Military Police Command (MPC), a USAR unit with an internment and resettlement mission, was the primary choice to conduct the operation.

<sup>28</sup> See Joint Task Force Provide Refuge, Standard Operating Procedures, Resource Management ¶ 1-4 (12 May 1999) (on file with CLAMO).

<sup>29</sup> 1079<sup>th</sup> AAR, *supra* note 10, at 1 (quoting the JTF Commander's intent).

<sup>30</sup> See Message, 01063Z May 99, Director of Military Support, Deputy Chief of Staff for Operations, subject: Execute Order for Kosovo Refugee Processing Operation, available at <http://freddie.forscom.army.mil/maca/Word/doms%20openarms%20order.doc>; Message, 010933Z May 99, Commander, U.S. Atlantic Command (J3), subject: Execute Order, available at <http://freddie.forscom.army.mil/maca/Word/ACOMORDER.doc>; Message, 011333Z May 99, Commander, U.S. Army Forces Command, subject: Execute Order, available at <http://freddie.forscom.army.mil/maca/Word/forscomexord.doc>.

<sup>31</sup> See 1079<sup>th</sup> AAR, *supra* note 10, at 3.

<sup>32</sup> See DOIM AAR, *supra* note 9, at 1.

<sup>33</sup> See FORSCOM AAR, *supra* note 8, at 5.

On 3 June 1999, BG Helmly, the Deputy Chief of the Army Reserve (DCAR), assumed command of JTF PR from BG Zais.<sup>34</sup>

Coordination efforts for the Operation commenced upon the designation of BG Zais as Commander, JTF PR. A concept plan developed by the Fort Dix Force Projection Directorate became the main planning document. During a 27-28 April 1999 visit of MG Magruder and BG Zais to Fort Dix, the C2 structure was clarified, with FORSCOM assigned as the JTF PR higher headquarters. DOMS gave FORSCOM a warning order on Friday, 30 April 1999, to be prepared to receive refugees on Tuesday, 4 May 1999, at Fort Dix. The Fort Dix staff began executing contracts upon receiving FORSCOM funding approval on 30 April 1999. The 300th MPC could not respond in such a short time period. Because the 300th MPC could not mobilize quickly enough, FORSCOM tasked XVIII Airborne Corps to augment full-time USARC personnel with units and additional C2 elements for the JTF PR headquarters. XVIII Airborne Corps designated the 507th Corps Support Group (CSG) to provide units and augmentation of the JTF PR headquarters. The 507th CSG was the JTF PR headquarters nucleus. The 507th CSG selected elements of the 530th Supply and Services Battalion to provide the necessary personnel. XVIII Airborne Corps also sent medic support and a military police (MP) platoon. USARC and FORSCOM augmented the 507th CSG with the 1079th U.S. Army Garrison Support Unit (USA GSU). The State of New Jersey coordinated all volunteer support efforts, including receipt and donation of material goods, and the New Jersey Governor volunteered the NJ ARNG to manage donated goods.<sup>35</sup> Appendix V-7 outlines the C2 structure and units in support of JTF PR.

Operational responsibilities included the following:

- command and control—interagency and military;
- reception—the reception of refugees at McGuire AFB;
- in-processing—those initial actions in the Welcome Center;
- processing—those key actions by PHS (medical screening), JVA (interviews and assurances), and INS (interviews and documentation);
- housing—physical care of the refugees;

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<sup>34</sup> See Message, 021700 (EDT) June 99, JTF Provide Refuge, subject: JTF Provide Refuge SITREP 31 [hereinafter SITREP 31] (on file with CLAMO).

<sup>35</sup> See FORSCOM AAR, *supra* note 8, at 5.

- support for the Village—care and feeding of refugees;
- camp life—social life and camp government; and,
- out-processing—orientation and onward movement of refugees.<sup>36</sup>

Advance elements from FORSCOM, USARC, and XVIII Airborne Corps arrived on 1 May 1999. Interagency representatives and the XVIII Airborne Corps main body arrived on 2 May 1999. The number of DOD personnel supporting JTF PR rapidly expanded from 239 (2 May 1999) to 355 (4 May 1999). DOD personnel included 262 active duty soldiers, 92 reservists, and 1 NJ ARNG soldier. There were four additional military liaison officers, one each from FORSCOM, USACOM, DOMS, and the NJ ARNG.<sup>37</sup>

JTF PR reached a peak of 387 soldiers.<sup>38</sup> The 1079th USA GSU completed its administrative support mission with JTF PR on 23 July 1999.<sup>39</sup> The NJ ARNG, which peaked at 91 soldiers,<sup>40</sup> completed its mission on 26 July 1999.

The National Command Authority (NCA) was clear in identifying the JTF PR objectives: DOD was to provide a suitable facility to receive, house, feed, and care for displaced Kosovar refugees and support their rapid transfer to sponsors in CONUS. USACOM passed the support mission to FORSCOM and the USARC. The Commander, FORSCOM, provided mission guidance to the Commander, JTF PR. The civilian in charge of DHHS operations, and thus in charge of Operation Provide Refuge, arrived late in the planning process and never provided clear guidance to the military. Perhaps because DHHS is a civilian organization, it never wrote an operations order.<sup>41</sup>

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<sup>36</sup> 1079<sup>th</sup> AAR, *supra* note 10, at 2.

<sup>37</sup> SITREP 3, *supra* note 26.

<sup>38</sup> Message, 071700 (EDT) June 99, JTF Provide Refuge, subject: JTF Provide Refuge SITREP 36 [hereinafter SITREP 36] (on file with CLAMO).

<sup>39</sup> Message, 221700 (EDT) July 99, JTF Provide Refuge, subject: JTF Provide Refuge SITREP 81 [hereinafter SITREP 81] (on file with CLAMO).

<sup>40</sup> SITREP 26, *supra* note 21.

<sup>41</sup> See DOIM AAR, *supra* note 9, at 3.

## **B. LESSONS LEARNED**

The mission of the JTF PR Staff Judge Advocate (JTF SJA) was broad:

- provide legal advice to the JTF PR Command Group on military and domestic law;
- coordinate with the Fort Dix SJA to provide legal services in administrative law, claims, contract law, criminal law, legal assistance, and environmental law to JTF PR personnel;
- coordinate with the Fort Dix SJA to provide General Courts-Martial Convening Authority (GCMCA) support involving the administration of military justice; and
- provide legal review for all contracts.<sup>42</sup>

The JTF SJA provided advice on court-martial jurisdiction, MP security and investigative jurisdiction, memoranda of agreement, military and refugee status, international law, claims, fiscal law, rules of interaction/rules of engagement (ROI/ROE), alcoholic beverages, pornography, weapons, refugee issues (fraternization, marriages, births, deaths, remains disposal, volunteer work, religious support), and interagency relationships. The JTF SJA drafted a punitive order, General Order Number 1 (GO 1), containing detailed rules on interacting with refugees.<sup>43</sup> GO 1 was signed by the JTF Commander and is included in Appendix V-8. The JTF SJA Standard Operating Procedure (SOP) is included in Appendix V-9.

A variety of lessons learned emerged from the wide range of legal issues addressed by the JTF SJA.

### ***1. Understand the Legal Basis for Military Support to Civil Authorities.***

The JA must understand that the DOD role in Military Support to Civil Authorities (MSCA) is unlike typical DOD operational missions. The LFA has responsibility for executing the mission, whatever that may be, and

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<sup>42</sup> See Headquarters, Joint Task Force Provide Refuge, Operation Plan 99-01, annex AC (Legal) (30 June 99) [hereinafter OPLAN 99-01] (on file with CLAMO); Joint Task Force Provide Refuge, Standard Operating Procedure, Staff Judge Advocate (4 June 1999) [hereinafter SJA SOP] (on file with CLAMO).

<sup>43</sup> See Memorandum, LTC Willis C. Hunter, Staff Judge Advocate, JTF Provide Refuge, to MAJ Donna L. Barlett, Chief, Operational Law, Office of the Staff Judge Advocate, U.S. Army Reserve Command, subject: Legal Issues Arising at Fort Dix (14 May 1999) [hereinafter Hunter Memorandum] (on file with CLAMO).

DOD operates in a supporting role only.<sup>44</sup> DOD acts only in response to LFA requests to provide specific support. MSCA directives establish parameters concerning types and amount of support DOD may provide to the LFA. DOD cannot “volunteer” to do more than what the LFA requests. DOD will determine, among its available resources, how to best suited fulfill the request. Included in Appendix V-10 is an “MSCA Basic Principles” Information Paper.<sup>45</sup>

Accordingly, JTF PR had to receive an LFA written request setting forth, at a minimum:

- organization or agency and the requesting official’s name, title, address, and telephone number;
- acknowledgment and statutory basis to reimburse DOD costs;
- brief statement of situation, to include location, identification of specific support requirements, and an estimate of the time needed; and
- assistance requested/provided by the National Guard, other military departments, or the Federal Emergency Management Agency.<sup>46</sup>

## ***2. JAs Will Face Military and Civilian Criminal Jurisdiction Issues.***

### ***a. Clarify Command Relationships.***

The JTF SJA addressed the issue of whether the JTF Commander had assumed command of the installation.<sup>47</sup> Some installation staff were unclear if BG Zais had assumed command of Fort Dix.<sup>48</sup> Both the JTF SJA and the Fort Dix SJA initially agreed the JTF PR was a tenant organization, because the JTF PR Commander had not published any assumption of command orders for the installation.

In reviewing the execute orders issued by DOMS, USACOM, and FORSCOM, FORSCOM determined that the Fort Dix Commander

<sup>44</sup> See U.S. DEP’T OF DEFENSE, DIR. 3025.15, MILITARY SUPPORT TO CIVIL AUTHORITIES (18 Feb. 1997) [hereinafter DOD DIR 3025.15].

<sup>45</sup> See E-mail from LTC Marsha A. Sajer, Office of the Army General Counsel, to MAJ Neoma J. White, International/Operational Law Division, Office of The Judge Advocate General, U.S. Army (28 May 1999) (on file with CLAMO).

<sup>46</sup> See Joint Task Force Provide Refuge, Standard Operating Procedures, J3 Operations, ¶ 2-15 (10 May 1999) [hereinafter JTF J3 Ops SOP] (included in Appendix 11); SJA SOP, *supra* note 42.

<sup>47</sup> See Hunter Memorandum, *supra* note 43.

<sup>48</sup> See Message, 131700 (EDT) May 99, JTF Provide Refuge, subject: JTF Provide Refuge SITREP 11 [hereinafter SITREP 11] (on file with CLAMO).

remained the installation commander but the installation was under operational control of the Commander, JTF PR.<sup>49</sup> Therefore, the JTF PR Commander had the power to exercise authority over the installation commander for purposes of mission execution, which provided him more authority than being a tenant activity on the installation. The command relationships between the various commanders did not affect existing court-martial jurisdiction.

***b. Domestic Military Operations Should Be Located, to the Extent Possible, on Areas of Exclusive Federal Jurisdiction.***

Mass immigration operations, such as Operation Provide Refuge, should be located on areas of exclusive federal jurisdiction. If such a location is not available, an area of concurrent state and federal jurisdiction can be an adequate substitute. Locations offering only state exclusive jurisdiction, such as state military reservations, should not be considered.<sup>50</sup> Federal jurisdiction on CONUS installations may be exclusive, concurrent, or none (state jurisdiction only). During a previous refugee operation at Fort Indiantown Gap, Pennsylvania, problems arose because refugee camps were located on an installation where only state jurisdiction applied.<sup>51</sup> Because only state jurisdiction applied, the command lacked direct law enforcement authority over the refugee population. As crimes went unpunished, discipline and order declined.

Fort Dix was a military installation under exclusive federal jurisdiction. All legal authority remained in federal hands. JTF PR, installation, and federal law enforcement officials were free to plan and make decisions knowing such decisions would be final without the additional requirement of obtaining approval from state, county, or local governments. Coordination was maintained with nonfederal agencies, but confusion and decision-making delay were eliminated. While sharing of authority adds flexibility, it requires increased coordination with state officials.

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<sup>49</sup> See E-mail from MAJ Patrick E. Koeppe, Office of the Staff Judge Advocate, U.S. Army Forces Command, to LTC Willis C. Hunter, Office of the Staff Judge Advocate, JTF Provide Refuge (14 May 1999); Message, 141700 (EDT) May 99, JTF Provide Refuge, subject: JTF Provide Refuge SITREP 12 [hereinafter SITREP 12] (on file with CLAMO); OPOORDER 99-005, *supra* note 4, ¶ 1.

<sup>50</sup> See JTF Staff Judge Advocate, After Action Review Input (n.d.) [hereinafter SJA AAR] (on file with CLAMO).

<sup>51</sup> See MILITARY HISTORY OFFICE, U.S. ARMY FORCES COMMAND, THE ROLE OF FORSCOM IN THE RECEPTION AND CARE OF REFUGEES FROM CUBA IN THE CONTINENTAL U.S. (1984).

***c. Be Aware That Not All Military Personnel Will Have the Same Status, and That Some Personnel Will Not Be Subject to the UCMJ.***

Although military personnel, AD, Reserve Component (RC), and National Guard, will wear the same uniform, the command and control and UCMJ jurisdiction for each may vary. In JTF PR, AD soldiers remained under the court-martial jurisdiction of their home unit. The SJA SOP indicated USAR and ARNG soldiers were attached to the GCMCA of the Fort Dix Commander on an as-needed basis and in accordance with orders placing them on AD.<sup>52</sup> As was the case with NJ ARNG personnel, National Guard personnel will normally not be in a federal AD status. National Guard personnel will generally remain in a Title 32 or state active duty status, under a governor's command and control.<sup>53</sup> USAR personnel will be subject to UCMJ jurisdiction when in an AD, ADT, AT, or IDT status. For example, the Army Reserve Personnel Command (AR-PERSCOM) identified USAR personnel to replace JTF PR staff.<sup>54</sup> Most of the personnel received Contingency Operation Temporary Tour of Active Duty orders, but they were a combination of Individual Mobilization Augmentees (IMA), Individual Ready Reservists (IRR), and Troop Program Unit (TPU) soldiers.

***3. Security and Criminal Jurisdiction Issues Will Be Complicated.***

JTF PR struggled with security and criminal jurisdiction issues.<sup>55</sup> JTF PR security and criminal investigation authorities included FBI agents, INS agents, border patrol agents, contracted security guards, DOD Police,<sup>56</sup> CID agents, and MPs. All had different roles and responsibilities. To understand the interaction between the various security agencies, it is important to understand the Fort Dix refugee camp design and the INS administrative procedures.

<sup>52</sup> See SJA SOP, *supra* note 42, ¶ 6-2.

<sup>53</sup> See 10 U.S.C. §§ 12301–12321 (2000).

<sup>54</sup> See SITREP 26, *supra* note 21.

<sup>55</sup> See E-mail from Brian H. Gerber, Chief, Civil Law Division, Office of the Staff Judge Advocate, U.S. Army Forces Command, to Beverly Thomas, DCSLOG (20 May 1999) (on file with CLAMO).

<sup>56</sup> DOD Police are U.S. government employees in the grade of GS-4 through GS-6. Potential DOD police officers must possess a bachelors degree or have at least one year of law enforcement experience. Upon being accepted into the DOD Police program, police officers attend an eight-week Police Training Course in Glynco, Georgia. See Cop Career.com, Department of Defense, Police Officer, *at* <http://www.copcareer.com/federal/defense/dodpolice.htm> (last visited 4 Aug. 2001). At Fort Dix, DOD police had replaced MPs and were responsible for law enforcement in the Fort Dix community. See Talk City.com, Department of Defense Police, Major John Dove, *at* <http://home.talkcity.com/BoomerSt/majordove/> (last visited 4 Aug. 2001).

Fort Dix set aside one area of the installation to accommodate the refugee mission. This area was called the “Welcome Center.” MP and DOD Police controlled access to this area by setting up traffic control points along the “outer perimeter.”<sup>57</sup> Between the outer perimeter and a temporary interior fence was an area known as the “buffer zone.” JTF PR headquarters was located within the buffer zone. At the heart of the refugee camp was the inner perimeter, bounded by the temporary fence. The inner perimeter was known as the “Village.” Within the Village were dormitories, a medical center, dining facility, and village store—all provided for the refugees. Detailed schematics of the installation layout are included in Appendix 12.

The INS considered the Village to be a port of entry (POE) for immigration purposes. The situation is analogous to a plane being diverted from a known POE to an alternate airfield due to weather. Regardless of where the plane lands, that airfield becomes a POE, and passengers are subject to Customs and INS requirements before leaving the POE.<sup>58</sup>

The INS policy required the refugees to remain in the Village until all immigration processing could be completed. Before arriving at the Village, INS gave the refugees Form I-590, “Registration for Classification as a Refugee.”<sup>59</sup> Form I-590 allowed refugees to meet with INS to obtain a Form I-94 “Arrival-Departure Record.” As refugees inprocessed, INS obtained a family history and examined all refugee identification. The refugees moved into the dormitories to wait for other phases of in-processing, including a complete medical exam, an interview to check for criminal record information, and assignment of a sponsor by JVA.<sup>60</sup>

The refugees would not obtain Form I-94 until all in-processing steps were complete. With a Form I-94, the refugees could leave the camp and legally enter the U.S.<sup>61</sup> After one year, the refugees would be eligible to

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<sup>57</sup> See SJA SOP, *supra* note 42, ¶ 6-5; JTF J3 Ops SOP, *supra* note 46, ¶ 2-16(o).

<sup>58</sup> See *generally* E-mail from MAJ Neoma J. White, International/Operational Law Division, Office of the Judge Advocate General, Army, to LTC Willis C. Hunter, Staff Judge Advocate, JTF Provide Refuge (28 May 1999) (on file with CLAMO).

<sup>59</sup> See E-mail from LTC Willis C. Hunter, Staff Judge Advocate, JTF Provide Refuge, to CPT Natalie A. Kolb, Office of the Staff Judge Advocate, U.S. Army Forces Command (12 May 1999) (on file with CLAMO).

<sup>60</sup> See Headquarters, Joint Task Force Provide Refuge, Command Brief, PowerPoint presentation, briefing slide 19 (n.d.) (entire presentation on file with CLAMO). Briefing slide 19 is included in Appendix V-13.

<sup>61</sup> See Balkan Refugees Fact Sheet, *supra* note 2.

apply for a Green Card (resident alien). After five years with a Green Card, the refugees would be able to apply for citizenship.

***a. Facilitate Law Enforcement Coordination and Cooperation with an Interagency Law Enforcement Memorandum of Agreement.***

The JTF PR SJA prepared an Interagency Law Enforcement Memorandum of Agreement (LE MOA).<sup>62</sup> The LE MOA was designed to clarify the roles of the various security and law enforcement agencies involved in the JTF PR operation.<sup>63</sup> The LE MOA had to be reviewed by the Department of Army (HQDA) and could not be finalized at the JTF PR level until HQDA completed its review.<sup>64</sup> Because the LE MOA needed to be staffed with the elements ultimately responsible for providing security assets and resources, HQDA determined the appropriate agencies to execute the MOA (DHHS, JTF, INS, and DOD Police).<sup>65</sup> The LE MOA is included in Appendix V-14.

***b. Understand the Roles of the Various Security Agencies.***

The FBI was responsible for overall mission security.<sup>66</sup> As the LFA, DHHS was responsible within the entire Welcome Center for refugee security. DHHS assigned this responsibility to the INS, which executed the security responsibility through border patrol and contract security personnel.<sup>67</sup> The military policing agencies (DOD Police, CID, MPs) were primarily responsible for military security and military criminal investigation issues. The military investigative agencies also had criminal

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<sup>62</sup> The agreement concerning law enforcement and peacekeeping responsibilities for Cuban refugees provided the precedent and guidance for the LE MOA. See MILITARY HISTORY OFFICE, *supra* note 51. See also E-mail from LTC Marsha A. Sajer, Office of the Army General Counsel, to MAJ Neoma J. White, International/Operational Law Division, Office of The Judge Advocate General, U.S. Army (27 May 1999) (on file with CLAMO).

<sup>63</sup> See Message, 211700 (EDT) May 99, JTF Provide Refuge, subject: JTF Provide Refuge SITREP 19 [hereinafter SITREP 19] (on file with CLAMO).

<sup>64</sup> See E-mail from MAJ Patrick E. Koepf, Office of the Staff Judge Advocate, U.S. Army Forces Command, to LTC Willis C. Hunter, Staff Judge Advocate, JTF Provide Refuge (27 May 1999, 16:20 EDT) (on file with CLAMO).

<sup>65</sup> See E-mail from MAJ Neoma J. White, International/Operational Law Division, Office of The Judge Advocate General, U.S. Army, to CPT Natalie A. Kolb, Office of the Staff Judge Advocate, U.S. Army Forces Command (26 May 1999) (on file with CLAMO).

<sup>66</sup> See SITREP 4, *supra* note 16.

<sup>67</sup> See E-mail from Beverly Thomas, DCSLOG, to Brian H. Gerber, Chief, Civil Law Division, Office of the Staff Judge Advocate, U.S. Army Forces Command (20 May 1999) [hereinafter Thomas E-mail to Gerber] (on file with CLAMO). See also Message, 101700 (EDT) May 99, JTF Provide Refuge, subject: JTF Provide Refuge SITREP 8 [hereinafter SITREP 8] (on file with CLAMO).

investigative responsibility for certain refugee crimes.<sup>68</sup> All security agencies agreed to work through the FBI for security issues and to address threats made to anyone involved in the mission. The Fort Dix Installation Security Office and the JTF PR J2 (Intelligence and Security) tracked and communicated threat information to the FBI.<sup>69</sup> To control access to the operation, the Director, Force Projection Directorate (FPD), only granted Emergency Operations Center (EOC) access to individuals supporting JTF PR who possessed INS-issued badges.<sup>70</sup> Based on mission or threat condition level changes, the Director, FPD, could impose access restrictions.<sup>71</sup>

### **1. INS is responsible for refugee security and administrative processing.**

Because the Village was considered a POE, INS was responsible for entry and exit to and from the Village as well as security within the Village. To control entry, the INS used a badge system. To ensure refugees did not leave the Village without proper authority, INS border patrol and contracted security personnel patrolled the fence surrounding the Village and the buffer zone between the inner and outer perimeters.<sup>72</sup> The function of the INS guards was to enforce INS requirements. To further provide immigration control and refugee security, INS inspected every car that left the inner perimeter.<sup>73</sup> These searches were conducted by the contracted security guards. Initially, the JTF SJA opined that as Fort Dix was an Army installation, only three people could order inspections of vehicles—the Installation Commander, the JTF PR Commander, or a federal judge. FORSCOM, however, later advised that because parts of Fort Dix were considered a POE, the INS and the contract security guards could conduct

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<sup>68</sup> See *infra* text accompanying notes 77-83 for a more detailed discussion of criminal investigation responsibilities.

<sup>69</sup> See Joint Task Force Provide Refuge, Standard Operating Procedures, J2 Operations ¶ 2-1 (May 10, 1999) [hereinafter JTF J2 Ops SOP] (on file with CLAMO).

<sup>70</sup> See Headquarters, U.S. Army Fort Dix, Standard Operating Procedures, Emergency Operations Center, ¶ 7-8 (n.d.) (on file with CLAMO).

<sup>71</sup> See JTF J2 Ops SOP, *supra* note 69, ¶ 2-1.

<sup>72</sup> See E-mail from LTC Robert C. Todd, Deputy Chief of Staff for Operations (DCSOPS), to FORSCOM Operations Center, Watch Team (3 May 1999) (containing the first situation report of Operation Open Arms) (on file with CLAMO).

<sup>73</sup> See E-mail from LTC Willis C. Hunter, Staff Judge Advocate, JTF Provide Refuge, to MAJ Patrick E. Koeppe, Office of the Staff Judge Advocate, U.S. Army Forces Command (27 May 1999, 13:08 EDT) (on file with CLAMO).

administrative inspections in the limited area for which DHHS and INS had security responsibility.<sup>74</sup>

## **2. Understand the restrictions of the Posse Comitatus Act.**

The Posse Comitatus Act (PCA) prohibits the military, including MPs and DOD Police, from directly enforcing immigration law and other civil laws.<sup>75</sup> The PCA does not, however, prevent MPs and DOD Police from investigating crime occurring on an installation. While enforcing immigration procedures and responding to refugee crimes were responsibilities of DHHS/INS,<sup>76</sup> this did not prevent MPs or DOD Police from maintaining order and security on Fort Dix or from conducting investigations of crimes committed by civilians on the installation. The MPs had the authority to stop crimes being committed on the installation pursuant to the inherent authority and responsibility of the Fort Dix and JTF PR Commanders to maintain order and security on the installation. The JTF PR Provost Marshall (JTF PM) provided security for the Welcome Center on Fort Dix, twenty four hours a day, seven days a week.<sup>77</sup> In addition to walking patrols, MPs used golf carts to patrol the perimeter of the refugee area. The Military Personnel Directorate (MPD) provided vehicle registration passes for operational personnel (military and DOD civilian), agency personnel, and other visitors that needed access to Fort Dix.

## **3. Distinguish security issues from criminal investigation issues.**

While the INS was responsible for all refugee security, criminal investigation fell to multiple investigative agencies. The INS reported any crime committed within the Village to the DOD Police. Upon receiving a report, DOD Police would make an initial evaluation as to whether the

<sup>74</sup> See E-mail from MAJ Patrick E. Koepf, Office of the Staff Judge Advocate, U.S. Army Forces Command, to LTC Willis C. Hunter, Staff Judge Advocate, JTF Provide Refuge (27 May 1999, 17:35 EDT) [hereinafter Koepf E-mail to Hunter (27 May 1999)] (on file with CLAMO).

<sup>75</sup> 18 U.S.C. § 1385 (2000). The PCA applies to the DOD Police as well as to MPs. See U.S. DEPT OF ARMY, REG. 190-56, THE ARMY CIVILIAN POLICE AND SECURITY GUARD PROGRAM ¶ 5-2 (21 June 1985) (“Civilian police and security guard personnel, while on duty at an installation, are considered part of the Army, and are therefore subject to the restrictions on aid to civilian law enforcement imposed by section 1385, title 18, U.S. Code, commonly known as the Posse Comitatus Act.”).

<sup>76</sup> See E-mail from CPT Natalie A. Kolb, Office of the Staff Judge Advocate, U.S. Army Forces Command, to LTC Willis C. Hunter, Staff Judge Advocate, JTF Provide Refuge (26 May 1999) (on file with CLAMO).

<sup>77</sup> See OPCODE 99-005, *supra* note 4, at annex K, ¶ 2.

offense was a misdemeanor or felony. If the case was a misdemeanor, the DOD Police reported the case to the DOD Criminal Investigations Unit (CIU). If the case was a felony, DOD Police reported the case to Fort Monmouth CID. CID was responsible for coordinating the case with the FBI. If the crime was refugee against refugee or involved a refugee and civilian employee, the FBI was to investigate. If the crime involved a military perpetrator, an unknown perpetrator, or if the FBI chose not to investigate, then CID would investigate. Coordination with DHHS and INS was required, no matter which investigative unit responded. If a crime occurred, DOD Police had authority to detain, just as for any criminal offense on post.

While INS was responsible for enforcing INS immigration requirements within the buffer zone, MPs and DOD Police were responsible for policing criminal activity within the buffer zone. The relationship between these two agencies' responsibilities had to be clarified when determining procedures for handling refugees attempting to leave the Village and Fort Dix without the INS-mandated Form I-94.<sup>78</sup> If refugees attempting to leave the Village were considered to be committing a "criminal act," the DOD Police and MPs were authorized to prevent the refugee from leaving.<sup>79</sup> If the refugees were not considered to be committing a criminal act by attempting to leave Fort Dix without proper authorization, it was important to ensure that INS, DHHS, and other agencies clearly understood that the DOD Police and MPs would not assist in preventing refugees from leaving.

JTF PR took the position, with which FORSCOM agreed,<sup>80</sup> that DOD personnel would not detain any refugees for attempting to leave without proper authorization.<sup>81</sup> If DOD personnel observed a refugee leaving the Village, they would take no other action other than to make a report to INS officials. JTF PR SJA advised MP and DOD Police that preventing refugees from leaving Fort Dix was an INS responsibility. The JTF SJA opined that,

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<sup>78</sup> See E-mail from MAJ Patrick E. Koeppe, Office of the Staff Judge Advocate, U.S. Army Forces Command, to LTC Willis C. Hunter, Staff Judge Advocate, JTF Provide Refuge (14 May 1999, 13:45 EDT) (on file with CLAMO).

<sup>79</sup> See SJA SOP, *supra* note 42, ¶ 6-8.

<sup>80</sup> See E-mail from MAJ Patrick E. Koeppe, Office of the Staff Judge Advocate, U.S. Army Forces Command, to LTC Willis C. Hunter, Staff Judge Advocate, JTF Provide Refuge (14 May 1999, 15:23 EDT) (on file with CLAMO).

<sup>81</sup> See E-mail from LTC Willis C. Hunter, Staff Judge Advocate, JTF Provide Refuge, to MAJ Patrick E. Koeppe, Office of the Staff Judge Advocate, U.S. Army Forces Command (14 May 1999, 14:14 EDT) (on file with CLAMO).

in reality, there was no confusion over responsibilities.<sup>82</sup> All three execute orders from DOMS, USACOM, and FORSCOM clearly stated that “[s]ecurity of Kosovar refugees off the installation is a function of local law enforcement. Security of refugees on the installation is the responsibility of the LFA and INS.”<sup>83</sup>

***c. Remember the Responsibilities of the Various Agencies When Reviewing Contracts for Security Services.***

DHHS entered into a security contract with a private security agency to augment border police providing refugee security. The security contract indicated that the contractor would provide security for the outer perimeter, a phrase that could have been interpreted to mean an area beyond the Welcome Center.<sup>84</sup> Thus, although structured to meet the refugee protection and processing needs of DHHS, the contract also appeared to contemplate security services for purposes of JTF PR force protection and overall installation security. In other words, it appeared that DOD might have been a party to the DHHS contract in order to meet the DOD security requirements. This was an issue that required clarification.

Upon review, the contract provision had to be interpreted narrowly. DOD could not have been a party to a contract for installation security, refugee security, or force protection for a number of reasons. First, except in certain narrow circumstances, DOD is statutorily prohibited from contracting for security guards in the U.S. Second, DOD was not authorized to provide refugee security and therefore could not contract for refugee security services. Finally, the installation and the JTF PR commanders had the ultimate authority and responsibility for maintaining order on the installation and protecting persons and property thereon.

DOD is statutorily prohibited from contracting for security guard functions. 10 U.S.C. § 2465 prohibits DOD from obligating or expending appropriated funds for security guard functions at any CONUS military installation or facility.<sup>85</sup> A broad interpretation of the contract provision to

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<sup>82</sup> *See id.*

<sup>83</sup> *E.g.*, Message, 010933Z May 99, USCINACOM, subject: Execute Order (on file with CLAMO).

<sup>84</sup> *See* E-mail from MAJ Patrick E. Koepp, Office of the Staff Judge Advocate, U.S. Army Forces Command, to Brian H. Gerber, Chief, Civil Law Division, Office of the Staff Judge Advocate, U.S. Army Forces Command (19 May 1999) (on file with CLAMO).

<sup>85</sup> This statutory prohibition does not apply to (1) a contract to be carried out on a government-owned but privately operated installation, or (2) a function that was under contract on September 24, 1983. 10 U.S.C.

provide installation security would have violated 10 U.S.C. § 2465 because DOD appeared to be entering into a contract for security guard services. This statutory restriction is not applicable to DHHS, which could contract directly for security services. Because DHHS was paying for the contract services and was the actual entity entering into the contract, the contract provision had to be limited to areas of the installation for which DHHS was responsible.

DOD had a limited military support role and was only authorized to provide support requested by DHHS and authorized by DOMS. Any expenses incurred for support, which were not approved by DOMS, would result in DOD not being reimbursed by DHHS, as they would be deemed to be unauthorized assistance to civil authorities. The DOD/DHHS MOA established the scope of services for which DHHS would reimburse DOD. Security inside the Village and the Hamlet was specifically an INS responsibility.<sup>86</sup> DOMS consistently made clear the position that the provision of “security” services, which were a DHHS responsibility, was not one of the services covered by the MOA. Thus, it was not an activity in which DOD should engage. If the Army contracted for security inside the Village perimeter, DHHS could refuse to reimburse the Army, as this service was not requested in the DOD/DHHS MOA. Understanding this, it became clear that DOD was not a party to the contract.

Force protection and installation security are the responsibility of the JTF and installation commanders. Because the JTF PR commander and the installation commander had the ultimate authority and responsibility for maintaining order on the installation and protecting persons and property, a contract between DHHS/INS with a private security firm could not have contracted away force protection authority.

***d. Forcibly Removing Refugees Raises Policy Issues.***

The JTF PR began experiencing more aggressive behavior on the part of refugees towards each other and U.S. contract laborers.<sup>87</sup> Refugees were verbally abusing dining facility workers and refugee interpreters. Refugee

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§ 2465(b) (2000). After the events of 11 Sept. 2001, Congress suspended 10 U.S.C. § 2465 during Operation Enduring Freedom and for 180 days thereafter. U.S.A. Patriot Act of 2001, H.R. 3162, 107th Cong. § 1010 (2001) (enacted).

<sup>86</sup> See Thomas E-mail to Gerber, *supra* note 67.

<sup>87</sup> See SITREP 19, *supra* note 63.

interpreters were effective as intermediaries, if they spoke English and had some authority figure physically present. It was important that uniformed INS agents be present in all dining facilities to maintain order.

In addition to disciplinary problems, potential overcrowding created the need to address the possibility of removing refugees. Any plan to move refugees raised two issues:

- the INS authority to force refugees to board transportation, and
- the policy problems if the Army had to resort to force to move refugees.<sup>88</sup>

Refugee disposition was an issue for resolution by the LFA, DHHS.<sup>89</sup> Even if INS had a legal basis to force refugees to leave the installation, DOD personnel would not be involved in forcing refugees to leave, as this would go beyond the military's supporting role. DOMS directed JTF PR not to take a position on removing refugees by force.<sup>90</sup> The JTF PR was to support the DHHS position—which was that all agencies (PHS, DHHS, INS, and JVA) do all that they could to encourage refugees to resettle in the U.S. The DOMS position was that a refugee not wanting to depart was a DHHS issue.

The issue was ultimately a policy decision rather than a legal decision.<sup>91</sup> Before any action to expel a refugee, DHHS must have had the opportunity to resolve the issue. If DHHS was unable to resolve the issue and asked the Commander, JTF PR, to expel a refugee, the Commander was not to take any action to force refugees to leave without first consulting with his assigned legal counsel who, in turn, would coordinate with FORSCOM. FORSCOM would coordinate with HQDA, if necessary.

On 9 June 1999, a refugee family refused to leave. INS officials assisted and raised the issue to DHHS, Washington, D.C., as a major policy

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<sup>88</sup> See E-mail from CPT Natalie A. Kolb, Office of the Staff Judge Advocate, U.S. Army Forces Command, to LTC Willis C. Hunter, Staff Judge Advocate, JTF Provide Refuge (12 May 1999) (on file with CLAMO).

<sup>89</sup> See E-mail from COL James N. Hatten, Staff Judge Advocate, U.S. Army Forces Command, to CPT Mark E. Austin, DCSOPS (14 June 1999) [hereinafter Hatten E-mail to Austin]; E-mail from MAJ Patrick E. Koepf, Office of the Staff Judge Advocate, U.S. Army Forces Command, to CPT Mark E. Austin, DCSOPS (15 June 1999) [hereinafter Koepf E-mail to Austin] (on file with CLAMO).

<sup>90</sup> See E-mail from COL Robert Fitton, Deputy, Director of Military Support, to MAJ Neoma J. White, International/Operational Law Division, Office of The Judge Advocate General, Army (15 June 1999) (on file with CLAMO).

<sup>91</sup> See Hatten E-mail to Austin, *supra* note 89.

concern. Fortunately, there was no confrontation, and the family left the same day to join a sponsoring family.<sup>92</sup>

***e. The JA Should Facilitate Weekly Meetings Among the Law Enforcement Agencies.***

Operation Provide Refuge required teamwork from all law enforcement agencies. Weekly meetings between the many law enforcement agencies provided the foundation for the close coordination of the law enforcement agencies in Operation Provide Refuge. The meetings were essential to identify issues, consider future responses, and clarify areas of responsibility initially established by the Rules of Interaction/Rules of Engagement (ROI/ROE).

Early in this type of operation, a “Law Enforcement Working Group” should meet on a weekly basis.<sup>93</sup> Each law enforcement agency should designate a representative to meet and work through security, law enforcement, and related legal issues with all affected law enforcement agencies. The LFA law enforcement official should chair the meetings with close JTF SJA coordination. Participating in the JTF PR meetings were representatives from DHHS, INS, DOD Police, CID, FBI, JTF PR, XVIII Airborne Corps, New Jersey State Police, the Burlington County District Attorney's Office, U.S. Border Patrol, and the Fort Dix Directorate of Information Management (DOIM).<sup>94</sup>

***f. Access to the Refugee Camp Is Both an INS Issue As Well As a Force Protection Issue.***

Even though access to the Village was an INS responsibility, JTF PR faced several force protection issues regarding access. A concern arose regarding Serbia sending “moles” among the refugees.<sup>95</sup> This became increasingly significant as the number of improperly documented refugees increased.

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<sup>92</sup> See Message, 081700 (EDT) June 99, JTF Provide Refuge, subject: JTF Provide Refuge SITREP [hereinafter SITREP 38] (on file with CLAMO).

<sup>93</sup> See SJA AAR, *supra* note 50; SJA SOP, *supra* note 42, ¶ 3.1(d).

<sup>94</sup> See Message, 261700 (EDT) May 99, JTF Provide Refuge, subject: JTF Provide Refuge SITREP 24 [hereinafter SITREP 24] (on file with CLAMO).

<sup>95</sup> See Message, 091700 (EDT) May 99, JTF Provide Refuge, subject: JTF Provide Refuge SITREP 7 [hereinafter SITREP 7] (on file with CLAMO).

Initially, improperly documented refugees were administratively segregated.<sup>96</sup> INS removed these individuals from refugee status and placed them into an “expedited removal” process to be treated as illegal immigrants.<sup>97</sup> Because they were no longer eligible for refugee status, they had the right to apply for political asylum.<sup>98</sup> If they applied for political asylum, they were afforded a hearing before the nearest immigration judge, who was in Philadelphia, Pennsylvania.<sup>99</sup>

The INS advised that if a refugee had a “credible fear” that he would be killed or harmed if returned to his native country, the refugee would usually be granted asylum. In the context of Kosovar refugees, INS believed it was a virtual certainty that asylum would be granted. The irony was that persons sent through the political asylum process were actually released much sooner than refugees in the Welcome Center, because the political asylum process was completed in a week or less while the INS processing took longer than a week.

When FORSCOM questioned why refugees had been placed in administrative segregation, INS advised the JTF SJA that the improperly documented refugees were not authorized entry into the U.S. because they had committed fraud in attempting to gain entry. Refugees in FYROM were assigned to one of the nineteen participating countries where they were to be taken as part of the overall refugee mission. Refugees were not offered the opportunity to select a country.<sup>100</sup> Some refugees in FYROM did not wish to come to the U.S., so they traded or sold their credentials to gain transportation to another country. When INS reviewed a refugee’s documents and found that the documents did not match the refugee presenting them, the refugee was then deemed to have lied on the application for refugee status. Other refugees stated that there was a rumor in the refugee camp in FYROM that the U.S. was only allowing families to come

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<sup>96</sup> Three Kosovars provided false information when boarding the 7 May 1999 flight from FYROM. Six other refugees were segregated from the 10 May 1999 flight. *See* Message, 111700 (EDT) May 99, JTF Provide Refuge, subject: JTF Provide Refuge SITREP 9 [hereinafter SITREP 9] (on file with CLAMO). On 12 May 1999 (Flight #4), twenty-one refugees were segregated for false representations to the INS. *See* SITREP 10, *supra* note 11; SITREP 11, *supra* note 48. Six improperly documented refugees were segregated from the 14 May 1999 flight. *See* SITREP 12, *supra* note 49. Flight #7 (19 May 1999) had five improperly documented refugees aboard. *See* Message, 201700 (EDT) May 99, JTF Provide Refuge, subject: JTF Provide Refuge SITREP 18 [hereinafter SITREP 18] (on file with CLAMO).

<sup>97</sup> *See* SITREP 10, *supra* note 11.

<sup>98</sup> *See* Hunter Memorandum, *supra* note 43.

<sup>99</sup> *See* SITREP 11, *supra* note 48.

<sup>100</sup> *See* SITREP 10, *supra* note 11.

to the U.S. Groups of individuals were getting together, assuming one family name, and posing as a complete family. Thus, all of these refugees were no longer eligible for refugee status and had to be placed in administrative segregation.

On 15 May 1999, INS changed procedures for the handling of improperly documented refugees.<sup>101</sup> The INS began admitting such refugees into the Village population rather than segregating them. Only individuals who continued to be deceptive about their identity and administrative information would be segregated.

Another force protection issue arose because of the large number of packages addressed to “any refugee.” Fort Dix DOIM purchased mail-scanning equipment to address any force protection issues posed by the large volume of mail.<sup>102</sup>

As the result of an incident on 13 May 1999, JTF PR J3 coordinated with DHHS and the DOD Police to implement additional security measures within the Welcome Center.<sup>103</sup> Ten individuals, who were Jehovah's Witnesses posing as chaplains, managed to gain access into the Welcome Center and obtain identification badges. The individuals attempted to distribute literature and religious books to the refugees. Three of these individuals returned on 14 May 1999 and were taken aside for questioning by DHHS and the JTF PM, who confiscated their identification badges.

#### ***4. Rules of Interaction/Rules of Engagement***

On 5 May 1999, the Commander, JTF PR, approved the ROI/ROE. The ROI/ROE were included as part of the SJA SOP and handed out to JTF PR personnel on wallet-sized cards.<sup>104</sup> Appendix V-15 contains an operations order annex spelling out the ROE/ROI.

The ROI provided guidance to DOD and military security personnel in dealing with refugees and other persons. Developed from guidance

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<sup>101</sup> See Message, 151700 (EDT) May 99, JTF Provide Refuge, subject: JTF Provide Refuge SITREP 13 [hereinafter SITREP 13] (on file with CLAMO).

<sup>102</sup> See DOIM AAR, *supra* note 9, at 2.

<sup>103</sup> See SITREP 12, *supra* note 49.

<sup>104</sup> See SJA SOP, *supra* note 42, ¶ 6-8; see also SITREP 3, *supra* note 26.

provided by DOMS, USACOM, and FORSCOM, the ROI were coordinated with the SJAs at Fort Dix, USARC, USACOM, FORSCOM, and OTJAG.

The ROI were primarily designed to ensure that the refugees were treated with dignity and respect and that there was no improper fraternization or misconduct between the military personnel and refugees.

The ROI restricted chaplains from providing direct religious support to civilians, including refugees.<sup>105</sup> Direct support was defined as preaching or leading a religious service. The ROI allowed chaplains to provide "indirect support," which included providing a place for religious services, procuring a civilian minister to lead services, providing necessary equipment and seating, and meeting with and counseling refugees.<sup>106</sup>

The ROI prohibited the introduction, possession, use, sale, transfer, or consumption of any alcoholic beverage within the limits of the Welcome Center, the Village, the Hamlet, or any other refugee housing areas. JTF PR personnel could engage in moderate consumption of alcoholic beverages when off-duty and in areas away from the Village or refugee housing areas.<sup>107</sup>

The ROE allowed JTF PR soldiers to use necessary force to defend themselves and others when threatened with death or serious bodily injury. The ROE instructed soldiers to avoid using force to accomplish the TF mission as long as they could accomplish the mission without using force. While allowed to use force, the ROE directed soldiers to use the minimum force necessary and to consider the risk of death or serious bodily harm to innocent bystanders prior to using force.<sup>108</sup> The ROE also contained guidance on security and investigative jurisdiction, discussed above.<sup>109</sup>

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<sup>105</sup> See SJA SOP, *supra* note 42, ¶ 6-7. The Army has also has a regulation on point. See U.S. DEP'T OF ARMY, REG. 165-1, CHAPLAIN ACTIVITIES IN THE UNITED STATES ARMY ch. 4 (26 May 2000) (The regulation was originally printed 28 February 1998; this printing incorporates Change 1.).

<sup>106</sup> See SJA SOP, *supra* note 42, ¶ 6-7.

<sup>107</sup> See *id.* ¶ 6-1.

<sup>108</sup> See OPLAN 99-01, *supra* note 42, at annex E; SJA SOP, *supra* note 42, ¶ 6-8.

<sup>109</sup> See *supra* text accompanying notes 55-83.

**5. *Be Aware of the Potential Limitations on Military Support for War Crimes Investigations.***

A dispute arose between DHHS, DOS, and the FBI over war crimes investigations. The Ambassador of War Crimes, DOS, was responsible for coordinating interviews of the refugees to gather war crimes evidence.<sup>110</sup> The U.S. Attorney General also directed a war crimes investigation,<sup>111</sup> and tasked the FBI to interview the refugees to obtain facts concerning war crimes that the refugees witnessed or experienced.<sup>112</sup> FBI agents wanted access to the refugees to pursue the tasking from the U.S. Attorney General.<sup>113</sup> Because the DHHS, DOS, and the Department of Justice had not agreed on the procedures for interrogation, DHHS and DOS did not grant the FBI agents access to the refugees.

OTJAG and FORSCOM advised JTF PR to make clear to DHHS that DOD had not been asked to assist in war crimes fact-gathering at the refugee camp.<sup>114</sup> DOD personnel were not to participate in such missions, and it was not appropriate to advise DHHS of any specific civil affairs or other military capabilities. Although some DOD personnel had been used as interpreters, DOD personnel were not specifically trained on how to conduct war crimes interviews.<sup>115</sup>

***a. Ensure That Requests for Support Meet MSCA Requirements.***

A DOS representative asked the Commander, JTF PR, for assistance in debriefing Kosovar refugees.<sup>116</sup> Specifically, the request was for members of the 325<sup>th</sup> Military Intelligence Battalion, 94<sup>th</sup> USAR Command, to assist the DOS in collecting information about war crimes to provide to the International Criminal Tribunal for the former Yugoslavia. FORSCOM advised JTF PR to provide no support until DOMS approved the level and

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<sup>110</sup> See E-mail from MAJ Patrick E. Koepp, Office of the Staff Judge Advocate, U.S. Army Forces Command, to MAJ Neoma J. White, International/Operational Law Division, Office of The Judge Advocate General, Army (1 June 1999) (on file with CLAMO).

<sup>111</sup> See SITREP 3, *supra* note 26.

<sup>112</sup> See E-mail from MAJ Patrick E. Koepp, Office of the Staff Judge Advocate, U.S. Army Forces Command, to MAJ Neoma J. White, International/Operational Law Division, Office of The Judge Advocate General, Army (20 May 1999) (on file with CLAMO).

<sup>113</sup> See SITREP 4, *supra* note 16.

<sup>114</sup> See E-mail from MAJ Neoma J. White, International/Operational Law Division, Office of The Judge Advocate General, U.S. Army, to MAJ Patrick E. Koepp, Office of the Staff Judge Advocate, U.S. Army Forces Command (24 May 1999) (on file with CLAMO).

<sup>115</sup> See *id.*

<sup>116</sup> See SITREP 38, *supra* note 92.

kind of support to be provided, if any.<sup>117</sup> The positions adopted by the Office of the Army General Counsel, HQDA, and OTJAG were that DOS should submit an official request to the Executive Secretary, Office of the Secretary of Defense (OSD), for support to its war crimes investigation.<sup>118</sup> DOMS would only approve military support specifically requested by DHHS in its role as the LFA. DOS would need to make a formal request through DHHS for this type of military assistance prior to such support being provided by AD or Reserve Component (RC) personnel.<sup>119</sup> In other words, such support was treated under typical military support to civil authority procedures.<sup>120</sup>

The request raised a number of legal issues, including the effect of the PCA. Under Executive Order (EO) 12333,<sup>121</sup> the military is generally precluded from performing interrogations in support of law enforcement agencies and from using intelligence assets to perform a law enforcement mission.<sup>122</sup> Further, the request did not comply with the procedures established in DOD Directives 3025.15<sup>123</sup> and 5525.5.<sup>124</sup> The Secretary of Defense had not delegated authority to approve requests for support to law enforcement operations. Accordingly, if DOS required DOD support for war crimes investigation, DOS would have to submit a request, signed by an authorized DOS official, to the OSD Executive Secretary. The request needed to outline the mission to be performed by DOD, and also indicate that the DOS would reimburse DOD, request a waiver, or cite statutory authority that would permit DOD to provide this support to DOS on a nonreimbursable basis.

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<sup>117</sup> See Hatten E-mail to Austin, *supra* note 89.

<sup>118</sup> See E-mail from LTC Marsha A. Sajer, Office of the Army General Counsel, to BG Bruce Lawlor, DOMS (14 June 1999); E-mail from LTC Marsha A. Sajer, Office of the Army General Counsel, to MAJ Neoma J. White, Operational Law Attorney, Office of the Judge Advocate General (14 June 1999) [hereinafter Sajer E-mail to White] (on file with CLAMO).

<sup>119</sup> See E-mail from MAJ Neoma J. White, International/Operational Law Division, Office of The Judge Advocate General, U.S. Army, to MAJ Patrick E. Koepp, Office of the Staff Judge Advocate, U.S. Army Forces Command (4 June 1999); E-mail from MAJ Patrick E. Koepp, Office of the Staff Judge Advocate, U.S. Army Forces Command, to MAJ Michael A. Newton, USALSA, Office of The Judge Advocate General, U.S. Army (4 June 1999) (on file with CLAMO).

<sup>120</sup> See *supra* text accompanying notes 44-46.

<sup>121</sup> Exec. Order No. 12,333, 3 C.F.R. 200 (2001).

<sup>122</sup> See Sajer E-mail to White, *supra* note 118.

<sup>123</sup> See *supra* note 44 and accompanying text.

<sup>124</sup> U.S. DEP'T OF DEFENSE, DIR. 5525.5, DoD COOPERATION WITH CIVILIAN LAW ENFORCEMENT OFFICIALS (15 Jan. 1986) (C1, 20 Dec. 1989).

***b. The Standards for Active Duty MSCA Are the Same for Reserve Component MSCA.***

Several RC officers were interested in assisting with war crimes interviews of the Kosovar refugees.<sup>125</sup> DOMS would only approve military support specifically requested by DHHS as the LFA. DOS had to make a formal request through DHHS for this type of military assistance prior to such support being provided by AD or RC personnel.<sup>126</sup>

A related issue concerned RC officers who were interested in responding to a DOS request to the American Bar Association (ABA) for assistance with war crimes interviews.<sup>127</sup> The concern was whether approval would appear contrary to the HQDA position regarding RC support. If the RC officer went to Fort Dix in a RC capacity, this would be contrary to the HQDA/DOMS guidance. However, the RC officer could respond in a civilian capacity to the ABA.

***c. Ensure Proper Authority Is Granted For Access to Refugees For Interviews.***

The Commander, JTF PR, received a phone call from a Senate staff member from the Senate Intelligence Committee, inquiring why the Commander had denied Defense Intelligence Agency (DIA) personnel access to the refugees.<sup>128</sup> In response, the Commander explained that 1) the DIA had not requested access to the refugees, and 2) if DIA had asked for access, the Commander would not be able to grant the request because there was no interagency agreement allowing such interrogation. The Commander further advised that the only people conducting interviews were the DOS and Amnesty International, both organizations focusing on war crimes, not exploitable military intelligence.

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<sup>125</sup> See E-mail from MAJ Patrick E. Koepp, Office of the Staff Judge Advocate, U.S. Army Forces Command, to MAJ Neoma J. White, International/Operational Law Division, Office of The Judge Advocate General, Army (1 June 1999); E-mail from MAJ Patrick E. Koepp, Office of the Staff Judge Advocate, U.S. Army Forces Command, to MAJ Neoma J. White, International/Operational Law Division, Office of The Judge Advocate General, Army (9 June 1999) [hereinafter Koepp E-mail to White (9 June 1999)] (on file with CLAMO).

<sup>126</sup> See E-mail from MAJ Neoma J. White, International/Operational Law Division, Office of The Judge Advocate General, U.S. Army, to MAJ Patrick E. Koepp, Office of the Staff Judge Advocate, U.S. Army Forces Command (4 June 1999) (on file with CLAMO).

<sup>127</sup> See Koepp E-mail to White (9 June 1999), *supra* note 125.

<sup>128</sup> See SITREP 22, *supra* note 148.

During an interagency conference call on 25 May 1999, a National Security Council representative indicated that the same Senate staff member called to discuss the DIA interrogation of refugees for the purpose of gathering exploitable military intelligence.<sup>129</sup> On 2 June 1999, JTF PR J2 received FORSCOM guidance directing JTF PR to provide only logistical support to the Defense Human Intelligence (HUMINT) Service of the DIA, as HUMINT had received DHHS and INS approval to participate in refugee interviews.<sup>130</sup>

## ***6. Be Prepared for Refugee Deaths, Births, and Marriages.***

### ***a. Consider Both Religious and Legal Requirements when Faced with a Refugee Death.***

Before JTF PR began, U.S. Army Claims Service (USARCS) considered the issue of potential claims, including claims arising out of refugee deaths. USARCS considered the LFA responsible for establishing a procedure for the investigation and payment of claims.<sup>131</sup> FORSCOM recommended that the JTF PR conduct claims investigations, which they believed should fall within the purview of the installation SJA, who already had claims authority.<sup>132</sup>

#### **1. Refugee death before arrival**

*After yesterday's funeral, Ali Maxhuni, son of the deceased, stated, "I only wish my mother had lived for three more days to see the kindness of America."*<sup>133</sup>

JTF PR received 463 refugees on 19 May 1999.<sup>134</sup> The JTF SJA worked the issue of handling the remains of a seventy-eight-year-old woman who died during the flight to Fort Dix.<sup>135</sup> There were no legal concerns

<sup>129</sup> See SITREP 23, *supra* note 145.

<sup>130</sup> See SITREP 31, *supra* note 34.

<sup>131</sup> See E-mail from CPT Natalie A. Kolb, Office of the Staff Judge Advocate, U.S. Army Forces Command, to LTC Willis C. Hunter, Staff Judge Advocate, JTF Provide Refuge (7 May 1999, 16:52 EDT) (on file with CLAMO).

<sup>132</sup> See U.S. DEP'T OF ARMY, REG. 27-20, CLAIMS ¶ 2-2(c)(1)(b) (31 Dec. 1997) (requiring claims investigations when a civilian is killed by an act or omission of a government employee).

<sup>133</sup> SITREP 19, *supra* note 63 (quoting Ali Maxhuni).

<sup>134</sup> See Message, 191700 (EDT) May 99, JTF Provide Refuge, subject: JTF Provide Refuge SITREP 17 [hereinafter SITREP 17] (on file with CLAMO).

<sup>135</sup> See *id.*

regarding the transfer of the body to local Muslim religious officials for handling in accordance with the deceased's religious beliefs.<sup>136</sup> INS did not classify persons pronounced dead upon arrival at McGuire AFB as refugees.<sup>137</sup> U.S. Customs had no issues. DHHS' statutory responsibility for the resettlement of refugees within the U.S. and its designation as the LFA dictated that it should be primarily responsible for responding to refugee deaths, which occurred in transit or in the Welcome Center, and for funding necessary costs. If DHHS requested DOD assistance in responding to refugee deaths, the JTF PR had authority to provide appropriate assistance in accordance with its limited military support mission, e.g., transportation to burial site, but DOD involvement was a last resort.

Accordingly, the remains were immediately released and transported to the local hospital for preparation of a death certificate. There was no autopsy because of the deceased's age and no indications of foul play. The Fort Dix Casualty Affairs Officer advised that there was no requirement to use the installation mortuary contract because the contract was only for AD soldiers and indigents that died on post. The family and a JTF PR Chaplain arranged for the remains to be taken to a Muslim mortuary to be prepared in accordance with Muslim religious requirements. Muslim law requires that the body be bathed in accordance with religious beliefs and be buried before the next sunrise. The JTF SJA met with a JTF PR Chaplain to confirm that the funeral was completed in accordance with the Muslim religion without any problems.<sup>138</sup>

## **2. Refugee death after arrival**

Law enforcement authorities planned to treat a death occurring in a refugee housing area as an unexplained death. The DOD Police were to respond and secure the scene for evaluation by CID. CID would conduct a crime scene analysis and coordinate with the FBI. The body would then be handled in accordance with normal police procedures, in consultation with DHHS, INS, and Muslim advisors.

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<sup>136</sup> See Koepp E-mail to Hunter (27 May 1999), *supra* note 74.

<sup>137</sup> See SJA SOP, *supra* note 42, ¶ 6-3.

<sup>138</sup> See SITREP 18, *supra* note 96.

The second refugee death occurred on 13 June 1999, at Burlington Memorial Hospital.<sup>139</sup> DHHS made all burial arrangements. A Commander's Critical Information Requirement (CCIR) report was provided through FORSCOM to USACOM. The JTF PR Chaplain contacted a volunteer Albanian-speaking imam<sup>140</sup> to assist in notifying the immediate family. The Chaplain also coordinated the essential religious elements for a traditional Muslim burial within twenty-four hours.

***b. Weddings Must Be Conducted In Accordance With State Law.***

The need arose for the JTF SJA to determine the legal requirements for refugee marriages in New Jersey.<sup>141</sup> The SJA coordinated with the Garrison SJA and determined that:

- the bride and groom must be 18 or older;
- there must be at least one witness;
- the license fee was \$28; and
- there was a three-day waiting period after applying for the license.<sup>142</sup>

If refugees wanted to be married while at Fort Dix, an application for a marriage license was obtained from the New Hanover Township Registrar in Cookstown, New Jersey. The JTF SJA assisted in obtaining and completing the marriage license application for two refugees.<sup>143</sup> The JTF SJA visited the New Hanover Township Registrar and picked up the completed marriage license.<sup>144</sup> He then provided the license to DHHS for completion by the imam and the witnesses. Lastly, he returned the completed marriage license to the Registrar for filing and obtained certified copies of the documents for the newly married couple.<sup>145</sup> On 22 May 1999, the wedding of the refugees occurred.<sup>146</sup> The wedding was supported through donations: wedding dress and tuxedo, a wedding cake prepared by

<sup>139</sup> See Message, 131700 (EDT) June 99, JTF Provide Refuge, subject: JTF Provide Refuge SITREP 42 [hereinafter SITREP 42] (on file with CLAMO).

<sup>140</sup> An imam is a recognized leader or religious teacher of Islam.

<sup>141</sup> See SITREP 17, *supra* note 134.

<sup>142</sup> See SJA SOP, *supra* note 42, ¶ 6-10.

<sup>143</sup> See SITREP 18, *supra* note 96.

<sup>144</sup> See SITREP 19, *supra* note 63.

<sup>145</sup> See Message, 251700 (EDT) May 99, JTF Provide Refuge, subject: JTF Provide Refuge SITREP 23 [hereinafter SITREP 23] (on file with CLAMO).

<sup>146</sup> See Message, 231700 (EDT) May 99, JTF Provide Refuge, subject: JTF Provide Refuge SITREP 21 [hereinafter SITREP 21] (on file with CLAMO).

volunteers in the federal prison, rings, scarves for the women to cover their heads in the Muslim church, flowers, a string of pearls for the bride, and an Albanian band from the Bronx. *LIFE* magazine provided wedding pictures in exchange for exclusive coverage inside the chapel and at the reception. The bride and groom had been separated for a year and were reunited at a refugee camp in FYROM. To accompany her and her family to the U.S., the groom posed as a cousin to the bride.

***c. Citizenship Issues Are Controlled by Federal Law.***

Children born at Fort Dix were U.S. citizens upon birth. U.S. law provides that persons born in the U.S., and subject to U.S. jurisdiction, are considered citizens of the U.S.<sup>147</sup> The first child born after arrival at Fort Dix was named “Amerika.”<sup>148</sup>

***7. Expect Refugees and Soldiers to Want to Volunteer.***

***a. Refugee Volunteer Work Cannot Violate the Antideficiency Act.***

Refugees wanted to help with odd jobs around the Village.<sup>149</sup> Working in coordination with FORSCOM, the JTF SJA prepared a waiver for Kosovar refugees to work in the Village.<sup>150</sup> The Judge Advocate General’s School, U.S. Army (TJAGSA), provided FORSCOM with an example waiver that was prepared for Kurdish refugees during Operation Provide Comfort in 1991.<sup>151</sup> The JTF SJA then prepared a Statement of Gratuitous Services Agreement for refugees to sign.<sup>152</sup> The Agreement is included in Appendix V-16.

Violation of the Antideficiency Act prohibition against accepting volunteer services<sup>153</sup> was a major issue. FORSCOM advised that according

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<sup>147</sup> See 8 U.S.C. § 1401 (2000).

<sup>148</sup> See Message, 241700 (EDT) May 99, JTF Provide Refuge, subject: JTF Provide Refuge SITREP 22 [hereinafter SITREP 22] (on file with CLAMO).

<sup>149</sup> See SITREP 10, *supra* note 11.

<sup>150</sup> See E-mail from CPT Natalie A. Kolb, Office of the Staff Judge Advocate, U.S. Army Forces Command, to LTC Willis C. Hunter, Staff Judge Advocate, JTF Provide Refuge, (7 May 1999, 13:11 EDT) [hereinafter Kolb E-mail to Hunter (7 May 1999)] (on file with CLAMO).

<sup>151</sup> See E-mail from LTC Willis C. Hunter, Staff Judge Advocate, JTF Provide Refuge, to CPT Natalie A. Kolb, Office of the Staff Judge Advocate, U.S. Army Forces Command (7 May 1999, 13:18 EDT) (on file with CLAMO).

<sup>152</sup> See Hunter Memorandum, *supra* note 43.

<sup>153</sup> 31 U.S.C. § 1341 (2000).

to Comptroller General decisions it was not a violation of the Antideficiency Act to accept free services from a person who agreed, in writing, to waive entitlement to compensation. It could, however, be an improper augmentation of an appropriation if a refugee was performing a job that would otherwise require someone to be paid.<sup>154</sup> If the refugee was only performing tasks within the Village, or was performing tasks directly related to processing of refugees, FORSCOM determined that these tasks were not tasks that would otherwise require payment. FORSCOM recommended that the issue be coordinated with the unions on Fort Dix and the Inter-Agency Working Group, to ensure that no one objected to refugee volunteer labor and that everyone agreed with the language of the Statement of Gratuitous Services.<sup>155</sup>

After consulting with the JTF SJA, the Fort Dix Commander coordinated with the Fort Dix union representatives and the Fort Dix Civilian Personnel Officer. There were no objections so long as the refugees worked within the Village and did not displace government employees. Because no one had any objection to the proposal, the JTF SJA drafted the Gratuitous Service Agreement and provided it to the JTF J2 for translation into Albanian.<sup>156</sup> The SJA used a second translator to verify the translation. The document was then provided to the J3 and the Civil-Military Officer.

***b. Ordering Soldiers to Work Directly for a Relief Organization Is Improper.***

A separate issue arose concerning soldiers' desires to assist the JVA, the organization representing the charitable organizations placing the refugees with family or sponsors.<sup>157</sup> The JTF SJA advised that ordering soldiers to work directly for the JVA was improper.<sup>158</sup> Soldiers could

<sup>154</sup> See Kolb E-mail to Hunter (7 May 1999), *supra* note 150.

<sup>155</sup> See E-mail from CPT Natalie A. Kolb, Office of the Staff Judge Advocate, U.S. Army Forces Command, to LTC Willis C. Hunter, Staff Judge Advocate, JTF Provide Refuge (12 May 1999, 13:11 EDT) (on file with CLAMO).

<sup>156</sup> See SITREP 8, *supra* note 67.

<sup>157</sup> See SITREP 10, *supra* note 11. Refer to Appendix V-4 for the list of refugee service agencies.

<sup>158</sup> Ordering soldiers to work directly for the JVA runs afoul of fiscal controls and government standards of conduct. First, a commander cannot obligate and expend funds without affirmative congressional authority. See, e.g., *United States v. MacCollum*, 426 U.S. 317, 321 (1976) ("The established rule is that the expenditure of public funds is proper only when authorized by Congress . . ."). Second, a commander cannot ethically force a subordinate to perform a nonofficial duty. See *Standards of Ethical Conduct for Employees of the Executive Branch*, 5 C.F.R. § 2635.705(b) (2001) ("An employee shall not encourage, direct, coerce, or request a subordinate to use official time to perform activities other than those required in the performance of official duties or authorized in accordance with law or regulation.").

volunteer, however, to work during their off-duty time. The JTF SJA further advised that volunteers must be true volunteers and that it would be wise to require them to perform their duties in civilian clothes to avoid the perception that they had been directed to work.

**8. *Providing Legal Assistance to Refugees Requires Secretary of the Army Approval.***

Pursuant to Army Regulation (AR) 27-3, *The Army Legal Assistance Program*,<sup>159</sup> Kosovar refugees were not entitled to legal assistance, but could become eligible legal assistance clients upon approval of the Secretary of the Army (SECARMY). If FORSCOM desired to expand legal assistance to Kosovar refugees, FORSCOM was advised to send a request to The Judge Advocate General for review. Legal Assistance, OTJAG, recommended that local bar committees be contacted to see if they could mobilize pro bono assistance.<sup>160</sup>

Subject to the availability of legal staff, 10 U.S.C. § 1044 authorizes SECARMY to provide legal assistance services for only AD members, their dependents, and retirees and their dependents. SECARMY could direct that certain otherwise ineligible clients, such as refugees, receive certain legal assistance services in accordance with 10 U.S.C. § 3013. JTF PR did not pursue this exception and, accordingly, did not provide legal assistance to refugees.

**9. *Access to Military Dining Facilities by Civilians Requires an Exception to Policy.***

Civilian personnel, including contractors, volunteers, and federal civilian employees, wanted to eat in military dining facilities.<sup>161</sup> In consultation with the Fort Dix SJA and the Director of Logistics, the JTF SJA determined that according to AR 30-22, *The Army Food Service Program* (draft AR),<sup>162</sup> the Fort Dix Commander could authorize civilian

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<sup>159</sup> U.S. DEP'T. OF ARMY, REG. 27-3, THE ARMY LEGAL ASSISTANCE PROGRAM (21 Feb. 1996).

<sup>160</sup> See E-mail from Colonel George L. Hancock, Jr., Office of The Judge Advocate General, U.S. Army, to Major Curtis A. Parker, Deputy Chief, Legal Assistance Policy Division, Office of The Judge Advocate General, U.S. Army (6 May 1999) (on file with CLAMO).

<sup>161</sup> See SITREP 10, *supra* note 11.

<sup>162</sup> U.S. DEP'T OF ARMY, REG. 30-22, THE ARMY FOOD SERVICE PROGRAM (draft). As of the publishing of this Book, the AR 30-22 draft has not yet replaced the current AR, U.S. DEP'T OF ARMY, REG 30-1, THE ARMY FOOD SERVICE PROGRAM (15 Aug. 1989).

personnel to eat in a military dining facility if a legitimate government interest was served by doing so.<sup>163</sup> Applying this analysis, the Fort Dix Commander felt that a legitimate government interest was the morale and productivity of the civilian force. Accordingly, he authorized all civilians employed in support of Operation Provide Refuge to eat in government dining facilities.<sup>164</sup>

## ***10. Fiscal Law.***

### ***a. Indirect Operating Costs May Not Be Reimbursable.***

The USARC Comptroller notified Fort Dix that \$20 million had been released directly to Fort Dix through the Defense Finance and Accounting Service (DFAS) on 14 May 1999 to provide reimbursement for Operations and Maintenance (O&M) costs incurred by Fort Dix, USARC, XVIII Airborne Corps, and FORSCOM.<sup>165</sup> The funding was available through 30 September 1999.

As of 14 June 1999, the JTF PR had not received guidance regarding any agreements between DA, DOD, and DHHS on what was or was not reimbursable.<sup>166</sup> DOD incurred many costs at the beginning of the operation that it was committed to pay, and the local DHHS office was questioning some of these costs. These primarily involved “indirect” costs associated with support of installation activities and responsibilities that were affected by the operation. Examples included: contracted support for units and soldiers training at Fort Dix; additional costs for training that could not be performed as originally budgeted because the barracks were used for refugee housing; and additional DOD Police patrols.

### ***b. Contractual Needs Must Be Tied to Mission Support and Properly Documented.***

JTF PR had not received final written approval from the Fort Dix contracting office prior to forming contracts in support of the mission. Instead, JTFPR relied upon verbal approval with an understanding that the

<sup>163</sup> See Hunter Memorandum, *supra* note 43.

<sup>164</sup> See SITREP 11, *supra* note 48. Civilians were required to pay the basic food charge plus a surcharge. The meal rates were fixed. Even if civilian workers were authorized full per diem, the rates did not change.

<sup>165</sup> See SITREP 12, *supra* note 49.

<sup>166</sup> See Message, 141700 (EDT) June 99, JTF Provide Refuge, subject: JTF Provide Refuge SITREP 43 [hereinafter SITREP 43] (on file with CLAMO).

details would be worked out later. In other words, JTF PR had contractually obligated its O&M funds without first establishing whether the contracts would be reimbursable by DHHS. This approach caused confusion once the contracts were submitted for official review.<sup>167</sup>

While all of the contracts broadly purported to be in support of the mission, closer inspection revealed that some of the construction contracts actually contained elements of infrastructure improvement—roof repair, for example—that arguably went beyond the bounds of mission support. Further complicating the analysis, the DOD/DHHS MOA was silent on whether construction costs were reimbursable expenses. In an effort to solve the problem after the fact, FORSCOM recommended that JTF PR draft a memorandum for record that would clarify how the disputed expenditure was tied to mission support.<sup>168</sup> Understanding that many contracts are formed in response to urgent needs and that the paperwork then follows, units should nonetheless strive to obtain formal written authorizations from the desired fund source before executing contracts whenever practicable.

***c. Competitive Contracting Procedures Are Required Absent Exception.***

Under the Competition in Contracting Act,<sup>169</sup> the government must seek competition for its contractual requirements. When circumstances do not allow for competitive contracting procedures, the contracting officer must prepare a Justification and Approval (J&A) and forward the J&A to higher headquarters for approval.<sup>170</sup> JTF PR never prepared a J&A, instead relying successfully upon Operation Order 99-005 to justify invoking the “unusual and compelling urgency” exception to competitive contracting procedures provided in 10 USC § 2304(c)(2).<sup>171</sup>

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<sup>167</sup> See E-mail from Brenda Quinn, Fort Dix, to Brian H. Gerber, Chief, Civil Law Division, Office of the Staff Judge Advocate, U.S. Army Forces Command (8 June 1999) (on file with CLAMO).

<sup>168</sup> See E-mail from Brian H. Gerber, Chief, Civil Law Division, Office of the Staff Judge Advocate, U.S. Army Forces Command, to Brenda Quinn, Fort Dix (8 June 1999) (on file with CLAMO).

<sup>169</sup> 10 U.S.C. § 2304 (2000).

<sup>170</sup> See GENERAL SERVS. ADMIN. ET AL., FEDERAL ACQUISITION REG. 6.303 (June 1997).

<sup>171</sup> See E-mail from MAJ Patrick E. Koepp, Office of the Staff Judge Advocate, U.S. Army Forces Command, to Brian H. Gerber, Chief, Civil Law Division, Office of the Staff Judge Advocate, U.S. Army Forces Command (1 June 1999) (on file with CLAMO).

## ***11. The JA Will Face Donation Issues.***

### ***a. Soldiers Cannot Solicit Donations.***

The JTF SJA reviewed issues surrounding JTF PR staff soliciting donations for items for refugees from local businesses.<sup>172</sup> The JTF SJA met with the JTF PR J3 to clarify the issue and point out that soldiers cannot solicit items on behalf of the Army.<sup>173</sup>

### ***b. New Jersey Army National Guard Donation Effort***

The NJ ARNG picked up, transported, sorted, warehoused, and distributed supplies and materiel donated by individuals, groups, and corporate sponsors.<sup>174</sup> DHHS anticipated that clothing requirements would be met by commercial and/or private donation. The NJ ARNG coordinated all donated clothing and supply efforts.<sup>175</sup> The NJ ARNG received over 120 calls from public and outside agencies offering relief and support.<sup>176</sup> Due to the overwhelming response for donations, JTF PR temporarily placed a moratorium on individual donations of clothing and other articles. The NJ ARNG continued to accept corporate-sponsored donations of certain items in short supply.

The American Red Cross (ARC) maintained all records of donations and lists of potential donors. The NJ ARNG operated two warehouses<sup>177</sup> where ARC shipments were received, off-loaded, sorted, and stored.<sup>178</sup> To support distribution to the refugees, the NJ ARNG opened “Village Stores” in eight of the nine Village dormitories and stocked the stores with goods from the two warehouses. The Village Store stocking priorities were updated daily based on items requested from the Village. The changes were

<sup>172</sup> See Hunter Memorandum, *supra* note 43.

<sup>173</sup> See U.S. DEP'T OF DEFENSE, REG. 5500.7-R, JOINT ETHICS REGULATION ¶ 2-100 (30 Aug. 1993); E-mail from LTC Willis C. Hunter, Staff Judge Advocate, JTF Provide Refuge, to LTC Herbert Flora, DCSOPS, U.S. Army Reserve Command (13 May 1999) (on file with CLAMO).

<sup>174</sup> See Message, 161700 (EDT) May 99, JTF Provide Refuge, subject: JTF Provide Refuge SITREP 14 [hereinafter SITREP 14] (on file with CLAMO).

<sup>175</sup> See OORDER 99-005, *supra* note 4, at annex I (Service Support), ¶ 3(b)(1). See also Joint Task Force Provide Refuge, Standard Operating Procedures, J4 Logistics, annex B (Supply and Service Operations), tab 1 (Points of Contact/Services) (19 May 99) [hereinafter JTF J4 Logistics SOP] (on file with CLAMO).

<sup>176</sup> See SITREP 19, *supra* note 63.

<sup>177</sup> See JTF J4 Logistics SOP, *supra* note 175, ¶ 1(b).

<sup>178</sup> See Message, 171700 (EDT) May 99, JTF Provide Refuge, subject: JTF Provide Refuge SITREP 15 [hereinafter SITREP 15] (on file with CLAMO).

then posted to the New Jersey Governor's home page, "Kosovo Refugee Relief Effort," to maximize visibility.

The ARC logistics officer worked to clear the donation warehouse, which contained about three million dollars worth of new children's clothing.<sup>179</sup> The ARC requested DOD validation of the requirement to obtain military airlift and authorization to execute the airlift to the Kosovar camps in FYROM and Albania for distribution.<sup>180</sup> On 6 July 1999, the ARC logistics officer confirmed through the International Red Cross that the children's clothing in the JTF PR warehouse was not needed for Kosovar camps and that military airlift would not be pursued. The ARC then distributed the clothing through local charitable organizations such as the Salvation Army.<sup>181</sup>

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<sup>179</sup> See Message, 021700 (EDT) July 99, JTF Provide Refuge, subject: JTF Provide Refuge SITREP 61 [hereinafter SITREP 61] (on file with CLAMO).

<sup>180</sup> The Denton Amendment, 10 U.S.C. § 402 (2000), allows for the transportation of nongovernmental privately donated humanitarian goods on a space-available basis using DOD assets. The program is jointly administered by the U.S. Agency for International Development (USAID) and DOD.

<sup>181</sup> See SITREP 65, *supra* note 22.

# APPENDICES



**APPENDIX III-1: V CORPS SJA DOCC APPENDIX**

1. REFERENCES.

- a. CJCSI 3121.01, JCS SROE for US Forces.
- b. Army Field Manual 27-10, The Law of Land Warfare.
- c. Department of Defense Directive 5100.77, Department of Defense Law of War Program.
- d. MJCS 0124-88, Joint Chiefs of Staff Implementation of the Department of Defense Law of War Program.
- e. Joint Publication 1-02, Department of Defense Dictionary of Military and Associated Terms.
- f. Department of the Army Pamphlet 27-1, Treaties Governing Land Warfare.
- g. Department of the Army Pamphlet 27-24, Selected International Agreements, Volume II.
- h. AFP 110-31, International Law - Conduct of Armed Conflict and Air Operations.
- i. MJCS 59-83, Implementation of DOD Law of Armed Conflict.

2. PURPOSE. To prescribe the manner in which the V Corps Staff Judge Advocate (SJA) will provide legal services in support of deep operations during wartime, transition to war, and other contingency operations.

3. SCOPE. The information contained herein is applicable to V Corps and its supporting organizations during planning and execution of Corps deep operations missions.

4. GENERAL. The V Corps SJA will provide legal support and services to the Corps Deep Operations Coordination Cell (DOCC). Support will include advice on all legal issues (foreign, domestic, and international) associated with combat operations. The V Corps SJA exercises technical supervision over all judge advocates in V Corps.

5. ORGANIZATION AND RESPONSIBILITIES.

a. Personnel. The V Corps SJA provides two Operational Law judge advocates to the DOCC for the planning, coordination, and execution of twenty-four hour deep operations.

b. Organization. The Operational Law judge advocates work out of the DOCC LNO section.

c. Responsibilities.

(1) Advises the CG, CofS, G3, FSCoord, Aviation Regiment Commander, and DOCC personnel on all targeting legal issues, to include international law, rules of engagement, law of war, proportionality, collateral damage, protected sites, and displaced civilians (DCs).

(2) Monitors the protected site list and locations of DCs.

(3) Monitors the Automated Deep Operations Coordination System (ADOCS).

(4) Serves as the liaison between the DOCC and the V Corps SJA.

## 6. PROCEDURES.

a. The Operational Law judge advocates participate in all stages of the mission planning and analysis, which includes attending targeting meetings, targeting boards, Go-No Go for planning meetings, Go-No Go for execution meetings, and targeting scrub meetings to provide legal advice and determine the focus for future operations. The judge advocates serve as combat multipliers, not inhibitors. As such, it is vital to work closely with the other planning sections from the inception of planning in order to identify possible legal objections/problems early on. This ensures maximum productivity from all sections.

b. The Operational Law judge advocates perform comprehensive legal reviews on all proposed target nominations and identify potential legal issues.

(1) A valid military target is any combatant and objects that by their nature, location, purpose, or use make an effective contribution to enemy military action. The basic principle of “proportionality” applies to all targeting decisions. The rule as it is often stated is that the loss of life and damage to property incidental to attacks must not be excessive in relation to the concrete and direct military advantage to be gained.

(2) Certain people, places, and property are protected and may not be directly targeted. Examples of protected persons are civilians who are not engaged in hostilities, and enemy soldiers who are out of combat due to surrender or injury or who are exclusively engaged in medical duties. An undefended city that is open for unopposed occupation is an example of a place that is protected and that may not be targeted. Also, forces must take all necessary measures to spare the following specific types of sites:

(A) Hospitals and places where the sick and wounded are collected.

(B) Buildings dedicated to religion, art, science, or charitable purposes.

(C) Historic monuments.

(3) Many, but probably not all, of the protected sites listed above are designated as no fire areas in OPORDs. Whether or not designated in an OPORD, protected persons, places, and property may not be targeted. Protected sites lose their legal protection, however, if the enemy misuses them for hostile purposes.

(4) Collateral Damage. Unavoidable and unplanned damage to persons and property incurred while attacking a military objective is not a violation of the Law of War. The rule of proportionality, however, still applies. Planners and commanders must take all reasonable steps to ensure not only that the targets they identify and approve are military objectives or defended places, but also that these objectives may be attacked without probable losses in lives and damage to property out of proportion to the military advantage gained.

(5) The following questions should be addressed and considered by judge advocates in those situations where there is a substantial probability of collateral damage to a protected site or where the potential target is located near a built-up or populated area.

(A) What is the make-up of the population? Is it civilian, military, or a combination of both? What proportion of the population is military as opposed to civilian?

(B) How large is the population?

(C) Is there a time during the day in which the population density is less?

(D) What is the estimated collateral damage?

(E) What is the estimated civilian loss of life?

(F) What are the estimated civilian casualties?

(G) What is the estimated destruction of civilian property?

(H) What is the nature of the target?

(I) How critical is the target to the enemy war effort?

(J) How important is the destruction of the target to accomplishment of our mission? What is the military objective?

(K) Is it a target that may be needed by U.S. Forces at end state to reestablish order (e.g., power plants, rail lines, commercial communication lines, etc.)?

(L) Is the target susceptible to alternate means of destruction (Information warfare, PSYOPS)?

(M) What can be done to mitigate the impact on the civilian population?

(N) Is the target time sensitive or can the decision be delayed and what is the impact of delay?

(O) What will be the political/military impact of the collateral damage if the decision is made to destroy the target?

(P) What will be the U.S. media reaction (CNN factor)?

(Q) What will be the world reaction (media, international organizations such as the UN, or the ICRC)?

(R) What will be the reaction of our allies and the Coalition (will it affect their support for our war effort)?

(S) Will it impact on our domestic support for the war effort?

(T) Is the target recognized as a protected site under international law (Geneva Conventions/Hague Treaty). If so, answer the following questions:

(1) Is the target dedicated to religion, art, science, charitable purposes, historical monuments, a hospital, or have some cultural significance?

(2) Has the target lost its protected status by enemy misuse?

(3) What was the nature of the misuse (balancing test between misuse and military necessity)?

(4) If so, are there any civilians or other non-combatants present?

(5) If so, is there a requirement to warn of a potential attack prior to such attack.

(6) Is surprise a key element to attacking the target that would nullify the duty to warn?

7. SUMMARY. This appendix offers a brief overview of the functions and responsibilities of the V Corps SJA in the DOCC. The Operational Law judge advocates are a vital part of the deep operations team.

8. PROPONENT. The Proponent for this appendix is the V Corps SJA.

## **APPENDIX III-2: ADOCS INFORMATION PAPER**

AETV-JA

18 March 1999

### INFORMATION PAPER

SUBJECT: Automated Deep Operations Coordination System

1. **Purpose:** To familiarize with the uses and technical requirements of the Automated Deep Operations Coordination System (ADOCS) for the Office of the Staff Judge Advocate, V Corps.

2. **Overview:** The ADOCS is a computer program that provides the user with an integrated set of tools for data management and analysis, along with mission planning, coordination, and execution. It was originally developed for deployment at the Corps level, but has since migrated to both higher and lower echelons. ADOCS map displays utilize standard Defense Mapping Agency (DMA) products. It also employs DMA's Digital Terrain Elevation Data (DTED) for terrain analysis and DMA Gazetteers for locating place names. ADOCS uses overlays to depict military units, facilities, platforms, events, sensors, mission plans, operational graphics, and no fire areas. Any of these items may be displayed over any map background at any scale.

3. **Application:** The ADOCS system is fully operational in the SJA Main Command Post. It provides the most accurate and up-to-date information available which allows us to thoroughly analyze potential legal issues associated with deep operations early in the process, ensuring we are combat multipliers, not inhibitors. The OSJA, V Corps uses ADOCS for the following purposes:

- a. To analyze engagement areas and their surroundings;
- b. To analyze targets and potential targets;
- c. To anticipate the potential for collateral damage;
- d. To track no fire areas (permanent and temporary); and
- e. To track enemy force movement (by unit).

4. **System Requirements:** ADOCS operates on a standard Windows-NT workstation. A color display and network interface card are required. The minimum amount of RAM is 12 MB, although 32 is recommended. Generally, at least 2 GB of storage space for map and DTED data will be required. Map data can easily be shared by multiple users on a classified network.

Prepared by CPT Kerry L. Erisman, Operations Law, OSJA, V Corps

Reviewed by LTC Gaylen G. Whatcott, Deputy Staff Judge Advocate, OSJA, V Corps

APPENDIX III-3: SJA TARGET ANALYSIS FORM

TARGET ANALYSIS – SJA

1. Name of Engagement Area:
  
2. Location of Engagement Area:
  
3. Major Units In Engagement Area:
  
4. Protected Sites In/Near Engagement Area:
  
5. Legal Issues/Concerns With Engagement Area:
  
6. Recommendation:            **GO**    /    **NO GO**

**APPENDIX III-4: TASK FORCE HAWK ROE CARD**

**RULES OF ENGAGEMENT  
TASK FORCE HAWK**

**MISSION STATEMENT**

Your mission - provide security for U.S. and Allied Forces engaged in Operation ALLIED FORCE.

**SELF DEFENSE**

- You have the right to use force, including deadly force, in self defense.
- Use only the minimum force necessary to defend yourself.

**GENERAL RULES**

- Use the minimum force necessary to accomplish your mission.
- Hostile forces/belligerents who want to surrender will not be harmed. Disarm them and turn them over to your superiors.
- Treat everyone, including civilians and detained hostile forces/belligerents, humanely.
- Collect and care for the wounded, whether friend or foe.
- Respect private property. Do not steal. Do not take "war trophies".
- Prevent and report all suspected violations of the Law of Armed Conflict to superiors.

**CHALLENGING AND WARNING SHOTS**

- If the situation permits, issue a challenge:

In English: "STOP OR I WILL FIRE!"  
In Serbo-Croat: "Shta-nee ee-lee poot-sam!"  
In Albanian: "N-dahl per n-droo-shay joo-eye!"

- If the person fails to halt, you may be authorized by the on-scene commander or by standing orders to fire a warning shot.

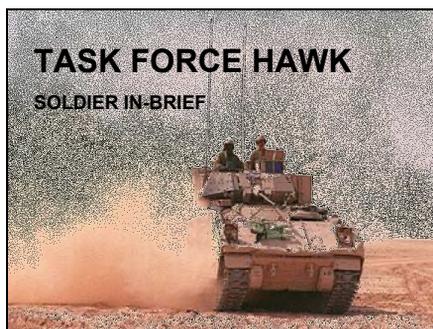
**OPENING FIRE** - You may fire only if you, friendly forces, persons or property under your protection are threatened with deadly force. This means you may fire against an individual who:

- Fires or aims his weapon at you, friendly forces, or persons with designated special status or property with designated special status under your protection.
- Plants, throws, or prepares to throw an explosive or incendiary device at you, friendly forces, or persons with designated special status or property with designated special status under your protection.
- Deliberately drives a vehicle at you, friendly forces, persons with designated special status or property with designated special status
- Attempts to take possession of friendly force weapons, ammunition, or property with designated special status, and there is no other way of avoiding this.

**MINIMUM FORCE** - If you have to fire: fire only aimed shots; fire no more rounds than necessary; take reasonable efforts not to destroy property; and stop firing as soon as the situation permits.

**APPENDIX III-V: TASK FORCE HAWK SOLDIER IN-BRIEF**

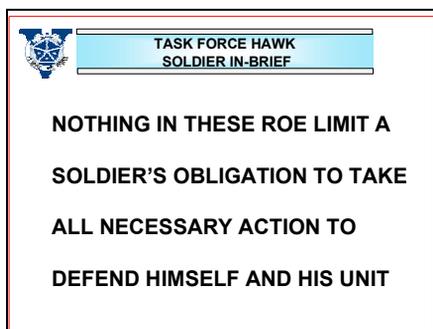
Slide 1



Slide 2



Slide 3



Slide 4



TASK FORCE HAWK  
SOLDIER IN-BRIEF

**KEY POINTS**

- NO FORCE HAS BEEN DECLARED HOSTILE
- OPERATIONS OUTSIDE HN NOT AUTHORIZED
- OFFENSIVE OPERATIONS NOT AUTHORIZED

Slide 5



TASK FORCE HAWK  
SOLDIER IN-BRIEF

**HOST NATION HAS PRIMARY  
RESPONSIBILITY FOR SECURITY**

- DURING A GROUND DEFENSE ALERT,  
REMAIN IN DESIGNATED STATION
- CHALLENGE, DETAIN, AND TURN OVER TO  
HOST NATION SECURITY SUSPICIOUS  
PERSONS FOUND INSIDE THE WIRE

Slide 6



TASK FORCE HAWK  
SOLDIER IN-BRIEF

**HOSTILE ACT -- HOSTILE INTENT**

- THREAT OR ATTACK BY FOREIGN FORCE  
OR TERRORIST UNIT AGAINST US FORCES,  
NATO TROOPS, PROTECTED PERSONS, OR  
DESIGNATED PROPERTY
- RESPONSE: PROPORTIONAL FORCE TO  
DETER, NEUTRALIZE, OR DESTROY THREAT

Slide 7



TASK FORCE HAWK  
SOLDIER IN-BRIEF

***PROPORTIONALITY***

- USE MINIMUM FORCE NECESSARY TO COUNTER THREAT
- FORCE MUST BE REASONABLE IN INTENSITY, DURATION, MAGNITUDE

Slide 8



TASK FORCE HAWK  
SOLDIER IN-BRIEF

***USE MINIMUM FORCE***

- VERBAL WARNINGS
- SHOW OF FORCE
- WARNING SHOTS (IF AUTHORIZED)
- DEADLY FORCE (SHOOT TO KILL)

Slide 9



TASK FORCE HAWK  
SOLDIER IN-BRIEF

**IF YOU HAVE TO OPEN FIRE:**

- FIRE ONLY AIMED SHOTS
- FIRE NO MORE ROUNDS THAN NECESSARY
- DO NOT UNNECESSARILY DESTROY PROPERTY
- STOP FIRING ASAP

Slide 10



TASK FORCE HAWK  
SOLDIER IN-BRIEF

**OPENING FIRE EXAMPLES**

- INDIVIDUAL AIMS WEAPON AT YOU
- INDIVIDUAL FIRES WEAPON AT YOU
- VEHICLE DELIBERATELY DRIVEN AT YOU

Slide 11



TASK FORCE HAWK  
SOLDIER IN-BRIEF

**MORE OPENING FIRE EXAMPLES**

- INDIVIDUAL PLANTS, THROWS, OR PREPARES TO THROW AN EXPLOSIVE OR INCENDIARY DEVICE AT YOU
- INDIVIDUAL TAKES POSSESSION OF FRIENDLY FORCE WEAPONS, AMMUNITION, OR PROTECTED PROPERTY

Slide 12



TASK FORCE HAWK  
SOLDIER IN-BRIEF

**RAMP – APPLICATION OF ROE**

**R**ETURN FIRE WITH AIMED FIRE  
**A**NTICIPATE ATTACK  
**M**EASURE THE AMOUNT OF FORCE  
**P**ROTECT WITH DEADLY FORCE ONLY  
HUMAN LIFE AND DESIGNATED  
PROPERTY

**APPENDIX III-6(a): CLAIMS PROCESSING INSTRUCTIONS**

**U.S. Army  
ANKESA PER PASURI TE HUMBUR  
CLAIMS FOR DAMAGE TO PROPERTY**

**Ne do te kerkojme dokumentat vijues per nje proces te rregullt me ju :**  
We will require the following documents in order to process your claim :

**Leter ose formular ankimi qe tregon mendimin tuaj dhe shumen qe deshironi.**  
Letter or claim form telling your intention to claim including the amount you wish to claim.

**Nje kopje te leternjoftimit ose te pasaportes.**  
A copy of your ID card.

**Nje kopje te dokumentit te pronesise ose te nje dokumenti tjetër qe verteton pronesine. Ne qofte se ankesa juaj eshte per deme ndaj tokes atehere duhet te bini : a) Certifikaten e regjistrimit te tokes b) kartelen c) harten treguese.**  
A copy of your deed or other document proving ownership. If you are claiming damage to the land you must include a photocopy of the : a)The certificate of land registration b) The cartela c) The indicatory map.

**Nje kopje te dokumentave te sigurimit te pasurise.**  
A copy of your property insurance documents.

**Fature origjinale per riparim te pasurise. Ne qofte se po ankoheni per demtime te tokes ju duhet te perfshini nje fature origjinale te agronomit per demet perkatese.**  
Original invoices for property repair or estimate of repair. If you are claiming damage to the land, you must include an official estimate of the damage from an agronomist.

**Nje kopje te raportit te policise lokale ose te forcave ushtarake te NATOs ( nese eshte e mundur)**  
A copy of the local police report or U.S. or NATO military police report ( if available)

**Emrin e njesise te ushtrise te SH.B.A. qe beri demtimin dhe emrin e komandantit te asaj njesie.**  
The name of the U.S. army unit that caused that damage and the name of the units commander.

**Disa fotografi te pasurise te demtuar.**  
Any photographs that you may have of the damaged property.

**Ne qofte se po ankoheni ne interes te personave te trete ,duhet te bini edhe nje prokure te posacme.**  
If you are claiming on behalf of someone else you must include an original power of attorney.

**Ju lutem ti conit keto dokumenta ne :**  
Please send this documents to :

**U.S. EMBASSY  
RRUGA E ELBASANIT 103  
TIRANE, ALBANIA  
ATTN : CLAIMS**

**APPENDIX III-6(b): CLAIMS FORM**

<b>APLIKUESI</b> Applicant	
<b>Emri i plote</b> Name in full	<b>Numri i telefonit</b> Telephone number
_____	
<b>Adresa perkatese</b> Mailing Address	
<b>SHUMA E KERKUAR</b> Amount claimed	
<b>Demi i pasurise</b> Property damage _____	<b>Demi personal</b> Personal injury _____
<b>Tjeter, pershkruaje</b> Other, describe _____	<b>Shuma</b> Amount _____
<b>Totali i shumes se kerkuar</b> Total amount claimed	
_____	
<b>INCIDENTI</b> Incident	
<b>Data</b> date _____	<b>Ora</b> Hour _____
<b>Vendi</b> Place _____	
<b>Jepni nje pershkrim te detajuar te incidentit. Identifikoni te gjithë personat dhe pasurine qe u perfsihine ne incident. Bashkangjisni te gjitha provat.</b> Give a detailed description of the incident. Identify all persons and property involved. Attach all supporting evidence.	
_____	
_____	
_____	
<b>DEMI I PASURISE</b> Property damage. <b>Deklaroni emrin dhe adresen e pronarit ne rast se eshte e ndryshme me te ate te personit qe ben ankesen. Deklaroni vitin e prodhimit dhe gjendjen fizike te pasurise se demtuar. Pershkruani riparimet e nevojshme dhe jepni koston e perafert.</b> State name and address of owner, if other than claimant. Describe and substantiate the age and the conditions of the damaged property. Describe necessary repair and substantiate all costs.	
_____	
_____	
_____	
<b>DEMI PERSONAL</b> Personal injury. <b>Jepni emrin dhe adresen e personit te demtuar. Pershkruani dhe vertetoni natyren , madhesine e demtimit dhe trajtimin mjekesor perkates.</b> State name and address of injured person. Describe and substantiate the nature and extent of injury and required medical treatment.	
_____	
_____	
_____	

**Deshmitaret. Witnesses. Jepni emrin ,adresen dhe numrin e telefonit te te gjithë deshmitareve te njohur.** State name ,address ,and phone number of all known witnesses.

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**Shenoni siguracionet qe ka pasur pasuria e demtuar. Specifikoni cdo lloj menyre tjeter qe te merrni demshperblim ( p.sh. sigurim shendeti ,sigurim social ,kompensimi i punonjesit dhe atij te dhene prej punedhenesit ). Jepni informata mbi natyren dhe madhesine e kompensimit.** List all insurance applicable to damaged property. Specify any other source of recovery, i.e.health insurance, social insurance, worker’s compensation fund and employer. State the nature and amount of compensation.

**Siguruesi** Insurer \_\_\_\_\_ **Numri i siguracionit** Policy number \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**Certifikate . Une vertetoj se kjo deklarate eshte e plote dhe korrekte dhe se cdo artikull i pyetur eshte plotesisht dhe ekskluzivisht i lidhur me incidentin e permendur. Une vertetoj se nuk kam marre dhe nuk jam i gatshem te marr kurrfare kompensimimi as pagese nga ndonje person tjeter. Une kuptoj se cdo paraqitje pa zbulim ose pa faktemund te rezultoje ne perfundim ose zbritje te kompensimit. Nese propozohet ndonje kompensim dhe une bie dakord me ate kompensim, une pranoj se kerkesat e mia jane plotesuar dhe perfundon zgjidhja e ketij ankimi te arritur prej incidentit, dhe une nuk do te kerkoj kompensim me tej nga ju apo nga ndonje pale tjeter.**

Certification. I certify that my statements above are complete and correct and that each requested item is entirely and exclusively related to the aforementioned incident. I also certify that I have not received nor I am eligible to receive any compensation or payment for these damages from any third party. I understand that any nondisclosure or fraudulent statement may result in denial of my request or a reduction in my award. If any award is offered and I accept that award, I agree that such acceptance will be in full satisfaction and final settlement of my claims arising from this incident and that I shall have no further claim against the tortfeasor or any third party.

**Nenshkrimi** \_\_\_\_\_  
Signature

**Vendi** \_\_\_\_\_  
Place

**Data** \_\_\_\_\_  
Date

**APPENDIX III-6(c): CLAIMS SETTLEMENT AGREEMENT**

**U.S. Armed Forces  
MARRVESHJE PER ZGJIDHJE TE ANKESES  
CLAIMS SETTLEMENT AGREEMENT**

**Numri i ankeses** \_\_\_\_\_  
Claim number

**I NJOHUR NGA TE GJITHE TE PRANISHMIT** Known by all men present :  
**Nepermjet kesaj une vertetoj se e pranoj shumen** \_\_\_\_\_ **ne kenaqesi te plote dhe te drejte si dhe perfundimin e te gjitha ankesave qe kam ose kam pasur kundra Shteteve te Bashkuara , oficerëve te saj , agjentëve dhe punetoreve, per te gjitha demtimet dhe humbjet, nese ka ndodhur ndonje si rezultat i forcave te SH.B.A. ne kete date. Une garantoj se jam pronari i ligjshem i pasurise se demtuar. Une garantoj se do te mbroj qeverine e SH.B.A. kunder cdo gjeje ne rast te kundert. Ne rast se eshte vendosur se dikush tjetër ose nje tjetër entitet është pronari i drejte i pasurise, se paku ,une do te ja kthej te gjithe pagesat qeverise se SH.B.A. Ne qofte se ka ndryshime mes tekstit shqip dhe atij anglisht ,teksti anglisht do te kete precedence.**

I hereby agree to accept the sum of \_\_\_\_\_ in full and fair satisfaction and final settlement of all claims, which i have or may have against the United States, its officers, agents and employess, for all damages and injuries, if any, incurred by me as a result of U.S. Forces as of this date. I warrant that I am the rightful owner of the damaged property. I warrant that I will defend the United States government against all claims to the contratry. In the event that is determined that another person or entity is the rightful owner of the damaged property, at a minimum I will refund all payments to the U.S. Government. In the event of different interpretations between the English and Albanian text, the English test will be controlling.

**Emri i ankuesit i shtypur** \_\_\_\_\_  
Typed or printed name of claimant

**Nenshkrimi i ankuesit** \_\_\_\_\_  
Signature of claimant

**Adresa e ankuesit** \_\_\_\_\_  
Address of claimant

**APPENDIX III-7: TASK FORCE HAWK GENERAL ORDER #1**

**HEADQUARTERS  
TASK FORCE HAWK  
TIRANA AIR BASE, ALBANIA**

General Order #1

6 April 1999

Operation Noble Anvil

Title: Duties and Prohibited Activities of Personnel Serving in Task Force Hawk

Applicability: All U.S. military and civilian personnel assigned or attached to, serving with, or accompanying U.S. Armed Forces deployed with or in support of Task Force Hawk while in the area of operations. For purposes of this order, the area of operations consists of the land territory, territorial water, international waters nearby, and airspace of the Balkans (including but not limited to Albania, the Former Yugoslav Republic of Macedonia (FYROM), and the Federal Republic of Yugoslavia (FRY)).

**1. Statement of Military Purpose and Necessity.** High standards convey the serious commitment of the U.S. and facilitate mission accomplishment. This order establishes individual standards and duties and sets essential restrictions upon certain activities in order to maintain the security, health, and welfare of U.S. Forces, prevent conduct prejudicial to good order and discipline or of a nature to bring discredit upon U.S. Forces, and maintain good relations within the region.

**2. Individual Duties.**

a. Everyone subject to this General Order must observe a "no-alone" policy, that is, they must be in parties of at least two U.S. military or accompanying civilian persons when outside assigned accommodations or secure field sites.

b. Everyone subject to this General Order must become familiar with and respect the laws, regulations, and customs of the Host Nation (HN) insofar as they do not interfere with the execution of their official duties. All personnel are charged to respect and cooperate to the maximum extent possible with the personnel of the armed forces of other nations participating and acting in concert with U.S. Forces in the execution of the missions of Operation Noble Anvil.

c. All persons subject to this General Order are directly responsible for mission, technology, and force protection, and must ensure the security of sensitive information,

equipment, plans, and procedures.

**3. Individual standards of training/certification:** Deploying personnel must be at peak military proficiency in their duties, operation of their equipment, and the following:

- a. Individual weapon qualification;
- b. Mask and personal NBC defense;
- c. Counter-intelligence and counter-terrorism;
- d. Cultural awareness, applicable requirements of HN law, and their rights and responsibilities under applicable Status of Forces Agreements (SOFA).

**4. Prohibited Activities.**

- a. Failure to be in a party of at least two U.S. military or accompanying civilian persons outside the assigned commercial accommodations or secure field sites.
- b. Travel across international boundaries, except as specifically authorized in the performance of official duty.
- c. Taking or retaining public or private property as souvenirs of the operation. (Legitimately purchased souvenirs, other than weapons, munitions, or items prohibited by customs regulations are authorized).
- d. Consuming alcoholic beverages, except for designated personnel at designated ceremonies, as approved by the Task Force Commander, Deputy Commander, or Chief of Staff.
- e. Gambling of any kind, including sports pools, lotteries, or raffles and the entry of any establishment where gambling is permitted or occurring.
- f. Selling, bartering, or exchanging any currency other than at the officially approved HN exchange facilities.
- g. Possessing, touching, using, or knowingly approaching without legal authority any mine, unexploded munition or ordnance of any kind or description whatsoever. Without legal authority means an act or activity undertaken by U.S. personnel which is not done at the direction of a commander or as the result of military necessity while performing military duties.
- h. Purchase, possession, use, sale, shipment or introduction of privately-owned firearms, ammunition, and explosives.
- i. Removing, possessing, selling, transferring, defacing, or destroying

archaeological artifacts or national treasures.

j. Any sexual conduct or contact with any person other than one's spouse.

k. Participating in any form in HN political activities outside the scope of official duties.

l. Entry of any HN religious shrine or mosque without approval of the Task Force Commander, Deputy Commander, or Chief of Staff.

**5. Punitive Order.** This order is punitive. Persons subject to the Uniform Code of Military Justice (UCMJ) who violate this order may be punished under Article 92, UCMJ, for violating a lawful general order. Civilians accompanying U.S. Forces may face adverse administrative action.

**6. Unit Commander Responsibility.** Unit commanders and supervisors are charged to ensure all personnel are briefed about the individual duties and prohibited activities contained herein.

**7. Contraband.** Prohibited items may be considered contraband and be immediately confiscated. Commanders or law enforcement personnel should coordinate with the Task Force legal advisor before destroying confiscated contraband.

**8. Effective Date and Expiration.** This General Order is effective immediately. It will expire upon stand down of Task Force Hawk, unless sooner rescinded, waived, or modified.

JOHN W. HENDRIX  
Lieutenant General, U.S. Army  
Commanding General

## Appendix III-8: TASK FORCE HAWK JURISDICTIONAL ALIGNMENT

V Corps Suppl 1 to USAREUR Reg 27-10  
Interim Change 7

### APPENDIX L

#### V CORPS AREA COURT-MARTIAL JURISDICTION, TASK FORCE HAWK

L-1. Effective 17 April 1999, the Commander-in-Chief, U.S. Army Europe and Seventh Army, transferred General Court-Martial Convening Authority (GCMCA) to Commander, V Corps, over all personnel assigned to Task Force Hawk (TFH). Paragraphs L-4 through L-8 align these units and soldiers for military justice administration within the Task Force Hawk area of operations. Those actions requiring the action of a Special Court-Martial Convening Authority (SPCMCA) are outlined in UR 27-10, paragraph 12e. Special Court-Martial Convening Authorities exercise jurisdiction over Summary Court Martial Convening Authorities (SCMCA) listed below them; SCMCA's exercise jurisdiction over the units listed below them. This jurisdictional delineation only applies to Task Force Hawk and has no effect on established jurisdictional schemes in the Central Region or elsewhere.

L-2. The jurisdiction structure depicted in paragraphs L-4 through L-8, to wit: the vicinity of US military operations at and around Tirana-Rinas Air Base, Albania, becomes effective when a unit or soldier deploys to a location at Task Force Hawk (TFH) and terminates when that unit or soldier permanently redeploys to a location outside TFH. Upon commission of an offense by a soldier assigned to a unit redeploying from TFH that may warrant a court-martial, the unit to which the soldier will redeploy will possess UCMJ authority over the offense.

L-3. Minor adjustments to the alignment depicted in paragraph L-4 through L-8 may be necessary after approval. Units may be attached or assigned to TFH in the future and some units currently assigned or attached could have been inadvertently omitted. If due to an oversight or any other reason, a unit is not listed or accounted for on these charts and that unit or a soldier is assigned or attached within TFH, then that unit or soldier will be attached (to include attachment for military justice purposes) to Commander, V Corps, Special Troops Battalion, TFH, and the SPCMCA and the SCMCA exercising jurisdiction over V Corps, Special Troops Battalion, TFH. The Commander, Special Troops Battalion, TFH, will serve as the Article 15, UCMJ authority for any soldiers who are individual augmentees and not otherwise assigned to a unit within TFH.

L-1

V Corps Suppl 1 to USAREUR Reg 27-10  
Interim Change 7

**L-4. SPCMCA and SCMCA: 12<sup>th</sup> Aviation Brigade.** – The Commander, 12<sup>th</sup> Aviation Brigade, is the SPCMCA and SCMCA for all soldiers in the Task Force Hawk area of operations that are assigned to the units listed below.

1. HHC, 5-158<sup>th</sup> Aviation Regiment  
(attach elements of HHC, 12 AV BDE, HHC & A Co. 3-58, & 1/E/51 IN BN present in TFH area of operations)
2. A Co., 5-158<sup>th</sup> Aviation Regiment
3. C Co., 5-158<sup>th</sup> Aviation Regiment
4. F Co., 5-159<sup>th</sup> Aviation Regiment
5. 159<sup>th</sup> Medical Company
6. D Co. 165<sup>th</sup> Military Intelligence

**L-5. SPCMCA: 7<sup>th</sup> Corps Support Group:** The Commander, 7<sup>th</sup> CSG, is the SPCMCA for all soldiers in the Task Force Hawk area of operations that are assigned to the units listed below.

**SCMCA - 8<sup>th</sup> Finance Battalion**

1. A Det. 8<sup>th</sup> Finance Battalion
2. D Det. 8<sup>th</sup> Finance Battalion
3. HHC, 38<sup>th</sup> Personnel Support Battalion

**SCMCA – 7-159<sup>th</sup> AVN BN**

1. A. Co. 7-159<sup>th</sup> AVN (-)  
(attach elements of B. Co. 7-159<sup>th</sup> AVN (-) present in Task Force Hawk area of operations)
2. HHC, 7<sup>th</sup> CSG  
(attach elements of 54<sup>th</sup> MA, 191<sup>st</sup> ORD, 77 MST, DLA, AMC, 94<sup>th</sup> ENG present in the TFH area of operations)
3. 529<sup>th</sup> ORD Co.  
(attach elements of 240<sup>th</sup> QM, 26<sup>th</sup> QM, 147<sup>th</sup> Main. Co. present in TFH area of operations)
4. 317<sup>th</sup> Maintenance Company  
(attach elements of HHD 71<sup>st</sup> CSB, 77<sup>th</sup> Main Co., 71<sup>st</sup> ORD Det. present in TFH area of operations)
5. 30<sup>th</sup> Movement Control Team
6. 515<sup>th</sup> Transportation Company  
(attach elements of 41<sup>st</sup> Trans & 19<sup>th</sup> CMMC Det present in TFH area of operations)
7. 535<sup>th</sup> Engineer Company
8. AMF (L)

L-2

V Corps Suppl 1 to USAREUR Reg 27-10  
Interim Change 7

**SCMCA – 212<sup>th</sup> MASH**

HHC, 212<sup>th</sup> CMF

(attach elements of 557<sup>th</sup> Med Co., 254<sup>th</sup> CSC, 523<sup>rd</sup> Dental Detachment, 71<sup>st</sup> PM, 226<sup>th</sup> Med Log Detachment, 64<sup>th</sup> Vet Det., 71 PM, present in TFH area of operations)

**L-6. SPCMCA: 11<sup>th</sup> Aviation Regiment:** The Commander, 11<sup>th</sup> Aviation Regiment, is the SPCMCA for all soldiers in the Task Force Hawk area of operations that are assigned to the units listed below:

**SCMCA – 2-6 Aviation Squadron**

1. HHT 2-6 Aviation Squadron
2. A Troop 2-6 Aviation Squadron
3. B Troop 2-6 Aviation Squadron
4. C Troop 2-6 Aviation Squadron
5. D Troop 2-6 Aviation Squadron

**SCMCA – 6-6 Aviation Squadron**

1. HHT 6-6 Aviation Squadron
2. A Troop 6-6 Aviation Squadron
3. B Troop 6-6 Aviation Squadron
4. C Troop 6-6 Aviation Squadron
5. D Troop 6-6 Aviation Squadron
6. HHC, 11th Aviation Regiment

**L-7. SPCMCA: V Corps Artillery:** The Commander, V Corps Artillery, is the SPCMCA for all soldiers in the Task Force Hawk area of operations that are assigned to the units listed below:

**SCMCA - 1-27 Field Artillery Battalion**

1. HHS, 1-27 Field Artillery Battalion  
(attach elements of HHB, V Corps Artillery, 41 FA BDE(-) present in TFH area of operations)
2. A Battery 1-27 Field Artillery Battalion
3. A Battery 2-18 Field Artillery Battalion
4. B Battery 1-27 Field Artillery Battalion
5. C Battery 1-27 Field Artillery Battalion

L-3

**L-8. SPCMCA: 2<sup>nd</sup> Brigade Combat Team:** The Commander, 2<sup>nd</sup> Brigade Combat Team, is the SPCMCA for all soldiers in the Task Force Hawk area of operations that are assigned to the units listed below:

**SCMCA - 1-6 Infantry Battalion**

1. HHC, 1-6 Infantry Battalion  
(attach elements of 501<sup>st</sup> MI BN, 69<sup>th</sup> Chem Co., 1-41 SIG, present in TFH area of operations)
2. A Co. 1-6 Infantry Battalion
3. C Co. 1-6 Infantry Battalion
4. D Co. 1-6 Infantry Battalion
5. C Co. 1-35 Infantry Battalion
6. A Battery, 4-27 Field Artillery Battalion
7. C Co. 47<sup>th</sup> FSB  
(attach elements of A, B, FSB & HHD 47<sup>th</sup> FSB present in TFH area of operations)
8. A Co. 40<sup>th</sup> Engineer Battalion
9. B Co. 501 MI

**SCMCA - 2-505<sup>th</sup> Parachute Infantry Regiment**

1. A Battery 2-505 Parachute Infantry Regiment
2. C Battery 2-505 Parachute Infantry Regiment
3. D Battery 2-505 Parachute Infantry Regiment
4. B Battery 3-505 Parachute Infantry Regiment
5. C Battery 1-319
6. HHC, 2-505 Infantry Battalion  
(attach elements of 2/C Co./3-4 AD, 2/C Co 302<sup>nd</sup> Eng, 1/1 82<sup>nd</sup> MP, A Co. 82nd FS BN, B Co. 82nd FS BN present in the TFH area of operation)

**SCMCA - 32<sup>nd</sup> Signal Battalion**

1. C Co. 32<sup>nd</sup> Signal Battalion  
(attach elements of HHC, 22<sup>nd</sup> Signal present in TFH area of operations)
2. D Co. 32<sup>nd</sup> Signal Battalion
3. Special Troops Battalion, V Corps  
(attach elements of psyops B/90 TPT, 130<sup>th</sup> ENG, 50<sup>th</sup> PAO Det., A Co. 1-10 SF, D Co. 94<sup>th</sup> Civil Affairs BN present in TFH area of operations)
4. A Co. 302d Military Intelligence Battalion  
(attach elements of NIST and NIMA present in TFH area of operations)
5. B Co. 302d Military Intelligence Battalion

V Corps Suppl 1 to USAREUR Reg 27-10  
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6. 615<sup>th</sup> MP Co.  
(attach elements of 3/212/793 MP BN present in TFH area of operations)
7. D Co. 1-4 Air Defense Artillery

L-5

**APPENDIX IV-1: MILITARY TECHNICAL AGREEMENT**

**Military Technical Agreement**

between the International Security Force ("KFOR") and the Governments of the Federal Republic of Yugoslavia and the Republic of Serbia

9 June 1999

Article I: General Obligations

1. The Parties to this Agreement reaffirm the document presented by President Ahtisaari to President Milosevic and approved by the Serb Parliament and the Federal Government on June 3, 1999, to include deployment in Kosovo under UN auspices of effective international civil and security presences. The Parties further note that the UN Security Council is prepared to adopt a resolution, which has been introduced, regarding these presences.

2. The State Governmental authorities of the Federal Republic of Yugoslavia and the Republic of Serbia understand and agree that the international security force ("KFOR") will deploy following the adoption of the UNSCR referred to in paragraph 1 and operate without hindrance within Kosovo and with the authority to take all necessary action to establish and maintain a secure environment for all citizens of Kosovo and otherwise carry out its mission. They further agree to comply with all of the obligations of this Agreement and to facilitate the deployment and operation of this force.

3. For purposes of the agreement, the following expressions shall have the meanings as described below:

a. "The Parties" are those signatories to the Agreement.

b. "Authorities" means the appropriate responsible individual, agency, or organisation of the Parties.

c. "FRY Forces" includes all of the FRY and Republic of Serbia personnel and organisations with a military capability. This includes regular army and naval forces, armed civilian groups, associated paramilitary groups, air forces, national guards, border police, army reserves, military police, intelligence services, federal and Serbian Ministry of Internal Affairs local, special, riot and anti-terrorist police, and any other groups or individuals so designated by the international security force ("KFOR") commander.

d. The Air Safety Zone (ASZ) is defined as a 25-kilometre zone that extends beyond the Kosovo province border into the rest of FRY territory. It includes the airspace above that 25-kilometre zone.

e. The Ground Safety Zone (GSZ) is defined as a 5-kilometre zone that extends beyond the Kosovo province border into the rest of FRY territory. It includes the terrain within that 5-kilometre zone.

f. Entry into Force Day (EIF Day) is defined as the day this Agreement is signed.

4. The purposes of these obligations are as follows:

a. To establish a durable cessation of hostilities, under no circumstances shall any Forces of the FRY and the Republic of Serbia enter into, reenter, or remain within the territory of Kosovo or the Ground Safety Zone (GSZ) and the Air Safety Zone (ASZ) described in paragraph 3. Article I without the prior express consent of the international security force ("KFOR") commander. Local police will be allowed to remain in the GSZ.

The above paragraph is without prejudice to the agreed return of FRY and Serbian personnel which will be the subject of a subsequent separate agreement as provided for in paragraph 6 of the document mentioned in paragraph 1 of this Article.

b. To provide for the support and authorization of the international security force ("KFOR") and in particular to authorize the international security force ("KFOR") to take such actions as are required, including the use of necessary force, to ensure compliance with this Agreement and protection of the international security force ("KFOR"), and to contribute to a secure environment for the international civil implementation presence, and other international organisations, agencies, and non-governmental organisations (details in Appendix B).

## Article II: Cessation of Hostilities

1. The FRY Forces shall immediately, upon entry into force (EIF) of this Agreement, refrain from committing any hostile or provocative acts of any type against any person in Kosovo and will order armed forces to cease all such activities. They shall not encourage, organise or support hostile or provocative demonstrations.

2. Phased Withdrawal of FRY Forces (ground): The FRY agrees to a phased withdrawal of all FRY Forces from Kosovo to locations in Serbia outside Kosovo. FRY Forces will mark and clear minefields, booby traps and obstacles. As they withdraw, FRY Forces will clear all lines of communication by removing all mines, demolitions, booby traps, obstacles and charges. They will also mark all sides of all minefields. International security forces' ("KFOR") entry and deployment into Kosovo will be synchronized. The phased withdrawal of FRY Forces from Kosovo will be in accordance with the sequence outlined below:

a. By EIF + 1 day, FRY Forces located in Zone 3 will have vacated, via designated routes, that Zone to demonstrate compliance (depicted on the map at Appendix A to the Agreement). Once it is verified that FRY forces have complied with this subparagraph and with paragraph 1 of this Article, NATO air strikes will be suspended. The suspension

will continue provided that the obligations of this agreement are fully complied with, and provided that the UNSC adopts a resolution concerning the deployment of the international security force ("KFOR") so rapidly that a security gap can be avoided.

b. By EIF + 6 days, all FRY Forces in Kosovo will have vacated Zone 1 (depicted on the map at Appendix A to the Agreement). Establish liaison teams with the KFOR commander in Pristina.

c. By EIF + 9 days, all FRY Forces in Kosovo will have vacated Zone 2 (depicted on the map at Appendix A to the Agreement).

d. By EIF + 11 days, all FRY Forces in Kosovo will have vacated Zone 3 (depicted on the map at Appendix A to the Agreement).

e. By EIF + 11 days, all FRY Forces in Kosovo will have completed their withdrawal from Kosovo (depicted on map at Appendix A to the Agreement) to locations in Serbia outside Kosovo, and not within the 5 km GSZ. At the end of the sequence (EIF + 11), the senior FRY Forces commanders responsible for the withdrawing forces shall confirm in writing to the international security force ("KFOR") commander that the FRY Forces have complied and completed the phased withdrawal. The international security force ("KFOR") commander may approve specific requests for exceptions to the phased withdrawal. The bombing campaign will terminate on complete withdrawal of FRY Forces as provided under Article II. The international security force ("KFOR") shall retain, as necessary, authority to enforce compliance with this Agreement.

f. The authorities of the FRY and the Republic of Serbia will co-operate fully with international security force ("KFOR") in its verification of the withdrawal of forces from Kosovo and beyond the ASZ/GSZ.

g. FRY armed forces withdrawing in accordance with Appendix A, i.e. in designated assembly areas or withdrawing on designated routes, will not be subject to air attack.

h. The international security force ("KFOR") will provide appropriate control of the borders of FRY in Kosovo with Albania and FYROM (1) until the arrival of the civilian mission of the UN.

### 3. Phased Withdrawal of Yugoslavia Air and Air Defence Forces (YAADF)

a. At EIF + 1 day, no FRY aircraft, fixed wing and rotary, will fly in Kosovo airspace or over the ASZ without prior approval by the international security force ("KFOR") commander. All air defence systems, radar, surface-to-air missile and aircraft of the Parties will refrain from acquisition, target tracking or otherwise illuminating international security ("KFOR") air platforms operating in the Kosovo airspace or over the ASZ.

b. By EIF + 3 days, all aircraft, radars, surface-to-air missiles (including man-portable air defence systems (MANPADS)) and anti-aircraft artillery in Kosovo will withdraw to other locations in Serbia outside the 25 kilometre ASZ.

c. The international security force ("KFOR") commander will control and coordinate use of airspace over Kosovo and the ASZ commencing at EIF. Violation of any of the provisions above, including the international security force ("KFOR") commander's rules and procedures governing the airspace over Kosovo, as well as unauthorised flight or activation of FRY Integrated Air Defence (IADS) within the ASZ, are subject to military action by the international security force ("KFOR"), including the use of necessary force. The international security force ("KFOR") commander may delegate control of normal civilian air activities to appropriate FRY institutions to monitor operations, deconflict international security force ("KFOR") air traffic movements, and ensure smooth and safe operations of the air traffic system. It is envisioned that control of civil air traffic will be returned to civilian authorities as soon as practicable.

#### Article III: Notifications

1. This agreement and written orders requiring compliance will be immediately communicated to all FRY forces.

2. By EIF +2 days, the State governmental authorities of the FRY and the Republic of Serbia shall furnish the following specific information regarding the status of all FRY Forces:

a. Detailed records, positions and descriptions of all mines, unexploded ordnance, explosive devices, demolitions, obstacles, booby traps, wire entanglement, physical or military hazards to the safe movement of any personnel in Kosovo laid by FRY Forces.

b. Any further information of a military or security nature about FRY Forces in the territory of Kosovo and the GSZ and ASZ requested by the international security force ("KFOR") commander.

#### Article IV: Establishment of a Joint Implementation Commission (JIC)

A JIC shall be established with the deployment of the international security force ("KFOR") to Kosovo as directed by the international security force ("KFOR") commander.

#### Article V: Final Authority to Interpret

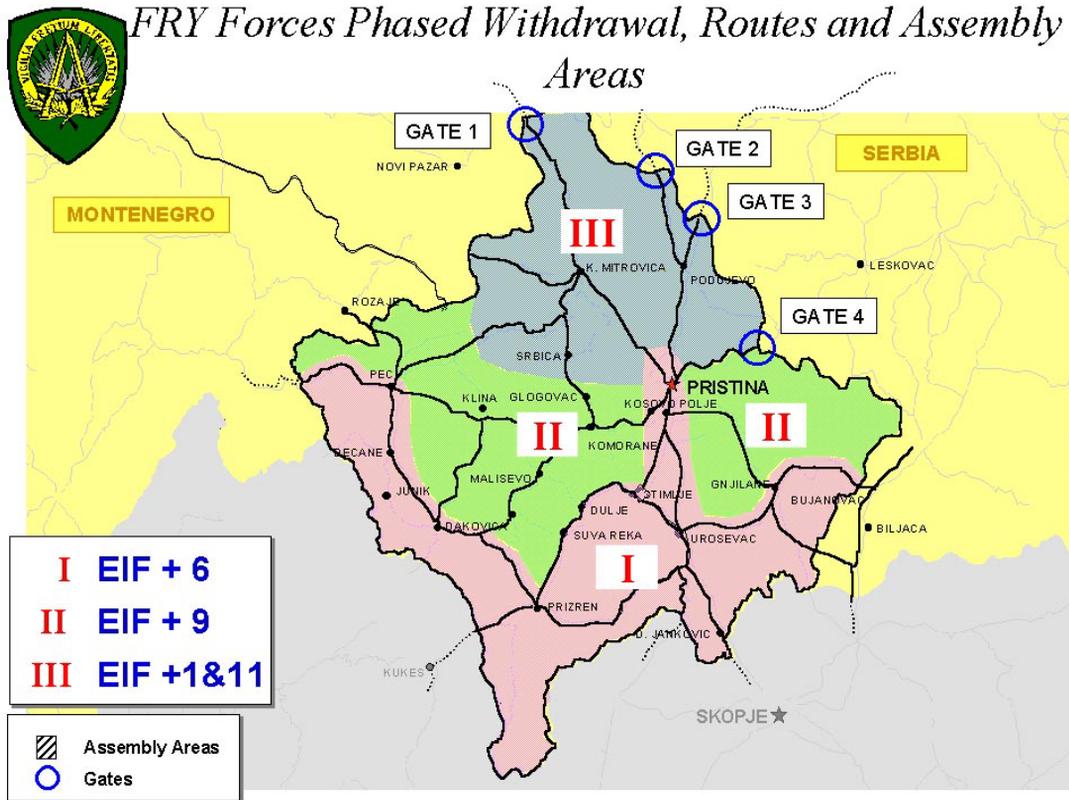
The international security force ("KFOR") commander is the final authority regarding interpretation of this Agreement and the security aspects of the peace settlement it supports. His determinations are binding on all Parties and persons.

#### Article VI: Entry Into Force

This agreement shall enter into force upon signature.

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 Appendices:  
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A. Phased withdrawal of FRY Forces from Kosovo



B. International security force ("KFOR") operations

1. Consistent with the general obligations of the Military Technical Agreement, the State Governmental authorities of the FRY and the Republic of Serbia understand and agree that the international security force ("KFOR") will deploy and operate without hindrance within Kosovo and with the authority to take all necessary action to establish and maintain a secure environment for all citizens of Kosovo.

2. The international security force ("KFOR") commander shall have the authority, without interference or permission, to do all that he judges necessary and proper, including the use of military force, to protect the international security force ("KFOR"), the international civil implementation presence, and to carry out the responsibilities inherent in this Military Technical Agreement and the Peace Settlement which it supports.

3. The international security force ("KFOR") nor any of its personnel or staff shall be liable for any damages to public or private property that they may cause in the course of duties related to the implementation of this Agreement. The parties will agree a Status of Forces Agreement (SOFA) as soon as possible.

4. The international security force ("KFOR") shall have the right:

a. To monitor and ensure compliance with this Agreement and to respond promptly to any violations and restore compliance, using military force if required.

This includes necessary actions to:

1. Enforce withdrawals of FRY forces.

2. Enforce compliance following the return of selected FRY personnel to Kosovo

3. Provide assistance to other international entities involved in the implementation or otherwise authorised by the UNSC.

b. To establish liaison arrangements with local Kosovo authorities, and with FRY/Serbian civil and military authorities.

c. To observe, monitor and inspect any and all facilities or activities in Kosovo that the international security force ("KFOR") commander believes has or may have military or police capability, or may be associated with the employment of military or police capabilities, or are otherwise relevant to compliance with this Agreement.

5. Notwithstanding any other provision of this Agreement, the Parties understand and agree that the international security force ("KFOR") commander has the right and is authorised to compel the removal, withdrawal, or relocation of specific Forces and weapons, and to order the cessation of any activities whenever the international security force ("KFOR") commander determines a potential threat to either the international security force ("KFOR") or its mission, or to another Party. Forces failing to redeploy, withdraw, relocate, or to cease threatening or potentially threatening activities following such a demand by the international security force ("KFOR") shall be subject to military action by the international security force ("KFOR"), including the use of necessary force, to ensure compliance.

Footnote:

1. Turkey recognises the Republic of Macedonia with its constitutional name.

**APPENDIX IV-2: UN SECURITY COUNCIL RESOLUTION 1244**

**United  
Nations**

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S/RES/1244 (1999)  
10 June 1999

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**RESOLUTION 1244 (1999)**

Adopted by the Security Council at its 4011th meeting,  
on 10 June 1999

The Security Council,

Bearing in mind the purposes and principles of the Charter of the United Nations, and the primary responsibility of the Security Council for the maintenance of international peace and security,

Recalling its resolutions 1160 (1998) of 31 March 1998, 1199 (1998) of 23 September 1998, 1203 (1998) of 24 October 1998 and 1239 (1999) of 14 May 1999,

Regretting that there has not been full compliance with the requirements of these resolutions,

Determined to resolve the grave humanitarian situation in Kosovo, Federal Republic of Yugoslavia, and to provide for the safe and free return of all refugees and displaced persons to their homes,

Condemning all acts of violence against the Kosovo population as well as all terrorist acts by any party,

Recalling the statement made by the Secretary-General on 9 April 1999, expressing concern at the humanitarian tragedy taking place in Kosovo,

Reaffirming the right of all refugees and displaced persons to return to their homes in safety,

Recalling the jurisdiction and the mandate of the International Tribunal for the Former Yugoslavia,

Welcoming the general principles on a political solution to the Kosovo crisis adopted on 6 May 1999 (S/1999/516, annex 1 to this resolution) and welcoming also the acceptance by the Federal Republic of Yugoslavia of the principles set forth in points 1 to 9 of the paper

presented in Belgrade on 2 June 1999 (S/1999/649, annex 2 to this resolution), and the Federal Republic of Yugoslavia's agreement to that paper,

Reaffirming the commitment of all Member States to the sovereignty and territorial integrity of the Federal Republic of Yugoslavia and the other States of the region, as set out in the Helsinki Final Act and annex 2,

Reaffirming the call in previous resolutions for substantial autonomy and meaningful self-administration for Kosovo,

Determining that the situation in the region continues to constitute a threat to international peace and security,

Determined to ensure the safety and security of international personnel and the implementation by all concerned of their responsibilities under the present resolution, and acting for these purposes under Chapter VII of the Charter of the United Nations,

1. Decides that a political solution to the Kosovo crisis shall be based on the general principles in annex 1 and as further elaborated in the principles and other required elements in annex 2;
2. Welcomes the acceptance by the Federal Republic of Yugoslavia of the principles and other required elements referred to in paragraph 1 above, and demands the full cooperation of the Federal Republic of Yugoslavia in their rapid implementation;
3. Demands in particular that the Federal Republic of Yugoslavia put an immediate and verifiable end to violence and repression in Kosovo, and begin and complete verifiable phased withdrawal from Kosovo of all military, police and paramilitary forces according to a rapid timetable, with which the deployment of the international security presence in Kosovo will be synchronized;
4. Confirms that after the withdrawal an agreed number of Yugoslav and Serb military and police personnel will be permitted to return to Kosovo to perform the functions in accordance with annex 2;
5. Decides on the deployment in Kosovo, under United Nations auspices, of international civil and security presences, with appropriate equipment and personnel as required, and welcomes the agreement of the Federal Republic of Yugoslavia to such presences;
6. Requests the Secretary-General to appoint, in consultation with the Security Council, a Special Representative to control the implementation of the international civil presence,

and further requests the Secretary-General to instruct his Special Representative to coordinate closely with the international security presence to ensure that both presences operate towards the same goals and in a mutually supportive manner;

7. Authorizes Member States and relevant international organizations to establish the international security presence in Kosovo as set out in point 4 of annex 2 with all necessary means to fulfil its responsibilities under paragraph 9 below;

8. Affirms the need for the rapid early deployment of effective international civil and security presences to Kosovo, and demands that the parties cooperate fully in their deployment;

9. Decides that the responsibilities of the international security presence to be deployed and acting in Kosovo will include:

(a) Deterring renewed hostilities, maintaining and where necessary enforcing a ceasefire, and ensuring the withdrawal and preventing the return into Kosovo of Federal and Republic military, police and paramilitary forces, except as provided in point 6 of annex 2;

(b) Demilitarizing the Kosovo Liberation Army (KLA) and other armed Kosovo Albanian groups as required in paragraph 15 below;

(c) Establishing a secure environment in which refugees and displaced persons can return home in safety, the international civil presence can operate, a transitional administration can be established, and humanitarian aid can be delivered;

(d) Ensuring public safety and order until the international civil presence can take responsibility for this task;

(e) Supervising demining until the international civil presence can, as appropriate, take over responsibility for this task;

(f) Supporting, as appropriate, and coordinating closely with the work of the international civil presence;

(g) Conducting border monitoring duties as required;

(h) Ensuring the protection and freedom of movement of itself, the international civil presence, and other international organizations;

10. Authorizes the Secretary-General, with the assistance of relevant international organizations, to establish an international civil presence in Kosovo in order to provide an interim administration for Kosovo under which the people of Kosovo can enjoy substantial

autonomy within the Federal Republic of Yugoslavia, and which will provide transitional administration while establishing and overseeing the development of provisional democratic self-governing institutions to ensure conditions for a peaceful and normal life for all inhabitants of Kosovo;

11. Decides that the main responsibilities of the international civil presence will include:

- (a) Promoting the establishment, pending a final settlement, of substantial autonomy and self-government in Kosovo, taking full account of annex 2 and of the Rambouillet accords (S/1999/648);
- (b) Performing basic civilian administrative functions where and as long as required;
- (c) Organizing and overseeing the development of provisional institutions for democratic and autonomous self-government pending a political settlement, including the holding of elections;
- (d) Transferring, as these institutions are established, its administrative responsibilities while overseeing and supporting the consolidation of Kosovo's local provisional institutions and other peace-building activities;
- (e) Facilitating a political process designed to determine Kosovo's future status, taking into account the Rambouillet accords (S/1999/648);
- (f) In a final stage, overseeing the transfer of authority from Kosovo's provisional institutions to institutions established under a political settlement;
- (g) Supporting the reconstruction of key infrastructure and other economic reconstruction;
- (h) Supporting, in coordination with international humanitarian organizations, humanitarian and disaster relief aid;
- (i) Maintaining civil law and order, including establishing local police forces and meanwhile through the deployment of international police personnel to serve in Kosovo;
- (j) Protecting and promoting human rights;
- (k) Assuring the safe and unimpeded return of all refugees and displaced persons to their homes in Kosovo;

12. Emphasizes the need for coordinated humanitarian relief operations, and for the Federal Republic of Yugoslavia to allow unimpeded access to Kosovo by humanitarian aid organizations and to cooperate with such organizations so as to ensure the fast and effective delivery of international aid;

13. Encourages all Member States and international organizations to contribute to economic and social reconstruction as well as to the safe return of refugees and displaced persons, and emphasizes in this context the importance of convening an international donors' conference, particularly for the purposes set out in paragraph 11 (g) above, at the earliest possible date;

14. Demands full cooperation by all concerned, including the international security presence, with the International Tribunal for the Former Yugoslavia;

15. Demands that the KLA and other armed Kosovo Albanian groups end immediately all offensive actions and comply with the requirements for demilitarization as laid down by the head of the international security presence in consultation with the Special Representative of the Secretary-General;

16. Decides that the prohibitions imposed by paragraph 8 of resolution 1160 (1998) shall not apply to arms and related matériel for the use of the international civil and security presences;

17. Welcomes the work in hand in the European Union and other international organizations to develop a comprehensive approach to the economic development and stabilization of the region affected by the Kosovo crisis, including the implementation of a Stability Pact for South Eastern Europe with broad international participation in order to further the promotion of democracy, economic prosperity, stability and regional cooperation;

18. Demands that all States in the region cooperate fully in the implementation of all aspects of this resolution;

19. Decides that the international civil and security presences are established for an initial period of 12 months, to continue thereafter unless the Security Council decides otherwise;

20. Requests the Secretary-General to report to the Council at regular intervals on the implementation of this resolution, including reports from the leaderships of the international civil and security presences, the first reports to be submitted within 30 days of the adoption of this resolution;

21. Decides to remain actively seized of the matter.

Annex 1

Statement by the Chairman on the conclusion of the meeting  
of the G-8 Foreign Ministers held at the Petersberg Centre  
on 6 May 1999

The G-8 Foreign Ministers adopted the following general principles on the political solution to the Kosovo crisis:

- Immediate and verifiable end of violence and repression in Kosovo;
- Withdrawal from Kosovo of military, police and paramilitary forces;
- Deployment in Kosovo of effective international civil and security presences, endorsed and adopted by the United Nations, capable of guaranteeing the achievement of the common objectives;
- Establishment of an interim administration for Kosovo to be decided by the Security Council of the United Nations to ensure conditions for a peaceful and normal life for all inhabitants in Kosovo;
- The safe and free return of all refugees and displaced persons and unimpeded access to Kosovo by humanitarian aid organizations;
- A political process towards the establishment of an interim political framework agreement providing for a substantial self-government for Kosovo, taking full account of the Rambouillet accords and the principles of sovereignty and territorial integrity of the Federal Republic of Yugoslavia and the other countries of the region, and the demilitarization of the KLA;
- Comprehensive approach to the economic development and stabilization of the crisis region.

Annex 2

Agreement should be reached on the following principles to move towards a resolution of the Kosovo crisis:

1. An immediate and verifiable end of violence and repression in Kosovo.
2. Verifiable withdrawal from Kosovo of all military, police and paramilitary forces according to a rapid timetable.
3. Deployment in Kosovo under United Nations auspices of effective international civil and security presences, acting as may be decided under Chapter VII of the Charter, capable of guaranteeing the achievement of common objectives.
4. The international security presence with substantial North Atlantic Treaty Organization participation must be deployed under unified command and control and authorized to establish a safe environment for all people in Kosovo and to facilitate the safe return to their homes of all displaced persons and refugees.
5. Establishment of an interim administration for Kosovo as a part of the international civil presence under which the people of Kosovo can enjoy substantial autonomy within the Federal Republic of Yugoslavia, to be decided by the Security Council of the United Nations. The interim administration to provide transitional administration while establishing and overseeing the development of provisional democratic self-governing institutions to ensure conditions for a peaceful and normal life for all inhabitants in Kosovo.
6. After withdrawal, an agreed number of Yugoslav and Serbian personnel will be permitted to return to perform the following functions:
  - Liaison with the international civil mission and the international security presence;
  - Marking/clearing minefields;
  - Maintaining a presence at Serb patrimonial sites;
  - Maintaining a presence at key border crossings.
7. Safe and free return of all refugees and displaced persons under the supervision of the Office of the United Nations High Commissioner for Refugees and unimpeded access to Kosovo by humanitarian aid organizations.

8. A political process towards the establishment of an interim political framework agreement providing for substantial self-government for Kosovo, taking full account of the Rambouillet accords and the principles of sovereignty and territorial integrity of the Federal Republic of Yugoslavia and the other countries of the region, and the demilitarization of UCK. Negotiations between the parties for a settlement should not delay or disrupt the establishment of democratic self-governing institutions.

9. A comprehensive approach to the economic development and stabilization of the crisis region. This will include the implementation of a stability pact for South-Eastern Europe with broad international participation in order to further promotion of democracy, economic prosperity, stability and regional cooperation.

10. Suspension of military activity will require acceptance of the principles set forth above in addition to agreement to other, previously identified, required elements, which are specified in the footnote below.<sup>1</sup> A military-technical agreement will then be rapidly concluded that would, among other things, specify additional modalities, including the roles and functions of Yugoslav/Serb personnel in Kosovo:

Withdrawal

- Procedures for withdrawals, including the phased, detailed schedule and delineation of a buffer area in Serbia beyond which forces will be withdrawn;

Returning personnel

- Equipment associated with returning personnel;
- Terms of reference for their functional responsibilities;
- Timetable for their return;
- Delineation of their geographical areas of operation;
- Rules governing their relationship to the international security presence and the international civil mission.

Notes

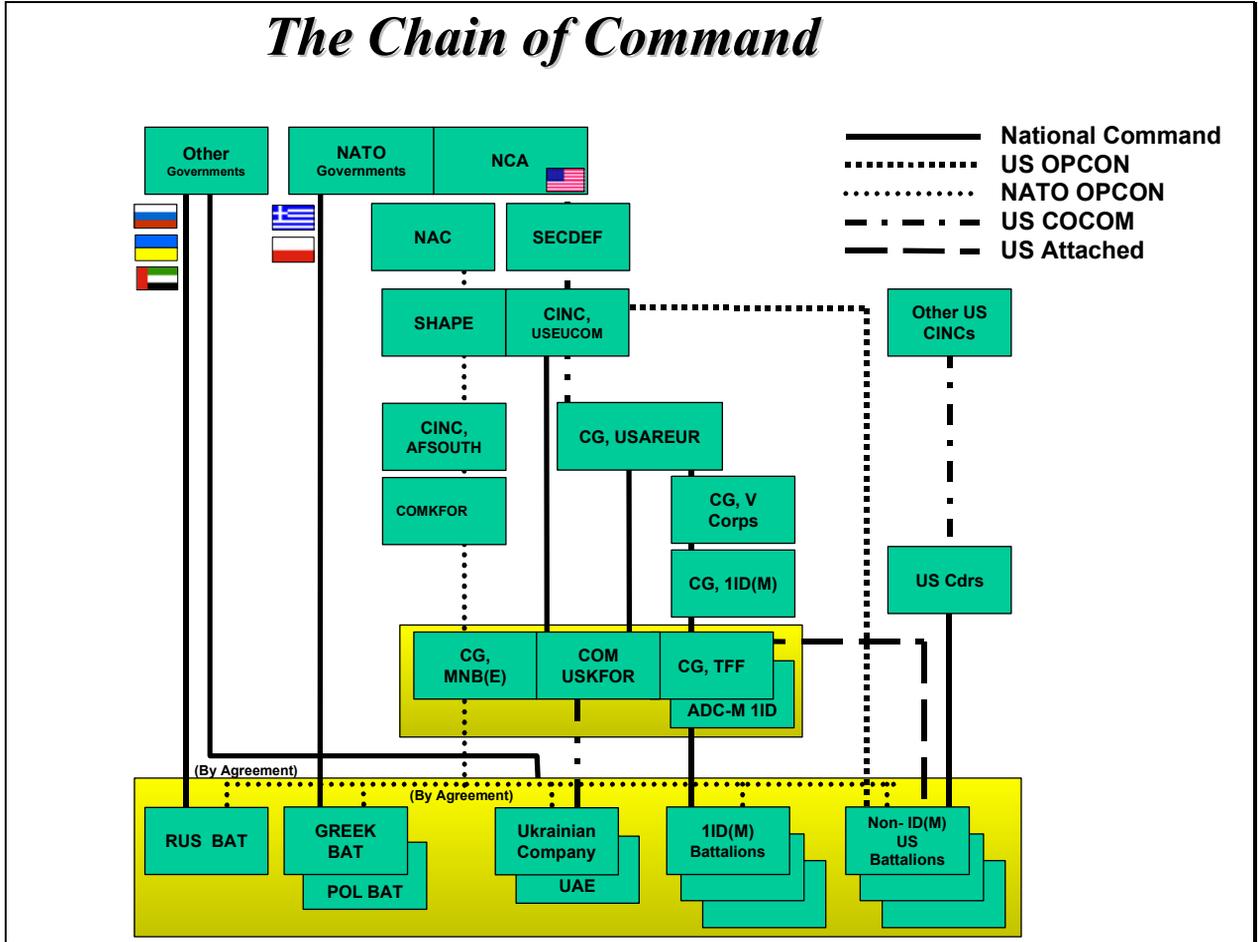
<sup>1</sup> Other required elements:

- A rapid and precise timetable for withdrawals, meaning, e.g., seven days to complete withdrawal and air defence weapons withdrawn outside a 25 kilometre mutual safety zone within 48 hours;
- Return of personnel for the four functions specified above will be under the supervision of the international security presence and will be limited to a small agreed number (hundreds, not thousands);
- Suspension of military activity will occur after the beginning of verifiable withdrawals;
- The discussion and achievement of a military-technical agreement shall not extend the previously determined time for completion of withdrawals.

**APPENDIX IV-3: MAP OF MNB(E) AREA OF KOSOVO**



**APPENDIX IV-4: CHAINS OF COMMAND TASK FORCE FALCON**



## **APPENDIX IV-5: UNDERTAKING OF DEMILITARIZATION & TRANSFORMATION BY THE UCK**

1. This Undertaking provides for a ceasefire by the UCK, their disengagement from the zones of conflict, subsequent demilitarisation and reintegration into civil society, in accordance with the terms of UNSCR 1244 and taking account of the obligations agreed to at Rambouillet and the public commitments made by the Kosovar Albanian Rambouillet delegation.
2. The UCK undertake to renounce the use of force, to comply with the directions of the Commander of the international security force in Kosovo (COMKFOR), and where applicable the head of the interim civil administration for Kosovo, and to resolve peacefully any questions relating to the implementation of this undertaking.
3. The UCK agree that the International Security Presence (KFOR) and the international civil presence will continue to deploy and operate without hindrance within Kosovo and that KFOR has the authority to take all necessary action to establish and maintain a secure environment for all citizens of Kosovo and otherwise carry out its mission.
4. The UCK agrees to comply with all of the obligations of this Undertaking and to ensure that with immediate effect all UCK forces in Kosovo and in neighbouring countries will observe the provisions of this Undertaking, will refrain from all hostile or provocative acts, hostile intent and freeze military movement in either direction across international borders or the boundary between Kosovo and other parts of the FRY, or any other actions inconsistent with the spirit of UNSCR 1244. The UCK in Kosovo agree to commit themselves publicly to demilitarise in accordance with paragraphs 22 and 23, refrain from activities which jeopardise the safety of international governmental and non-governmental personnel including KFOR, and to facilitate the deployment and operation of KFOR.
5. For purposes of this Undertaking, the following expressions shall have the meanings as described below:
  - a) The UCK includes all personnel and organisations within Kosovo, currently under UCK control, with a military or paramilitary capability and any other groups or individuals so designated by Commander KFOR (COMKFOR).
  - b) "FRY Forces" includes all of the FRY and Republic of Serbia personnel and organisations with a military capability. This includes regular army and naval forces, armed civilian groups, associated paramilitary groups, air forces, national guards, border police, army reserves, military police, intelligence services, Ministry of Internal Affairs, local, special, riot and anti-terrorist police, and any other groups or individuals so designated by Commander KFOR (COMKFOR).
  - c) The Ground Safety Zone (GSZ) is defined as a 5-kilometre zone that extends beyond the Kosovo province border into the rest of FRY territory. It includes the terrain within that 5-kilometre zone.
  - d) Prohibited weapons are any weapon 12.7mm or larger, any anti-tank or anti-aircraft weapons, grenades, mines or explosives, automatic and long barrelled weapons.
6. The purposes of this Undertaking are as follows:
  - a) To establish a durable cessation of hostilities.
  - b) To provide for the support and authorisation of the KFOR and in particular to authorise the KFOR to take such actions as are required, including the use of necessary force in accordance with KFORs rules of engagement, to ensure compliance with this Undertaking and protection of the KFOR, and to contribute to a secure environment for the international civil implementation presence, and other international organisations, agencies, and non-governmental organisations and the civil populace.

## CENTER FOR LAW AND MILITARY OPERATIONS

7. The actions of the UCK shall be in accordance with this Undertaking. "The KFOR" commander in consultation, where appropriate, with the interim civil administrator will be the final authority regarding the interpretation of this Undertaking and the security aspects of the peace settlement it supports. His determinations will be binding on all parties and persons.

### Cessation of Hostilities

8. With immediate effect on signature the UCK agrees to comply with this Undertaking and with the directions of COMKFOR. Any forces which fail to comply with this Undertaking or with the directions of COMKFOR will be liable to military action as deemed appropriate by COMKFOR.

9. With immediate effect on signature of this Undertaking all hostile acts by the UCK will cease. The UCK Chief of General Staff undertakes to issue clear and precise instructions to all units and personnel under his command, to ensure contact with the FRY forces is avoided and to comply fully with the arrangements for bringing this Undertaking into effect. He will make announcements immediately following final signature of this Undertaking, which will be broadcast regularly through all appropriate channels to assist in ensuring that instructions to maintain this Undertaking reach all the forces under his command and are understood by the public in general.

10. The UCK undertakes and agrees in particular:

- a) To cease the firing of all weapons and use of explosive devices.
- b) Not to place any mines, barriers or checkpoints, nor maintain any observation posts or protective obstacles.
- c) The destruction of buildings, facilities or structures is not permitted. It shall not engage in any military, security, or training related activities, including ground, or air defence operations, in or over Kosovo or GSZ, without the prior express approval of COMKFOR.
- d) Not to attack, detain or intimidate any civilians in Kosovo, nor shall they attack, confiscate or violate the property of civilians in Kosovo.

11. The UCK agrees not to conduct any reprisals, counter-attacks, or any unilateral actions in response to violations of the UNSCR 1244 and other extant agreements relating to Kosovo.

This in no way denies the right of self-defence.

12. The UCK agrees not to interfere with those FRY personnel that return to Kosovo to conduct specific tasks as authorised and directed by COMKFOR.

13. Except as approved by COMKFOR, the UCK agrees that its personnel in Kosovo will not carry weapons of any type:

- a) Within 2 kilometres of VJ and MUP assembly areas;
- b) Within 2 kilometres of the main roads and the towns upon them listed at Appendix A;
- c) Within 2 kilometres of external borders of Kosovo;
- d) In any other areas designated by COMKFOR.

14. Within 4 days of signature of this Undertaking:

- a) The UCK will close all fighting positions, entrenchments, and checkpoints on roads, and mark their minefields and booby traps.

b) The UCK Chief of General Staff shall report in writing completion of the above requirement to COMKFOR and continue to provide weekly detailed written status reports until demilitarisation, as detailed in the following paragraphs, is complete.

#### Cross-Border Activity

15. With immediate effect the UCK will cease the movement of armed bodies into neighbouring countries. All movement of armed bodies into Kosovo will be subject to the prior approval of COMKFOR.

#### Monitoring the Cessation of Hostilities

16. The authority for dealing with breaches of this Undertaking rests with COMKFOR. He will monitor and maintain and if necessary enforce the cessation of hostilities.

17. The UCK agrees to co-operate fully with KFOR and the interim civil administration for Kosovo. The Chief of the General Staff of the UCK will ensure that prompt and appropriate action is taken to deal with any breaches of this Undertaking by his forces as directed by COMKFOR.

18. Elements of KFOR will be assigned to maintain contact with the UCK and will be deployed to its command structure and bases.

19. KFOR will establish appropriate control at designated crossing points into Albania and the FYROM.  
Joint Implementation Commission (JIC)

20. A JIC will be established in Pristina within 4 days of the signature of this Undertaking. The JIC will be chaired by COMKFOR, and will comprise the senior commanders of KFOR and the UCK, and a representative from the interim civil administration for Kosovo.

21. The JIC will meet as often as required by COMKFOR throughout the implementation of this Undertaking. It may be called without prior notice and representation by the UCK is expected at a level appropriate with the rank of the KFOR chairman. Its functions will include:

- a) Ensuring compliance with agreed arrangements for the security and activities of all forces;
- b) The investigation of actual or threatened breaches of this Undertaking;
- c) Such other tasks as may be assigned to it by COMKFOR in the interests of maintaining the cessation of hostilities.

#### Demilitarisation and Transformation

22. The UCK will follow the procedures established by COMKFOR for the phased demilitarisation, transformation and monitoring of UCK forces in Kosovo and for the further regulation of their activities. They will not train or organise parades without the authority of COMKFOR.

23. The UCK agrees to the following timetable which will commence from the signature of this Undertaking:

- a) Within 7 days, the UCK shall establish secure weapons storage sites, which shall be registered with and verified by the KFOR;
- b) Within 7 days the UCK will clear their minefields and booby traps, vacate their fighting positions and transfer to assembly areas as agreed with COMKFOR at the JIC. Thereafter only personnel authorised by COMKFOR and senior Officers of the UCK with their close protection personnel not exceeding 3, carrying side arms only, will be allowed outside these assembly areas.
- c) After 7 days automatic small arms weapons not stored in the registered weapons storage sites can only be held inside the authorised assembly areas.

## CENTER FOR LAW AND MILITARY OPERATIONS

d) After 29 days, the retention of any non automatic long barrelled weapons shall be subject to authorisation by COMKFOR.

e) Within 30 days, subject to arrangements by COMKFOR if necessary, all UCK personnel who are not of local origin, whether or not they are legally within Kosovo, including individual advisors, freedom fighters, trainers, volunteers, and personnel from neighbouring and other States, shall be withdrawn from Kosovo.

f) Arrangements for control of weapons are as follows:

(1) Within 30 days the UCK shall store in the registered weapons storage sites all prohibited weapons with the exception of automatic small arms. 30 per cent of their total holdings of automatic small arms weapons will also be stored in these sites at this stage. Ammunition for the remaining weapons should be withdrawn and stored at an approved site authorised by COMKFOR separate from the assembly areas at the same time.

(2) At 30 days it shall be illegal for UCK personnel to possess prohibited weapons, with the exception of automatic small arms within assembly areas, and unauthorised long barrelled weapons. Such weapons shall be subject to confiscation by the KFOR.

(3) Within 60 days a further 30 per cent of automatic small arms, giving a total of 60 per cent of the UCK holdings, will be stored in the registered weapons storage sites.

(4) Within 90 days all automatic small arms weapons will be stored in the registered weapons storage sites. Thereafter their possession by UCK personnel will be prohibited and such weapons will be subject to confiscation by KFOR.

g) From 30 days until 90 days the weapons storage sites will be under joint control of the UCK and KFOR under procedures approved by COMKFOR at the JIC. After 90 days KFOR will assume full control of these sites.

h) Within 90 days all UCK forces will have completed the processes for their demilitarisation and are to cease wearing either military uniforms or insignia of the UCK.

i) Within 90 days the Chief of General Staff UCK shall confirm compliance with the above restrictions in writing to COMKFOR.

24. The provisions of this Undertaking enter into force with immediate effect of its signature by the Kosovar Albanian representative(s).

25. The UCK intends to comply with the terms of the United Nations Security Council Resolution 1244, and in this context that the international community should take due and full account of the contribution of the UCK during the Kosovo crisis and accordingly give due consideration to:

a) Recognition that, while the UCK and its structures are in the process of transformation, it is committed to propose individual current members to participate in the administration and police forces of Kosovo, enjoying special consideration in view of the expertise they have developed.

b) The formation of an Army in Kosovo on the lines of the US National Guard in due course as part of a political process designed to determine Kosovos future status, taking into account the Rambouillet Accord.

26. This Undertaking is provided in English and Albanian and if there is any doubt as to the meaning of the text the English version has precedence.

OFFERED BY HASHIM THAQI, COMMANDER IN CHIEF UCK

RECEIVED BY LT GEN MIKE JACKSON, COMMANDER KFOR  
21 June 1999

Appendix A

ROADS

- 1) Pec - Lopusnik - Pristina
- 2) Border - Djakovica - Klina
- 3) Border - Prizren - Suva Reka - Pristina
- 4) Djakovica - Orahovac - Lopusnik - Pristina
- 5) Pec-Djakovica - Prizren - Urosevac - Border
- 6) Border - Urosevac - Pristina - Podujevo - Border
- 7) Pristina - Kosovska Mitrovica - Border
- 8) Kosovka Mitrovica - (Rakos) - Pec
- 9) Pec - Border with Montenegro (through Rozaj)
- 10) Pristina - Lisica - Border with Serbia
- 11) Pristina - Gnjilane - Urosevac
- 12) Gnjilane - Veliki Trnovac - Border with Serbia;
- 13) Prizren - Doganovic

**APPENDIX IV-6: STATEMENT OF PRINCIPLES**

**THE KOSOVO PROTECTION CORPS**  
**COMMANDER KOSOVO FORCE'S STATEMENT OF PRINCIPLES**

The members of the Kosovo Protection Corps will act in accordance with the United Nations Security Council Resolution 1244(1999) of 10 June 1999.

The members of the Kosovo Protection Corps will act in accordance with the Undertaking of Demilitarisation and Transformation by the UCK offered on 21 June 1999.

The Members of the Kosovo Protection Corps are resolved to provide a disciplined and effective emergency service.

They therefore agree to this Statement of Principles.

Article 1 *Purpose*

1. The Kosovo Protection Corps is to provide assistance to the United Nations Mission In Kosovo in the event of natural disaster or similar emergency, in the reconstruction of the Kosovo civilian infrastructure and other assistance as may from time to time be requested by the United Nations Mission In Kosovo.
2. The Kosovo Protection Corps is consistent with the process outlined in the Undertaking on Demilitarisation and Transformation signed on 21 June 1999.
3. Mission. The Kosovo Protection Corps shall be the only multidisciplinary, multi-ethnic, indigenous emergency service agency that will undertake to:
  - a. Respond to any disaster affecting the population and territory of Kosovo.
  - b. Conduct search and rescue operations.
  - c. Assist in rebuilding the infrastructure and community of Kosovo.
  - d. Provide assistance to the United Nations Mission in Kosovo and Kosovo Force when required.
  - e. Perform ceremonial duties.

in order to serve all the people of Kosovo in keeping with the transition to a democratic and free society.

4. The Mission of the Kosovo Protection Corps may only be changed by the Special Representative of the Secretary General.

Article 2 *Principles*

1. The Kosovo Protection Corps in pursuit of the purpose stated in Article 1 of this Statement of Principles, shall act in accordance with the following principles:
  - a. The Kosovo Protection Corps will exist to serve all of the people of Kosovo. It will be politically neutral, and its members will neither serve in public office nor hold any office or positions in political parties whether voluntary or paid.
  - b. The Kosovo Protection Corps shall comply with internationally recognised human rights agreements in all aspects including recruitment, retention, career progression and in the activities of the Kosovo Protection Corps. There shall be no discrimination against any person on grounds of race, sex, colour, language, religion, political or other opinion, national or ethnic or social origin or association with a national community, property, birth or other status.
  - c. Nothing contained in this Statement of Principles shall authorise or permit the Kosovo Protection Corps to intervene or concern itself with, as an organisation or through its membership, any matter other than those specified in this Statement of Principles.
  - d. Any member of the Kosovo Protection Corps who breaches the principles and regulations contained in this Statement of Principles or the United Nations Mission In Kosovo Regulation 1999/8 may be dismissed from the Corps and may be subject to criminal prosecution.
  - e. Members of the Kosovo Protection Corps may only operate outside the boundaries of the Province of Kosovo with the authority of the Special Representative of the Secretary General.

Article 3 *Composition*

1. The strength of the Kosovo Protection Corps will be about 5000 members, of which 3000 will be permanent members and the remainder reserve members. Up to 100 locally employed personnel may also be employed.
2. Recruiting to the Kosovo Protection Corps will be on an individual basis and will be carried out by the Kosovo Force and the Kosovo Protection Corps transitional leadership under the authority of the Special Representative of the Secretary General. A significant portion of the Kosovo Protection Corps will initially come from the leadership and ranks of the demilitarised UCK and the remainder from the civilian population at large.
3. The Kosovo Protection Corps is to be recruited and based on multi-ethnic, non-sectarian principles. No specific religious, ethnic or gender quotas will be applied; however, continued international support will depend upon continued evidence of an organisation that mirrors the Province's ethnic balance.

## CENTER FOR LAW AND MILITARY OPERATIONS

4. Every member of the Kosovo Protection Corps will wear a uniform; the pattern of the uniform and its badges and emblems will be in accordance with that which has been approved by the Commander Kosovo Force. The official badge of the Kosovo Protection Corps is at Annex D. Members of the Kosovo Protection Corps may not wear any other form of uniform. They may wear their uniforms whilst off duty and at home if they so wish; however, any evidence of misuse of this privilege will result in the uniform only being worn on duty.
5. The Kosovo Protection Corps will issue an identification card of an approved design to every member of the Kosovo Protection Corps under the supervision of the Commander Kosovo Force. This identification card must be carried at all times.

### Article 4 *Command Status*

1. Commander Kosovo Force will exercise day to day supervision of the Kosovo Protection Corps within the framework of the Mission.
2. No formed body of the Kosovo Protection Corps may be used outside its regional boundaries without the express permission of the Commander Kosovo Force.
3. Commander Kosovo Protection Corps will employ the Corps in accordance with Commander Kosovo Force's direction.
4. Commanders of the Kosovo Force multinational brigades will exercise supervision over and, consistent with the requirements of a secure environment, provide security for any tasking of the Kosovo Protection Corps within their areas. Multinational brigades will provide assistance to operational deployments of the Kosovo Protection Corps within means and capabilities.

### Article 5 *Organisation*

1. The Kosovo Protection Corps is to consist of one Central Headquarters, six regional headquarters and task groups, one Guard and Rapid Reaction Group, seven central support or service support groups including Communications, Engineer, Environmental and Chemical Protection, Air Search and Rescue, Medical, Transport and Supply, and Maintenance, and two training colleges. The structure of the Kosovo Protection Corps is shown at Annex A to this Statement of Principles. Changes to this structure can only be authorised by the Special Representative of the Secretary General.
2. The Kosovo Force will, within means and capabilities, provide Training and Advisory Teams to the Kosovo Protection Corps, at its Central Headquarters and six regional headquarters.
3. The administrative locations for the key components of the Kosovo Protection Corps may not be changed without the authority of Commander Kosovo Force.

### Article 6 *Training and Assistance*

1. All training for the Kosovo Protection Corps will be planned by Commander Kosovo Protection Corps and will be approved by Commander Kosovo Force.
2. All aid, equipment and assistance provided to the Kosovo Protection Corps by the International Community must be authorised by the Special Representative of the Secretary General and Commander Kosovo Force.
3. The Kosovo Protection Corps will maintain liaison links with other public service organisations such as the civil fire, police, electricity, water and forestry departments as well as key international humanitarian organisations that could require specialised emergency assistance.

#### *Article 7 Equipment*

1. The equipment of the UCK is to be made available for use by the Kosovo Protection Corps. Specific arrangements for weapons are covered in Article 8.1.f.
2. All equipment issued to the Kosovo Protection Corps for the purpose of fulfilling its Mission is to be accounted for at the Kosovo Protection Corps Central Headquarters. Where such equipment is issued down to regional task groups, similar accounting procedures are to be in place.
3. A rolling annual stock take of equipment is to be completed. Quarterly returns are to be submitted to the Deputy Special Representative of the Secretary General for Civil Administration, via the Kosovo Protection Corps chain of command.

#### *Article 8 Self Defence*

1. Every member of the Kosovo Protection Corps has the inherent right of self defence. To clarify this, the following guidelines apply:
  - a. Every member of the Kosovo Protection Corps who is attacked, or reasonably believes he is about to be attacked, may use reasonable minimum force as is necessary in the circumstances to defend himself.
  - b. No member of the Kosovo Protection Corps has the right to use force to defend another person, unless the member has been specifically authorised by the Special Representative of the Secretary General to protect that person.
  - c. Force can never be used unless necessary and then only minimum force can be used.
  - d. Minimum force can include lethal force but only if life is in imminent danger and no alternative action can be taken.
  - e. No member of the Kosovo Protection Corps will be permitted to carry arms of any kind unless authorised to do so by the Special Representative of the Secretary General.

f. 2000 weapons in total are held in trust for the Kosovo Protection Corps. 200 will be in use at any one time for:

- (1) Guarding of installations.
- (2) Security when units are deployed.

Issuance of these weapons will be specifically authorised by Commander Kosovo Force and their use by the Kosovo Protection Corps will be in accordance with Kosovo Force guidelines.

g. The remaining 1800 weapons held for the Kosovo Protection Corps will be stored within Kosovo Force secure weapons facilities to which authorised Kosovo Protection Corps members will have privileged access in order to exercise joint control.

h. Additionally:

- (1) Weapons (sidearms) may be carried by authorised officers for personal protection, as authorised by the Commander Kosovo Force, using his delegated authority from the UNMIK Police Commissioner. Such authorisations will be limited to a period of one year and will be subject to review at the Special Representative of the Secretary General's discretion.
- (2) Ceremonial units will carry de-commissioned bolt action weapons.
- (3) Close protection units will carry sidearms or automatic short barrelled weapons for close protection of key members of the Kosovo Protection Corps.

i. Weapons will be made available to the Kosovo Protection Corps for training.

#### *Article 9 Supplemental Arrangements*

1. The Special Representative of the Secretary General shall make such supplemental arrangements to this Statement of Principles which may from time to time be required. When concluded, such arrangements will be annexed to and shall form part of this Statement of Principles and shall have the same force and effect as this Statement of Principles.

#### *Article 10 Amendments*

1. Any part of this Statement of Principles may be amended or modified by the Special Representative to the Secretary General.

M D JACKSON  
Lieutenant General  
Commander Kosovo Force

Accepted By:

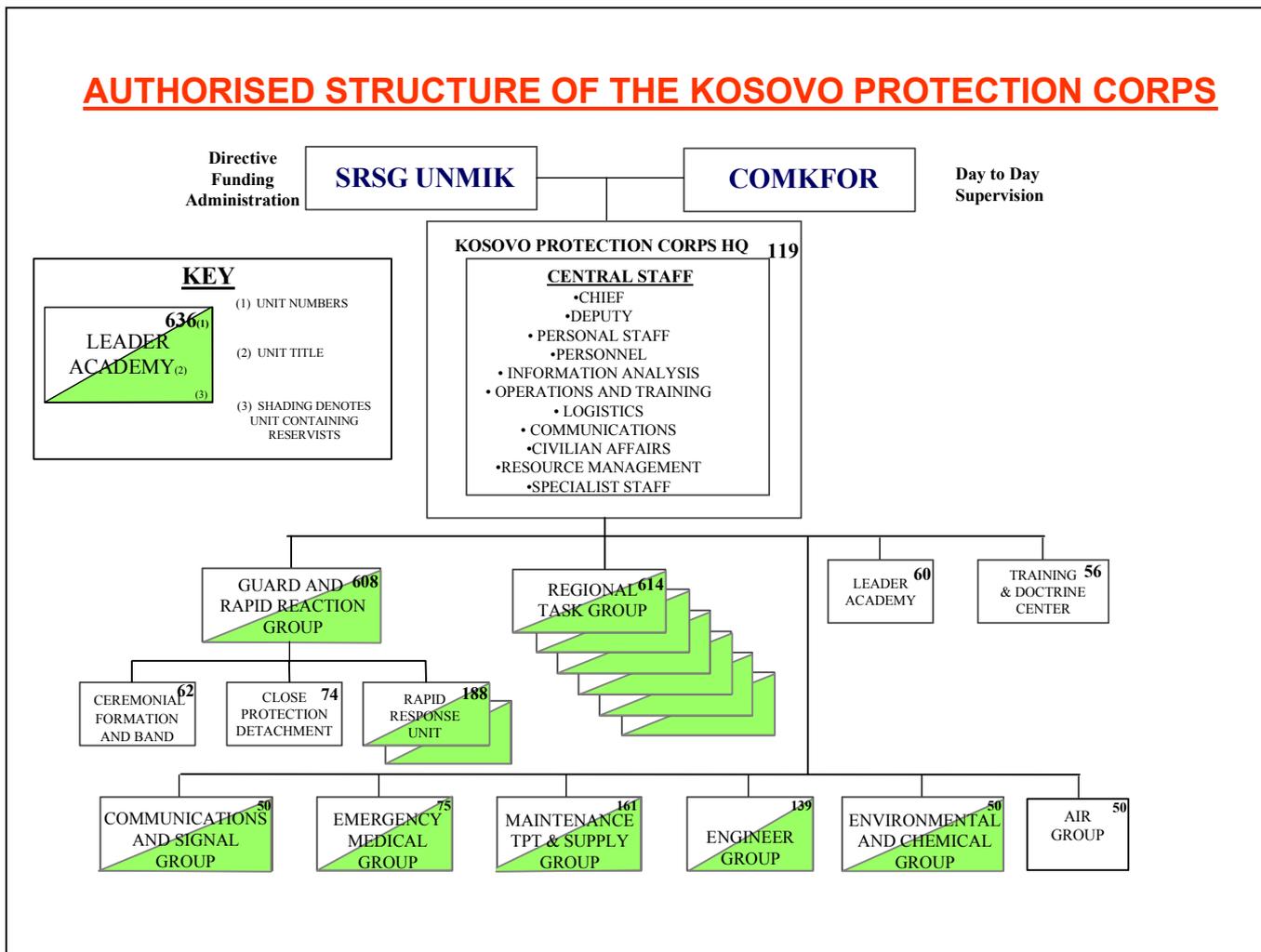
Agim Çeku  
Lieutenant General

Annexes:

- A. Authorised Structure of the Kosovo Protection Corps.
- B. Kosovo Protection Corps Key Tasks.
- C. Kosovo Protection Corps Locations.
- D. Kosovo Protection Corps Official Badge.

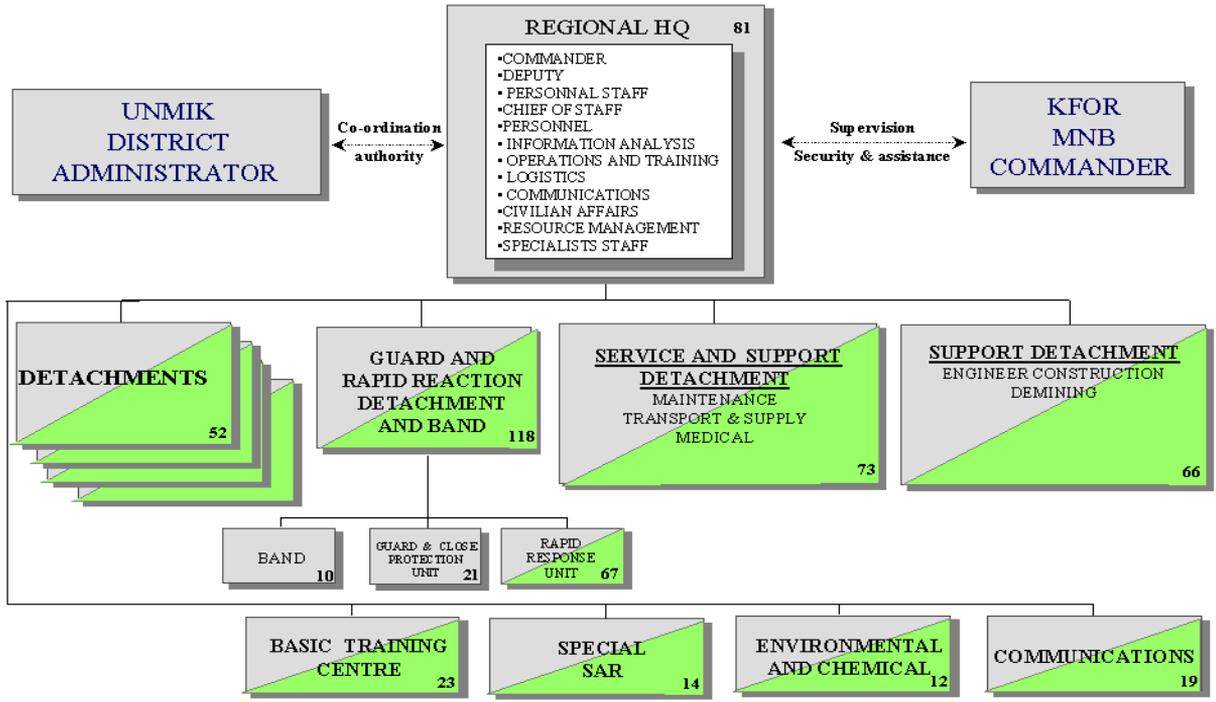
ANNEX A TO THE KOSOVO PROTECTION CORPS  
STATEMENT OF PRINCIPLES

**AUTHORISED STRUCTURE OF THE KOSOVO PROTECTION CORPS**



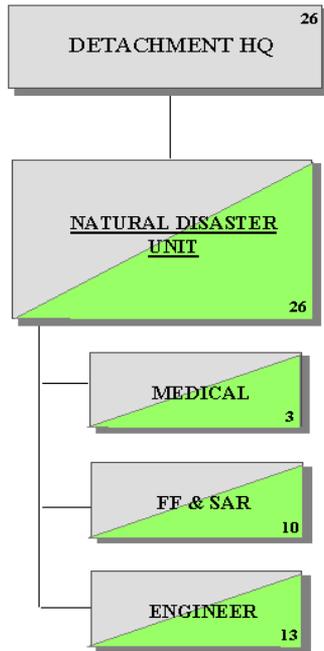
614

**ORGANISATION - REGIONAL TASK GROUP LEVEL**



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**ORGANISATION - DETACHMENT**



ANNEX B TO THE KOSOVO PROTECTION CORPS STATEMENT OF PRINCIPLES

**KOSOVO PROTECTION CORPS KEY TASKS**

1. To provide an emergency response capability to meet natural disasters and other situations defined by UNMIK, in order to protect the life and property of the people of Kosovo.
2. To assist the Kosovo population in case of natural and technological disasters.
3. To re-establish and control the normal flow of traffic in emergencies when requested by UNMIK.
4. To support and actively participate in the rebuilding of the living accommodation and infrastructure of Kosovo.
5. To conduct de-mining and EOD clearance of mine and munitions affected areas in support of UNMIK and NGOs.
6. To provide training for all new members of the Corps and lay down the foundations of a youth training organisation.
7. Continuously to enhance the professional skills of the staff with scientific programmes adapted to the conditions and structures of Kosovo.
8. To maintain the capabilities of active and reserve elements and sufficient information on the terrain, vegetation, weather, climate, structure, railways and roads to react rapidly to all disasters.
9. To conduct all planning necessary to fulfil the mission.
10. To organise and implement the training of reserve personnel of the Corps.
11. To undertake search and rescue operations for people and property in case of accidents.
12. To provide support to KFOR when requested.
13. To perform ceremonial duties upon the arrival or departure of high state personalities and similar cases.
14. To be responsible for guarding the Corps installations and senior officers of the organisation.
15. To guard and maintain the equipment of the Corps.
16. To write doctrine and Standing Operating Procedures for the organisation.

ANNEX C TO THE KOSOVO PROTECTION CORPS STATEMENT OF PRINCIPLES

KOSOVO PROTECTION CORPS HEADQUARTERS LOCATIONS.

1. Locations. The following locations have been provisionally identified:

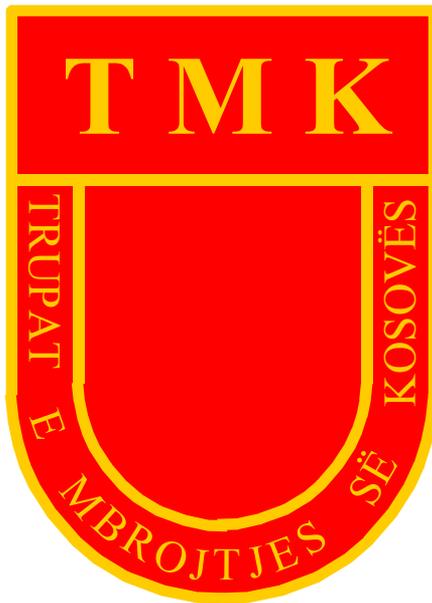
a. Central Level

- (1) General Headquarters PRISTINA GR 126217 (Auto-Moto Liaison)
- (2) Guard and Rapid Reaction Group PRISTINA GR 115224 (former VJ barracks) and BLINAJA (company buildings)
- (3) Leadership Academy PRISTINA GR EN 135217 (technical faculty PRISTINA university). Proposed accommodation at GR DM 116222.
- (4) Training Centre (To Be Confirmed)
  - (a) JUNIK (former textile factory) Option 1.
  - (b) NASHEC (PRIZREN) Option 2.
- (5) Communication Group PRISTINA.
- (6) Medical Group PRISTINA (PRISTINA Hospital).
- (7) Logistics Group PRISTINA (Togbashqe Barracks).
- (8) Engineer Group FERIZAJ.
- (9) Chemical Group SUHAREKË.
- (10) Helicopter Group PRISTINA (Slatina) Airport

b. Regional Level

- (1) Regional Headquarters PRISTINA GR 128229 (former VJ barracks).
- (2) Regional Headquarters MITROVICA GR DN 892489 (former VJ mobilisation centre).
- (4) Regional Headquarters GJILAN.
- (5) Regional Headquarters SKENDERAJ GR DN 826322 .
- (6) Regional Headquarters PEC GR DN 432227 (former state motel) and GR DN 443226 (old HGV test centre).
- (7) Regional Headquarters PRIZREN GR DM 786737 (former VJ senior officer's house).(TBC).

ANNEX D TO  
THE KOSOVO PROTECTION CORPS  
STATEMENT OF PRINCIPLES



**APPENDIX IV-7: 1ST ID LEADERS LEGAL BRIEFING**

Operation Joint Guardian

TASK FORCE FALCON

**LEADERS LEGAL BRIEFING**

**TASK FORCE FALCON  
KFOR 1B**

DUTY FIRST  
Page 1

Operation Joint Guardian

TASK FORCE FALCON

**AGENDA**

- ◇ MTA Structure and General Provisions
- ◇ KFOR - UCK Undertaking of Demilitarization
- ◇ Kosovo Protection Corps Statement of Principles
- ◇ UNSCR 1244
- ◇ ROE
- ◇ General Order # 1

DUTY FIRST  
Page 2

Operation Joint Guardian

TASK FORCE FALCON

**MTA**

**The Military Technical Agreement  
Agreement Between the International  
Security Force (KFOR) and the  
Governments of the Federal  
Republic of Yugoslavia and the  
Republic of Serbia  
Signed 9 June 1999**

DUTY FIRST  
Page 3

Operation Joint Guardian

TASK FORCE FALCON

**Contents**

- Article I General Obligations
- Article II Cessation of Hostilities
- Article III Notifications
- Article IV Establishment of a Joint Implementation Commission
- Article V Final Authority to Interpret
- Article VI Entry Into Force
- Appendix A Phased Withdrawal of FRY Forces
- Appendix B KFOR Operations

DUTY FIRST  
Page 4

Operation Joint Guardian

TASK FORCE FALCON

**Cessation of Hostilities**

**“The FRY forces shall immediately . . . Refrain from committing any hostile or provocative acts of any type against any person in Kosovo. They shall not encourage or organize hostile or provocative demonstrations.”**

**Article II, Para. 1**

DUTY FIRST  
Page 5

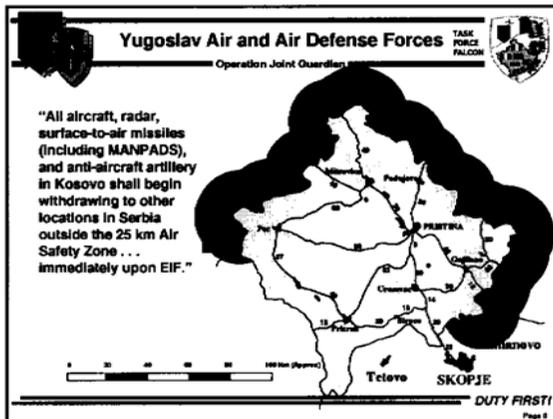
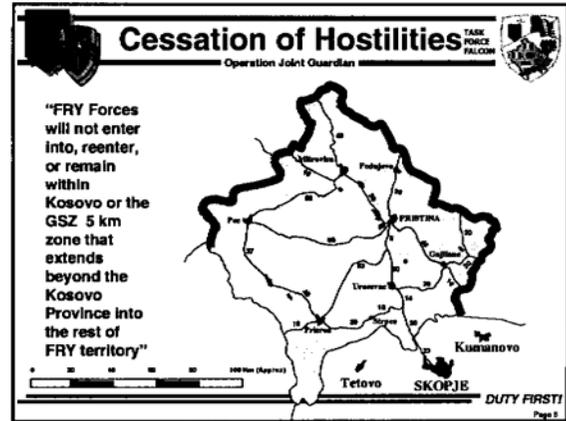
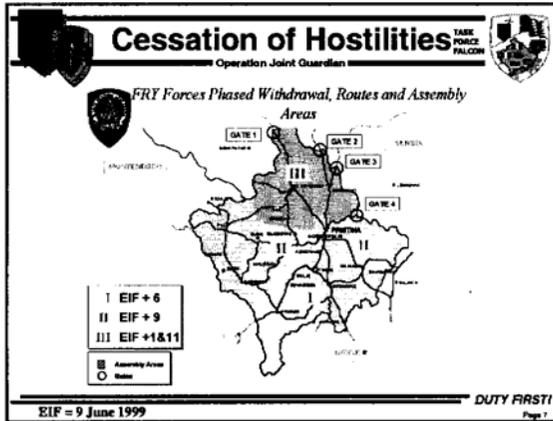
Operation Joint Guardian

TASK FORCE FALCON

**Cessation of Hostilities**

- Phased withdrawal of All FRY Forces to Serbia
- FRY Forces = VJ, armed civilian groups, associated paramilitary groups, border police, reserve forces, MUP, SUP, and anyone else designated by COMKFOR
- Clear all mines, demolitions, booby traps, obstacles and charges

DUTY FIRST  
Page 6



**The “Hammer”** TASK FORCE FALCON  
Operation Joint Guardian

“KFOR will deploy and operate without hindrance within Kosovo and with the authority to take all necessary action to establish and maintain a secure environment for all citizens of Kosovo”

DUTY FIRST! Page 10

**The “Hammer”** TASK FORCE FALCON  
Operation Joint Guardian

“The KFOR CDR shall have the authority to do all that he judges necessary and proper, including the use of military force, to protect the force, the international civilian presence and to carry out the responsibilities inherent in this agreement . . .”

DUTY FIRST! Page 13

**Undertaking of Demilitarization** TASK FORCE FALCON  
Operation Joint Guardian

**General Terms**

- ◇ Signed 20 June 1999
- ◇ Cease-fire, disengagement, phased demilitarization, transformation and monitoring of UCK
- ◇ Establishes JIC with UCK
- ◇ Use of Force to ensure compliance
- ◇ Future UCK similar to National Guard

DUTY FIRST! Page 14

**Undertaking of Demilitarization** TASK FORCE FALCON

Operation Joint Guardian

**Cease Fire and Disengagement**

- ◇ Cease firing weapons and using explosives
- ◇ Stop placing mines, creating checkpoints, and manning OPs
- ◇ Stop military training unless approved by COMKFOR
- ◇ Stop carrying weapons in certain areas

DUTY FIRST! Page 15

**Undertaking of Demilitarization** TASK FORCE FALCON

Operation Joint Guardian

**Cease Fire and Disengagement**

- ◇ Forbidden to attack, detain or intimidate Kosovo civilians
- ◇ Forbidden to interfere with authorized FRY forces conducting COMKFOR approved tasks
- ◇ Does not deny UCK right to use force in self-defense
- ◇ UCK intends to comply with terms of United Nations Security Council Resolution 1244

DUTY FIRST! Page 16

**Undertaking of demilitarization** TASK FORCE FALCON

Operation Joint Guardian

**Demilitarization Timetable**

- ◇ 27 June—Establish secure weapons sites registered with KFOR
- ◇ 27 June—Clear Minefields and transfer to assembly areas
- ◇ 27 June—Automatic small arms either stored in weapons site or in assembly area
- ◇ 19 July—Retention of Nonautomatic long barreled weapons subject to COMKFOR authorization
- ◇ 20 July—UCK personnel not from Kosovo must withdraw from Kosovo

DUTY FIRST! Page 17

**Timetable** TASK FORCE FALCON

Operation Joint Guardian

- ◇ 20 July—Prohibited weapons and 30% of automatic small arms stored in weapons sites
- ◇ 20 July—Automatic small arms not in storage sites may only be possessed in assembly areas
- ◇ 20 August—60% of automatic small arms stored in weapons sites
- ◇ 20 September—All automatic small arms stored in weapons sites
- ◇ 20 September—Complete demilitarization and cease wearing uniforms or insignia of the UCK

DUTY FIRST! Page 18

**Joint Implementation Commission** TASK FORCE FALCON

Operation Joint Guardian

**The JIC (comprised of COMKFOR, senior cdrs of KFOR and the UCK and a rep from the interim civil administration for Kosovo) shall ensure compliance with agreed arrangements for the security and activities of all forces; investigation of actual and threatened breaches of the undertaking and other tasks assigned to it by COMKFOR.**

DUTY FIRST! Page 19

**STATEMENT OF PRINCIPLES** TASK FORCE FALCON

Operation Joint Guardian

Signed 21 Sep 99  
 Establishes Kosovo Protection Corps  
 3,000 active and 2,000 reservists

The KPC will provide:

- Disaster Response Services
- Search and Rescue
- Humanitarian Assistance
- Assist in demining
- Contribute to rebuilding infrastructure



DUTY FIRST! Page 20

**Statement of Principles** TASK FORCE FALCON

Operation Joint Guardian

- ◊ Every member will wear a uniform and carry an ID Card approved by COMKFOR
- ◊ All Training, Aid, Equipment, and Assistance must be authorized by COMKFOR

**WEAPONS:**

- ◊ 200 IN USE AT ANY ONE TIME FOR GUARDING INSTALLATIONS AND SECURITY WHEN UNITS ARE DEPLOYED
- ◊ SIDEARMS MAY BE CARRIED BY AUTHORIZED OFFICERS FOR PERSONAL PROTECTION

DUTY FIRST! Page 21

**Statement of Principles** TASK FORCE FALCON

Operation Joint Guardian

- ◊ The KPC shall not take part in any political activity, hold public office or actively engage in political affairs
- ◊ The KPC shall not have any role in law enforcement or the maintenance of law and order
- ◊ Members may be dismissed by the Special Representative
- ◊ MNB Cdrs will supervise and provide security for any tasking of the KPC within their areas.

DUTY FIRST! Page 22

**UNSCR 1244** TASK FORCE FALCON

Operation Joint Guardian

- ◊ Resolution 1244 adopted by Security Council on 10 June 1999
- ◊ Acting under Chapter VII of UN Charter
- ◊ Deployment of effective international civil and security presence
- ◊ Establishment of an interim administration for Kosovo
- ◊ Safe return of all refugees and unimpeded access by humanitarian aid organizations

DUTY FIRST! Page 23

**UNSCR 1244** TASK FORCE FALCON

Operation Joint Guardian

- ◊ Political agreement providing for substantial self-gov't taking into account sovereignty and territorial integrity of FRY
- ◊ Comprehensive approach to economic development and stabilization
- ◊ Return of FRY Forces to:
  - ◊ Liaison with civil mission and KFOR;
  - ◊ Mark and Clear Minefields; and
  - ◊ Maintain presence at border crossings and Serb patrimonial sites

DUTY FIRST! Page 24

**United Nations Mission in Kosovo** TASK FORCE FALCON

Operation Joint Guardian

**BRINGING PEACE TO KOSOVO**  
The UN Interim Administration Mission in Kosovo (UNMIK)

**FOUR PILLARS OF REFORMING KOSOVO**

- Civil Administration—Under the United Nations
- Humanitarian Assistance—Led by UNHCR
- Democratization and Institution-Building--Led by OSCE
- Economic Reconstruction--Managed by EU

DUTY FIRST! Page 25

**Troop Briefing** TASK FORCE FALCON

Operation Joint Guardian

**RULES OF ENGAGEMENT (ROE)**

DUTY FIRST! Page 26

**Rules of Engagement**  
Operation Joint Guardian

TASK FORCE FALCON

- ◇ SELF-DEFENSE
- ◇ MINIMUM FORCE
- ◇ USE OF FORCE FOR OTHER PURPOSES
- ◇ CHALLENGE PROCEDURES
- ◇ REQUIREMENT TO USE PROPORTIONAL FORCE
- ◇ OTHER COMMAND GUIDANCE
- ◇ RAMP

DUTY FIRST!  
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**Rules of Engagement**  
Operation Joint Guardian

TASK FORCE FALCON

**SELF-DEFENSE**

**YOU HAVE THE RIGHT TO USE NECESSARY AND PROPORTIONAL FORCE, INCLUDING DEADLY FORCE, TO DEFEND YOURSELF AND OTHER NATO-LED FORCES AGAINST ATTACK OR IMMINENT ATTACK**

DUTY FIRST!  
Page 28

**Rules of Engagement**  
Operation Joint Guardian

TASK FORCE FALCON

**Elements of Self-Defense**

- ◇ **Necessity:** Use force to defend against attack or imminent attack (hostile acts or expressions of hostile intent)
- ◇ **Proportionality:** Must be proportionate in nature, duration, and scope. Use appropriate force to counter threat. Protection not punishment.

DUTY FIRST!  
Page 29

**Rules of Engagement**  
Operation Joint Guardian

TASK FORCE FALCON

**Hostile Act**

**Force is being used against you or protected persons that could result in death, serious bodily harm, (or destruction of protected property)**

DUTY FIRST!  
Page 30

**Rules of Engagement**  
Operation Joint Guardian

TASK FORCE FALCON

**Hostile Intent**

**Actions which indicate a clear intent to commit a hostile act**

**Things to consider are:**

- ◇ the apparent ability to inflict damage
- ◇ types and orientation of weapons
- ◇ other circumstances...

DUTY FIRST!  
Page 31

**Rules of Engagement**  
Operation Joint Guardian

TASK FORCE FALCON

**MINIMUM FORCE**

**YOU ARE REQUIRED TO USE THE LEAST AMOUNT OF FORCE THAT YOU CAN**

**THIS AMOUNT OF FORCE WILL VARY WITH THE SITUATION**

**➔ THE MINIMUM FORCE REQUIRED MAY BE DEADLY FORCE**

DUTY FIRST!  
Page 32

**Rules of Engagement**  
Operation Joint Guardian

TASK FORCE FALCON

**USE OF DEADLY FORCE**

- ▷ USE AGAINST INDIVIDUAL WHO COMMITS HOSTILE ACT OR DEMONSTRATES HOSTILE INTENT AND IF CHALLENGE PROCEDURES ARE EITHER INSUFFICIENT OR INAPPROPRIATE
- ▷ HOSTILE ACT:
  - AGGRESSIVE ACTION OR ATTACKS USING DEADLY FORCE
  - AGAINST FRIENDLY FORCES, PERSONS DESIGNATED SPECIAL STATUS, OR PROPERTY WITH DESIGNATED SPECIAL STATUS
- ▷ HOSTILE INTENT:
  - ACT WHICH APPEARS TO BE IN PREPARATION OF A HOSTILE ACT

DUTY FIRST!  
Page 33

**Rules of Engagement**  
Operation Joint Guardian

TASK FORCE FALCON

**USE OF DEADLY FORCE**

- ▷ PERSONS with DESIGNATED SPECIAL STATUS:
  - Members of non-belligerent organizations operating in the AOR under the authority of the UN or NATO - International Police Force, ICRC, CARE, OSCE, etc.
  - Individuals or groups specifically designated by COMKFOR

DUTY FIRST!  
Page 34

**Rules of Engagement**  
Operation Joint Guardian

TASK FORCE FALCON

**USE OF DEADLY FORCE**

- ▷ PROPERTY with DESIGNATED SPECIAL STATUS: Humanitarian Aid or material identified by COMKFOR;

Property or information including classified material under the control of friendly forces, the loss of which would increase the risk of grave injury or death to friendly forces or PDSS or increase the risk of substantial damage to property with special status;

Other property designated by COMKFOR.

DUTY FIRST!  
Page 35

**Rules of Engagement**  
Operation Joint Guardian

TASK FORCE FALCON

**USE OF FORCE FOR OTHER PURPOSES**

- ▷ KEEPING UNAUTHORIZED PEOPLE OUT OF DESIGNATED OR RESTRICTED AREA
- ▷ DEFEND AGAINST HOSTILE FORCES THAT PREVENT FORCES FROM CARRYING OUT THEIR DUTIES
- ▷ PERFORM AUTHORIZED, DIRECTED PRE-EMPTIVE MILITARY ACTIONS

DUTY FIRST!  
Page 36

**Rules of Engagement**  
Operation Joint Guardian

TASK FORCE FALCON

**USE OF FORCE FOR OTHER PURPOSES**

DEFEND, INCLUDING THROUGH OPENING FIRE, ANY INDIVIDUAL, WHO IS, OR IS ABOUT TO BE, THE SUBJECT OF AN UNLAWFUL ACT WHICH ENDANGERS HIS/HER LIFE, OR IS LIKELY TO CAUSE HIM/HER SERIOUS BODILY HARM, IN CIRCUMSTANCES WHERE THERE IS NO OTHER WAY TO PREVENT THE ACT

DUTY FIRST!  
Page 37

**Rules of Engagement**  
Operation Joint Guardian

TASK FORCE FALCON

**REQUIREMENTS TO USE PROPORTIONAL FORCE**

- ▷ WHENEVER FORCE AUTHORIZED, USE ONLY FORCE REQUIRED TO ACHIEVE THE IMMEDIATE OBJECTIVE
- ▷ MAKE EVERY EFFORT TO MINIMIZE COLLATERAL DAMAGE
- ▷ DO NOT ATTACK PROPERTY THAT THE EXCLUSIVELY CIVILIAN OR RELIGIOUS IN NATURE UNLESS THE PROPERTY IS BEING USED FOR MILITARY PURPOSES

DUTY FIRST!  
Page 38

**Rules of Engagement**  
Operation Joint Guardian

**CHALLENGE PROCEDURES**

- WHEN OPERATIONAL SITUATION PERMITS, GIVE CHALLENGE BEFORE OPENING FIRE (ROE Card in 2 foreign languages)
- EXAMPLES WHERE NOT REQUIRED TO CHALLENGE:
  - YOU OR OTHERS IN IMMEDIATE VICINITY ARE UNDER ARMED ATTACK,
  - OR
  - CHALLENGE WOULD INCREASE THE RISK OF DEATH OR GRAVE INJURY TO YOU OR ANY OTHER PERSON

DUTY FIRST! Page 38

**Rules of Engagement**  
Operation Joint Guardian

**OTHER COMMAND GUIDANCE**

- Persons who demonstrate hostile acts or intent or commit criminal misconduct may be stopped, searched and detained.
- Detained persons will be either turned over to the on-site MP or delivered to a local MP substation
- GO 1 Guidance

DUTY FIRST! Page 40

**RAMP**  
Operation Joint Guardian

**INTRODUCTION**

**RAMP IS NOT THE SAME AS ROE**

**RAMP IS A FRAMEWORK FOR TRAINING ON THE USE OF FORCE**

DUTY FIRST! Page 41

**Rules of Engagement**  
Operation Joint Guardian

**“R-A-M-P”**

**TRAINING AID ON ROE FOR INDIVIDUAL SOLDIER**

Return fire with aimed fire. Return force with force. You always have the right to repel hostile acts with necessary force.

Anticipate attack. Use force first if, but only if, you see clear indicators of hostile intent or identify a hostile force.

Measure the amount of force that you use, if time and circumstances permit. Use only the amount of force necessary to protect lives and accomplish the mission.

Protect with deadly force only human life, and property designated by your commander. Stop short of deadly force when protecting other property.

DUTY FIRST! Page 42

**Rules of Engagement**  
Operation Joint Guardian

**“R”**

***“Return fire with aimed fire. Return force with force. You always have the right to repel hostile acts with necessary force.”***

DUTY FIRST! Page 43

**Rules of Engagement**  
Operation Joint Guardian

**“A”**

***“Anticipate attack. Use force first if, but only if, you see clear indicators of hostile intent or identify a hostile force.”***

DUTY FIRST! Page 44

**Rules of Engagement**  
Operation Joint Guardian

TASK FORCE FALCON

**ANTICIPATE ATTACK**  
**"HAND S-A-L-U-T-E"**

- ◇ HAND
- ◇ SIZE
- ◇ ACTIVITY
- ◇ LOCATION
- ◇ UNIT
- ◇ TIME
- ◇ EQUIPMENT

DUTY FIRST!  
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**Rules of Engagement**  
Operation Joint Guardian

TASK FORCE FALCON

**"M"**

***Measure the amount of force that you use, if time and circumstances permit. Use only the amount of force necessary to protect lives and accomplish the mission.***

DUTY FIRST!  
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**Rules of Engagement**  
Operation Joint Guardian

TASK FORCE FALCON

**MEASURE**  
**"V-E-W-P-R-I-K"**

- ◇ **V**ERBAL WARNING
- ◇ **E**XHIBIT WEAPON
- ◇ **W**ARNING SHOT IF AUTHORIZED
- ◇ **P**EPPER SPRAY IF AUTHORIZED
- ◇ **R**IOT STICK/RIFLE BUTT
- ◇ **I**NJURE WITH FIRE
- ◇ **K**ILL WITH FIRE

DUTY FIRST!  
Page 47

**Rules of Engagement**  
Operation Joint Guardian

TASK FORCE FALCON

**"P"**

***Protect with deadly force only human life, and property designated by your commander. Stop short of deadly force when protecting other property.***

DUTY FIRST!  
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**Rules of Engagement**  
Operation Joint Guardian

TASK FORCE FALCON

**APPLYING THE ROE**  
***Some Examples***

DUTY FIRST!  
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**Rules of Engagement**  
Operation Joint Guardian

TASK FORCE FALCON

**"R-A-M-P"**

**TRAINING AID ON ROE FOR INDIVIDUAL SOLDIER**

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DUTY FIRST!  
Page 50

**GENERAL ORDER #1**  
Operation Joint Guardian

TASK FORCE FALCON

**APPLICABILITY**

- ◇ U.S. Military and Civilian personnel in support of NATO Operation Joint Guardian
- ◇ Located in Albania, Croatia, Bosnia-Herzegovina, Macedonia, Serbia, Montenegro AND KOSOVO

DUTY FIRST!  
Page 31

**GENERAL ORDER #1**  
Operation Joint Guardian

TASK FORCE FALCON

◇ **Purpose and Necessity**

- Prevent conduct prejudicial to good order and discipline
- Prevent conduct which could bring discredit to U.S. Armed Forces
- Respect host nation law
- Improve U.S. relations in the region

DUTY FIRST!  
Page 32

**GENERAL ORDER #1**  
Operation Joint Guardian

TASK FORCE FALCON

**RESTRICTIONS**

- ◇ Taking, possessing, or shipping captured, found or purchased weapons
- ◇ Introduction, possession, use, sale, transfer, manufacture, or consumption of alcohol
- ◇ Possessing, touching, using or knowingly approaching UXO
- ◇ Purchase, sale, possession, use, or introduction of privately owned weapon
- ◇ Gambling of any kind (including betting on sports, lotteries, and raffles)

DUTY FIRST!  
Page 33

**GENERAL ORDER #1**  
Operation Joint Guardian

TASK FORCE FALCON

**RESTRICTIONS**

- ◇ Selling, bartering, or exchanging any currency other than at the official host nation exchange rate
- ◇ Entrance into a religious shrine or mosque unless approved by military authority or compelled by military necessity
- ◇ Removing, possessing, selling, defacing, or destroying archeological artifacts
- ◇ Participating in any form of host nation political activity
- ◇ Taking or retaining public or private property as souvenirs

DUTY FIRST!  
Page 34

**GENERAL ORDER #1**  
Operation Joint Guardian

TASK FORCE FALCON

**GENERAL ORDER NUMBER 1 IS PUNITIVE AND VIOLATIONS CAN BE PUNISHED UNDER UCMJ ARTICLE 92 FOR VIOLATING A LAWFUL GENERAL ORDER**

DUTY FIRST!  
Page 35

**GENERAL ORDER #1**  
Operation Joint Guardian

TASK FORCE FALCON

**CONCLUSION**

QUESTIONS?

DUTY FIRST!  
Page 36

**APPENDIX IV-8: DETENTION POLICY (KFOR 1A)**

**DEPARTMENT OF THE ARMY  
HEADQUARTERS, TASK FORCE FALCON  
CAMP BONDSTEEL, KOSOVO  
APO AE 09340**

**TASK FORCE FALCON  
POLICY LETTER #TFF-04  
DETENTION PROCESSING**

AETV-BGA-FWD

3 Aug. 1999

1. Pursuant to United Nations Security Council Resolution 1244, KFOR has the responsibility to ensure public safety and order until the international civil presence can take responsibility for this task. Sergio Vieira de Mello reiterated that, "In performing this task, KFOR has the right to apprehend and detain persons who are suspected of having committed offenses against public safety and order, including the commission of such serious offenses as murder, rape, kidnapping or arson, or war crimes (enclosure)." This memorandum outlines the procedures to be employed in the Multi-National Brigade-East Area of Responsibility (MNB-E AOR) for the detention and release of civilians.

2. The most common types of crimes in the MNB-E AOR are divided into the following four categories:

a. Category I:

- (1) Hostile acts or threats toward KFOR
- (2) War Crimes

b. Category II: Serious Crimes

- (1) Murder
- (2) Rape
- (3) Kidnapping
- (4) Arson
- (5) Aggravated Assault
- (6) Any crime involving a suspect that has been previously detained by KFOR
- (7) Any crime in which a weapon was used in the commission of the crime

c. Category III: Standard Crimes

- (1) Burglary/Housebreaking
- (2) Larceny/Looting
- (3) Weapons Violations
- (4) UCK Uniform Violations
- (5) Driving Under the Influence of Alcohol or Drugs
- (6) Prostitution
- (7) Establishing an unauthorized checkpoint
- (8) Destruction of Property
- (9) Blackmarketing
- (10) Simple Assault
- (11) Harassment
- (12) Use or possession of illegal drugs
- (13) Possession of stolen property
- (14) Auto Theft/Carjacking

d. Category IV: Misdemeanors

- 1) Curfew Violations
- 2) Drunk and Disorderly

3. In accordance with Yugoslav law, within 48 hours of the time an individual is brought to the Camp Bondsteel Detention Facility, KFOR must either make a determination to release the individual or conduct a hearing to determine if there is probable cause for continued detention. Only the Task Force Falcon Commander has the authority to order the release of individuals detained for Category I crimes. The Task Force Falcon Chief of Staff has the authority to order the release of individuals detained for Category II crimes. The Provost Marshal has the authority to order the release of individuals detained for Category III crimes. The on-scene commander has the authority to order the release of individuals detained for Category IV crimes.

4. The Task Force Falcon Commander personally reviews all cases in which continued detention beyond 48 hours is recommended. The authority to order continued detention of suspects beyond 48 hours rests solely with the Task Force Falcon Commander.

5. The initial investigation and documentation of alleged crimes must be as thorough and complete as possible. The operational constraints of conducting law enforcement activities in the present environment severely inhibits KFOR's ability to conduct follow-up investigations. It is imperative that the investigation be done correctly, the first time. Therefore, the first soldiers to respond to the scene of an alleged crime will take the following actions.

a. When responding to the scene of a Category I, II or III crime, the first responders will:

- (1) Establish control of the scene.
- (2) Notify the Military Police (MP) as soon as possible. MPs will notify CID as appropriate (Rape, Murder, Arson, Kidnapping)

(3) Continue to provide perimeter security until the MPs have completed their investigation.

b. When responding to the scene of a Category IV crime, or when the Military Police have specifically deferred the investigation of the alleged Category III crime to the on-scene commander, the first responders will:

- (1) Establish control of the scene.
- (2) Notify the MPs.
- (3) Take statements from the victims and witnesses (sworn statements when possible).
- (4) Prepare a sketch of the scene.
- (5) Render personal statements.
- (6) Account for all physical evidence on a DA Form 4137.
- (7) Bring the suspect(s) and all documents from sub-paragraphs 3 through 6 to the nearest MP sub-station.

6. The MP sub-station plays a critical role in preparing the evidence for the detention facility. The MP sub-station will do the following:

- (1) Review the statements and ask follow-up questions.
- (2) Ensure the evidence is properly tagged and the DA Form 4137 is completed.
- (3) Coordinate with the Camp Bondsteel Detention Facility for transportation of suspects to the detention facility.

7. The Camp Bondsteel Detention Facility will accept all individuals for detention. If the statements and documents are not detailed or complete, the capturing unit must submit supporting statements and physical evidence (if obtained) to the Camp Bondsteel Detention Facility within twelve hours.

8. When individuals brought to the detention facility are known to be members of the UCK, the detention facility will notify the JIC or the G-5 so that the individual's Chain of Command can be contacted. This coordination should occur as soon as possible, but may occur after the individual has been interrogated by Military Police Investigators (MPI), Criminal Investigation Division (CID) Special Agents or Counter Intelligence (CI) Agents. Members of the UCK that are detained solely for violations of the Undertaking for Demilitarization and Transformation of the UCK will be released to UCK Chain of Command. However, members of the UCK deemed to be a threat to KFOR or that are suspected of committing criminal acts will be processed through the detention process like any other detainee.

9. It is the responsibility of the NCOIC of the Camp Bondsteel Detention Facility to prepare a memorandum THRU the Provost Marshal FOR the appropriate release authority recommending the release or continued detention of each detainee. The memorandum will be supported, as applicable, by the following enclosures:

- a. Statements of the first responders, investigators, victim(s), witnesses, and suspect(s)
- b. Evidence/Chain of Custody Document

CENTER FOR LAW AND MILITARY OPERATIONS

- c. Sketch of the crime scene
- d. Digital photograph of the detainee with corresponding biographical information

Release will occur in accordance with Paragraph 2.

10. In the event that the Kosovar Investigating Magistrate directs the release of an individual detained in the Camp Bondsteel Detention Facility, coordination will be made with the Task Force Falcon Chief of Staff. All such releases must be approved by the Task Force Falcon Chief of Staff.

11. POC for this memorandum is CPT Jacobs at MSE 563-3568.

Encl (as)

BANTZ J. CRADDOCK  
Brigadier General, USA  
Commanding, Task Force Falcon

DISTRIBUTION:

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793 MP	

**APPENDIX IV-9: EXECUTIVE SUMMARY, AR 15-6**  
**INVESTIGATION INTO ALLEGATIONS OF EXCESS FORCE BY 3-**  
**504 PIR**

**I. Introduction**

The charter appointed to me, COL John W. Morgan, III, SUBJECT: Appointment of AR 15-6 Investigating Officer, dated 23 January 2000. The purpose was to conduct an informal investigation into the unit climate and state of discipline within 3<sup>rd</sup> Battalion, 504 Parachute Infantry Regiment (PIR), presently attached to Task Force Falcon, Kosovo. The appointment order (paragraphs 2b. - 2j.) charged me to address 9 separate allegations of which 7 were substantiated and 2 were unsubstantiated. Facts, Findings, and Recommendations of each of the allegations are addressed in Section VIII of the Report of Investigation (ROI).

**II. Objective of the Investigation**

To determine the overall unit climate and state of discipline within the 3-504 PIR, attached to Task Force Falcon, Kosovo

**III. Overview of the Investigation**

On 23 January 2000, during my office call with the Appointing Authority, Brigadier General (BG) Ricardo Sanchez, the scope of the investigation was orally expanded. The expansion included interviewing soldiers from direct/general support units (e.g., Civil Affairs, Military Police, Counter-Intelligence, Intelligence Collection Assets) that operated in and around the Vitina area. Additionally, BG Sanchez orally tasked me to interview members of the local population in Vitina to include community leaders from both ethnic groups (i.e., Serbians and Albanians). The scope of the investigation was also expanded to cover the entire period from 3-504 PIR's deployment in early September to present and determine if there were additional incidents of misconduct. In addition, I was orally tasked to contact Non-Governmental Organizations (e.g. UNHCR, OSCE, ICRC) and TFF medical assets including the TFF Surgeon and Psychiatrist. To ensure the thoroughness of the investigation, I also interviewed former and present TFF commanders and soldiers across the Multi-National Brigade (East) sector to include individuals that had already redeployed to home station.

**IV. Methodology of the Investigation**

Initially, I gathered all available CID statements involving the murder of the 11-year-old Albanian girl, Merita Shabiju. I also collected all available CID statements involving unit members' alleged use of excessive force against local nationals. I coordinated daily with CID ensuring that my investigation did not impede or hamper the criminal investigation.

I conducted 65 interviews of officers, noncommissioned officers and enlisted soldiers assigned to the 3-504 PIR and across Task Force Falcon (TFF). The investigation consisted of two phases. The first phase of the investigation occurred in the MNB (E) sector, Kosovo, and spanned thirteen days. The second phase occurred within the 1<sup>st</sup> Infantry Division footprint in Central Region, Germany. I gathered sworn statements from TFF leadership and soldiers involved in both 1<sup>st</sup> ID rotations to Kosovo. Additionally, I gathered 155 exhibits that I incorporated into the ROI and gathered an additional 25 reference documents.

My investigation explored the following: pre-deployment training, usefulness/realism of home-station training; communication and effectiveness of the Transfer of Authority (TOA) between KFOR 1 Alpha and KFOR 1 Bravo units; communication flow from unit leadership to troops on the ground; relationships between the 3-504 and its direct/general support assets; quality of training and leadership of officers and noncommissioned officers specifically focused on A/3-504. My investigation also reviewed statistical information and trends in the areas of military justice and mental/physical health.

## **V. Summarized Findings and Recommendations**

### **A. Whether members of Alpha Company, 3-504 Parachute Infantry Regiment (PIR) have violated the limits and terms of their military assignments in and around Vitina.**

#### **• Findings**

Yes. Unit members violated the limits and terms of their military assignments by intimidating, interrogating, abusing and beating Albanians and by traveling outside of their physically assigned sector to conduct some of these activities. These actions violated KFOR/TFF Rules of Engagement (ROE) and TFF standing policies. These actions also constituted criminal violations of the UCMJ and violated basic standards of conduct, human decency and the Army Values of treating others with dignity and respect.

#### **• Recommendations**

That the command considers imposing the range of nonjudicial to judicial punishment on unit members depending upon the severity of the circumstances of each case. The command should also conduct refresher training on ROE and on the basic tenets of Army Values. Commanders, at all levels, should ensure that soldiers understand the mission statement and associated specified and implied tasks and require periodic brief-backs on the methods used to execute the mission.

### **B. Provide the facts surrounding a demonstration(s) by Kosovar civilians in or around Vitina on or about the period 9 to 10 January 2000, to include the location, timing, size, stated reasons for, and duration of the demonstrations(s), the Task Force Falcon elements and individual soldiers in the vicinity of the demonstrations(s), and the conduct of those elements and soldiers.**

- **Findings**

Although the demonstrators were not overly hostile or aggressive and appeared organized, the evidence revealed systemic deficiencies pertaining to the soldiers' crowd control methods and techniques. The unit invited a Combat Camera team to videotape the staged demonstrations. Overall, I did not see any excessive use of force on the part of A/3-504, but evidence reveals that unit members treated local nationals roughly, yelled vulgar obscenities and conducted personnel searches not in accordance with proper procedures. Although the command dismisses the demonstrations as an information operations campaign to rid Vitina of the unit, the reasons for the demonstrations stemmed from the unit's pro-Serb mentality and reflected growing anti-KFOR sentiment in the Vitina Opstina. Specifically, the crowd was protesting the unit's recent arrests of Albanian MRP members, suspected of criminal misconduct.

- **Recommendations**

That the command strive to develop an environment that reflects impartiality towards both ethnic groups by employing methods that strike a balance, reflecting fair and impartial treatment of all local nationals. The unit should also be equipped with proper training on crowd control, search techniques and use of force. Additionally, the command should provide interpreters at the squad leader level to prevent a communication barrier that leads to frustration and ultimately violence.

**C. Whether Members of Alpha Company, 3-504, used Excessive Force in Responding to the Demonstrations.**

- **Findings**

See B. supra

- **Recommendations**

See B. supra

**D. Whether Members of Alpha Company, 3-504, have used Excessive Force during questioning of Kosovar Civilians suspected to be Perpetrators of or Witnesses to Crimes or Have *Otherwise* Used Excessive Force.**

- **Findings**

Yes. Unit members intimidated, interrogated, and beat Albanians suspected of crimes. Additionally, during Vitina's weekly "Market Days" the soldiers committed acts of misconduct and used excessive force against Albanians. These actions

violated KFOR/TFF ROE and TFF standing policies. These actions also constituted criminal violations of the UCMJ and violated basic standards of conduct, human decency and the Army Values of treating others with dignity and respect.

- **Recommendations**

That the command considers imposing the range of nonjudicial to judicial punishment on unit members depending upon the severity of the circumstances of each case. The command should also conduct refresher training on ROE and on the basic tenets of Army Values. Commanders, at all levels, should ensure that soldiers understand the mission statement and associated specified and implied tasks and require periodic brief-backs primarily on the methods used to execute the mission.

**E. Whether members of Alpha Company, 3-504, either in Connection with the Demonstrations or *Otherwise*, have Inappropriately touched Kosovar Civilian Females While Purporting to Conduct Searches for Weapons or Contraband or have *Otherwise* inappropriately touched Kosovar Civilian Females.**

- **Findings**

Yes. Although the evidence indicates that much of this misconduct centered around SSG Ronghi, the facts reveal several incidents of soldier misconduct towards females including inappropriate touching, grabbing of breasts and buttocks, and the perception by Kosovar females of improper searches conducted by soldiers. This misconduct reflects the overall negative command climate and violated basic standards of conduct, human decency and the Army values of treating others with dignity and respect.

- **Recommendations**

That the command ensures individual soldiers are trained on proper search procedures during pre-deployment training, emphasizing dignity and respect of others. Additionally, due to force protection measures, searching females is mandatory; however, the command should equip soldiers with “wands” or “scanners” to avoid the perception, based upon cultural standards, that the soldiers are mistreating female local nationals.

**F. Whether and under what circumstances members of Alpha Company, 3-504 were authorized to be away from Traffic Control Points (TCPs) or other military posts, alone, in the streets and/or buildings of Vitina. Include copies of any written standing operating procedures (SOPs), orders, or standards pertaining to the conduct of patrols, the manning of TCPs, protection of the force, and any activity in which the minimum number of soldiers or vehicles is addressed; if not in writing, record any such procedures, orders, or standards in the sworn statements of the soldiers and leaders relating them.**

- **Findings**

Although in many instances the procedures were not formalized in a unit SOP, unit members understood there were no circumstances when they were authorized to be away from TCPs or other military posts unaccompanied. Although soldiers clearly understood that convoys required a minimum of two vehicles, I found a discrepancy in the minimum amount of soldiers required for each vehicle. Despite SSG Ronghi's ability to travel through the sector unaccompanied on numerous occasions, there was limited evidence of soldiers violating the "buddy concept." Note, however, I personally observed a lone soldier on foot traveling the streets of Vitina.

- **Recommendations**

That the command formalize a SOP on this subject, emphasizing the basic "buddy concept" and ensure units are provided with the proper resources to meet the two-vehicle rule. Additionally, the command must provide the squad leader with a mechanism for force protection while moving from one four-man team to emplace another four-man team.

**G. Whether members of Alpha Company, 3-504 have drunk vodka or consumed any other alcoholic beverage in the company of a Kosovar woman referred to by soldiers as "Yugoslavia," at or near an old warehouse on a street in Vitina referred to by soldiers as "Ireland Street."**

- **Findings**

Despite SSG Ronghi's consumption of alcohol with "Yugoslavia", no other evidence exists to substantiate that any other soldier consumed alcohol in the company of "Yugoslavia."

- **Recommendations**

None.

**H. Whether members of Alpha Company, 3-504 have consumed alcohol on other occasions in Kosovo in violation of General Order Number 1.**

- **Findings**

Despite numerous allegations of the Alpha Company Commander's and his First Sergeant's consumption of alcohol, there is no evidence to substantiate these allegations. Other than SSG Ronghi's violation of General Order Number 1 and legal statistics documenting the command's imposition of nonjudicial punishment for 17 violations of General Order Number 1, no other evidence exists to substantiate that any other unit members consumed alcohol in violation of General Order Number 1.

- **Recommendations**

None.

**I. Whether members of Alpha Company, 3-504 have had sexual intercourse with a woman referred to by soldiers as “Yugoslavia,” at or near an old warehouse on a street in Vitina referred to by soldiers as “Ireland Street.”**

- **Findings**

Although SSG Ronghi had an intimate relationship with “Yugoslavia” and had sexual intercourse with her on numerous occasions, no other evidence exists to substantiate that any other soldiers had sexual intercourse with “Yugoslavia” or any other local national females.

- **Recommendations**

None.

**J. Whether members of Alpha Company, 3-504, have had sexual intercourse with Kosovar women on other occasions.**

- **Findings**

See I. supra

- **Recommendations**

See I. supra

**K. Whether leaders within Alpha Company and the Battalion knew of allegations of misconduct such as those described above, and whether they took appropriate actions upon hearing any reports of misconduct by 3-504 soldiers and subordinate leaders.**

- **Findings**

The Battalion Commander and Alpha Company commander deny any prior knowledge of the most serious incidents of interrogations, abuse and beatings of Kosovar Albanians. Nonetheless, there are numerous instances of misconduct, including the excessive use of force, that either the commanders or their respective staffs knew or should have known based upon reports from intelligence/operational assets, OSCE, Civil Affairs, Military Police and directly from local national reports.

- **Recommendations**

That the command consider issuing both the Battalion and Company commander a General Officer Memoranda of Reprimand (GOMOR) and the Alpha Company First Sergeant a Brigade Commander Memorandum of Reprimand and/or other adverse administrative personnel actions for failing to properly investigate or cause to be investigated allegations of criminal misconduct and/or excessive use of force within

the unit, thereby perpetuating a volatile situation leading to an unhealthy command environment.

**L. To what extent, if any, the Inadequacy of the Unit's Pre-Deployment Training, the Chain of Command's Pressure to Accomplish the Mission, or the Complexity of the Peacekeeping Law Enforcement Mission in this Environment Contributed to the Misconduct by 3-504 soldiers.**

*1. Inadequacy of the Unit's Pre-Deployment Training.*

- **Findings**

Due to the unit's High Intensity Conflict (HIC) focus during predeployment, the unit was not adequately trained for a Peace Support Operation (PSO). Additionally, the unit conducted little PSO oriented training during pre-deployment nor did they undergo an externally evaluated Mission Rehearsal Exercise (MRE). I interviewed a cross-section of officers, noncommissioned officers and junior enlisted personnel who deployed to Kosovo prepared for a combat operation with little PSO oriented training.

- **Recommendations**

That as the command deploys highly trained combat soldiers into a PSO theater of operations relevant measures are taken to assist the unit adapt from HIC focused combat operations to PSO. That the command also ensures units undergo a Mission Rehearsal Exercise (MRE) prior to deploying to a PSO theater of operation.

*2. Chain of Command's Pressure to Accomplish the Mission.*

- **Findings**

The Battalion Commander's command emphasis and determination to accomplish Specified Task #7 (see Task 7a, Classified ROI) set the tone for the battalion's focus. This task was outside of TFF's command intent and the Battalion Commander's emphasis on this task permeated the unit's climate and created a set of conditions that provided his subordinates the opportunity to step over the line of acceptable conduct (e.g., criminal misconduct, excessive use of force and lack of dignity and respect for others).

- **Recommendations**

That the command consider issuing the battalion commander a General Officer Memorandum of Reprimand (GOMOR) and/or consider other adverse administrative personnel actions for exceeding the limits and scope of his military duties and assignments which created an unhealthy command climate, ultimately resulting in alleged criminal violations by members of his unit. Commanders, at all levels, should require periodic and detailed brief-backs on the task, purpose, and primarily methods for executing the mission and articulating the end state.

3. *Complexity of the Peacekeeping Law Enforcement Mission in this Environment.*

- **Findings**

The totality of the evidence within the ROI substantiates and highlights several systemic deficiencies pertaining to 3-504 soldiers exceeding the scope of their duties by conducting policing operations. Although in the Kosovo operation it is difficult to draw a distinction between Military Police (MP) duties and the infantry soldiers' on the ground, KFOR/TFF had polices in effect for defining the role between the MP and the soldier on the ground. In the policing duties the soldier on the ground is required to perform in Kosovo, the 3-504 soldiers were not adequately trained for the police mission that they were asked to execute. This problem is exacerbated by the United Nation's failure to adequately and, in a timely manner, provide a viable civilian police force.

- **Recommendations**

That the Kosovo operation be reinforced with a greater presence of Military Police and Counter-Intelligence Agents inherently trained on the proper aspects of crowd control, search procedures and interrogation. Commanders should ensure that the general support (GS) assets develop a relationship of trust with the commands they support either at home station during Individual Readiness Training (IRT) and/or during Mission Rehearsal Exercises (MREs), or if not possible at home station, immediately begin to cultivate this relationship upon entering the PSO theater of operations.

**VI. Overall Investigative Conclusions/Impressions**

- Although the murder of the 11-year-old Albanian girl, Merita Shabiju, was an isolated incident, the accompanying statements of the CID murder investigation and companion CID investigation involving alleged abuses of Kosovars by members of the 3-504 revealed systemic command climate deficiencies
- Because Kosovar abuses and other misconduct centered on the alleged misconduct of SSG Ronghi and his squad, excluding his alleged murder of the Albanian girl, I believe unit members felt free to speak candidly about this misconduct. Whereas, I believe unit members were less candid in their discussions and/or knowledge concerning additional misconduct due to the fear of possible chain of command reprisals/repercussions.
- Although the 3-504 appears to be a highly trained unit focused on HIC operations, it is my impression that the unit was not adequately trained for the full range of PSO. As a result, the 3-504 experienced difficulties tempering their combat mentality for adapting and transitioning to the Kosovo PSO. In the PSO environment, the unit's overly aggressive tendencies were manifested in practices such as the unit slogan, "shoot 'em in the face" and their standard

operating procedure of pointing the M-4 carbine weapon system with attached maglight in the face of local nationals in order to illuminate their faces.

- The 3-504 Battalion Commander's Task #7 (see Task 7a, Classified ROI), a task outside of TFF's command guidance and intent, set the tone for the battalion's focus. This focus permeated, and, to a certain extent, infected the command climate. Although the Battalion Commander and his Alpha Company commander both claim lack of knowledge about unit members' interrogations, abuses, and beatings of Kosovars, there are indicators that both commanders and their respective staffs knew or *should have known* of other allegations of misconduct and/or excessive use of force.
- Although the allegations of misconduct and excessive use of force appear isolated to A/3-504 located in Vitina, I found this was due to the ethnic mix in Vitina (approximately 30% Serbians; 70% Albanians). Given the battalion and company commanders' propensity towards Serb favoritism, coupled with the battalion's emphasis on Task 7a, Vitina was the natural focal point for abuses and excessive use of force against the Albanians.
- The 3-504 is a highly trained unit focused on High Intensity Conflict (HIC) operations. My overall impression of 3-504 is that of a professional organization comprised of highly disciplined, mission focused and motivated soldiers. During the extended period of their deployment, however, some elements of the battalion suffered disciplinary and leadership breakdowns as they transitioned from High Intensity Conflict (HIC) to complex Peace Support Operations (PSO) in Kosovo. Some of the leadership and disciplinary breakdowns occurred at the small unit level (e.g., squad and platoon level). These breakdowns, coupled with the command emphasis to accomplish their perceived mission, Task 7a, contributed to the patterns of alleged misconduct. It is my opinion that battalion and company level leadership failed to take appropriate action based upon reported allegations of soldier misconduct, to include the excessive use of force.

Original Signed  
JOHN W. MORGAN, III  
COL, FA  
Commanding

**APPENDIX IV-10: WEAPONS CONFISCATION POLICY**

AETV-TFF-CJA

22 June 00

INFORMATION PAPER

SUBJECT: Rules Governing Possession, Registration, and Confiscation of Civilian Weapons

1. REFERENCES:

- a. KFOR Directive 012, Weapons Policy Instruction (7 Dec 99)
- b. Kosovo Criminal Code, Article 199 (1977)
- c. Undertaking of Demilitarization (20 June 1999)

2. BLUF. Disabled and ceremonial weapons of the KPC are legal without special authorization. Certain members of the KPS and TMK are authorized to carry firearms. Civilians may possess certain caliber hunting and sporting rifles and shotguns that are properly registered with UNMIK-P. KFOR personnel have the discretion to confiscate legal weapons that pose a threat to KFOR or to the establishment of a safe and secure environment. All other weapons are unauthorized and may be confiscated. KFOR may not return confiscated weapons until UNMIK publishes guidance on the return of those weapons.

3. AUTHORIZED WEAPONS

a. Disabled and Ceremonial Weapons. Weapons must be disabled by: (1) a vertical cut of no less than 5 mm in width through middle portion of the barrel extending from outer casing to bore so that the bore is clearly visible to the naked eye; (2) filling the barrel with a immovable, impassable, solid plug of molten lead; or (3) welding working parts into the breech so that movement is impossible.

b. KPC/TMK and KPS. Individual members of these organizations possessing a valid weapons authorization card (WAC) or weapons card (WC) may lawfully carry the weapon identified on the card.

c. Civilian Possession. Civilians may possess any of the following: (1) unmodified, single-shot, breach-loaded or manually-cocked shotguns of no greater than 12 bore gauge; (2) unmodified, single-shot, bolt-action, hunting rifles (not military sniper rifles) with a maximum caliber of 8 mm; or (3) air powered rifles and pistols with a maximum caliber of 6 mm. Civilians must obtain a license from UNMIK-P for their hunting and recreational use weapons.

d. Weapons can only be stored, transported and used by the registered owner.

e. All other weapons not mentioned above are unauthorized.

4. CONFISCATION OF WEAPONS

- a. All unauthorized weapons will be confiscated and stored in the SWSS.
- b. KFOR may seize authorized weapons when they are used illegally or when the owner fails to produce the appropriate WAC, WC or UNMIK-P-granted license.
- c. KFOR may seize authorized weapons found in excessive quantities or found with unauthorized weapons when there are indications of suspicious activity.

#### 5. RETURN OR DESTRUCTION OF WEAPONS

- a. Confiscated weapons belonging to the KPC/TMK or KPS will be stored in the SWSS until ordered returned to their owner following an investigation.
- b. Weapons confiscated pursuant to a criminal investigation will be stored in the SWSS until the investigation and trial is complete. They will then be destroyed by MNB-E on the order of KFOR MAIN.
- c. MNB-E will not return confiscated civilian weapons to their owners until UNMIK makes a decision to destroy or return the weapon. No decision has currently been made.
- d. MNB-E has the authority to destroy all other confiscated weapons.

6. POCs are CPT Joe Berger or CPT Rebecca Connally, TFF TOC, DSN 781-6016.

**APPENDIX IV-11: DD FORM 2665-R**

<b>PRISONER OF WAR MAIL</b>	
<p style="text-align: center;"><b>IMPORTANT</b></p> <p>This card must be completed by each prisoner immediately after being taken prisoner and each time his/her address is changed (by reason of transfer to a hospital or to another camp).</p> <p>This card is distinct from the special card which each prisoner is allowed to send to his/her relatives.</p>	<p><b>TO:</b></p> <p style="text-align: center;"><b>CENTRAL PRISONERS OF WAR AGENCY</b></p>

DA FORM 2665-R, May 82

EDITION OF 1 JUL 63 IS OBSOLETE.

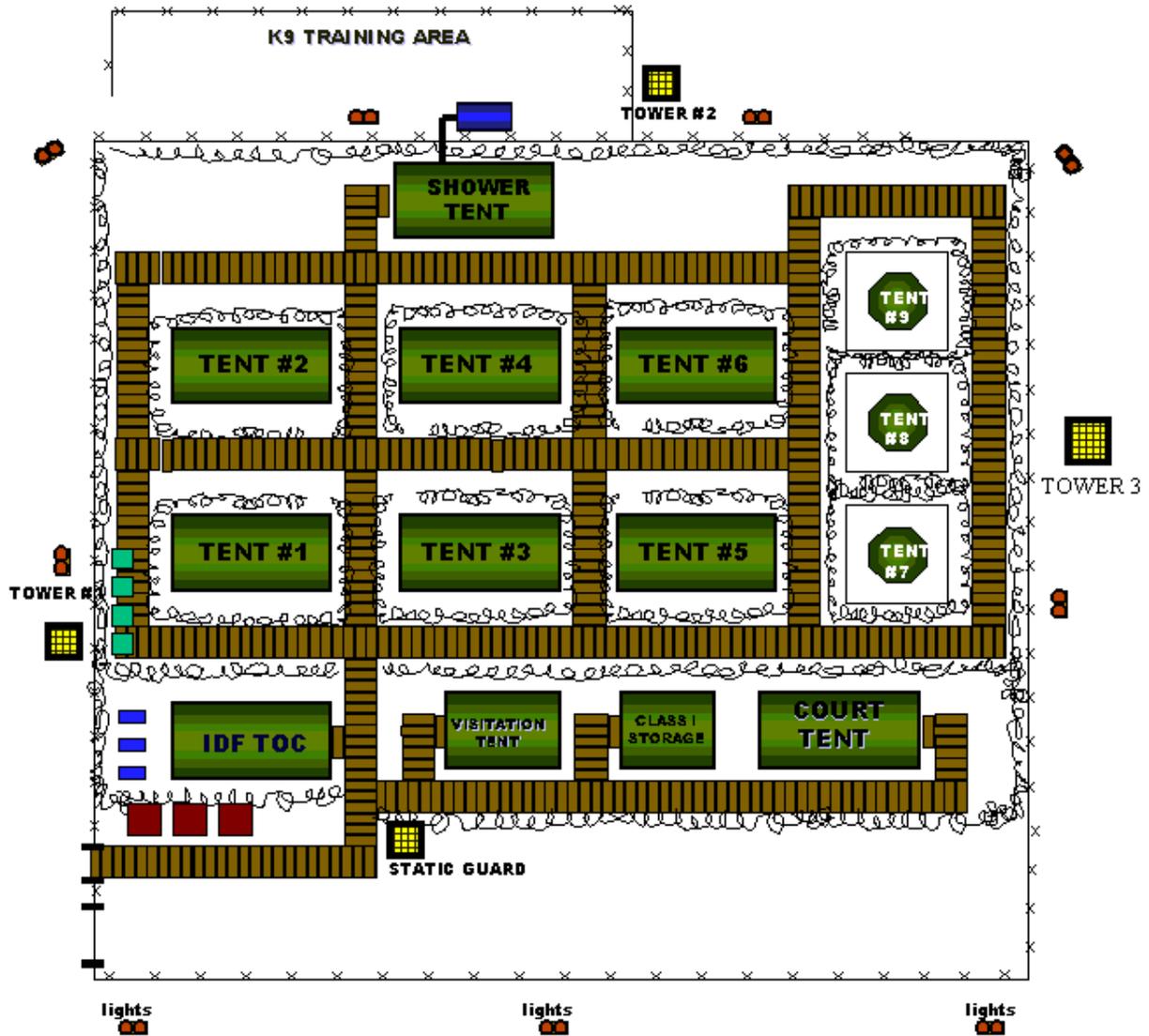
(Front)

<b>CAPTURE CARD FOR PRISONER OF WAR</b>			
<small>For use of this form, see AR 190-8; the proponent agency is DCSPER.</small>			
<b>WRITE LEGIBLY IN BLOCK LETTERS. DO NOT ADD ANY REMARKS</b>			
NAME (Last, First, MI)		GRADE	
SERVICE NUMBER	POWER SERVED	PLACE OF BIRTH	
DATE OF BIRTH	FIRST NAME OF FATHER	MAIDEN NAME OF MOTHER	
NAME, ADDRESS, AND RELATIONSHIP OF NEXT OF KIN		DATE OF CAPTURE OR TRANSFER	
<b>PHYSICAL CONDITION (Check applicable box)</b>			
<input type="checkbox"/> GOOD HEALTH	<input type="checkbox"/> RECOVERED	<input type="checkbox"/> SICK	<input type="checkbox"/> SERIOUSLY WOUNDED
<input type="checkbox"/> NOT WOUNDED	<input type="checkbox"/> CONVALESCENT	<input type="checkbox"/> SLIGHTLY WOUNDED	
FORMER ADDRESS		INTERMENT SERIAL NO.	
PRESENT ADDRESS (Name of Camp, or Hospital, and Location)			
DATE	SIGNATURE OF PRISONER		

Reverse of DA Form 2665-R, May 82

(Reverse)

**APPENDIX IV-12: DETENTION FACILITY DIAGRAM**



## **APPENDIX IV-13: MNB-E DETENTION PROCESS SOP (KFOR 1B)**

### **GENERAL**

#### **Purpose**

The purpose of this SOP is to provide future TFF Judge Advocates an understanding of TFF Legal's role in the detention process.

#### **References**

1. The Military Technical Agreement Between the International Security Force ("KFOR") and the Governments of Federal Republic of Yugoslavia and the Republic of Serbia (MTA).
2. United Nations Security Council Resolutions (UNSCR) 1160, 1199, and 1203 (1998), 1239, and 1244 (1999).
3. Compilation of Primary Criminal Laws Applicable in Kosovo on 22 March 1989, Organization for Security and Co-operation in Europe, Rule of Law Division, Pristina, February 2000.
  - a. UNMIK Regulation No. 1999/24.
  - b. The Criminal Code of the Socialist Autonomous Province of Kosovo (1977).
  - c. The Criminal Code of the Socialist Federal Republic of Yugoslavia (1977).
  - d. The Criminal Procedure Code of the Socialist Federal Republic of Yugoslavia (1977).
  - e. The Criminal Law of the Republic of Serbia (1994).
  - f. The Law of the Execution of Penal Sanctions of the Republic of Serbia (1977).
4. Uniform Code of Military Justice and Manual for Courts-Martial, 1998.
5. Task Force Falcon Policy Letter #TFF-04, Detention Processing, signed by Brigadier General Sanchez (1B).
6. CONPLAN 07 (MNB-E Witness Summons) to TF Falcon 99-01 (Operation Joint Guardian).

7. UNMIK Regulations: 1999/1, 1999/2, 1999/5, 1999/6, 1999/7, 1999/24, 1999/26, 2000/17: accessible at <http://www.un.org/peace/kosovo/pages/regulations/regs.html>.

## Overview

The current judicial process is a work in progress. In the past few months many changes have occurred in the MNB-E sector to include:

1. 14 January 2000: UNMIK appoints judges, prosecutors, and lay judges for the district and municipal courts in Kosovo. Gnjilane district court and Ferizaj municipal courts are re-opened.

2. February 2000: USKFOR transfers several detainees under Pristina district court jurisdiction to Prizren.

3. February-March 2000: MP platoon assigned to the substation in Gnjilane refurbishes and improves the holding facility in the UNMIK police substation. KFOR begins to transport detainees awaiting initial investigation for Gnjilane district and surrounding municipal courts to Gnjilane. Detainees remain at the Gnjilane holding facility awaiting hearings for short periods of time (2-7 days).

4. March-April 2000. UNMIK-P begin to support the MPs at the Gnjilane holding facility with personnel.

5. April 2000. USKFOR transfers primary responsibility of the Gnjilane holding facility to UNMIK-P and Kosovo Corrections. Result: All detainees arrested by UNMIK-P go directly to Gnjilane detention facility for processing. Only Serbians, murder suspects, ethnic-related assault suspects, and high-profile detainees are transferred to Bondsteel IDF.

6. 1 May 2000. Vitina municipal courthouse opens for court. Interim plan is to continue to process detainees through Gnjilane. Also in May, Kamenica municipal courthouse opens for court.

7. 8 May 2000. Lipjan prison opens. Lipjan will primarily hold females and minors. USKFOR transfers 5 detainees from Bondsteel IDF to Lipjan prison.

8. June 2000. Ishtak prison opens. Kosovo's largest prison opens – effect on Bondsteel IDF??

## COURT ORGANIZATION

The Kosovo courts are currently separated into two criminal jurisdictions – district courts and municipal courts. These courts mirror felony and misdemeanor courts in the United States. Serious crimes are withheld to the district courts while lesser crimes are handled by the smaller municipal courts. In addition, the district court's geographical jurisdiction encompasses the smaller municipal court jurisdictions. For example, Gnjilane district court covers the opstinas (counties) of Gnjilane, Vitina, and Kamenica. Those opstinas are also covered by lower municipal courts. The opstina of Ferizaj (Ferizaj, Strpce, Kacanik) is covered by a municipal court; Pristina district court encompasses the Ferizaj opstina for serious crimes. (see below)

MNB-E court jurisdictions:

Gnjilane District Court

- Gnjilane municipal court
- Kamenica municipal court
- Vitina municipal court

Pristina District Court

- Ferizaj municipal court

## CURRENT SITUATION

Given the detention facilities/holding facilities operating in MNB-E (Bondsteel IDF/Gnjilane holding facility), the current process is as follows:

1. All municipal level offenders arrested by UNMIK police in the Gnjilane district go directly to the Gnjilane holding facility. They are processed by UNMIK-P, their cases are presented to the court, and decisions are handed back to UNMIK-P. KFOR is **not** involved with these suspects unless they have been somehow identified as intelligence opportunities. In that case, MI interrogators will interview the suspects at the Gnjilane holding facility.
2. Most serious crime offenders arrested by UNMIK police in the Gnjilane district go directly to the Gnjilane holding facility and are processed as in para. 1. Crimes involving murder, ethnic-related assaults, Serbians and other Kosovar minorities, and high-profile detainees are sent to Bondsteel IDF for processing. (see below for procedures)
3. All levels of offenders arrested by UNMIK police in the Ferizaj district (Ferizaj, Strpce, Kacanik) are brought directly to Bonsteel IDF for processing. (see below for procedures)
4. All offenders detained by KFOR in the MNB-E sector are brought directly to Bondsteel IDF for processing.

## **Transition Tasks**

1. Orientation to Bondsteel Installation Detention Facility (IDF) at Camp Bondsteel. Tour of detention facility to include the courtroom, military police detention operations center, interview/detainee visitation tent, and detainee living area.
2. Orientation of local courts, including Gnjilane District Court and Ferizaj Municipal Court. Tour of courts and introduction to key court personnel, including: presidents of court, prosecutors, judges, linguists and court security personnel.
3. Orientation of UNMIK-P operations in Gnjilane and Ferizaj. Tour of UNMIK police stations in Gnjilane and Ferizaj; introduction to regional commanders, regional investigators and court liaisons.
4. Brief on detention operations. Review MNB-E SJA TACSOP, and pertinent CONPLANS, OPLANS, and OPORDS. Review the detention process SOP. Provide overview of the complete criminal justice process from apprehension to trial. Discussion of applicable procedural law and KFOR's role in the process.
5. Introductions of key personnel to include the interpreters assigned to TFF Legal.

## **Personnel Requirements**

1. One Judge Advocate (JA) to 1) perform duties as the Military Magistrate when reviewing case files; 2) act as legal advisor to the Installation Detention Facility; 3) perform duties as the legal liaison for all the courts and court personnel in the MNB-E sector; and 4) oversee court hearings held at the IDF.
2. One enlisted soldier (MOS 71D) to provide administrative and logistical support. The legal specialists helps the attorney to maintain administrative accountability of all detainees processed through the IDF, maintain case files, and provide escort/transportation to court.
3. Two KFOR interpreters, one of whom must speak and read both Serbian and Albanian. Because of the sensitive nature of the proceedings, both interpreters should be Category II (US citizen-secret clearance) interpreters.

## **Required Equipment**

1. Computer with printer to maintain current and released detainees matrixes. Office supplies for creation and maintenance of individual detainee files. Filing cabinet to hold detainee case files.

2. The courtroom at the IDF requires seating for 16 individuals and desk/table top space for 12 individuals. Presently, four fest benches, four folding chairs, two fest tables, two field desks, and two folding tables occupy the courtroom. This represents the minimum acceptable amount of furniture. Class I support is necessary for the judicial team. Class I support includes bottled water and MREs supplied by the IDF.
3. One HMMWV for escort of court personnel to the IDF, as well as transportation of legal personnel to off-basecamp courts.

### **Battle Rhythm**

The battle rhythm varies given the weekly trial schedule and the flow of detainees in and out of the detention facility. Trials are not set on certain days of the week. Below is a *typical* example of a given week:

1. Sunday: Prepare new cases of detainees for initial investigation by Investigating Magistrate; update current detainee matrix – synchronize with on-hand report.
2. Monday: Travel to Gnjilane District court to provide new cases (KFOR detentions) to prosecutor, review weekly trial schedule, receive court documents for current detainees, and coordinate witnesses.
3. Tuesday: Administrative day. Review case files, ensure that UNMIK-P has provided Ferizaj municipal court with new cases. Travel to Ferizaj (if necessary) to coordinate Thursday court hearings.
4. Wednesday: Travel to Gnjilane District court for trial. Escort detainee to trial, observe trial, receive court documents, coordinate with court.
5. Thursday: Detention hearings at the Camp Bondsteel Detention Facility for Ferizaj municipal court. Deliver court documents from Ferizaj to detainees.
6. Friday: Travel to Gnjilane District for trial. Escort detainee to trial, observe trial, receive court documents, coordinate with court.
7. Saturday: File court documents, deliver all court documents to detainees, answer detainee questions.

### **DETENTION PROCESS**

The processing procedures for all detainees sent to the Bondsteel IDF is as follows:

#### **Pre-Hearing Procedure**

1. Individual suspected of criminal conduct is detained (Arrest + 0 hour). IAW TFF Policy Letter #4 and Annex Z of OPLAN 60507, evidence is collected and presented to the Deputy Provost Marshal (PM) NLT A+24. (PM has delegated authority to the DPM) The DPM, after counsel from the legal advisor, may elect to release individuals detained for Category III or IV crimes. The DPM does not have the authority to release Category I and II offenders. For definition of criminal “categories,” see Task Force Falcon Policy Letter #4 included in this SOP at Enclosure A. If the DPM orders detention, MPs deliver case file to the TFF Military Magistrate NLT A+48. UNMIK police will deliver their case files to the IDF IAW their procedures in compliance with the above time limits.

2. In cases where the DPM has ordered immediate release, the Bondsteel IDF will ensure that the detainee is entered into the IDF database (with detainee #), maintain a case file of the detainee, and file the detainee’s case file by detainee number.

3. In all other cases, the military magistrate prepares case file for court. The legal specialist creates an individual case file for military magistrate files and copy for court. The military magistrate reviews case and prepares a memorandum that 1) details the essential facts surrounding detention, 2) lists what crimes have been substantiated by the evidence, 3) recommends continued detention for action by the appropriate court. (see example at ENCLOSURE ) If necessary, the military magistrate tasks interpreters to translate substantive documents. The original file is returned to the Bondsteel IDF with a copy of the military magistrate’s memorandum. The legal specialist creates a detainee file with chronology sheet, copy of the case, and magistrate’s memorandum. In addition, a copy of the case and the magistrate memorandum is made for the court. (see below)

a. Case files where detainee is held for court:

i) File with original case file and magistrate memorandum – to IDF

ii) File with chronology sheet, case file, and magistrate memorandum – for magistrate’s records

iii) Copy of case and magistrate memorandum – for court

4. The military magistrate adds the detainee to the current detainees matrix under “new cases” and delivers case to court at the soonest opportunity. Note: in cases where arrest was made by UNMIK police in the opstina of Ferizaj, the UNMIK-P court liaison should deliver a copy of the case to the Ferizaj prosecutor immediately following deliver of detainee to Bondsteel IDF. The military magistrate should doublecheck with the UNMIK-P court liaison to ensure compliance.

### **Detention Hearing: Kosovar Prosecutor’s Role**

1. The TFF JA (or UNMIK-P court liaison) will present the complete case file, to include the Military Magistrate's review, to the appropriate prosecutor. The Military Magistrate's review and any other pertinent statements shall be translated for the prosecutor unless the court is staffed with adequate linguists, e.g. Gnjilane.
2. The prosecutor will review the packet and decide whether or not to prosecute the detainee. The TFF JA must play an active role in this decision, ensuring the prosecutor considers all the evidence before rendering a decision. This is especially important when cases involve detainees in which TFF has a significant interest.
3. If the prosecutor elects to prosecute, he will type a charge sheet and present the charge sheet and case file to the Kosovar Investigating Magistrate who is also a **judge of the court**. The IM is then responsible for conducting an investigation into the case. This process is roughly equivalent to the grand jury process in the US.
4. Significantly, a case that has been presented to the IM by the prosecutor is required to be investigated whether or not the individual charged for the crime remains in detention. Only the prosecutor has the power to drop the charges.
5. If the prosecutor elects not to prosecute, he will prepare two documents for the JA. One will be a statement describing his legal opinion of the case; one will be an order for release (see example and form document at ENCLOSURE ). It is important to have an interpreter provide a summary of the case in English on these documents to ease any future reference. These documents should be retained for TFF records in the detainee's case file. In addition, the military magistrate should log entry into the case chronology.

### **Detention Hearing: Investigating Magistrate's Role**

1. Upon receipt of the case from the prosecutor, the IM will begin his investigation by reviewing the case file and then interviewing the detainee. This interview is conducted in "open court," in the presence of the prosecutor and defense counsel. In cases of significant TFF interest, a KFOR interpreter should monitor the testimony of the detainee to keep the JA apprised of the case. After completing the interview, the IM will provide the TFF JA with a description of the case and a notice whether to release or continue the detention.
2. The IM has the authority to order a detainee to be held for 1 month. This is the statutory maximum granted to the IM. During this period, the IM must conduct his investigation of the alleged crime. If he should be unable to complete the investigation during this period, the IM must petition the three-judge panel in Pristina for an extended detention. The three-judge panel will conduct an ex-parte review of the case (a "paper review," no appearances are made) and may order up to two months of additional detention. In special circumstances, the IM may petition the Kosovar Supreme Court for

an additional three months of detention. However, six months of detention is the maximum permitted under the applicable procedural law. After six months, the IM must turn his findings over to the prosecutor who must then indict the individual and go to trial or drop the charges and release the individual. UNMIK has implemented UNMIK regulation 1999/26 which allows an appeal to the Supreme court to extend pre-trial detention without an indictment beyond 6 months (rarely used).

3. It is the responsibility of the IM to ensure that the present term of detention does not expire. Under FRY law, the detaining authority is required to release any detainee should the court ordered term of detention expire. Any detention beyond that which has been ordered by the court is unlawful. However, MNB-E has taken the position that those individuals who represent a threat to KFOR shall remain in detention despite lack of "local legal authority." They will remain in detention pending the outcome of a "1244" appeal discussed below.

### **Detention Hearing: KFOR Interpreters Role**

1. The KFOR interpreters are required to provide translation/interpretation services for the JA. Translation of documents from English to Albanian or Serbian for the prosecutor and magistrate is required. Translation of documents from Albanian or Serbian into English for the JA is also required.

2. The KFOR interpreters are also required to provide interpretation support whenever the JA needs to address any of the court officers. They also are required to assist KFOR witnesses when KFOR witnesses appear to testify.

3. Finally, the KFOR interpreters are often tasked to "eavesdrop" on the testimony of both detainees and witnesses for the JA. This critical function permits the JA to stay informed about cases of special interest to KFOR. This information can often be used to appeal a release order from the IM.

### **Witnesses**

1. The IM will require the testimony of witnesses to aid in his investigation. UNMIK police has assumed police primacy within MNB-E, therefore, they also assume full responsibility for delivering witnesses. TFF is only responsible for producing KFOR witnesses and individuals who require substantial security, e.g. serbs.

2. During the course of the detention hearings, the IM will often deliver a witness subpoena to the JA. This subpoena will list the name of the desired witness, the address where he/she can be located, and the case name and file number. The subpoena is written in Albanian and will require translation to be understood.

3. Using this subpoena, the JA will produce the witness portion of the FRAGO. This FRAGO will task the unit, to deliver the witness to the IDF or court to allow the IM to

conduct his interview. Once the witness portion of the FRAGO is drafted, it must be delivered to the G-3 to be incorporated in the TFF FRAGO and disseminated to the units. A copy of a TFF FRAGO is included at Enclosure E.

4. The unit tasked to deliver the witness(es) will be required to provide a statement to the JA if they are unable to produce the witness(es). A sample of this statement, along with other coordinating instructions for the maneuver units, is outlined in CONPLAN 7, included at Enclosure F. One copy of this statement will be provided to the IM for his records. The TFF JA will retain one copy in the "Witnesses Not Found" file.

5. Depending on the reason for the failure to secure the witness, it may be worthwhile to attempt to retrieve the witness at a later date (fled to Serbia vs. temporarily out of town). This determination should be made on a case by case basis in consultation with the IM.

6. Be prepared to brief KFOR witnesses on the facts of the case about which they are summoned to appear. KFOR soldiers have often been involved in numerous arrests and will not necessarily know which case is at issue.

#### **Detention Hearing: Defense Counsel's Role**

1. FRY law requires that all "accused" have the opportunity to be represented by counsel. UNMIK has further stipulated that any "accused" unable to afford counsel will have counsel appointed and paid for by UNMIK.

2. Although the "accused" is entitled to access to an attorney, under FRY law this access is controlled by the IM. Consequently, the defense attorneys routinely ask the IM for permission to visit with their client. Permission is normally granted. When granted, the court reporter will give the detaining authority a note signed by the judge permitting an attorney to visit a client(s). An example of this "permission slip" is included at Enclosure G. An attorney should not be allowed access to a detainee unless the attorney has written permission from an IM.

#### **Release Procedures**

1. Category III and Category IV: As stated above, IAW TFF Policy Letter # 4, the Provost Marshal is the release authority for Cat III and Cat IV detainees. The 1B Provost Marshall has delegated all release authority to the Deputy Provost Marshall (DPM). Therefore, if a court orders the release of a Cat III or Cat IV detainee, the process is as follows:

- a. The military magistrate provides the DPM with a copy of the signed release order form.

- b. The DPM makes a decision to release or appeal (see release order appeals below).
- c. If the DPM orders release, he/she will clear the detainee through the Military Intelligence team attached to the IDF to ensure that the detainee has been questioned.
- d. Once cleared through MI, the DPM sends out an e-mail to various commanders and staff announcing the anticipated release date (usually the next day).
- e. At the next morning's ACE, the intelligence officer for the MP battalion briefs the day's releases.
- f. If no reasonable objections to release are made, the DPM orders the IDF to execute release (usually at 1300 of that day).

2. Category II: IAW TFF Policy Letter #4, the Chief of Staff is the release authority for Cat II detainees. If a court orders the release of a Cat II detainee, the process is as follows:

- a. The military magistrate creates a release file in the proper file configuration:
  - i) Case evidence with magistrate memorandum on top on the right side of file.
  - ii) Translated court documents organized chronologically and chronology sheet on left side.
  - iii) Detainee's info sheet/picture and copy of signed release order form attached to the front of file.
- b. The military magistrate or TFF legal advisor briefs the case to the Chief of Staff with recommendations regarding release.
- c. The Chief of Staff makes a decision to release or appeal (see release order appeals below).
- d. If the Chief of Staff orders release, the military magistrate notifies the DPM of the decision and the release procedures for Cat III and Cat IV detainees are followed.

3. Category I: IAW TFF Policy Letter #4, the Commanding General of TFF is the release authority for Cat I detainees. If a court orders the release of a Cat I detainee,

the process is the same as the release procedures for Cat II detainees, except the decision authority is the CG.

### **Release Order Appeals**

1. On occasion, the IM will order the release of individuals who, in the judgment of the TFF JA, should remain in detention. These cases involve individuals who represent a threat to KFOR or satisfy one of the criteria in Article 191 of the FRY Code of Procedure. Namely, that they (1) are a threat to commit future crimes, (2) may intimidate or kill witnesses, (3) may destroy physical evidence, or (4) represent a flight risk. See Enclosure I. In such cases, the TFF JA should appeal the release order.
2. The first level of “appeal” is to the IM who ordered the release. The TFF JA should not hesitate to ask “Why?” whenever an objectionable release is ordered. The JA should discuss the evidence in the case file, the existence of prior offenses, and which prong(s) of Article 191 apply. Occasionally, the IM has neglected to consider a key statement from an eyewitness, evidence of prior misconduct, evidence from a related case, or other relevant evidence. These release orders can sometimes be rescinded after a frank discussion with the IM.
3. If unsuccessful with the IM, the release order should be appealed to the Kosovar prosecutor. By law, any release order must be “blessed” by the prosecutor. However, neither the IM’s decision to release nor the prosecutor’s desire to detain is superior. Consequently, if the JA can convince the prosecutor to “non-concur” with the release, the detainee must remain in custody pending a review by the three-judge panel. This appeal is presented to the three-judge panel who reviews the case and renders a decision in a matter of days. The JA has no official role in this appeal.
4. There is no mechanism under applicable FRY law for appealing the decision of the three-judge panel to release a detainee. Should the three-judge panel order the release of a detainee, all “local” means of appeal will have been exhausted. However, in certain cases, it is possible to seek redress from Commander, KFOR (COMKFOR). This form of redress should be sought **sparingly**, in only the most egregious of cases. It is KFOR’s position that UNSCR 1244 grants COMKFOR the authority to detain individuals, even contrary to a judge’s order, in order to preserve the “peace and security” of Kosovo and to ensure the protection of the force.
5. Because UNSCR 1244 vests this power in COMKFOR, these appeals must be made to COMKFOR. MNB-E legal will brief Commander, TFF, to obtain his approval to appeal. When approval is granted, MNB-E Legal will call KFOR Legal and inform them that MNB-E is holding a detainee contrary to a court’s order for release. MNB-E legal should prepare a brief to COMKFOR stating the objections to the release and providing all necessary documentation to support continued detention. This brief should be written through Commander, Task Force Falcon for COMKFOR. The brief should be delivered to KFOR Legal in Pristina who will present the case to COMKFOR. A copy of

one such appeal is included at Enclosure J. During this process, the detainee will remain in the custody of KFOR.

### **Post Hearing Tasks**

1. The JA notifies the DPM of any releases that were ordered by the Prosecutor, Investigating Magistrate, or the three-judge panel.
2. Additionally, the JA must update the "Detention Hearing Matrix." This Excel document tracks the cases delivered to the Kosovar Prosecutor and disposition of the case. Relevant information includes the name of the detainee, type of offense, date of detention, date of first hearing, whether the case will be prosecuted, whether the individual was ordered to remain detained, and when the next detention hearing will be. A copy of the Detention Hearing Matrix is at Enclosure M.
3. Finally, the JA must deliver to the detainees the documents that arise out of the judicial proceedings. These documents can be (1) detention extensions, (2) procedural notices, or (3) release notices. The detention extensions and other procedural notices will be delivered to the detainees. The detainee will sign for the document(s) on a receipt furnished by the court. This receipt will be returned to the IM at the next available opportunity. Significantly, release notices should not be given to any detainee until the detainee is outprocessing the IDF. Instead, these notices should be given to the MP's who will place the paperwork in the detainee's property box. The detainee will then receive notice of his release at that time.

### **Pending Changes in the Applicable Law**

1. Presently, the UN/international community is drafting a new criminal code and procedural code for Kosovo province. Until this is approved; however, the pertinent legal authority remains the applicable law prior to 22 March 1989: reference the OSCE Compilation of Applicable Law in Kosovo.

## POINTS OF CONTACT

### KFOR Personnel

1. The Deputy Provost Marshal: DSN 781-6334
2. IDF: DSN 781-3137.
3. OIC of IDF: DSN 781-3137.
4. Senior KFOR Legal Advisor. LTC Tresguerres, (from DSN) 9-606-681-2085 or KPN 5507. Chief legal advisor for Commander, KFOR.
5. KFOR Deputy Legal Advisor. LTC Buellesbach, same as above.

### International Organizations

1. Organization for Security and Cooperation in Europe (OSCE). UNMIK agency chiefly responsible for standing up and monitoring the Kosovar judicial process. The chief legal advisor for OSCE is David Marshall (American). Judicial monitors include Michael Lackner (Austrian) and other interpreters.
  - a. David Marshall's e-mail: [dmarshall@mindspring.com](mailto:dmarshall@mindspring.com)
  - b. Michael Lackner's e-mail: [mlackner@hotmail.com](mailto:mlackner@hotmail.com)  
Satellite phone: +871-762-138-685
2. United Nations High Commission for Human Rights. The UNMIK agency chiefly responsible for safeguarding human rights in Kosovo. As such, their representatives find it necessary to monitor the Kosovar judicial process.
3. OSCE and the various other international groups (ECMM-European Committee Monitoring Mission, ICRC-International Confederation of the Red Cross/Crescent, UNICEF, Amnesty International) often desire to monitor the court proceedings and sometimes visit the detainees. The position of MNB-E has been to permit open access to the court and to the detainees except as limited by the Kosovar court. Of course, the detainees may always refuse visitors themselves.
  - a. Shelly Inglis, Esq., UNICEF: [singlis@amnesty.org](mailto:singlis@amnesty.org)
4. The UNMIK regional district of Gnjilane is serviced by a legal advisor, Oriano Miccaletti (Italian). His office is in the UNMIK building across the street from the court-house.

- a. Oriano Miccaletti's e-mail: mcintalan@hotmail.com

### **Kosovar Judicial Officials**

The phone system in Kosovo is still a work in progress. The judges do not have e-mail access. The only way to contact them is through go-betweens who can give messages in person. Below are the names of the important court personnel that the military magistrate deals with on a consistent basis.

#### 1. Gnjilane District Court

- a. Ymer Huruglica, President of the Gnjilane District Court
- b. Mustafe Musa, Vice President of the Gnjilane District Court
- c. Sabit Avdulla, Prosecutor
- d. Refik Alili, Judge
- e. Hasan Sadiki, Judge

#### 2. Ferizaj Municipal Court

- a. Rifat Abdullahu, President of the Ferizaj Municipal Court
- b. Ekrem Shabani, Prosecutor
- c. Vesel Jashari, Judge
- d. Zenullahu Heta, Judge
- e. Isak Neziri, Judge
- f. Muhamed Beqiri, Judge
- g. Nasmir Ibrahim (f), Judge

#### 3. Pristina District Court

- a. Ramadan Berisha, President of the Pristina District Court
- b. Pjeter Rrapi, Prosecutor

c. Osman Kryeziu, Prosecutor

d. Selman Bogiqi, Judge assigned to Ferizaj, Strpce, Kacanik opstina

4. Three-judge panel. Members include Ramadan Berisha (president of the Pristina Judiciary). Role in the detention process includes extending detention beyond one month and up to three months. Possesses the authority to resolve disputes between the IM and the prosecutor.

5. Supreme Court. Seven members. Role in the detention process includes extending detention beyond three months.

**APPENDIX IV-14: MAGISTRATE REVIEW MEMO**

DEPARTMENT OF THE ARMY  
HEADQUARTERS, TASK FORCE FALCON  
OFFICE OF THE STAFF JUDGE ADVOCATE  
APO AE 09340

AETV-BGJA

23 June 1999

MEMORANDUM OF MILITARY MAGISTRATE'S FINDINGS AND RECOMMENDATION

SUBJECT: Detention Hearing, Blagoje Petkovic

1. A Detention Hearing was held on 22 June 1999, at the 793d MP Battalion Detention Center, US Area, Kosovo, to determine if the actions of Blagoje Petkovic warrant continued detention.
2. The following individuals were present:
  - a. Blagoje Petkovic, Detainee;
  - b. CPT Alex Bustamante, Command Representative for the Detainee;
  - c. A Serbian language interpreter;
  - d. An MP guard for the detainee;
  - e. CW2 Robert Sirmons, SAC, attached to 793d MP Battalion;
  - f. CPT Christopher Jacobs, Military Magistrate.
3. Prior to the detention hearing, CPT Bustamante, the Command Representative for Detainees, and Mr. Petkovic had a thirty (30) minute discussion. With the aid of an interpreter, CPT Bustamante informed Mr. Petkovic that he had the right to remain silent. He was also informed that anything he said could be used against him in a later trial. CPT Bustamante also discussed the procedural and substantive aspects of a detention hearing. Mr. Petkovic agreed to talk with CPT Bustamante. They discussed the circumstances for detainment. Mr. Petkovic also indicated that he wanted CPT Bustamante to speak on his behalf. CPT Bustamante presented a detailed argument on behalf of Mr. Petkovic during the hearing. He pointed to the lack of forensic evidence (i.e., matching bullets of the victims to the weapon) and to the lack of witness statements by victims involved. Mr. Petkovic also made several statements during the hearing.
4. CW2 Sirmons presented the following documents for my review: 1) 8 sworn statements by US Marines assigned to the 26<sup>th</sup> MEU; 2) two diagrams, one of Mr. Petkovic's apartment and one of the area surrounding Mr. Petkovic's apartment building; 3) a medical statement by MAJ

Kungys, Forward Surgical Team Orthopedic Surgeon; 4) six digital pictures of areas relevant to the criminal investigation; 5) a portion of a map of Gnjilane showing the area at issue; 6) a DA Form 4137, Evidence/Property Custody Document; and 7) a digital photograph of Mr. Petkovic with biographical information. These documents are attached to this memorandum as an enclosure.

5. CW2 Sirmons stated that on or about 191100Jun99, US Marines patrolling in Gnjilane heard gunfire. At the intersection adjacent to Mr. Petkovic's apartment building, the driver of a white Mercedes was shot and killed. The driver wore a black, UCK uniform. A passenger in the white Mercedes was wounded by a gunshot to his arm. A white van was abandoned in an alley along the side of Mr. Petkovic's apartment building. The van had several bullet holes through the roof, and blood on the driver's seat. The driver of the van could not be located.

6. As the Marines closed on the location of the shots, civilians in the area pointed to a window at the end of the second floor of an apartment building. An elderly man with gray hair stuck his head out of the window. The marines told him to raise his hands and hold them out of the window. The man complied. Another team of marines entered the building and kicked in the door to an apartment from where they believed the shots originated. No one was found in the apartment. The marines then kicked in the door to Mr. Petkovic's apartment. Inside they found Mr. Petkovic, an AK-47 with a hot barrel, 4 AK-47 magazines, fifty-two 7.62 rounds, a 12-gauge shotgun, a 7mm pistol, an ammunition belt with nineteen 12-gauge shotgun shells, a pistol magazine with five rounds, and a knife. Next to one of the windows in the apartment they found several 7.62 shell casings. Several of the same type shell casings were found on the ground outside of the window. According to CW2 Sirmons, both the white Mercedes and the white van could be fired upon from the window.

7. During the hearing, Mr. Petkovic and CPT Bustamante related the following series of events: The day before the shooting incident, Mr. Petkovic's son was told by a person who identified himself as a member of the UCK that Mr. Petkovic and his family must leave in a couple of days. The next morning, 19 June 1999, Mr. Petkovic received a phone call from a person who identified himself as a member of the UCK. Mr. Petkovic was told to leave. At approximately 1030 that same morning, he heard a knock on his door. Mr. Petkovic grabbed his AK-47. As he approached the door, the door was forced open. Mr. Petkovic stated that he saw a man in a black uniform holding an automatic weapon standing in his doorway. Mr. Petkovic shot at the door several times. He then used a wooden chair leg to jam his front door closed to prevent the man from entering his apartment. He stated that he tried calling NATO for help. Mr. Petkovic stated that he does not think that he hit the man in the black uniform when he fired.

Shortly thereafter, Mr. Petkovic said that he heard people talking outside of his door about throwing a bomb into his apartment. He stated that he was terrified. He backed up to his window to defend himself. He looked out of his window and saw a car containing people in black uniforms. He stated that he shot into the ground in self defense. He does not think that he shot anyone. Mr. Petkovic stated that he "lives good" with his Albanian neighbors. He said that he is not going to kill anyone. He also said that if he killed any man it was not because he wanted to, but out of self-defense.

8. Based on my review of the documents presented by CW2 Sirmons, by the comments of CW2 Sirmons and by the statements of Mr. Petkovic and CPT Bustamante, I have determined by a preponderance of the evidence that there is probable cause to believe:

a. That Blagoje Petkovic has committed a serious criminal act (serious criminal act defined as: homicide, aggravated assault, rape, arson, robbery, burglary, or larceny); and

b. Continued detention is warranted based on the seriousness of the crimes at issue and the necessity to secure Mr. Petkovic's presence for trial. Because of the threats he has received from the UCK, it is foreseeable that Mr. Petkovic and his family will flee Kosovo.

9. Recommendation and the factual findings on which it is based:

a. Recommendation. Blagoje Petkovic remain in detention.

b. Findings. US Marines heard gunshots. As they responded to the location of the shots, local civilians pointed to a second-story apartment window. A gray-haired man stuck his head out of the window and was directed by the marines to hold his hands above his head and out of the window. He complied. A team of marines entered the apartment building and eventually located the apartment from which the witnesses indicated the shots were fired. When they entered the apartment, they found Mr. Blagoje Petrovic and took him into their custody. Mr. Petrovic is an elderly man with brownish-gray hair. From the apartment the marines also seized an AK-47 with a hot barrel, 4 AK-47 magazines, fifty-two 7.62 rounds, a 12-gauge shotgun, a 7mm pistol, an ammunition belt with nineteen 12-gauge shotgun shells, a pistol magazine with five rounds, and a knife. The marines also found 7.62 shell casings near one of the apartment's windows and on the ground outside of the window.

Outside of the apartment building, a man in a black uniform was shot and killed while sitting in the driver's seat of a white Mercedes. The passenger in the white Mercedes was wounded by a gunshot. An abandoned white van in an alley next to Mr. Petrovic's apartment building had bullet holes in the roof and a pool of blood in the driver's seat. It is possible to fire at both the white Mercedes and the white van from the window of Mr. Petrovic's apartment at which the shell casings were found. In addition, Mr. Petkovic stated that he fired the AK-47 out of his window in self-defense. These facts, taken together, indicate that it is more likely than not that Mr. Petkovic fired an AK-47 out of his apartment window, killing one man and injuring at least one other.

10. Blagoje Petrovic and CPT Bustamante were notified of my recommendation on 222230 June 1999.

CENTER FOR LAW AND MILITARY OPERATIONS

Encl (as)

CHRISTOPHER W. JACOBS  
CPT, JA  
Military Magistrate

Coordination:

TF Falcon Legal Advisor

Concur \_\_\_\_\_ Nonconcur \_\_\_\_\_

Task Force Falcon Commander Action;

Approved \_\_\_\_\_ Disapproved \_\_\_\_\_

**APPENDIX IV-15: MAGISTRATE REVIEW MEMO, DOCUMENTS ONLY**

DEPARTMENT OF THE ARMY  
HEADQUARTERS, TASK FORCE FALCON  
OFFICE OF THE STAFF JUDGE ADVOCATE  
APO AE 09340

AETV-BGJA

9 October 1999

MEMORANDUM OF MILITARY MAGISTRATE'S FINDINGS AND RECOMMENDATION

SUBJECT: Detention Hearing; Bashkim Gagica (843)

1. A detention hearing was held on 9 October 1999, at the Task Force Falcon Staff Judge Advocate Cell, Camp Bondsteel, Kosovo, to determine if the actions of Bashkim Gagica warrant continued detention.
2. The following documents were presented for my review: 1) a memorandum signed by the Provost Marshal regarding the results of the preliminary investigation; 2) a detainee information sheet; 3) a military police report (DA Form 3975); 4) two information worksheets; and 5) two statements. These documents are attached as an enclosure.
3. Findings: On 30 September 1999, Bashkim Gagica demanded money from Mr. Sami Hasami and Mr. Bajram Hasami in exchange for not burning their house down. Bashkim Gagica demanded 10 DM and stated that he would return at 2300 to collect his money. Bashkim Gagica was detained by KFOR at 2355 hours in the vicinity of the Hasami's home. He was detained after he was identified by several individuals as the man responsible for burning several homes in the area.
4. Based on my review of the documents and available information, I have determined by a preponderance of the evidence that there **IS** probable cause to believe that:
  - a. The individual is currently a member of the UCK, or is armed, and threatens essential civic order;
  - b. The individual poses a threat to KFOR, other protected persons, key facilities, or property designated mission-essential by COMKFOR;
  - c. The individual has committed **serious** criminal acts (defined as: homicide, aggravated assault, rape, arson, robbery, burglary, or larceny); **OR**

CENTER FOR LAW AND MILITARY OPERATIONS

d. The individual has valuable information pertaining to individuals not yet detained to whom one or more of grounds a. through c. apply.

5. Recommend that Bashkim Gagic remain in detention.

Encls (as)

CHRISTOPHER W. JACOBS  
CPT, JA  
Military Magistrate

Coordination:

Commander, 793d MP Battalion  
TF Falcon Legal Advisor

Concur \_\_\_\_\_ Nonconcur \_\_\_\_\_  
Concur \_\_\_\_\_ Nonconcur \_\_\_\_\_

Task Force Falcon Commander Action:

Approved \_\_\_\_\_ Disapproved \_\_\_\_\_

**APPENDIX IV-16: DETENTION POLICY (KFOR 2A)**

AETV-TFF-CG

24 July 2000

COMMANDING GENERAL POLICY LETTER #4

SUBJECT: Detention Policy

1. This policy letter outlines Multi-National Brigade-East (MNB-E) procedures for the detention and release of civilians in the brigade's Area of Responsibility (AOR). It applies to all MNB-E units and personnel operating in the AOR. Supplementation of this policy requires the approval of the Commander, MNB-E.

2. United Nations Security Council Resolution 1244 gives KFOR the responsibility to ensure public safety and order until the international civil presence can take complete responsibility for this task. This policy letter provides specific guidance for handling civilians detained by KFOR and UNMIK-P to ensure that human rights are observed and properly balanced against KFOR's mandate to provide a safe and secure environment. The failure of any individual to adhere to the provisions of this policy letter will not confer any benefit on any person accused of an offense.

3. Task Force Falcon commanders and soldiers may apprehend individuals for either unlawful or unauthorized conduct.

a. "Unlawful conduct" is criminal behavior defined by the laws of the Federal Republic of Yugoslavia, the Republic of Serbia, and the province of Kosovo. It includes common offenses such as murder and assault. UNMIK Regulations can also define unlawful conduct (e.g., publicly inciting intolerance). Kosovar courts can prosecute unlawful conduct.

b. "Unauthorized conduct" is defined by the Military Technical Agreement (threats to a safe and secure environment), the Undertaking of Demilitarization (prohibited weapons), and KFOR directives (counter barricades). Commanders and soldiers are authorized to enforce these rules but Kosovar courts will not prosecute the misconduct unless there is an underlying criminal act.

4. Detainees will be released upon the order of an international judge or a local magistrate. An international judge or local magistrate has unlimited authority to order the release of a detainee.

5. Military authorities may order the release of a detainee at any point before an international judge or local magistrate has taken action. The proper military release authority is determined by the type of alleged misconduct. The commander, MNB-E, may withhold military release authority on a case-by-case basis. Delegation of military release authority is not permitted without the prior approval of the Commander, MNB-E. There are three categories of crimes and unauthorized conduct.

a. Category I - The MNB-E Commander is the military release authority for Category I crimes. The proposed release of an individual detained for a Category I crimes will be reviewed in accordance with paragraph X, below. Category I crimes include:

- (1) War crimes
- (2) Any ethnically motivated crime
- (3) Hostile acts or threats toward KFOR

- (4) Murder and attempted murder
- (5) Kidnapping
- (6) Aggravated Assault with a Dangerous Weapon
- (7) Armed Robbery

b. Category II - The MNB-E Deputy Provost-Marshal is the military release authority for Category II crimes. The proposed release of an individual detained for a Category II crime will be reviewed in accordance with paragraph X, below. Category II crimes include:

- (1) Rape
- (2) Arson
- (3) Larceny or looting equal to or greater than DM 1000.00
- (4) Burglary and housebreaking
- (5) Possession of illegal drugs in a quantity that implies an intent to sell or distribute
- (6) Any crime committed by a suspect previously detained by KFOR (repeat offenders)
- (7) Any crime, other than a Category I crime, in which a weapon was used in the commission of the crime
- (8) Weapons violations
- (9) UCK uniform violations
- (10) Establishing an unauthorized checkpoint
- (11) Intimidation, harassment, communicating a threat, and provoking speech

c. Category III - The company commander is the military release authority for Category III crimes. The Deputy Provost-Marshal may order the release of individuals detained for Category III crimes at any time after they have been transported to the Camp Bondsteel IDF. Category III crimes include:

- (1) Larceny or looting less than DM 1000.00
- (2) Curfew violations
- (3) Simple assault (no weapons involved)
- (4) Driving under the influence of alcohol or drugs
- (5) Possession of illegal drugs in a quantity that implies personal use, rather than intent to sell or distribute
- (6) Possession of stolen property
- (7) Black marketing
- (8) Auto theft
- (9) Drunk and disorderly
- (10) Traffic violations
- (11) Unlawful destruction of property

6. Units will deliver detainees to the supporting MP sub-station, Gnjilane Information Center, or the Camp Bondsteel Installation Detention Facility (IDF). All individuals are detained in Gnjilane except:

- a. Individuals detained as a threat to KFOR are detained at the Camp Bondsteel IDF.
- b. Serbian detainees are detained at the Camp Bondsteel IDF.
- c. Individuals apprehended in the Urosovec, Kacanik, and Strpce opstinas are detained at the Camp Bondsteel IDF.

7. In order to comply with local law and international standards of due process and human rights, units will comply with the following.

a. Detainees **may not** be used to perform any type of labor outside of the detention/holding facility itself. Any work details must directly support the maintenance of cleanliness, security, and or safety of the detention/holding facility where they held.

b. Detaining units will complete all required paperwork (to include witness statements, evidence vouchers, crime scene sketches, or other required documentation, as determined by the supporting MP or UNMIK-P office) before departing the the supporting MP sub-station or detention facility. The Camp Bondsteel IDF will provide a copy of this file for each new detainee at the IDF to the IDF Judge Advocate.

8. The Deputy Provost-Marshal will release a detainee upon the order of an international judge, local magistrate, or the appropriate Military Release Authority.

a. International judges and local magistrates have the primary responsibility for reviewing an individual's detention. This review must occur within 72 hours of initial detention. The Camp Bondsteel IDF may hold detainees for a reasonable period beyond 72 hours if an international judge or local magistrate has scheduled an initial detention review. MNB-E is not required to conduct initial detention reviews in the absence of an international judge or local magistrate.

b. The IDF Judge Advocate will review each detainee's file and determine whether there is probable cause to believe that continued detention is warranted. If the IDF Judge Advocate finds insufficient evidence to warrant continued detention, she will coordinate with UNMIK-P or the Deputy Provost-Marshal, as appropriate. If insufficient evidence still exists, the appropriate Military Release Authority may release the detainee without waiting for an international judge or local magistrate to conduct an initial detention review.

c. Upon receipt of a release order from an appropriate authority, the Deputy Provost-Marshal will notify, via e-mail, the TFF G2, G3, Command Judge Advocate, IDF Judge Advocate, UNMIK-P, 503<sup>rd</sup> MP Battalion commander and S-3, and appropriate battalion commander. Absent an objection from one of the above, the Deputy Provost-Marshal will release the detainee when transportation assets are available (at the latest, within 48 hours).

9. COM KFOR may direct that a detainee be held in the interest of maintaining a safe and secure environment. Such a "COM KFOR hold" is subject to close scrutiny, granted sparingly, and authorized only when there is concrete and clear evidence that the detainee is a threat to a safe and secure environment. Units that desire a COM KFOR hold must:

a. Notify the TFF G3, G2, and Command Judge Advocate immediately upon apprehending an individual that a COM KFOR hold is appropriate and requested.

b. Provide a copy of all evidence in their possession that supports a COM KFOR hold directly to either the Command Judge Advocate or the IDF Judge Advocate.

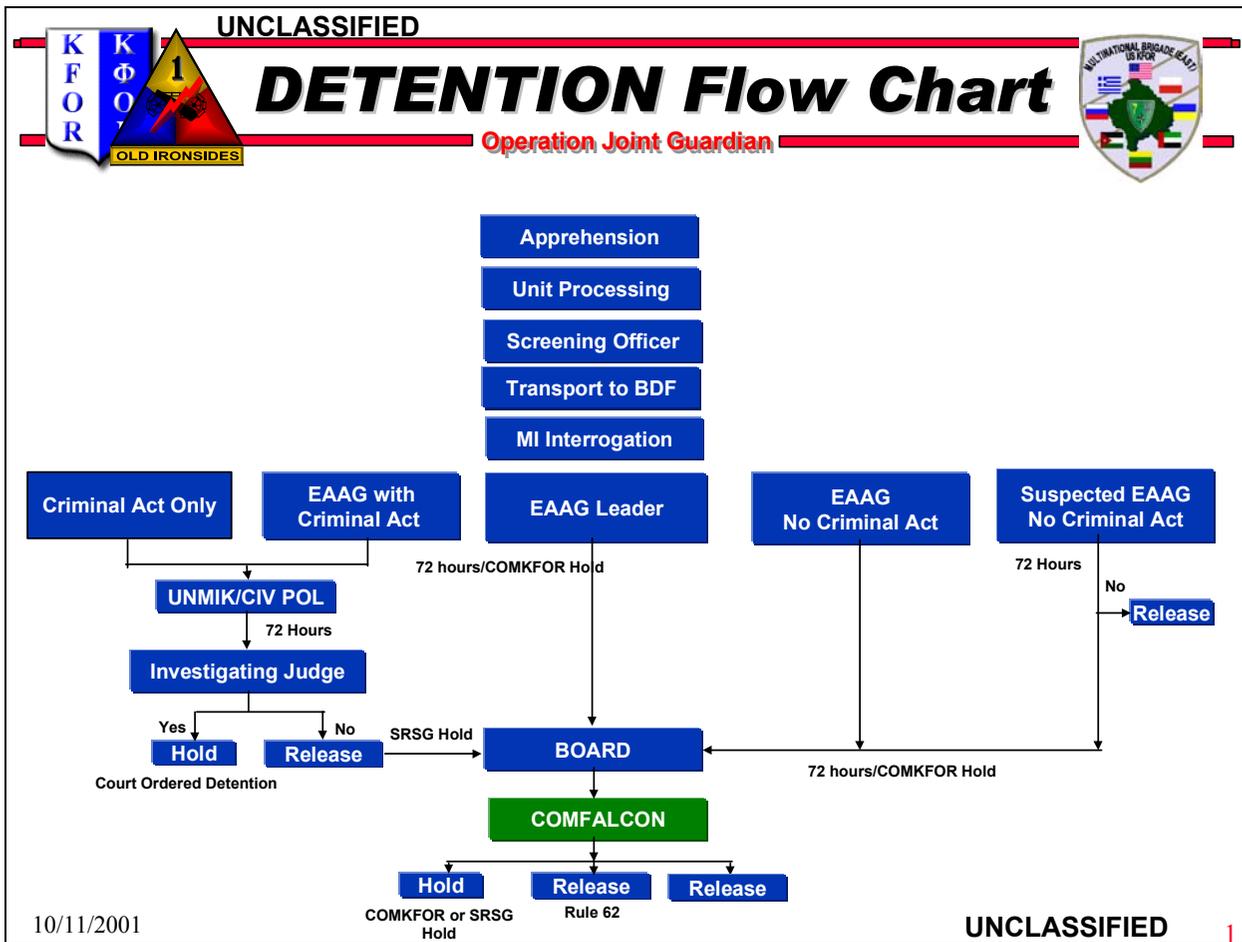
c. Identify a point of contact that will be available to provide additional information.

10. The POC for this memorandum is LTC Nelson, Deputy Provost-Marshal, DSN 781-6334.

RANDAL M. TIESZEN  
Brigadier General, USA  
Commanding



**APPENDIX IV-18: DETENTION PROCESSING WITH OPERATIONAL  
DETENTION**



**APPENDIX IV-19: MAGISTRATE'S REPORT**

#	Name	Ethnicity	Offense	Date Detained	Jud Hrng	Indicted	Cont'd Det	Next Hrng	Comments
1	<b>Blagoje Petkovic</b>	Serbian	Murder	18-Jun-99	03-Jul-99	Yes	Yes	03-Oct-99	
2	Ismail Ramini	Albanian	Kidnapping	04-Jul-99	10-Jul-99	Yes	No	N/A	
3	<b>Negjat Sopi</b>	Albanian	Attempted Murder	01-Jul-99	10-Jul-99	Yes	Yes	02-Sep-99	
4	<b>Fadil Beqiri</b>	Albanian	Attempted Murder	01-Jul-99	10-Jul-99	Yes	Yes	02-Sep-99	
5	Abdylkadir Rexhepi	Albanian	Aggravated Assault	05-Jul-99	13-Jul-99	Yes	No	N/A	
6	Hajdar Klokoqi	Albanian	Aggravated Assault	05-Jul-99	13-Jul-99	Yes	No	N/A	
7	Agron Klokoqi	Albanian	Aggravated Assault	05-Jul-99	13-Jul-99	Yes	No	N/A	
8	Sabit Tahiri	Albanian	Kidnapping	07-Jul-99	13-Jul-99	Yes	No	N/A	
9	Lulzim Neziri	Albanian	Kidnapping	07-Jul-99	13-Jul-99	Yes	No	N/A	
10	Naser Shagri	Albanian	Kidnapping	07-Jul-99	13-Jul-99	Yes	No	N/A	
11	Srecko Arsic	Serbian	Communicating Threats	07-Jul-99	13-Jul-99	Yes	No	N/A	
12	Ivica Givrich	Serbian	Communicating Threats	07-Jul-99	13-Jul-99	Yes	No	N/A	
13	Zoran Milkich	Serbian	Communicating Threats	07-Jul-99	13-Jul-99	Yes	No	N/A	
14	Boban Momcilovic	Serbian	Murder	11-Jul-99	15-Jul-99	N/A	N/A	N/A	No Decision
15	Mirolub Momcilovic	Serbian	Murder	11-Jul-99	15-Jul-99	N/A	N/A	N/A	No Decision
16	Jugoslav Momcilovic	Serbian	Murder	11-Jul-99	15-Jul-99	N/A	N/A	N/A	No Decision
17	Zhivoje Jovanovic	Serbian	Attempted Murder	12-Jul-99	15-Jul-99	N/A	N/A	N/A	No Decision
18	Zhivoje Jovanovic	Serbian	Attempted Murder	12-Jul-99	17-Jul-99	Yes	No	N/A	
19	Raif Kosumi	Albanian	Attempted Murder	11-Jul-99	17-Jul-99	Yes	No	N/A	
20	Bekim Shabani	Albanian	Attempted Murder	11-Jul-99	17-Jul-99	Yes	No	N/A	
21	Ismail Jahiu	Albanian	Kidnapping	13-Jul-99	17-Jul-99	No	N/A	N/A	
22	<b>Boban Momcilovic</b>	Serbian	Murder	11-Jul-99	17-Jul-99	Yes*	Yes	10-Aug-99	
23	<b>Mirolub Momcilovic</b>	Serbian	Murder	11-Jul-99	17-Jul-99	Yes*	Yes	10-Aug-99	
24	<b>Jugoslav Momcilovic</b>	Serbian	Murder	11-Jul-99	17-Jul-99	Yes*	Yes	10-Aug-99	
25	<b>Selim Bajrami</b>	Albanian	Aggravated Assault	12-Jul-99	19-Jul-99	Yes	Yes	11-Aug-99	
26	<b>Beqe Uka</b>	Albanian	Aggravated Assault	12-Jul-99	19-Jul-99	Yes	Yes	11-Aug-99	
27	<b>Mikaovic Yugoslave</b>	Serbian	Attempted Murder	23-Jun-99	19-Jul-99	Yes	Yes	?	***, ###
28	<b>Sasha Stojanovic</b>	Serbian	Attempted Murder	23-Jun-99	19-Jul-99	Yes	Yes	?	***, ###
29	<b>Alija Emiri</b>	Albanian	Murder	17-Jul-99	22-Jul-99	Yes	Yes	16-Aug-99	
30	Nobosha Zarcovic	Serbian	Obstructing Justice	15-Jul-99	22-Jul-99	No	N/A	N/A	
31	<b>Musli Basraliu</b>	Albanian	Rape	17-Jul-99	22-Jul-99	Yes	Yes	16-Aug-99	
32	<b>Ekrem Jakupi</b>	Albanian	Murder	17-Jul-99	26-Jul-99	Yes	Yes	16-Aug-99	02-Aug-99

(\*\*\*) = Threat to KFOR (###) = Release Denied

**APPENDIX IV-20: PARAGRAPH 7 REPORT**

USCINCEUR MSG 082155 MAY 99, SUBJ: WAR CRIME REPORTING IN KOSOVO AND THE SURROUNDING REGION (relating to “alleged violations within the jurisdiction of the ICTY committed by the VJ/MUP or UCK personnel in or around the territory of the former Yugoslavia”)

Describe the scene or evidence, to include the factors supporting the conclusion that U.S. Forces were not involved: House, yard, and livestock building in the village of Vlastica, EM 41779283, Opstina of Gnjilane, Province of Kosovo, Federal Republic of Yugoslavia. House and livestock building had been burned and bulldozed. Visible on the ground in one of the former rooms of the house was a pair of garments, with bones protruding. Also on the ground, on top of a piece of stove wreckage, were several bones. In the neighboring house, was Nehat Shabani (see witness information below) a 35-year old man who provided a detailed account of what his 13-year old female cousin, Vlora Shabani (see witness information below) told him on and after 4 May 1999 about the events in the burned/bulldozed house on the afternoon of 30 April 1999. Evidence thus far collected consists of photographs taken by Task Force Falcon team from 1330 to 1430 on Friday, 25 June 1999 along with interview notes of the account related by Nehat Shabani during the 1330-1430 Task Force Falcon team visit, and a powerpoint sketch of the alleged crime scene. Nehat Shabani related that on and after 4 May, Vlora Shabani told him the following:

In the afternoon of 30 April 1999, Vlora and her family were in and around the house. Many families in the town of Vlastica had already left the town. In fact, Nehat Shabani had taken his family from the house neighboring Vlora’s and had moved to Slatina in order to evade Serbs. The family unit living in Vlora’s house consisted of five people: Vlora as well as Rifat Shabani (male—Vlora’s Grandfather), Selami Shabani (male—Vlora’s father), Zjavere Shabani (female—Vlora’s mother), and Fisnik Shabani (male—Vlora’s 2 year old brother). Vlora’s father was giving something to the cow in the livestock building. Two men came to the house (not clear whether on foot or by vehicle). Nehat Shabani was unable to describe the men secondhand. He recalls Vlora saying that one man was older than the other and that he was in a uniform. The uniform Nehat says Vlora described was a VJ uniform and a uniform of the type she had seen in the town earlier. The two men walked passed the buildings and into the backyard. They then threatened Selami Shabani, Vlora’s father and told him to go into the house. The two men then went up the street to another of the few Vlastica houses in which people continued to live and ordered the inhabitants of that house out into the street and then into Vlora’s house. The individuals in the other house consisted of fifteen people: Deli Hyseni (30-year old male survivor), Imer Hyseni (14-year old male survivor), Drita Hyseni (female survivor), Leonard Hyseni (female survivor), Blerina Hyseni (female survivor), Hysen Hyseni (male), Ajshe Hyseni (female), Fazli Hyseni (male), Hrife Hyseni (female), Driton Hyseni (male), Xxxxxx Hyseni (wife of Deli Hyseni), Blerin (male, last name unknown), Xhavit Berisha (male), and Sylejman Ibishi (male). The two men then ordered the nineteen people (five from Vlora’s family and five from the Hyseni house) into the main downstairs room of Vlora’s house, ordered the men to go to the side of the room near the stove, and the women to the side of the room near the window. Then the older man wearing the uniform began shooting the men (mostly firing at their heads at close range) with an automatic weapon. After shooting and killing most of the men, he began shooting the women. Nehat says that Vlora was familiar enough with weapons to know that it was an automatic weapon. The older man wearing the uniform shot and killed the four other individuals in Vlora’s family as well as nine of the fourteen that had come from the Hyseni house: Hysen, Ajshe, Fazli, Hrife, Driton, Blerin, Xhavit, Sylejman, and the unnamed woman who was Deli’s wife. He injured Deli Hyseni (shot in shoulder), Leonora Hyseni (injury unknown), and Vlora (shot in pinky finger of left hand and received a grazing wound to the left cheek). The condition of Drita and Blerin was not known by Nehat. Imer was not injured. Vlora had been standing behind her mother, who was holding the 2-year old Fisnik, when her mother and Fisnik were shot. She was holding her left cheek with her left hand, and both were hit by a bullet, she told Nehat.

Factors supporting conclusion that U.S. Forces were not involved: alleged murders occurred more than five weeks before KFOR entered the country. Witness accuses Serb individuals. No connection to U.S. Forces is supported in any way.

Specific location where found or observed (e.g., street address, grid coordinates, maps, drawing) EM 41779283, Opstina of Gnjilane, Province of Kosovo, Federal Republic of Yugoslavia. Photos taken from the air and ground.

Full name, unit addresses, SSN and DOB of U.S. military witnesses: there were no U.S. Military witnesses.



**APPENDIX IV-21: ICTY DATABASE**

LOCATION	GRID	STATISTIC S	DESCRIPTION	DISPOSITION
Aca Bogocevic	EM 130927	1 body bound and shot in back of hed	Body of Lukim Murati – found skeleton at grid. Remains turned over to Hysni Murati for burial	
Banjica	EM13572-82442	2 bodies	One body was already exhumed by the family and re-buried in Brod. The second body was identified as Qamil Rexhepi killed on 3 MAR 99	Danish Team completed 11OCT99
Beljan	EM216759	4 males/ shot	Exhumed from site- identified as locals	Danish Team completed 5OCT99
Binac	EM3006082226	2 bodies	Ijuf Hysen and Jakup Hysen found in gravesite at local cemetery- No autopsies were performed	OSCE – Completed by villagers on 25SEP99
Binacka Morava (Route Chrome)	EM457977	Several bodies	Several bodies- UXO's and mines present though	
Crnilo	EM164005	1	Body of Baki Grajinca was found killed after the war in the village- buried in the village.	Reburied by locals
Delekare	EM342895	Unconfirmed	6 dead (including two children) and 16 wounded by MUP	Reported to ICTY on 20 JAN 00
Doganaj (Kacanik area)		1 body	Sami Tusha exhumed- Cause of death not determined	Danish Team completed 6 OCT 99
Donja Groa	EM176814	Multiple reported	Multiple graves reported, also gravesite of small child near artillery	
Donja Nerodinje	EM07959007	1 body	Xhemail Nuha shot by Serbs and thrown into local well. Team didn't have necessary equipment to recover body- turned over to Civil Affairs	Canadian team recorded on 7JUL99
Donji Zegovac	Vrbica area	4 bodies- 2 were UCK	4 local Albanians killed as car approached Serb roadblock on 15APR99	Canadian team recorded on 8JUL99
Driamjak (South of)	EM0470792742	1	Young possibly female 8-12 years old skeletal remains. Body is burned and missing head and foot. Found in the same area as an Albanian camp.	
Dubrava	EM16167857	9 bodies- 8m/1f	Killed in a Serb offensive 25May99. All local Albanians. Eyewitness to 3 of the killings. One family refused to have body exhumed.	Swiss team completed 23SEP99
Dubrava (Lama Mahala)	EM1491078613	11 bodies- 1 was UCK	Local Albanians killed during Serb offensive 13APR99 Eyewitness to some of the killings	Canadian team completed 26JUL99
Dunav	EM460786	2	Bodies of Imer Kadriut & Nebi Zyberi found killed close to their house. Killed on 31MAR99.	Reburied by locals.
Firaja (Kacanik)		4 bodies	Exhumed from remote site. All were identified.	Danish team completed 8OCT99
Gatnjanska Livada	EM146845	1	Serb Orthodox priest was missing. Found dead behind the church.	
Gerlica Eperme	EM1786	1 body	Body of Skender Gashi found by Ramadush Prushi. Gashi was abducted by Serbs during the conflict. He is buried in Begrace, Old Kacanik	Inspected by ICTY 31AUG99, completed by locals
General Jankovic	EM2273969132	2 bodies- UCK	UCK said watched Serbs bury bodies from OP in mountains. However, 2 numbered stakes (115 & 116) similar to those found at Kacanik site were observed.. 2 KLA soldiers buried there. The UCK moved the bodies to the UCK cemetery.	Canadian team inspected- revisited by ICTY 8OCT99  Completed by UCK

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				20NOV99
Glavica (East of)	EM17698144		Gravesite found near another gravesite that was excavated	
Gnjilane (near Montieth)	EN37879952	1	Human bones lying in a ditch found 03JUL99	Investigated by MP
Gnjilane (behind Montieth)			Site with several bodies	CID Inspected-determined probably just a graveyard.
Gnjilane	EN38200023	40-50 reported	Possible mass grave site identified by aerial recon. Site is in Muslim cemetery, but no evidence to suggest the graves relate to a war crime – 6-10 newly buried.	Site inspected by ICTY 16AUG99
Gornje Nerodimlje	EM07059130		Ali Nuhaj reported that the men were separated from the women and children. W&C heard gunfire and the men were not heard from again. Blood was found in the house.	
Gornje Zegovce (NE of)	EN288070	4 bodies		
Grlica	EM1381680728	1- shot in chest	Ibrahim Voglici exhumed from local cemetery.	Danish team completed 10OCT99
Izance	EM0804581147	3	Reportedly contains bodies of 3 local villagers-Osman, Handije and Solman Halili buried at grid at 75m N of grid- last seen 23APR99- probably same site as below- different info though.	
Izance	EM0804581147	3	Bodies of husband/wife and of Ismajil Vladi – killed in Izance. H/W reburied in Firaja, Vladi reburied in Urosevac. Naser Suroja still missing from village. Probably same site as above.	Reburied by families.
Kacanik (SW right off Route Hawk)	EM211749	1 female	Blue dress, shot execution style in head and dumped	MPs removed
Kacanik	EM209750	1 male	Partially decayed body of 71 year old male found in river buried at grid brought in by 13 UCK.	
Kacanik	EM209740		Woman's body- appeared to have been mugged or hit by a car	
Kacanik	EM20957552	25	25 bodies recovered from the local cemetery. All identified.	Swiss team completed 20SEP99
Kacanik	EM20957552	8	Also located in Muslim cemetery (see above) . All civilians identified.	Swiss team completed 20SEP99
Kacanik	EM2165469333	4- 3m/1f	Site discovered 13JUL99- one body identified as Bairam Bega. All bodies reburied in Kcanik cemetery	Inspected by ICTY on 8OCT99. Completed by local UCK 22NOV99.
Kacanik	EM20437397	1 male	Body badly burnt and decayed	
Kacanik	EM20957552	1	Ramadan Elezi exhumed from local cemetery. Cause of death not established.	Danish team completed 7OCT99
Kacanik Cemetery	EM20957552	8 unconfirmed	Reported to ICTY investigators that 7 unidentified civilians and 1 unidentified person in UCK uniform are still in the local cemetery and have not been exhumed yet.	
Kacanik		1 male	Found shot to death in the river in the city. Buried at night on a hill by locals.	Swiss completed 27SEP99
Kacanik I Vjeter		1 male	Victim exhumed has been identified.	Danish team completed 8OCT99
Kacanik I Vjeter	EM177815	0	3 graves on Ymeri farm-contained canine remains	Canadian team completed 15JUL99

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Kacanik I Vjeter		18 bodies- 16m/2f	Number of victims were members of the UCK. Women were nurses. Majority of victims were identified. Graves were marked with numbered stakes (82-97)	Canadian team completed 17JUL99
Kacanik (West of)	EM20987423	1	One body reported by aviation	
Kamena Glava	EM1786		Possible human bones in well. Reported by Fatmir Haliti- strip map in file.	
Kamenica	EM48721567	1-2	Site exhumed but only remains of burned bones recovered. Not possible to identify remains. Body of Ramadan Kastrati expected to be found here.	OSCE completed 19SEP99
Kmetovc	EM4314503569	2 females	Killed on 28MAR99 while taking shelter in a basemant in Malesevo- Buried in local cemetery.	Reburied by locals.
Kodra e Made (near)	EM238751	4 3m/1f	In open grave discovered 26JUL99- dead for about 4 weeks	
Kodra Mar	EN263084	6 bodies		
Kotlina	EM192697	22- 10 were UCK	22 villagers were executed by Serb forces 24MAR99. Bodies dumped in 2 wells on a hillside above the village. Wells were then collapsed by explosives.	Locals and NGO began to exhume site on 3SEP99. Austrian SOC team completed on 16SEP99
Kotlina	EM192697	3	Elderly villagers (Idria Kuqi, Zymer Loku and Vesel Vlashi) killed by Serb forces on 24 MAR99- are buried in local Muslim cemetery.	Austrian SOC team completed 16SEP99
Lagja E Re		1- gunshot wound to chest	Maliq Zharku exhumed from site.	Danish team completed 7OCT99
Lagja E Re		5 bodies	Exhumed from area	Completed by Swiss team 26SEP99
Lipovac	EM274820	5 (unconfirmed)	5 grave mounds surrounded by a minefield	
Llapushnica (near Uglare)	EM456971 EM455969	11	11 bodies in very shallow grave- body parts visible- some are Serbs. 6 bodies have been identified and returned to families, & other 5 bodies were buried.	Austrian/Icelandic team completed 11AUG99
Llapushnica (near Uglare)	N42 25.621 E21 33.124	2	2 unidentified corpses reported floating downstream. Looked comparatively fresh- ICTY felt case was in KFOR/CIVPOL jurisdiction.	Icelandic team inspected 6AUG99
Llapushnica (near Uglare)	EM453976	1-Contact injury to skull	Partial skeleton remains found 24JUL99. Recovered by US Army CID	Inspected 23AUG99 by ICTY
Lovce	EM46529541	7 bodies- 5m/2f	9 killed by Serb paramilitary- 7 graves- victims identified as local Albanians killed on 5APR99-2 eyewitness accounts	Canadian team completed 10JUL99
Malesevo	EN415002	4/5 bodies	Albanians	
Manastirce	EM08018906	1	Young boy executed- shot in head- witness Rraman Begisholli. Videotape of body and others killed in our file.	
Mrosavjte (NW of)	EM19909445	1	Gravesite, body exposed	
Nerodimjle	EM1914794272	1	Body was submerged in a well and was recovered by family- we had report of three graves at this same site and three bodies in the well at this same site- ICTY reports only one body.	Swiss team recorded 4JUL99
Novo Selo	EM2665293977	2 bodies	Bone fragments and 2 skulls found in a burned out house 22SEP99	CID investigated?
Papaz	EM155964	4-6 bodies unconfirmed	Reported by villagers of Softovic	

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Patronivici (NW of)	EM35548238	1	Peter Tunia found shot in head behind barn	
Pojatiste	EM180940	4 males	On 4APR99, 5 elderly men were killed in a field near the village- 5 <sup>th</sup> male still missing	Swiss team recorded on 4JUL99- bodies reburied by the locals.
Radanova Mala	DM987756	1	61 year old Serb farmer shot several times and head missing	
Radivojce	EM3292	1	54 year old male tortured and shot in neck. Buried between Radivojce and Donje Budriga. POC is wife Ismete Ph#029020226 and sister Sojite in Radivojce EM3449130.	
Ramjane	EM 254909	Unconfirmed	Well 20m deep containing bodies.	25JUN99 nothing was found with a grappling hook.
Ravsii Vrelos	EM177558160		Suspected murder site (unknown if current or old)	2 Helo flights over to confirm location
Rojatiste	EM180938	4	Executed- graves and witnesses present	
Sasare	EM3781	1	Pesic Iranica found shot in head	
Slatina	EM1379	5	Victims identified as local Albanians. 4 were killed during Serb offensive 13APR99, 2 were UCK. Very remote site. May be the same site as the site below.	Canadian team recorded 19JUL99
Slatina	EM1379	3	Killed by Serbs on 28MAR99- Identified as Qemalij Deda, Nazmi Elezi, and Vesel Elezi from the villages of Dedaj and Slatina- may be the same site as above.	Danish team completed 6OCT99
Smira (SW of)	EM 23688204	1	Human remains found near old Serb fighting positions. UXO reported in area.	
Smira	EM274820	5	Bodies of Mirali Sejdiu, Hebib Sejdiu, Skender Salihu and Elvi Demiri found- reburied in Vitina. Body of Ramadan Berati also found- reburied in Smira-Zylfi Agushi still missing from village.	All 5 reburied by locals.
Sojevo	EM1817191696	3	Victims were elderly local Albanians. The bodies were exhumed and filmed by OSCE but no autopsies done. Victims were Shaqir, Shukri & Haki Kciku- videotape given to ICTY (R. Manas)- suspect Shinisha (first name)	OSCE completed on 24JUL99
Sojevo	EM185898	4	Victims Haxhere and Nazmije Nebihu, Hamet Halimi and Qerim Ajvazi – All were shot.	Danish team completed 12OCT99
Sojevo	EM1890	2- 1 shot by sniper	Xhevaire Tahiri was exhumed from a local cemetery, only burnt bones remained. Bulic Mehmet found buried in the wood, shot by sniper	Danish team completed 12OCT99
Sopotnica	EM1679	5-7? (unconfirmed)	Serbs allegedly killed 5-7 local Albanians	
Stagova	EM2094379886	10 bodies- 4m/5f/ & 1 child	Serb paramilitaries from Vrbani fired on villagers fleeing Stagova on 21MAY99. 13 killed, 7 wounded. 10 buried in mass grave near the village. All victims identified- 3 eyewitnesses to the incident.	Swiss team completed 25SEP99
Stagovo	EM2080	2	Fahri Mani and Ramush Jaha killed 21MAY99 by VJ- remote site	Danish team completed 7OCT99
Staro Selo	EM165890	5-7 (unconfirmed)	Local villagers report 7 people missing. Villagers found suspected brain tissue at one site (turned out to be animal brains) and saw Serbs digging at another site. ICTY examined, but found no human remains at either site.	ICTY inspected 19JUL99

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Staro Selo	EM1597289361	4- 2m/2f	4 local Albanians killed and were found in a septic tank. Zeka family.	Austrian/Icelandic team completed 5AUG99
Staro Selo	EM1649689082	0	Local villagers suspected bodies in a local well. ICTY dragged well with a grappling hook but found nothing.	ICTY inspected 5AUG99 and 27 OCT- still nothing found.
Staro Selo	EM156903		Mass grave near warehouse without roof. May be related to sites above.	
Stojglavica	EM3715887230	6- 2m/2f/2 children	Victims were local Albanians killed in the town of Djelekare on 15APR99 by Armed serbs in VJ type uniforms	Austrian/Icelandic team completed 14AUG99
Strelica	EM491174	1	Decomposed body found	
Surlane	EM440835	3 males	Villagers killed on 31MAR99. All identified and reburied in the local cemetery.	Reburied by locals.
Tankosic	EM239921	1 male	Albanian gunshot wound to head	
Tarajela	EM143895	unconfirmed	Albanian man has new gravesite in his back yard	
Uji I Tharte (Etezhane)	EM231679	unknown	Potential gravesite to be exhumed reported to ICTY	Inspected by ICTY on 25NOV99
Unknown	Unknown	1 male	Decomposed body found in civilian clothes.	Taken to Gnjilane hospital
Unknown	Unknown	1	Body recovered from well- Zufi Kastrati, shot in head	CIMIC had victim's identification pending investigation.
Unknown	Unknown	1	Vehvi Sojeva found by son Murahem Sojeva burned and shot. Victim last seen alive 9APR99.	
Urosevac	EM145907		Lulzim Aliv (Besnif) reported bunker smells decayed.	
Urosevac	EM1391	1	73 year old man found shot in chest	
Urosevac	EM117915	8	5 bodies buried in mass grave and 3 separately in local Muslim cemetery. Two graves marked with numbered stakes (122/99 and 123/99). All 8 bodies identified as local Albanians, and 6 have been reburied elsewhere. We have reports stating the cemetery here is actually Serbian and there are Albanians buried there. ICTY has details.	Bodies reburied by locals
Urosevac	EM11909165	5- 4m/1f	Site discovered on 31JUL99 in a local Orthodox cemetery.. Local Albanians could not identify bodies, ICTY suspects they may be Serbs.- - Also we have report of 5 graves in cemetery across from soccer field at N4225.621/E2133.124 (not sure if same sight)- and of shallow graves covered with plywood in a Serbian cemetery in Urosevac- not sure if this report is the same site either.	OSCE documented site and submitted a file to ICTY
Urosevac (near Sajkoe)	EM03498945	Multiple (unconfirmed)	Reported 400m UCK trench which had been filled in by the Serbs reported to be a mass grave site. Soldiers found clothing at the site. POC in area is Skender Bega.	ICTY has inquired with locals and UCK- no one knows about it so far.
Urosevac (SE of on Route Hawk)	EM1590918	1	Decomposed body lying in a well.	
Velekince	EM48271421	7	7 Killed from village, 2 in the village and 5 taken from convoy in Malasevo.	Completed by locals.
Vitina (SE of)	EM300848		Suspected mine field and evidence of bombing. Strong death odor present in area.	
Vladove	EM392927	5- 4m/1f	Killed when local Serbs attacked the village on 2APR99. All 5 victims are identified, but a 6 <sup>th</sup> man is still missing.	Inspected by ICTY on 16AUG99

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Vladovo	EM3892 (vicinity)	5-6 bodies	Buried in different spots- POC Avdush Ajeti. EM3849892546, EM3844392496, EM391829273, EM3909992818 and EM 3898192905. Killed by Serb paramilitary.	
Vladovo (NW of)	EM380936		Albanian from Donji Livoc reported graves at grid resulted from war crimes at a concentration camp (factory at EM375947)	
Vlastica	EM4192	4	Local Albanians killed when the Serbs raided a makeshift camp in the hills above the village. At least 3 of the bodies were elderly.	Canadian team completed on 14JUL99
Vlastica	EM416926	1	13 year old boy decapitated and disemboweled-Reportedly there are other decapitated victims in the town.	
Vlastica	EM4171692637	13	13 people shot and burned in home by Serb paramilitaries	Canadian team completed 5JUL99
Vrban	EM225840		Albanian men reported that Serbian Jokic Milos murdered someone in MAY99	MP investigated
Vrbica	EN4303	7	Site is in local Muslim cemetery and contains bodies of 7 identified local Albanians killed in isolated incidents during a Serb offensive on 16APR99. No witnesses to the killings.	Canadian team recorded on 8JUL99

## **APPENDIX IV-22: ICTY SOP**

### **OFFICE OF THE STAFF JUDGE ADVOCATE**

#### **GENERAL**

##### **Purpose**

The purpose of this SOP is to provide future Judge Advocates an understanding of the International Criminal Tribunal for the Former Yugoslavia (ICTY), its mission in Kosovo, and the Judge Advocate's role with ICTY.

##### **References**

1. The Military Technical Agreement Between the International Security Force ("KFOR") and the Governments of Federal Republic of Yugoslavia and the Republic of Serbia (MTA).
2. United Nations Security Council Resolution (UNSCR) 1244 (1999).
3. SACEUR OPLAN 10413 Operation Joint Guardian, dtd. 11JUN99.
4. Task Force Falcon OPORD 99-01.

##### **General Overview**

1. The International Criminal Tribunal for the Former Yugoslavia (ICTY) is the section of the UN that is investigating war crimes in order to prosecute the war criminals the UN has indicted. ICTY's mission is to gather evidence on individual war crimes committed and to link those war crimes to the indictees by showing a causal link between their orders and decisions made as military and political leaders and the war crimes that were actually committed down the chain of command by Serbian police (MUP), the Serbian Army (VJ) and paramilitary forces.

##### **ICTY General Procedures**

1. During the warmer months, (March through October), the forensics teams come in to Kosovo from different UN countries (prior teams in MNB(E) have been from Canada, Austria, Iceland, Switzerland, and Denmark). These forensics teams document crime scenes, exhume bodies, perform autopsies, attempt to have the victims identified, and return the bodies to the families who normally have their own funerals for the victims. ICTY does cursory interviews during this process, and aids the forensics teams in performing their jobs. The exhumation of sites begin again in March or April after the spring thaw.

2. During the winter months, ICTY does in-depth interviews with witnesses and the victims' families to gather evidence against the indictees. They locate witnesses and take statements to support the physical evidence found at the crime scenes.

### **ICTY Liaison**

1. The ICTY liaison with the US military is an investigator sent down from the Hague to coordinate the crime scene investigations, exhumations, and interviews in the MNB(E) AO. This person is the POC for the US Army.

2. The ICTY Kosovo office is in Pristina. The MNB(E) ICTY liaison lives in Pristina. The PTT number (Kosovo civilian number) is 00871-762-083-095. The liaison, however, spends most of his/her time in MNB(E) sector and is rarely in the ICTY office. A message can be left for the liaison to come to Camp Bondsteel if it is important that he/she be reached. Otherwise, the liaison reports periodically to the SJA office in the TOC at Camp Bondsteel to give an update on his movement and actions in MNB(E) and to request any logistical support necessary.

### **Task Force Falcon (TFF) Legal Advisor Liaison**

1. A TFF Legal Advisor will be the liaison officer for ICTY. Responsibilities of the liaison include:

a. Coordination with ICTY on at least a biweekly basis as to their activities in MNB(E).

b. Obtaining information and statistics for briefing the Task Force Commander and staff (see 'Briefing' section below).

c. Updating ICTY on possible new war crimes sites found in the area.

d. Coordination between the tasked support unit and ICTY liaison (screening support requests for those TFF cannot support, etc.).

e. Obtaining information on possible new war crimes sites discovered by or reported to ICTY.

f. Updating the War Crimes in MNB(E) database.

### **Logistical Support**

1. TFF Legal is the liaison office for the ICTY operating in MNB(E). In SACEUR OPORD 10413, Task Force Falcon is tasked with aiding ICTY within our means

and capabilities. This phrase has different meanings to different Task Force Commanders. MNB(E) has provided the following support to ICTY.

- a. Housed the Forensics teams on Camp Bondsteel and provided them logistical support (food, laundry).
- b. Provided 24 hour point security at the crime sites while the sites were being exhumed.
- c. Provided EOD support to clear the sites of UXOs, mines, ordnance, booby traps and other explosives.
- d. Various other logistical support such as 5 tons, water buffaloes, high pressure sprayers, body bags, stretchers, cranes (lifting equipment), casualty affairs support, and even coffins.

**2. Procedure.** TFF Legal coordinates with G-3 who tasks a unit to provide the logistical support listed above to the forensics teams and to ICTY. TFF Legal prepares the FRAGO tasking the unit to continually provide logistical support and security to the forensics teams, the ICTY, and its mission. The tasked unit's S-3 should then be introduced to the ICTY liaison. The TFF Legal office should encourage the ICTY liaison to go directly to the unit assigned to support them when ICTY has logistical support needs. Many times the ICTY liaison will come back to TFF Legal when they need support, or ask for it during the course of reporting their in-sector activities. The liaison should be referred to the tasked unit or the TFF Legal should call the unit and ask for the support. The liaison should also be prepared to deny requests that are not feasible. See Enclosure A for example of tasking FRAGO.

### **War Crimes Sites in MNB(E)**

**1. Reporting Procedures.** A war crime by definition can only happen during war. Therefore, only those killed before the MTA was signed and the Serbian forces pulled out of Kosovo are possible war crime victims. TFF Legal has created a database of possible war crimes sites in our area that have been discovered thus far. These reports come from various sources. ICTY (they have their own database which they provide to us), Civil Affairs, G-3, and SOCCE report a majority of the sites. This database must be updated as new sites come in. The database is in alphabetical order according to what village the site is in or near. The number of sites found monthly dramatically decreased after the first month Task Force Falcon was present in Kosovo. The reports come in all forms, such as SPOT reports, on half sheets of paper, etc. All information on a site is located in a manila file folder labeled with the name of the village (as on the database). There is a file for each village or city that has one or more reported war crimes. These files are a good reference when questions come up about the site. There is no information other than an oral report on many of the sites.

**2. Database.** Most of the sites that have been reported so far have already been completed by the forensics teams. The database is annotated as to which sites have been finished. Some of the sites in the database are just reports of dead decomposed bodies lying out. In those cases, according to the PMO, the unit finding the body is responsible for policing it up and taking it to the morgue. If it is possible the death is a result of a war crime (could have been killed before the MTA was signed), then the information regarding the site will be recorded on the database. Historically, ICTY has not been interested in this type of site, but they should be briefed on its existence nonetheless. Obviously, a body that could not be from the pre-MTA time period is a regular murder and should be reported to the PMO. See Enclosure B for a copy of the database.

**3. Briefings.** The Task Force Commander and staff will be briefed during the BUB by the Task Force Legal Advisor on ICTY activities in sector. These briefs will include ICTY's movements in the AO and new statistics from the war crimes sites. Therefore, there should be a constant flow of information from ICTY to the TFF Legal liaison to ICTY on the following:

- a. What site the ICTY/forensic team is currently investigating or exhuming.
- b. At the site, how many bodies have been recovered, autopsies done, cause of death, sex of bodies, age of bodies, whether civilians or UCK.
- c. Logistical support provided or requested.
- d. Any other information of particular importance or interest.

**4. Evidence Collection.** Any physical evidence (shell casings, videotapes, etc) from a possible war crimes site collected by or brought to the US military should be recorded by filling out a chain of custody form and turned over to the ICTY liaison. See Enclosure C for the form.

## Reports

**1. Paragraph 7 Reports.** A report to USCINCEUR should be done on each site investigated by ICTY. See Enclosure D for a copy of the report. The report provides USCINCEUR with the following information if applicable and available:

- a. Description of the scene.
- b. Names of local witnesses.
- c. Names of military witnesses.
- d. Photographs.
- e. Description of seized evidence

**2. Bi-Monthly Report to KFOR.** A bi-monthly report to KFOR Main J-3 compiles information on the ICTY investigations in each MNB. This information is reported to SHAPE. The report should be sent by CRONUS to KFOR Main. See Enclosure E for a copy of the report. The information reported is as follows:

- a. Time period covered.
- b. Summary of Recent Operations.
- c. Meetings between MNB Reps and ICTY Representation.
- d. Forecast.
- e. Way Ahead.
- d. Conclusion

**APPENDIX IV-23: DISPUTED PROPERTY FORMS**

**ENGLISH**

# Disputed Property Form

NAME: \_\_\_\_\_ DATE: \_\_\_\_\_

FORM OF IDENTIFICATION: \_\_\_\_\_.

ADDRESS: \_\_\_\_\_

\_\_\_\_\_.

**PLEASE ANSWER THE FOLLOWING QUESTIONS**

• Please fully describe your missing property or item: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_.

• Please describe how you acquired it: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_.

\_\_\_\_\_.

• Where did you get the item (please include name of store or individual): \_\_\_\_\_.

• How much did it cost: \_\_\_\_\_.

• Do you have any receipts, pictures or witnesses that can show that this item belongs to you: \_\_\_\_\_.

• Do you have anything else that would show ownership of these items: \_\_\_\_\_.

## ALBANIAN

## Formular Per Pasuri Kontestuese

EMRI: \_\_\_\_\_ DATA: \_\_\_\_\_

NR. I LETERNJOFTIMIT, PASAPORTES OSE PATENT

SHOFERIT: \_\_\_\_\_.

ADRESA: \_\_\_\_\_.

### JU LUTEM TE PERGJIGJENI NE PYETJET VIJUESE

- Pershkrimi i pasurise: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_.
- Pershkruani si e keni marre (fituar): \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_.
- Ku e keni marre: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_.
- A keni fature, fotografi ose deshmitare i cili mund te deshmoj ge  
 ajo ju takon (perket): \_\_\_\_\_  
 \_\_\_\_\_.
- Sa ka kushtuar (cmimi): \_\_\_\_\_.
- A keni deshmi tjeter se jeni pronar I ketyre gjerave (sendeve,  
 pasurive): \_\_\_\_\_  
 \_\_\_\_\_.

**SERBO-CROATIAN**

## Formular Za Sporno Imanje

IME: \_\_\_\_\_ DATUM: \_\_\_\_\_

BROJ LICNE KARTE, PASOSA ILI VOZACKE

DOZVOLE: \_\_\_\_\_.

ADRES: \_\_\_\_\_

\_\_\_\_\_.

### MOLIM VAS DA ODGOVORITE NA SLEDECA PITANJA

• Opis imanja: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_.

• Opisajte kako ste ga nabavili: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_.

\_\_\_\_\_.

• Gdje ste ga nabavili: \_\_\_\_\_.

• Koliko je kostovao: \_\_\_\_\_.

• Da li imate racun, sliku, ili svjedok koji moze pokazati da to vam pripada: \_\_\_\_\_.

• Da li imate drugi dokaz da ste vlasnik ove stvari: \_\_\_\_\_

\_\_\_\_\_.

**APPENDIX IV-24: MEASURES OF SUCCESS MATRIX**

<b>Immediately--</b>	<b>243d MIB</b>	<b>52d Corps Arty Bde</b>	<b>MUP</b>	<b>UCK</b>
All parties cease committing hostile or provocative acts				
All aircraft, radars, SAMS (including MANPADS) and AAA begin withdrawing to outside the MSZ				
The appropriate NATO commander shall control and coordinate use of airspace				
Other Forces observe Art I, para 2, Art II, para 1, and Art III and refrain from all hostile intent, military training, etc.				
Other Forces publicly commit themselves to demilitarization, renounce violence, guarantee security of international personnel, and undertake to respect the international borders of the FRY and all terms of this Annex.				
Other Forces must not carry weapons within 1 km of VJ and MUP cantonments or of main roads or within 6 km of international borders.				

<b>5 Days--</b>	<b>243d MIB</b>	<b>52d Corps Arty Bde</b>	<b>MUP</b>	<b>UCK</b>
VJ Army units complete redeployment to approved cantonment sites				
senior VJ commander in Kosovo confirms in writing to that the VJ is in compliance and provides the information required in Article VII (and then weekly)				
Other Forces abandon and close all fighting positions, entrenchments, and checkpoints. Senior commander reports completion				
Other Forces establish secure weapons storage sites, which are registered with and verified with the KFOR; MUP units complete redeployment to the approved cantonment sites or to garrisons outside Kosovo. Senior MUP commander confirms in writing				

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MUP units not assigned to Kosovo prior to 1 Feb 1998 withdraw Parties furnish specific information per Art VII and update COMKFOR weekly				
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<b>10 Days--</b>	<b>243d MIB</b>	<b>52d Corps Arty Bde</b>	<b>MUP</b>	<b>UCK</b>
Withdrawal of all aircraft, radars, SAMS (including (MANPADS)) and AAA completed and reported by senior VJ commander in Kosovo commander				
<b>14 Days--</b>	<b>243d MIB</b>	<b>52d Corps Arty Bde</b>	<b>MUP</b>	<b>UCK</b>
VJ Border Guard forces down to 1500 members and in Djakovica, Prizren, and Urosevac and subordinate facilities within the 5 kilometer Border Zone				
Routes and procedures for VJ travel determined				
Parties provide info on prisoners to ICRC				
<b>20 Days--</b>	<b>243d MIB</b>	<b>52d Corps Arty Bde</b>	<b>MUP</b>	<b>UCK</b>
all Special Police, including PJP, SAJ, and JSO forces, and their equipment out of Kosovo				

<b>21 Days--</b>	<b>243d MIB</b>	<b>52d Corps Arty Bde</b>	<b>MUP</b>	<b>UCK</b>
Parties release and transfer all persons held in connection with the conflict				
<b>30 Days--</b>	<b>243d MIB</b>	<b>52d Corps Arty Bde</b>	<b>MUP</b>	<b>UCK</b>
Chief of VJ General Staff provides detailed plan for withdrawal to COMKFOR				
Other Forces store all prohibited weapons in registered weapons storage sites				
Other Forces commanders confirm completion of weapons storage to COMKFOR				
Other Forces in Kosovo cease wearing military uniforms and insignia				
Other Forces personnel who are not of local origin withdrawn				
Senior MUP commander provides detailed plan for withdrawal to COMKFOR				
<b>60 Days--</b>	<b>243d MIB</b>	<b>52d Corps Arty Bde</b>	<b>MUP</b>	<b>UCK</b>
50% drawdown of the				

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remaining MUP units				
<b>90 Days--</b>	<b>243d MIB</b>	<b>52d Corps Arty Bde</b>	<b>MUP</b>	<b>UCK</b>
VJ withdraw 50% of men and materiel and all designated offensive assets				
COMKFOR reviews deployments of VJ and adjusts				
authority for storage sites passes to the KFOR. Weapons subject to confiscation				
<b>120 Days--</b>				
demilitarization of all Other Forces completed.				
drawdown to 2500 MUP				
<b>180 Days--</b>				
all VJ Army personnel and equipment withdrawn				
<b>1 Year--</b>				
all MUP withdrawn				

**APPENDIX IV-25: KOSOVO ROE CARD**

**FRONT**

**KFOR RULES OF ENGAGEMENT FOR USE  
IN KOSOVO**

**SOLDIER'S CARD**

To be carried at all times.

**MISSION.** Your mission is to assist in the implementation of and to help ensure compliance with a Military Technical Agreement (MTA) in Kosovo.

**SELF-DEFENSE.**

- a. You have the right to use necessary and proportional force in self-defense.
- b. Use only the minimum force necessary to defend yourself.

**GENERAL RULES.**

- a. Use the minimum force necessary to accomplish your mission.
- b. Hostile forces/belligerents who want to surrender will not be harmed. Disarm them and turn them over to your superiors.
- c. Treat everyone, including civilians and detained hostile forces/belligerents, humanely.
- d. Collect and care for the wounded, whether friend or foe.
- e. Respect private property. Do not steal. Do not take "war trophies".
- f. Prevent and report all suspected violations of the Law of Armed Conflict to superiors.

**CHALLENGING AND WARNING SHOTS.**

- a. If the situation permits, issue a challenge:
  - In **English**: "NATO! STOP OR I WILL FIRE!"
  - Or in **Serbo-Croat**: "NATO! STANI ILI PUCAM!"
  - (Pronounced as: "NATO! STANI ILI PUTSAM!")
  - Or in **Albanian**: "NATO! NDAL OSE UNE DO TE QELLOJ!"
  - (Pronounced as: "NATO! N'DAL OSE UNE DO TE CHILLOY!")
- b. If the person fails to halt, you may be authorized by the on-scene commander or by standing orders to fire a warning shot.

**BACK**

**OPENING FIRE.**

a. You may open fire only if you, friendly forces or persons or property under your protection are threatened with deadly force. This means:

- (1) You may open fire against an individual who fires or aims his weapon at, or otherwise demonstrates an intent to imminently attack, you, friendly forces, or Persons with Designated Special Status (PDSS) or property with designated special status under your protection.
- (2) You may open fire against an individual who plants, throws, or prepares to throw, an explosive or incendiary device at, or otherwise demonstrates an intent to imminently attack you, friendly forces, PDSS or property with designated special status under your protection.
- (3) You may open fire against an individual deliberately driving a vehicle at you, friendly forces, or PDSS or property with designated special status.

b. You may also fire against an individual who attempts to take possession of friendly force weapons, ammunition, or property with designated special status, and there is no way of avoiding this.

c. You may use minimum force, including opening fire, against an individual who unlawfully commits or is about to commit an act which endangers life, in circumstances where there is no other way to prevent the act.

**MINIMUM FORCE.**

- a. If you have to open fire, you must:
  - Fire only aimed shots; and
  - Fire no more rounds than necessary; and
  - Take all reasonable efforts not to unnecessarily destroy property; and
  - Stop firing as soon as the situation permits.
- b. You may not intentionally attack civilians, or property that is exclusively civilian or religious in character, except if the property is being used for military purposes or engagement is authorized by the commander.

## **APPENDIX IV-26: CAS ROE CARD**

### **FYROM RULES OF ENGAGEMENT**

#### 1. GENERAL RULES

- A. The CJCS Standing Rules of Engagement (“SROE”) are in effect in FYROM for US forces (CJCSI 3121.01A)
- B. The FYROM ROE are different than the ROE currently used in Kosovo by TFF

#### 2. SELF-DEFENSE

- A. You have the **inherent right and obligation** to use force, including lethal force, **to defend yourself** and/or members of your unit and other US forces in the vicinity against attack or imminent attack.
- B. Use only the **minimum force** necessary to defend yourself and/or your unit.

#### 3. GENERAL RULES

- A. Necessary and Proportional: Use of force must be proportional in nature, duration, and scope to the threat you face. When time and circumstances permit, attempt to de-escalate the situation.
  - 1. Shout a warning.
  - 2. Show your weapon.
  - 3. Demonstrate that you are prepared to use your weapon.
  - 4. Warning shots are not prohibited.
  - 5. The minimum force necessary for self and unit defense may be lethal force.
- B. Remember that FYROM is a sovereign country – if you see a crime being committed or about to be committed, notify FYROM authorities immediately.
- C. Protect property with minimum force -- but remember: You are **not** permitted to protect property with deadly force unless the loss of that property poses an immediate threat to yourself or other US forces (such as theft of a loaded weapon that is immediately pointed in your direction)!

#### 4. OPENING FIRE

- A. You may open fire only if you, your unit, or other US forces are attacked or threatened with imminent attack with deadly force.
- B. You may open fire against:
  - 1. A person who **aims his weapon** at you, your unit, or other US forces.
  - 2. A person who **plants, throws, or prepares to throw an explosive or incendiary device** at you, your unit, or other US forces.

3. A person about to use any other force against you, your unit, or other US forces and you reasonably believe that force to be deadly.
4. MINIMUM FORCE
  - A. If you have to open fire, remember:
    1. Fire only **aimed shots**.
    2. Fire **no more** rounds **than necessary**.
    3. Make all reasonable efforts not to unnecessarily destroy civilian property.
    4. **Stop firing** as soon as the situation permits.
    5. Immediately **report** the situation.
    6. **Treat** any casualties resulting from the use of lethal force.
  - B. You may not intentionally attack civilians, their property, or property that is religious in character unless that property is being used against you for a military purpose and engagement is authorized by the your commander.

## **APPENDIX IV-27: 1AD ROE TEST**

### **Section I: True or False**

1. U.S. soldiers may use deadly force to defend themselves only when authorized by the senior tactical leader present.

True or **False**

2. The Military Technical Agreement (MTA) allows FRY forces (defined in the MTA to include, among others, regular Yugoslav Army Forces) to operate in the Air and Ground Safety Zones (ASZ and GSZ).

True or **False**

3. When operating out of the MNB-E sector, a U.S. soldier's right to self-defense is governed by the ROE of the nation "owning" that sector (e.g., when operating in MNB-N, U.S. Forces are governed by French ROE if that ROE differs from US or KFOR ROE).

True or **False**

4. Under United Nations Security Council Resolution 1244, FRY Forces have the right to re-enter Kosovo at any time for any or all of the following specific reasons: (1) to guard Patrimonial sites; (2) to maintain a presence at key border crossings; (3) to mark and clear minefields; and (4) to liaison with UNMIK and/or KFOR.

True or **False**

5. The Military Technical Agreement allows "local police" to remain within the five kilometer-wide Ground Safety Zone (GSZ).

**True** or False

6. You are always required to issue a challenge in the local language before using deadly force.

True or **False**

7. Although the air campaign has ended, VJ Forces are still categorized as a declared hostile force.

True or **False**

### **Section II: Multiple Choice**

Select the single correct answer from each of the four options.

8. Company commanders are authorized to:

(a) Retain seized weapons for unit "trophy" cases back at home station;

**(b) Attack property (like a hospital) that is exclusively civilian in nature when that property is being used for military purposes;**

(c) Call for indirect fires into a crowd in order to separate fighting Serbian and Albanian factions; or,

(d) Direct U.S. soldiers to conduct out of sector operations (e.g., out of MNB-E) in order to provide routine support to fellow KFOR Troop Contributing Nations.

9. The abbreviation R-A-M-P stands for:

- (a) Return fire with aimed fire; Allow the situation to fully develop; Measure your response; Protect with deadly force that property which is designated by the commander;
- (b) Return to home station immediately upon receiving hostile fire; Anticipate the attack; Measure the number of rounds you fire; Protect sensitive items with deadly force;
- (c) Return fire with aimed fire; Anticipate the attack; Measure your response; Protect with deadly force that property which is designated by the commander; or,**
- (d) Return fire with aimed fire; Annihilate the attacker; Measure the number of rounds you fire; Protect sensitive items with deadly force.

10. “Hand SALUTE” is an abbreviation that allows you to:

- (a) Ensure soldiers are in compliance with the military tradition of saluting senior officers;
- (b) Determine whether or not an individual is demonstrating hostile intent;**
- (c) Determine whether or not an individual is committing a hostile act; or,
- (d) Comply with TFF-specific Peace Support Operations SOPs.

11. In the absence of further guidance, you may open fire at:

- (a) Kosovar Albanians who hurl insults at you and your soldiers;
- (b) Serbs who hurl insults at you and your soldiers;
- (c) An escaping detainee;
- (d) An individual deliberately driving a vehicle at your position at a high rate of speed who shows no intent of slowing down.**

12. When acting in self-defense, the directive to “use the minimum force:”

- (a) May include deadly force;**
- (b) Never includes the use of deadly force;
- (c) Includes the use of deadly force only when authorized by COMKFOR;
- (d) Includes the use of deadly force only when authorized by the senior tactical leader on the scene.

13. The \_\_\_\_\_ is responsible for the Rules of Engagement.

- (a) Operations Officer;
- (b) Staff Judge Advocate;
- (c) The Commander; or,**
- (d) The National Command Authority (NCA).

### Section III: Fill in the Blank

14. The written source of a U.S. soldier’s inherent right to self-defense is \_\_\_\_\_

**\_\_ Chairman of the Joint Chiefs of Staff Standing Rules of Engagement (SROE) \_\_**

15. The possible range of graduated responses for individual soldier self defense includes: A verbal warning, **\_\_ exhibit weapon / show of force** \_\_\_\_\_, warning shots (when authorized by the appropriate commander), use of pepper spray or CS gas (when authorized by the appropriate commander), use of a riot baton or the butt of your rifle, and deadly force.

16. When opening fire, every reasonable effort should be made to **\_\_ minimize / avoid** \_\_\_\_\_ collateral damage.

17. Who can release individuals stopped for Category IV crimes (the lowest order of crimes)? **\_\_ the on-the-scene commander** \_\_\_\_\_.

18. The Ushtria Clirimtare Kosoves (UCK), is known in English as the \_\_\_\_\_  
\_\_ **Kosovo Liberation Army (KLA)** \_\_\_\_\_.

19. The Air Safety Zone (ASZ) is \_\_\_\_\_ **25** \_\_\_\_\_ kilometers wide.

20. You may **detain and search** \_\_\_\_\_ an individual attempting to enter a restricted area (an area under U.S. control) with a false ID card.

**Section IV: Short Answer**

21. A U.S. helicopter pilot flying an AH-64 in support of French forces in MNB-N positively identifies an individual in a small courtyard below him pulling out of a large box what clearly appears to be a SA-7 missile and place it on his shoulder, pointing it skyward. French standing ROE on self- defense require French soldiers to wait until fired upon to fire back. The U.S. pilot should

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22. A U.S. soldier, acting as a courier, is carrying SECRET documents between Camps Bondsteel and Montieth. While passing through Partes, his two-vehicle convoy is forced to stop due to a traffic accident ahead being handled by UNMIK Police. The soldier gets out of the vehicle. A teenager runs up to the vehicle and grabs the soldier's helmet bag containing the SECRET documents. What actions should the soldier take? What is the highest level response appropriate?

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23. A soldier is pulling gate guard duty at Camp Monteith, situated just outside of Gnjilane. Suddenly, a yellow truck that has circled the block in front of the main gate three times gathers speed and barrels towards the main gate you are tasked with guarding. Within a matter of seconds it could be at the main building. The soldier should

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**24.** You are on a dismounted patrol on the outskirts of Donja Budriga. You hear an explosion. A nearby patrol reports that the round exploded harmlessly in an open field. TF Falcon's Q-36 has acquired a point of origin near your location and sends you the grid coordinates via FM. The location is an old logging trail on a wooded hillside about 2 kms from your current location. You are within sight of the origin grid coordinates eight minutes after receiving the grid coordinates from your higher headquarters, and ten minutes after hearing the explosion. As you approach the location, you see two men standing near a mortar tube and talking excitedly. Your squad sets up blocking positions on the road, and you yell "HALT! NATO! STANI ILI PUTSAM!" (a verbal warning for the two men to halt). They give you a startled look and one takes off running into the woods. The other man momentarily freezes in place and then reaches into the vehicle that is parked next to the mortar tube. You can't see what he's reaching for. You fire a warning shot at the one who is fleeing, but he doesn't even hesitate. What now, squad leader?

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**APPENDIX IV-28: ROE AZIMUTH CHECKS**

# UCK Flags

## and Other Paraphernalia

**Situation:** You are out on patrol in a mostly K-Albanian part of your sector. You see a large UCK flag flying from a flagpole attached to the roof rafters of a local house. What do you do now?

**Response:** You continue your patrol. There are no restrictions for flying flags from private residences. Since it's a mostly K-Albanian area, it's not a provocative or inflammatory act.

**Situation:** What if it's an Albanian flag?

**Response:** You continue your patrol. There are no restrictions for flying flags from private residences.

**THE ALBANIAN FLAG**

**Situation:** You are manning a checkpoint and see a small UCK flag hanging from the rear view mirror of a vehicle you have stopped. You recognize the driver as a member of the TMK, but he is not in TMK uniform. What do you do now?

**Response:** Do NOT seize the flag. It is private property. TMK members wearing civilian clothes are permitted to possess small quantities of UCK paraphernalia. If he were in uniform, you could direct him to remove the flag. If he refused, you could seize it (making sure you issue a proper hand-receipt for it).

**THE UCK CREST**

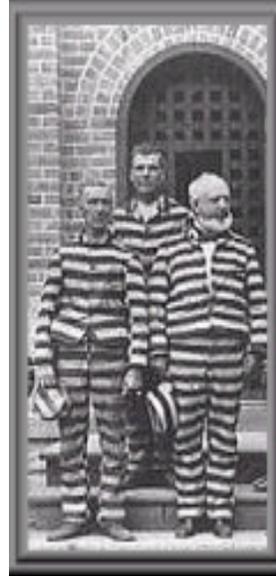
**Situation:** What if the flag is flying from out the windows of a K-Albanian car being driven through the middle of a K-Serb area?

**Response:** Stop the car. You can seize the flags, with the appropriate hand-receipt. This is provocative act and compromises our mission of establishing a safe and secure environment.

### **BACKGROUND**

- COMKFOR has specifically allowed KPC/TMK members to have small quantities of non-obtrusive UCK insignia or any kind of UCK memorabilia in their possession or in their POVs when they are NOT in their KPC/TMK uniforms. UCK insignia or memorabilia is not prohibited.
- NEVER seize private property without (1) a lawful basis, (2) issuing a hand-receipt for the property, and (3) safeguarding the property afterwards. **Remember**, GO#1 prohibits taking or keeping private property as souvenirs

# TEMPORARY DETENTION *and Work Details*



**Situation:** It is after the posted curfew time. You are on patrol in your sector. You see someone violating the curfew. What do you do?

**Response:** You are authorized to detain them for up to 12 hours IAW UNMIK Regulation 1999/2.



**Situation:** You're still out on patrol and you've now rounded up 6 curfew violators. You think you can keep them busy and out of trouble by making the curfew violators pick up trash along the MSR. Can you do it?

**Response:** **NO.** Forcing detainees to work violates Department of Defense guidelines.

**Situation:** You are on patrol and come upon another squad from your company. They have a bunch of curfew violators lined up on the side of the road and are making them do push-ups and other exercises. What do you do?

**Response:** Find the NCO in charge and direct him to stop. Making detainees do push-ups or other physical exercises also violates DoD guidelines.

## **BACKGROUND**

- Remember FAR #4: Apply the Golden Rule-Treat everyone with dignity and respect.
- UNMIK Regulation 1999/2 only allows detention by the unit for up to 12 hours.
- U.S. Forces must comply with the principles of the law of war, even in a peacekeeping operation. In Kosovo, this means that you can't make detainees work and you can't punish them by making them do pushups or other exercises.

# “ROE” UPDATE

## Questions 2A soldiers have Asked

*Q: Can we mark all vehicles on a MEDCAP mission with the Red Cross?*



**A.** No. The only vehicles that can be marked with the internationally recognized, Geneva convention approved red cross or red crescent are **actual medical vehicles** (i.e., ambulances). Support and security vehicles may not be marked, even though they are being used to support medical missions (i.e., MEDCAPs). Other markings (e.g., “MEDCAP Vehicle”) on support and security should be avoided as they present the appearance of attempting to use protected status symbols for an unauthorized purpose.



*Q: What are the prohibitions against wearing complete, partial, or “clothing significantly similar to” FRY uniforms (as FRY is defined in the MTA to include, among others, the MUP)?*

**A:** FRY personnel are not permitted in Kosovo without the express consent of COMKFOR. Individuals wearing actual FRY uniforms (even partial uniforms, with such indicators as insignia) should be stopped and questioned. If necessary, detain the individual.

*Q: What are the prohibitions against wearing UCPMB uniforms?*

**A:** UCPMB uniforms are not prohibited by any treaty or agreement, however, individuals wearing them clearly present a threat to a “safe and secure” environment. Individuals wearing these can be detained for operational reasons and questioned. If necessary, detain the individual.

*Q: What is our authority to arrest/detain individuals for illegal policing?*

**A:** KFOR’s mandate is to establish a safe and secure environment. Vigilante police groups undermine the rule of law and threaten safety and security. KFOR soldiers and UNMIK-P may stop individuals who are engaged in “illegal policing” (e.g., an illegal checkpoint), question them, and detain them for up to 72 hours. “Illegal policing”, however, is not a crime under the Kosovo Criminal Code. Local courts will release individuals charged only with “illegal policing”. Usually, individuals conducting “illegal policing” have communicated a threat, assaulted someone, or committed a number of other crimes under the Kosovo Criminal Code. In order to have local courts detain these individuals longer than 72 hours, soldiers must charge them with an actual crime and not merely with “illegal policing.” Detention of individuals for illegal policing should be coordinated with your supporting Judge Advocate.

**APPENDIX IV-29: SAMPLE JURISDICTION MEMO**

AETV-BGJA (27-10)

2 January 2000

MEMORANDUM FOR SEE DISTRIBUTION

SUBJECT: UCMJ Jurisdiction over U.S. Army personnel located in Kosovo and the Former Yugoslav Republic of Macedonia

1. References.

- a. UR 27-10, Military Justice, 15 August 1994 (Change 1, 2 May 1997).
- b. IID Circular 27-98-1, 15 September 1998.
- c. Memorandum, AEAJA-MC, Subject: Assignment of General Court-Martial Jurisdiction – Operation Joint Guardian, dated : 23 June 99.
- d. Memorandum, AETV-BGCG, Subject: Temporary Assignment of Units from the 3d Brigade, 1st Infantry Division, to the Special Court-Martial Jurisdiction, 100<sup>th</sup> Area Support Group (ASG).

2. Pursuant to reference c, the Commander 1<sup>st</sup> Infantry Division is the designated General Court-Martial Convening (GCMCA) authority for all U.S. Army personnel located in Kosovo and the Former Yugoslav Republic of Macedonia pursuant to Operation Joint Guardian. Pursuant to reference d, the 3d Brigade Commander (Deputy Commander, Task Force Falcon) is the designated Special Court-Martial Convening Authority (SPCMCA) for all U.S. Army personnel located in Kosovo and the Former Yugoslav Republic of Macedonia pursuant to Operation Joint Guardian.

3. U.S. Army personnel assigned to the following units located in Kosovo and the Former Yugoslav Republic of Macedonia are further aligned under Summary Court-Martial Convening Authorities (SCMCA) and Company Commands as follows:

- a. The soldiers assigned to the following Commands fall under the SCMCA of Commander, 1-63 Armor Battalion.
  - 1) HHC, 1-63 AR
  - 2) A Co, 1-63 AR
  - 3) B Co, 1-63 AR
  - 4) C Co, 1-63 AR

5) D Co, 1-63 AR

b. The soldiers assigned to the following Commands fall under the SCMCA of Commander, 55<sup>th</sup> Personnel Service Battalion.

1) HHC/55th PSB

c. The soldiers assigned to the following Commands fall under the SCMCA of Commander, 39<sup>th</sup> Finance Battalion.

1) B/39<sup>th</sup> FN

d. The soldiers assigned to the following Commands fall under the SCMCA of Commander, 2-2 Infantry Regiment.

1) HHC, 2-2 IN

2) A Co, 2-2 IN

3) B Co, 2-2 IN

4) C Co, 2-2 IN

5) D Co, 2-2 IN

e. The soldiers assigned to the following Commands fall under the SCMCA of Commander, 1-1 Aviation Battalion.

(1) HHC/1-1 AVN

(2) F/159

(3) B/1-1 AVN

(4) B/2-1 AVN

(5) D/1-1 AVN

(6) D/1-4 CAV (This includes all soldiers assigned to any CAV Troop)

(7) A/3-58 AVN

(8) 236<sup>th</sup> Medical Company (AA)

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(9) 236<sup>th</sup> Medical Commander (This includes all soldiers assigned to 557<sup>th</sup> Medical Company (AMB))

f. The soldiers assigned to the following Commands fall under the SCMCA of Commander, 3-504 Parachute Infantry Regiment.

1) HHC/3-504 IN (This includes all soldiers assigned to 307<sup>th</sup> EN Company, 3-4 ADA Company; 3-319 FA Company; and 307<sup>th</sup> FSB)

2) A/3-504 IN

3) B/3-504 IN

4) C/3-504 IN

5) D/3-504 IN

g. The soldiers assigned to the following Commands fall under the SCMCA of Commander, 1-6 Field Artillery Battalion

1) HHB/1-6 FA

2) A/1-6 FA

3) B/1-6 FA

4) SVC/1-6

5) E/151

6) HHC, 3d BDE (This includes all soldiers assigned to HHC, 1st ID; HST, V Corps; 55<sup>th</sup> SG CO; USACCE; DCMSC; LIWA)

7) F/4 BRT

h. The soldiers assigned to the following Commands fall under the SCMCA of Commander, 101 Military Intelligence Battalion.

1) C/101 MI (This includes all soldiers assigned to the NIST without a local Company level Commander)

2) D/101 MI

i. The soldiers assigned to the following Commands fall under the SCMCA of Commander, 709<sup>th</sup> Military Police Battalion.

- 1) HHD/709<sup>th</sup> MP (This includes soldiers assigned to the 515<sup>th</sup> MP Detachment (CID))
- 2) 212<sup>th</sup> MP
- 3) 65<sup>th</sup> MP
- 4) 92d MP

j. The soldiers assigned to the following Commands fall under the SCMCA of Commander, 201st Forward Support Battalion.

- 1) HHC, 201<sup>st</sup> FSB
- 2) A Co., 201<sup>st</sup> FSB
- 3) B Co., 201<sup>st</sup> FSB
- 3) C Co, 201<sup>st</sup> FSB
- 4) HHC, DISCOM
- 5) 701<sup>st</sup> MSB??
- 6) A Co. 701<sup>st</sup> MSB
- 7) B Co. 701<sup>st</sup> MSB
- 8) D Co., 701<sup>st</sup> MSB
- 6) 19<sup>th</sup> MMC??
- 7) 792d QM Co.
- 8) 95<sup>th</sup> Maintenance Co.
- 9) DLA
- 10) LSE
- 11) 54<sup>th</sup> QM Co.
- 12) 41<sup>st</sup> Transportation Co.
- 13) A Co., 601<sup>st</sup> ASB

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k. The soldiers assigned to the following Commands fall under the SCMCA of Commander, 82d Engineer Battalion.

(1) HHC/82d (This includes all soldiers assigned to HHC, Engineer Brigade; MAC; BCCA; ATFE; 467<sup>th</sup> EN (Firefighter); HQ/142 EN CO)

(2) A/82d

(3) B/82d

(4) C/82d

(5) A/864<sup>th</sup> EN

(6) 568<sup>th</sup> CSE

l. The soldiers assigned to the following Commands fall under the SCMCA of Commander, 2-63 Armor Battalion.

(1) HHC 2-63 AR

(2) A/2-63 AR

m. The soldiers assigned to the following Commands fall under the SCMCA of Commander, 67 Combat Surgical Hospital.

(1) HQ/67 CSH (This includes soldiers assigned to 226 MEDLOG; 93d Dental Detachment; 64<sup>th</sup> MED; 64<sup>th</sup> VET; 133 Preventive MED; and any other soldiers assigned to the TF Falcon hospital)

n. The soldiers assigned to the following Commands fall under the SCMCA of Commander, 852 RAOC.

o. The soldiers assigned to the following Commands fall under the SCMCA of the Commander, 121 Signal Battalion.

(1) B/121 (This includes soldiers assigned to B/440 SIG; D/440 SIG and HHC/121)

(2) 324<sup>th</sup> SIG (This includes soldiers assigned to HHD, 72d SIG; 58<sup>th</sup> SIG; and HHC, 7<sup>th</sup> SIG BGD)

(3) 268<sup>th</sup> SIG

n. The soldiers assigned to the following Commands fall under the SCMCA of the Commander, 15<sup>th</sup> PSYOP Battalion.

(1) 350<sup>th</sup> PSYOP Company

(2) 321 PSYOP Company

o. All soldiers assigned to 415<sup>th</sup> Civil Affairs Battalion (SCMCA) fall under the Commander, 415<sup>th</sup> CA Battalion for both Company and Summary Court-Martial Authority. The soldiers assigned to the following Commands also fall under the SCMCA of the Commander, 415<sup>th</sup> CA Battalion.

(1) 22d Public Affairs Detachment

p. All soldiers assigned to the 852d RAOC fall under the Commander, 852d RAOC for both Company and Summary Court-Martial Authority.

q. All soldiers assigned to SOCCE fall directly under the Commander 3d Brigade.

4. All soldiers assigned to units not specifically mentioned in this jurisdictional memorandum are attached for UCMJ purposes to HHC, 3d Brigade until the unit can be incorporated into a subsequent memorandum.

DISTRIBUTION: A

CLINTON T. ANDERSON  
COL, AR  
Deputy Commander

**APPENDIX IV-30: GENERAL ORDER NUMBER 1 AND**  
**AMENDMENT**

DTG is 290903Z JUN 99.

CINC approved attached message for release as amended.

AMENDMENT FOLLOWS:

AMENDMENT OF GENERAL ORDER NUMBER 1 - EFFECTIVE IMMEDIATELY

"General Order Number 1, HQ, EUCOM, issued 12 April 1999, is hereby amended and expanded as of the date of promulgation of this amendment, to apply, in addition to the operations cited, to all U.S. Forces in the named countries supporting NATO Operation Joint Guardian or related operations, or other units and elements who fall under the operational authority of USCINCEUR. General Order Number 1 does not apply to individuals serving in NATO positions."

Wesley K. Clark  
General, U.S. Army

Original General Order Number 1 is attached.

01 01 122213Z APR 99 RR RR UUUU AT ZYUW ETCC  
USCINCEUR VAIHINGEN GE//ECCC//  
COMJTF NOBLE ANVIL//COM/DIR/J1/J2/J3/J4/J6/SJA//  
COMJTF SHINING HOPE//J1/J2/J3/J4/J6/SJA//  
CDRUSAREUR HEIDELBERG GE//AEAGB/SJA//  
CDRUSAREUR HEIDELBERG GE//AEAGC-O//  
COMUSAFE RAMSTEIN AB GE  
HQ USAFE RAMSTEIN AB GE//CC/CE/DO//IN/XP/LG/JA//  
CINCUSNAVEUR LONDON UK//OO/DOO/O1/N1/N3/N4/N5/N7/N9/JA//  
COMMARFOREUR HQ MARFOREUR BOEBLINGEN GE//G1//  
COMSOCEUR VAIHINGEN GE//J1/JA//  
INFO JOINT STAFF WASHINGTON DC//J1/J2/J3/LC//  
SECDEF WASHINGTON DC  
CSA WASHINGTON DC  
DA WASHINGTON DC//DAMO-ZC/ZCJ/JA//  
CNO WASHINGTON DC//N3/N5C/JA//  
CSAF WASHINGTON DC  
HQ USAF WASHINGTON DC//XO/XOO/XOJP/XOPX/XOOO/JA//  
CMC WASHINGTON DC//JA//  
CINCUSACOM NORFOLK VA//J1/JA//  
USCINCSOC MACDILL AFB FL//JA//  
HQ AFSOC HURLBURT FLD FL//CC/DO//  
CDRUSASOC FT BRAGG NC  
USCINCCENT MACDILL AFB FL  
USCINCPAC HONOLULU HI  
USAFE AOS RAMSTEIN AB GE//AOR/AOX/CAT-DIR//  
COMSIXTHFLT//N3/JA//

COMNAVFOR JTF NOBLE ANVIL  
424 ABS RAF FAIRFORD UK  
16 AF AVIANO AB IT//CC/CV/DO//  
USAFE AMOCC RAMSTEIN AB GE//CC//  
CDR V CORPS HEIDELBERG GE//AETC-GC/AETV-GC-P//  
COMMARFORLANT//G1//  
JSOTF2 SAN VITO DEI NORMANNI AS IT//CC/DO//  
JSOTF2 BRINDISI AB IT  
CDR 1 10THSFGA BOEBLINGEN GE  
NAVSPECWARUNIT TWO  
352 SOG RAF MILDENHALL UK  
DISA EUR VAIHINGEN GE  
USNMR SHAPE BE  
HQ USEUCOM LO WASHINGTON DC  
USCINCEUR VAIHINGEN GE//ECCS/ECJ1/ECJ2/ECJ3//  
USCINCEUR VAIHINGEN GE//ECJ4/ECJ5/ECJ6/ECJ35//  
USCINCEUR VAIHINGEN GE//POLAD/ECCH/ECMD/ECCM//  
USCINCEUR VAIHINGEN GE//ECJA/ECPA/ECSM/ECRA//  
USCINCEUR VAIHINGEN GE//ETCC/ECJ31/ECJ33//  
USCINCEUR ALT SHAPE BE//SPASAC//  
BT  
UNCLAS  
OPER/NOBLE ANVIL/SHINING HOPE//  
MSGID/ORDER/USCINCEUR//  
ORDTYP/GENERAL ORDER/USCINCEUR//  
SUBJ:GENERAL ORDER 1 IN SUPPORT OF ALLIED FORCE AND HUMANITARIAN EFFORTS  
IN THE BALKANS (U)//  
TIMEZONE/Z//  
NARR/THIS IS A LAWFUL GENERAL ORDER APPROVED, ISSUED, PUBLISHED AND BY  
USCINCEUR.//  
GENTEXT//  
1. TITLE: PROHIBITED ACTIVITIES FOR U.S. PERSONNEL DEPLOYED IN THE  
REGION OF THE FORMER YUGOSLAVIA IN SUPPORT OF ALLIED FORCE AND  
HUMANITARIAN EFFORTS IN THE BALKANS.  
2. AUTHORITY: TITLE 10 UNITED STATES CODE SECTION 164(C)(1)(F) AND  
THE UNIFORM CODE OF MILITARY JUSTICE (UCMJ)(TITLE 10 UNITED STATES  
CODE SECTIONS 801-940).  
3. APPLICABILITY: THIS GENERAL ORDER IS APPLICABLE TO ALL U.S.  
MILITARY AND CIVILIAN PERSONNEL SERVING WITH OR ACCOMPANYING THE  
ARMED FORCES OF THE UNITED STATES DEPLOYED IN SUPPORT OF NATO  
OPERATION ALLIED FORCE OR NATO HUMANITARIAN OPERATION ALLIED HARBOR,  
DEPLOYED TO THE LAND, TERRITORIAL SEAS AND AIRSPACE OF ALBANIA AND  
THE NATIONS WHICH FORMERLY COMPRISED THE NATION OF YUGOSLAVIA, TO  
INCLUDE CROATIA, BOSNIA-HERZEGOVINA, MACEDONIA, SERBIA AND  
MONTENEGRO. THIS GENERAL ORDER DOES NOT COVER INDIVIDUALS ASSIGNED  
OR ATTACHED TO SFOR. WITH REGARD TO MILITARY MEMBERS THIS GENERAL  
ORDER IS PUNITIVE. WITH REGARD TO CIVILIAN PERSONNEL IT MAY SERVE  
AS THE BASIS FOR ADVERSE ADMINISTRATIVE ACTION IN CASE OF VIOLATION  
OF ITS PROVISIONS.  
4. STATEMENT OF MILITARY PURPOSE AND NECESSITY: RESTRICTIONS UPON  
CERTAIN ACTIVITIES ARE ESSENTIAL TO MAINTAIN THE SECURITY, HEALTH  
AND WELFARE OF U.S. FORCES; TO PREVENT CONDUCT PREJUDICIAL TO GOOD  
ORDER AND DISCIPLINE OR OF A NATURE TO BRING DISCREDIT UPON THE U.S.  
FORCES; AND TO IMPROVE U.S. RELATIONS WITHIN THE REGION. THESE  
RESTRICTIONS ARE ESSENTIAL TO PRESERVE U.S. RELATIONS WITH HOST  
NATIONS AND OTHER FRIENDLY FORCES. FURTHERMORE, CURRENT OPERATIONS

## CENTER FOR LAW AND MILITARY OPERATIONS

PLACE U.S. ARMED FORCES IN COUNTRIES WHERE LOCAL LAW AND CUSTOMS PROHIBIT OR RESTRICT CERTAIN ACTIVITIES. THIS GENERAL ORDER TO ENSURE GOOD ORDER AND DISCIPLINE ARE MAINTAINED AND HOST NATION LAWS ARE RESPECTED TO THE MAXIMUM EXTENT CONSISTENT WITH MISSION ACCOMPLISHMENT.

### 5. PROHIBITED ACTIVITIES:

5A. TAKING, POSSESSING, OR SHIPPING CAPTURED, FOUND OR PURCHASED WEAPONS WITHOUT LEGAL AUTHORITY OR FOR PERSONAL USE. "WITHOUT LEGAL AUTHORITY" MEANS AN ACT OR ACTIVITY UNDERTAKEN BY U.S. PERSONNEL THAT IS NOT DONE AT THE DIRECTION OF A COMMANDER OR AS A RESULT OF MILITARY NECESSITY DURING THE PERFORMANCE OF MILITARY DUTIES.

5B. INTRODUCTION, POSSESSION, USE, SALE, TRANSFER, MANUFACTURE, OR CONSUMPTION OF ANY ALCOHOLIC BEVERAGE OR CONTROLLED SUBSTANCE. INDIVIDUALS ARE AUTHORIZED TO CONSUME ALCOHOLIC BEVERAGES, E.G., TOASTS, WHENEVER REFUSAL TO DO SO WOULD OFFEND HOST NATION MILITARY OR CIVILIAN OFFICIALS.

5C. POSSESSING, TOUCHING, USING, OR KNOWINGLY APPROACHING WITHOUT LEGAL AUTHORITY ANY UNEXPLODED MUNITIONS OR ORDNANCE, OF ANY KIND OR DESCRIPTION WHATSOEVER.

5D. PURCHASE, POSSESSION, USE, SALE, OR INTRODUCTION OF PRIVATELY OWNED FIREARMS, AMMUNITION, AND EXPLOSIVES.

5E. GAMBLING OF ANY KIND, INCLUDING BETTING ON SPORTS, LOTTERIES AND RAFFLES.

5F. SELLING, BARTERING, OR EXCHANGING ANY CURRENCY OTHER THAN AT THE OFFICIAL HOST NATION EXCHANGE RATE.

5G. ENTRANCE INTO A RELIGIOUS SHRINE OR MOSQUE UNLESS APPROVED BY OR DIRECTED BY MILITARY AUTHORITIES OR COMPELLED BY MILITARY NECESSITY.

5H. REMOVING, POSSESSING, SELLING, TRANSFERRING, DEFACING, OR DESTROYING ARCHEOLOGICAL ARTIFACTS OR NATIONAL TREASURES.

5I. PARTICIPATING IN ANY FORM OF POLITICAL ACTIVITY OF THE HOST NATION, UNLESS DIRECTED TO DO SO AS PART OF THE MISSION.

5J. TAKING OR RETAINING PUBLIC OR PRIVATE PROPERTY AS SOUVENIRS OF THE OPERATION. LEGITIMATELY PURCHASED SOUVENIRS, OTHER THAN WEAPONS, MUNITIONS, OR ITEMS PROHIBITED BY CUSTOMS REGULATIONS ARE AUTHORIZED.

6. PUNITIVE ORDER: TO REITERATE, THIS ORDER IS PUNITIVE. PERSONS SUBJECT TO THE UNIFORM CODE OF MILITARY JUSTICE WHO VIOLATE THIS ORDER MAY BE PUNISHED UNDER ARTICLE 92, UCMJ, FOR VIOLATING A LAWFUL GENERAL ORDER. CIVILIANS ACCOMPANYING THE U.S. ARMED FORCES MAY FACE ADVERSE ADMINISTRATIVE ACTIONS FOR VIOLATIONS.

7. INDIVIDUAL DUTY: PERSONS SUBJECT TO THIS GENERAL ORDER ARE CHARGED WITH THE INDIVIDUAL DUTY TO BECOME FAMILIAR WITH AND TO RESPECT, THE LAWS, REGULATIONS, AND CUSTOMS OF THE HOST NATION INSOFAR AS THEY DO NOT INTERFERE WITH THE EXECUTION OF THEIR OFFICIAL DUTIES. INDIVIDUAL ACTS OF DISRESPECT OR FLAGRANT VIOLATIONS OF HOST NATION LAWS, REGULATIONS, AND CUSTOMS MAY BE PUNISHED AS A VIOLATION OF THE UCMJ FOR MILITARY MEMBERS AND MAY LEAD TO ADVERSE ADMINISTRATIVE ACTION AGAINST CIVILIANS WHO VIOLATE ITS PROVISIONS. COMMANDERS SHOULD REMIND SERVICEMEMBERS OF THEIR RESPONSIBILITIES UNDER THE CODE OF CONDUCT AND THE PROVISIONS OF THE INTERNATIONAL LAW OF ARMED CONFLICT.

8. UNIT COMMANDER RESPONSIBILITY: UNIT COMMANDERS AND SUPERVISORS ARE TO ENSURE THAT ALL PERSONNEL ARE BRIEFED ON THE CONTENTS OF THIS GENERAL ORDER.

9. CONTRABAND: ITEMS DETERMINED TO VIOLATE THIS GENERAL ORDER MAY

BE CONSIDERED CONTRABAND AND MAY BE CONFISCATED. BEFORE DESTRUCTION OF CONTRABAND, COMMANDERS, OR LAW ENFORCEMENT PERSONNEL SHOULD COORDINATE WITH THEIR SERVICING STAFF JUDGE ADVOCATE.

10. EFFECTIVE DATE: THIS GENERAL ORDER IS EFFECTIVE IMMEDIATELY. AN AMNESTY PERIOD OF 72 HOURS IS GRANTED, FROM THE EFFECTIVE DATE OF THIS GENERAL ORDER, FOR PERSONNEL TO SURRENDER OR DISPOSE OF ITEMS THAT VIOLATE THIS GENERAL ORDER. INDIVIDUALS OR COMMANDERS MAY ARRANGE FOR SAFEKEEPING OF PERSONAL FIREARMS WITH THEIR UNIT MILITARY LAW ENFORCEMENT ACTIVITY. THERE IS NO AMNESTY PERIOD FOR ALCOHOLIC BEVERAGES.

11. EXPIRATION: THIS GENERAL ORDER WILL EXPIRE UPON THE COMPLETION OF OPERATIONS UNLESS IT IS RESCINDED, WAIVED OR MODIFIED.

12. WAIVER AUTHORITY: MISSION REQUIREMENTS MAY PERMIT AND HOST NATION TOLERANCE MAY ALLOW FOR THE CONSUMPTION OF ALCOHOL IN CERTAIN PORTIONS OF THE AREA OF OPERATIONS. THEREFORE, AUTHORITY TO WAIVE OR MODIFY THE PROHIBITIONS OF THIS ORDER RELATIVE ONLY TO ALCOHOLIC BEVERAGES IS DELEGATED TO JOINT TASK FORCE COMMANDERS. WHEN WAIVER OR MODIFICATION IS GRANTED COMMANDERS WHO GRANT SUCH WAIVERS WILL NOTIFY DCINC USEUCOM IMMEDIATELY. REQUESTS FOR WAIVER OF OTHER PROVISIONS BEYOND THEIR AUTHORITY WILL BE DIRECTED TO DCINC USEUCOM.

13. STAFF JUDGE ADVOCATES FOR THE WAIVER AUTHORITIES WILL PROVIDE THE USEUCOM JUDGE ADVOCATE WITH COPIES OF ALL WAIVERS GRANTED TO THIS ORDER.

14. WHEN COMMANDERS INFORM SUBORDINATES OF THE PROVISIONS OF THIS GENERAL ORDER, THEY WILL ALSO INFORM THEM THAT I AM PERSONALLY VERY PROUD OF THEIR COURAGE, PROFESSIONALISM AND DEDICATION TO DUTY UNDER VERY DIFFICULT CIRCUMSTANCES. MAKE NO MISTAKE ABOUT IT, THE TASKS WE ARE UNDERTAKING ARE DIFFICULT AND WILL CALL FOR PERSONAL SACRIFICE. NEVERTHELESS, I KNOW THAT WHEN OUR SERVICEMEMBERS ARE CALLED UPON TO MAKE PERSONAL SACRIFICES AS REPRESENTATIVES OF THEIR COUNTRY THEY ALWAYS PERFORM SELFLESSLY AND BRILLIANTLY. I CANNOT OVER-EMPHASIZE THE TRUST, FAITH AND CONFIDENCE I HAVE IN THEM. THEY WILL GET THE MISSION DONE WITH SKILL AND EXPERTISE OUT OF A SENSE OF DUTY AND PATRIOTISM. WHAT THEY ARE DOING THEY ARE DOING FOR AMERICA. I KNOW THAT WHEN PARTICIPANTS LOOK BACK ON THEIR ROLE IN THIS WORTHY ENDEAVOR, WHETHER IT BE FIGHTING FOR THEIR COUNTRY OR HELPING TO FEED AND CARE FOR THE DISPOSSESSED IN THIS STRIFE-TORN PART OF THE WORLD, THAT IT WILL BE WITH PRIDE. THEY WILL KNOW THAT THEIR SACRIFICE MADE A DIFFERENCE IN THE LIVES OF THOSE IN NEED.

SIGNED, WESLEY K. CLARK, COMMANDER-IN-CHIEF, U.S. EUROPEAN COMMAND, GENERAL, U.S. ARMY.

BT

**APPENDIX IV-31: WEAPONS DISCHARGE INVESTIGATION**

1. OFFICER CONDUCTING INVESTIGATION: \_\_\_\_\_

2. UNIT: \_\_\_\_\_ 3. DTG OF DISCHARGE: \_\_\_\_\_

4. TIME TOC NOTIFIED: \_\_\_\_\_ 5. LOCATION OF DISCHARGE: \_\_\_\_\_

6. TYPE OF WEAPON: \_\_\_\_\_ 7. # OF ROUNDS DISCHARGED: \_\_\_\_\_

8. RANK / NAME OF SOLDIER: \_\_\_\_\_

9. RANK / NAME OF SENIOR LEADER PRESENT: \_\_\_\_\_

Y N

10.   Was discharge into a clearing barrel?  
(If NO, describe circumstances surrounding discharge on reverse side of form.)

11.   Was any **property damaged**?  
 US property (describe property) \_\_\_\_\_  
 Other KFOR property (describe property) \_\_\_\_\_  
 Private property (describe property) \_\_\_\_\_  
Description of damage: \_\_\_\_\_

Y N

12.   Was **anyone injured**?  
 U.S. soldier       Other KFOR soldier       Civilian (If known, nationality: \_\_\_\_\_)

Name: \_\_\_\_\_

Unit (if military): \_\_\_\_\_

Location of injured individual: \_\_\_\_\_

Nature of injuries: \_\_\_\_\_

\_\_\_\_\_

**13. WITNESS INFORMATION:**

a) Name: \_\_\_\_\_  
Unit (if military): \_\_\_\_\_

b) Name: \_\_\_\_\_  
Unit (if military): \_\_\_\_\_

c) Name: \_\_\_\_\_  
Unit (if military): \_\_\_\_\_

**14. ATTACHMENTS:**

- Statement of soldier discharging round (or DA 3881 Rights Warning Certificate)
- Statement of senior leader present
- Statement(s) of any witness(es)

**15. ADDITIONAL ATTACHMENTS** (witness statements, photographs, sketch of AO, etc.):

a) \_\_\_\_\_ c) \_\_\_\_\_

b) \_\_\_\_\_ d) \_\_\_\_\_

**16. UNIT ACTIONS TAKEN:**

\_\_\_\_\_  
\_\_\_\_\_

**CONTINUE INFORMATION FOR ANY SECTION ON THE BACK OF THIS PAGE. CLEARLY INDICATE THE SECTION THE INFORMATION APPLIES TO. PRINT NEATLY.**

## **APPENDIX IV-32: HISTORICAL ARTIFACTS PROCESSING INFORMATION**

### REFERENCES:

- a. AR 608-4, Control and Registration of War Trophies, 28 August 1969.
  - b. AR 870-20, Historical Activities: Museums and Artifacts, 11 January 1999.
  - c. MESSAGE, Vice Chief of Staff, Army, Subject: Resource Stewardship—Control and Registration of War Trophy Firearms, DTG 281049Z APR 98.
  - d. MESSAGE, DCSLOG, USAREUR, Subject: USAREUR Policy on Authorization of War Trophies and Historical Artifacts, DTG 131316Z JUL 99.
  - f. Information Paper, AETV-BGJA-TFF, SUBJECT: War Trophies and Historical Artifacts, dated, 29 January 2000. (available on Outlook in public folders; subfolder “legal;” subfolder “info papers”)
1. Units wishing to obtain permission to retain historical artifacts must submit their requests NLT \_\_\_\_ to Task Force Falcon G-4, Attention\_\_\_\_\_. The Task Force G-4 will be the single source collector for all Task Force requests and will submit a consolidated Task Force Request through the appropriate channels IAW reference “d” above.
  2. A unit application for the retention of historical artifacts should include the following:
    - a. Memorandum Requesting Retention of Historical Artifacts (see below)
    - b. DA Form 2609 (for each item)
    - c. Photograph of Each Item
    - d. Signed Affidavit Listing all Weapons that were rendered inoperable (by whom, how, when and where)
  3. The memorandum requesting retention of historical artifacts should include the following:
    - a. Nomenclature/ Description of each Item
    - b. Serial Numbers/ Markings
    - c. Acquired Locations/ Dates
    - d. Sources/ how each item was obtained (Gift, Captured, Seized, Abandoned, etc.)
    - e. Current Locations
    - f. Proposed holding Site in Garrison (reference AR 870-20)
    - g. Disposition Requested (unit wants to retain items and wants Chief, Military History approval)
    - h. Name of Artifact Responsible Officer (ARO) who will be the hand-receipt holder of the items
    - i. Proposed hold site
    - j. Brief description of the items' historical significance

k. If the requesting unit's home station is in Germany the memorandum should be signed by the Commander and addressed as follows:

**THRU:**

Commander, Task Force Falcon, APO AE 09340  
Commander, First Infantry Division, APO AE 09036  
USAREUR ODCSLOG Supply Division, Unit 29351, Attn: AEAGD-SD-GSB,  
APO AE 09014

**FOR** Commander, U. S. Army Center of Military History, Attn: DAMH-MD, 103rd Avenue, Fort McNair, Washington, D. C. 20319-5058

l. If the unit's home station is NOT located in Germany, the Memorandum should be addressed as follows:

**THRU:**

Commander, Task Force Falcon, APO AE 09340  
USAREUR ODCSLOG Supply Division, Unit 29351, Attn: AEGD-SD-GSB,  
APO AE 09014

**FOR** Commander, U. S. Army Center of Military History, Attn: DAMH-MD, 103rd Avenue, Fort McNair, Washington, D. C. 203190-5058

3. Units are reminded that the USAREUR Commander has restricted unit requests to 3 items per Battalion. Separate companies should not request more than 2 items. No vehicles may be included in the requests.

4. Units are further reminded that until approved by the Center for Military History, items may not be removed from Kosovo. Units that remove items without the proper approval will be considered in violation of General Order Number 1, and punitive action may be taken against individuals determined to be in violation of this General Order.

## **APPENDIX IV-33: COMMANDER'S ASSESSMENT OF USE OF LETHAL FORCE**



**DEPARTMENT OF THE ARMY**  
HEADQUARTERS, UNITED STATES ARMY, EUROPE, AND SEVENTH ARMY  
THE COMMANDING GENERAL  
UNIT 29351  
APO AE 09014

AEAJA-ILOD

7 May 2001

MEMORANDUM FOR SEE DISTRIBUTION

SUBJECT: Commander's Assessment of Use of Lethal Force Resulting in Personal Injury During Peace Operations

This memorandum expires in 1 year.

1. The use of lethal force during peace operations is rare. When lethal force is used, however, this use must comply with the rules of engagement (ROE) and must be appropriate under the circumstances.
2. If a member of the U.S. Forces involved in a peace operation uses lethal force that results in someone being injured, the battalion commander of the unit involved will, as a minimum, prepare a commander's assessment (CA) within 48 hours after the incident according to the enclosure. The commander's servicing judge advocate will help the commander prepare the CA. The CA is needed to—
  - a. Quickly and accurately gather the facts about the incident.
  - b. Determine whether or not lethal force was used according to the ROE.
  - c. Determine whether the ROE or the ROE training needs to be changed.
  - d. Determine whether an additional inquiry or a more formal investigation is required.
3. The enclosure provides guidance on preparing CAs. This guidance will be incorporated into a permanent USAREUR publication before this memorandum expires.
4. If, before starting the CA, the commander believes that more rigorous, fact-finding procedures are needed (for example, an informal AR 15-6 investigation or a commander's inquiry), the commander should use those procedures instead of completing a CA. Commanders may also take actions they deem necessary after completing the CA.
5. CAs will also be conducted during training (including ROE training), during mission-rehearsal exercises, and during other training conducted in preparation for peace operations.
6. The Office of the Deputy Chief of Staff, Operations (ODCSOPS), HQ USAREUR/7A, and the Office of the Judge Advocate (OJA), HQ USAREUR/7A, will conduct a quarterly review of the ROE in effect in the USAREUR area of responsibility.

*This memorandum is available at <http://www.aeaim.hqusareur.army.mil/library/home.htm>.*

AEAJA-ILOD

SUBJECT: Commander's Assessment of Use of Lethal Force Resulting in Personal Injury  
During Peace Operations

a. These ROE reviews will be conducted through joint ODCSOPS and OJA staff-assistance visits to ongoing operations, through discussions with USAREUR commanders, and through objective reviews of completed CAs submitted since the previous ROE review.

b. Immediately after each ROE review, the ODCSOPS and the OJA will assess the ROE for currency and effectiveness. Proposed changes to the ROE and to ROE training procedures will also be assessed.

c. On completion of the joint ODCSOPS and OJA ROE review, the ODCSOPS will send the assessment through the Chief of Staff, HQ USAREUR/7A, to the CG, USAREUR/7A.

7. Commanders must be able to objectively assess situations in which lethal force resulting in personal injury was used during peace operations. The CA provides a method of doing this without having an adverse effect on the unit involved. By using CAs, commanders can determine what happened and why. The CA also provides a way to ensure that ROE are up-to-date and effective.

Encl

  
MONTGOMERY C. MEIGS  
General, USA  
Commanding

DISTRIBUTION:  
A (UPUBS)

## COMMANDER'S ASSESSMENT GUIDE

If lethal force is used during peace operations and someone is injured as a result, the battalion commander of the unit involved in the incident will prepare a commander's assessment (CA) according to this guide.

### 1. General.

a. Before beginning the CA, the commander should presume that the soldiers and units involved acted properly according to applicable rules of engagement (ROE). The CA provides a way to verify this presumption by providing facts for the commander to make an objective, common-sense analysis of what happened. AR 15-6 procedures and other standardized investigation procedures do not apply and should not be followed.

b. A critical determination of the CA is whether or not the lethal force was used properly according to the applicable ROE, and whether or not the ROE need to be changed to meet mission-specific requirements.

**2. Procedures.** Within 48 hours after learning of an incident in which lethal force was used and resulted in personal injury, the battalion commander responsible for the unit involved in the incident will do the following:

a. Contact the servicing judge advocate for assistance in preparing the CA.

b. Determine who used lethal force and where, when, how, and under what circumstances.

c. Review the following, as necessary:

(1) Radio, electronic, voice, and written message traffic to and from the unit involved and its higher commander and staff.

(2) Situation reports from the unit involved.

(3) Intelligence reports before the incident that show whether lethal force might be required.

(4) The ROE briefing and ROE training the unit received before the incident.

d. Not interview or request written statements from commanders, leaders, or soldiers who used or ordered the use of lethal force. If the commander determines that negligence (for example, failure to follow established ROE) or criminal acts occurred, the commander will seek the advice of the servicing judge advocate and determine whether to initiate a more formal investigation or to refer the matter to the next higher commander for review.

e. Make other observations related to the use of the lethal force.

**3. CA Memorandum.** After the CA is completed, the commander will provide CA determinations, conclusions, and recommendations according to the enclosed format (tab). The servicing judge advocate will review the CA memorandum before the commander submits it through command channels to the CG, USAREUR/7A. CA memorandums will be marked at least For Official Use Only (FOUO). If the memorandum includes classified information, it must be marked accordingly (for example, Confidential, Secret).

Tab

Encl, memo, HQ USAREUR/7A, AEAJA-ILOD, 7 May 01

**COMMANDER'S ASSESSMENT FORMAT**

Completed commander's assessments should be in memorandum format according to AR 25-50 and include at least the information shown in the figure below.

---

**DEPARTMENT OF THE ARMY**  
COMMAND  
UNIT OR CMR NUMBER  
APO AE 09XXX

OFFICE SYMBOL

Date

MEMORANDUM THRU (Command Channels)

FOR Commander, USAREUR/7A, Unit 29351, APO AE 09014

SUBJECT: Commander's Assessment -- Use of Lethal Force Resulting in Injury on (date-time group) Involving (unit name)

1. **Unit Involved:** Enter the name of the unit or units that used the lethal force.
2. **Location of the Incident:** Give the exact location of where the lethal force was used.
3. **Casualties:** Enter the number, type, and nationality of those who were injured, if known.
4. **Description of the Incident:** Describe who was involved in the use of lethal force; where, when and why the force was used; what weapons were involved; and how the force was used. Provide as many details as possible, including dates, names, and locations as necessary. Do not gather evidence or attach exhibits or enclosures. If certain documents are important to understanding what happened, reference them and explain why they are important. When referencing them, cite the name of the document, its date, and the applicable paragraph; quote the part of the document that applies; provide the name of the person who created or has the document; and say where the document can be found.
5. **Rules of Engagement:**
  - a. **Assessment.** Provide an assessment, based on the facts, of whether or not lethal force was properly used according to the applicable ROE and the circumstances.
  - b. **Training.** Provide an assessment of the ROE training that the unit and soldiers last received before using lethal force. Include information on who provided the training, how it was provided, and when and where it took place.
  - c. **Recommendation.** Provide a recommendation on whether the ROE is sufficient as written to allow soldiers to use the necessary amount of force required to protect themselves and perform their missions, or whether the ROE should be changed to allow soldiers to use greater or lesser force in given situations.
6. **Other Observations:** Provide other comments as applicable on the use of lethal force that is being assessed.
7. **Further Investigation:** Make a recommendation, based on the facts and the commander's assessment, as to whether or not further investigation or inquiry is required.

Commander's Signature Block

**FOR OFFICIAL USE ONLY**

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Tab to encl

**Appendix IV-34: MOU UAE and USAREUR**

**MEMORANDUM OF AGREEMENT**

**BETWEEN**

**THE MINISTER OF DEFENSE**

**OF THE UNITED ARAB EMIRATES**

**AND**

**THE COMMANDING GENERAL, UNITED STATES ARMY, EUROPE AND SEVENTH  
ARMY (USAREUR/7A)**

**CONCERNING**

**THE ATTACHMENT OF UNITED ARAB EMIRATES SPECIAL OPERATIONS  
FORCES, AH64 (C) APACHES AND CREWS, AND JORDANIAN SPECIAL  
OPERATIONS FORCES, TO A UNITED STATES ARMY FORCE FOR  
PARTICIPATION IN OPERATION JOINT GUARDIAN**

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**MEMORANDUM OF AGREEMENT**

**BETWEEN**

**THE MINISTER OF DEFENSE**

**OF THE UNITED ARAB EMIRATES**

**AND**

**THE COMMANDING GENERAL, UNITED STATES ARMY, EUROPE AND SEVENTH  
ARMY (USAREUR/7A)**

**CONCERNING**

**THE ATTACHMENT OF UNITED ARAB EMIRATES SPECIAL OPERATIONS  
FORCES, AH64 (C) APACHES AND CREWS, AND JORDANIAN SPECIAL  
OPERATIONS FORCES, TO A UNITED STATES ARMY FORCE FOR  
PARTICIPATION IN OPERATION JOINT GUARDIAN**

**PREAMBLE:** The Minister of Defense of the United Arab Emirates, represented by the Commander, United Arab Emirate Task Force (UAE TF) and the Commanding General, United States Army, Europe & Seventh Army, represented by the ODCSR, Agreements Division, United States Army, Europe and Seventh Army (USAREUR/7A), hereinafter referred to as “the Parties,”

Considering the attachment of Special Operations Forces and AH-64 (C) helicopters from the UAE and Jordan to a US Army unit participating in Operation Joint Guardian;

Taking into account United Nations Security Council Resolution 1244 of 10 June 1999, which authorizes the establishment of an international security presence in Kosovo;

Further recognizing the applicability of the Military Technical Agreement between the International Security force (KFOR) and the Governments of the Federal Republic of Yugoslavia and the Republic of Serbia of 9 June 1999 which establishes the authority, privileges, and obligations of the international security force in Kosovo;

Taking note of separate foreign military sales arrangements between the Parties, in existence or under negotiation, which will govern the provision of reimbursable logistic support to UAE forces;

Taking further note of negotiations between the Parties to establish an Acquisition and Cross-Servicing Agreement (ACSA), which, in certain circumstances, might be used as a further means of providing logistic support,

Have agreed as follows:

## SECTION 1. DEFINITIONS

For purposes of this MOA the following definitions apply:

a. **Designated personnel:** All special operations forces, aircrews, technicians, and other personnel deploying as part of the UAE TF.

b. **Designated equipment:** The aircraft and all other equipment deployed in support of the designated personnel.

c. **Host Unit:** USAREUR.

d. **National authorities:** The United States of America or the United Arab Emirates.

e. **MOA:** Memorandum of Agreement.

f. **UAE TF:** United Arab Emirates Task Force.

g. **Combined mission:** OPCON of designated personnel and equipment to TF Falcon.

h. **UAE TF SOF Company:** Combined United Arab Emirates and Jordanian Special Operations Forces task organized into one company under UAE command.

i. **MNB(E):** Multi-National Brigade (East).

j. **OPCON:** Operational control - Transferable command authority that may be exercised by commanders at any echelon at or below the level of combatant command. Operational control is inherent in combatant command (command authority). Operational control may be delegated and is the authority to perform those functions of command over subordinate forces involving organizing and employing commands and forces, assigning tasks, designating objectives, and giving authoritative direction necessary to accomplish the mission. Operational control includes authoritative direction over all aspects of military operations and joint training necessary to accomplish missions assigned to the command. Operational control should be exercised through the commanders of subordinated organizations. Normally this authority is exercised through subordinate joint force commanders and Service and/or functional component commanders. Operational control normally provides full authority to organize commands and forces and to employ those forces as the commander in operational control considers necessary to accomplish assigned missions. Operational control does not, in and of itself, include authoritative direction for logistics or matters of administration, discipline, internal organization, or unit training.

k. **TACON:** Tactical Control - Command authority over assigned or attached forces or commands, or military capability or forces made available for tasking, that is limited to the detailed and, usually, local direction and control of movements or maneuvers necessary to accomplish missions or tasks assigned. Tactical control is inherent in operational control. Tactical control may be delegated to, and exercised at any level at or below the level of combatant command. Tactical control allows commanders below combatant command level to

apply force and direct the tactical use of logistical assets but does not provide authority to change organizational structure or direct administrative and logistical support.

l. **ADCON:** Administrative Control. Direction or authority exercised over subordinate or other organizations in respect to administration and support, including organization of Service forces, control of resources and equipment, personnel management, unit logistics, individual and unit training, readiness, mobilization, demobilization, discipline, and other matters not included in the operational missions of the subordinate or other organizations.

m. **Task Force Battalion Commander:** Designated US Maneuver Battalion Commander in support of TF Falcon.

n. **KFOR:** Kosovo Forces.

o. **TF Falcon:** Task Force Falcon.

## **SECTION 2. PURPOSE**

This MOA sets forth a program for the assignment of designated personnel and equipment to the Host Unit, and from the Host Unit onward. This MOA enables the participation of designated personnel and equipment in a US Army combined mission within the framework of Operation Joint Guardian in Kosovo.

## **SECTION 3. SCOPE**

3.1 This MOA sets forth the general terms and conditions which will govern the participation of designated personnel and equipment in Operation Joint Guardian. Specific logistics support terms and conditions will be provided by separate Foreign Military Sales (FMS) arrangements, or by an Acquisition and Cross-Servicing Agreement (ACSA) (under negotiation), between the Parties.

3.2 No provision of this MOA will supersede the terms of any existing lease arrangements between the National Authorities or the Parties. The terms contained in such lease arrangements will remain in effect and control in the event of conflict with any provision contained in this MOA.

## **SECTION 4. SELECTION AND TRAINING OF PERSONNEL AND EQUIPMENT.**

4.1 The UAE SOF Commander is solely responsible for the selection of designated personnel and equipment for deployment.

4.2 Aviation training requirements will be in accordance with UAE Aviation Training Assistance Plan. See Appendix 3.

4.3 The UAE TF will assign a total of up to 125 SOF personnel, 12 pilots, 25 technicians and 6xAH-64 aircraft for the mission. USAREUR will provide a Training Assistance Team to assist

UAE authorities with:

a. Pre-deployment training in UAE prior to deployment or immediately upon arrival at TF Falcon in the subjects of mine awareness training, Kosovo area orientation, in-country brief, weapons clearing/safety, heat/cold injury training, and NATO KFOR Rules of Engagement (ROE) briefings.

b. Aviation Phase One - 16 hours of aviation orientation, instruction, and "round table discussion" in UAE.

c. Aviation Phase Two - 5 day detailed familiarization training with the Army Airspace Command and Control (A2C2), route review, sector boundaries, Aircrew Procedures Guide (APG), Search and Rescue (SAR) briefing, and mission overview in AOR prior to conducting operational flying missions.

4.4 The TF Falcon Commander will ensure that the designated personnel are trained and ready for deployment and operations as part of TF Falcon, and the selected crews meet entry level aviation training standards and qualifications.

## **SECTION 5. COMMAND, CONTROL, AND COMMUNICATIONS**

5.1 Transfer of Authority (TOA) over UAE personnel will occur upon debarkation in NATO KFOR Area of Responsibility (AOR). The AOR includes Albania, Greece, Former Yugoslav Republic of Macedonia (FYROM), and Kosovo. OPCON over designated personnel will be exercised by the TF Falcon Commander (Commander MNB(E)).

5.2 The command relationship between the TF Falcon Commander and designated personnel will be in accordance with SACEUR OPLAN 10413. It is agreed that this command relationship must provide the TF Falcon Commander the proper latitude to integrate and employ the designated personnel and equipment into TF Falcon as fully as possible.

5.3 It is understood by all participants to this MOA that the Rules of Engagement (ROE) to be employed during this operation are the NATO KFOR ROE (currently described and detailed in Annex E (ROE) to SHAPE OPLAN 10413).

5.4 The UAE TF Commander will deploy with at least one (preferably two) member(s) of the TAFT to serve as a facilitator between the UAE element and the Aviation Task Force Commander.

5.5 The UAE TF Commander will provide an LNO to the Aviation Task Force Commander for the duration of the operation. This LNO shall be a pilot fluent in English and capable of performing flight duties.

5.6 In accordance with Serial 27-xx of the NATO KOSOVO SOR, SOCEUR will provide a regionally-focused Liaison and Coordination Element (LCE) consisting of up to 15 Army Special Forces personnel. SOCEUR has agreed that the mission of the LCE will be to advise and assist the UAE SOF Company Commander and improve the overall integration of the UAE

SOF Company into the MNB(E) structure. The LCE will operate under OPCON of Commander Special Operations Command and Control Element (SOCCE) TF Falcon, and TACON to Task Force Ground Maneuver, Commander. SOCCE TF Falcon will have no command and control authority over the UAE SOF Company.

5.7 The UAE TF SOF Company will be employed primarily to support one or more of the following missions:

- a. Mounted Reconnaissance Patrolling.
- b. Dismounted Reconnaissance Patrolling.
- c. Convoy Security.
- d. Direct Action.
- e. Special Reconnaissance.

5.8 The TF Falcon Commander and the UAE TF Commander will mutually agree on how religious holidays and customs will be accommodated within the needs of TF Falcon's mission and operational tempo.

## **SECTION 6. USE OF FACILITIES**

6.1 All quality of life facilities normally available to US members of TF Falcon will ultimately be available to the assigned designated personnel. This includes, but is not limited to, MWR and AAFES facilities.

6.2. The UAE TF Commander will coordinate the use of all other facilities (e.g. maintenance clamshells) with the TF Falcon Commander. In the event UAE requirements for such facilities exceed TF Falcon capabilities, the UAE may request support be provided via the sustainment contractor in accordance with Annex A, Section H, Additional Contract Support.

## **SECTION 7. JURISDICTION AND OPERATIONS**

7.1 The UAE TF Commander will at all times retain jurisdiction and authority over designated personnel for military justice and other disciplinary or administrative measures. The TF Falcon Commander may request that designated personnel be removed from their duties. Such a request will specify the reasons for the request, and will be directed to the UAE TF Commander.

7.2 Designated personnel will respect the regulations, orders, instructions, and customs of the US Army and Host Unit insofar as they are applicable and consistent with laws or regulations of the United Arab Emirates government and service.

7.3 Designated personnel will be tasked to perform duties equal to those performed by US Army personnel of the same rank, and/or who perform the same duties.

7.4 UAE TF personnel are authorized to fly on US Military aircraft for missions in support of TF Falcon in the TF Falcon AOR.

## **SECTION 8. SECURITY / INTELLIGENCE SUPPORT**

8.1 All communications, aircraft survivability equipment (ASE) loads, and other secure/cryptological material will be loaned by the US to the extent possible and permissible under applicable US law and FMS cases. The designated personnel will deploy with their organic hardware, in accordance with the guidance given in NSA message 091955Z Jul 99 (NOTAL).

8.2 All mission essential information, normally required for mission accomplishment by non-NATO KFOR personnel conducting operations in MNB(E), will be releasable to the designated personnel on the same basis as to KFOR personnel.

8.3 The provisioning US encryption equipment will be from CECOM. The temporary transfer of the said encryption equipment will be done in the AOR in the form of a hand receipt to the designated UAE COMSEC Responsible Officer(s). The equipment will be installed, maintained and removed only by US contract personnel. UAE COMSEC equipment will be keyed only on a mission by mission basis, to include IFF MODE 4 codes. All keying of COMSEC equipment will be done by properly cleared US personnel. Upon mission completion, the COMSEC equipment will be cleared (zeroized) of COMSEC codes by US personnel. Upon completion of the overall mission, COMSEC equipment and ASE equipment will be returned to US standard logistic channels prior to UAE aircraft departing for home station (HS).

8.4 UAE will pass clearances through USDAO from the American Embassy in UAE. Clearance Certificate will be filed with USAREUR, ODOSINT, AEAGB-CI-S, Unit 29351, APO AE 09063. UAE individuals will have the equivalent of a SECRET clearance. Designated personnel will have access to all TF Falcon intelligence products up to SECRET RELEASABLE KFOR.

## **SECTION 9. UNIFORM**

9.1 Designated personnel will wear their own distinctive UAE duty uniform.

9.2 The order of dress for any occasion is to be that which most nearly conforms to the order for TF Falcon. TF Falcon guidelines will be observed concerning the wearing of civilian clothes.

9.3 Designated personnel will adhere to the same force protection uniform standards as US Army personnel.

## **SECTION 10. SIGNS AND MARKINGS**

UAE vehicles will be painted woodland green camouflage pattern and display UAE and KFOR markings. Aircraft will display their own distinctive markings and the KFOR markings.

## **SECTION 11. FINANCIAL OBLIGATIONS**

11.1 Pricing, invoicing, and payment for all reimbursable logistic support shall be in accordance with the terms and conditions set forth in separate FMS cases, or an ACSA, should one be concluded between the Parties. Orders for, and deliveries of, supplies and services under FMS cases or an ACSA shall be documented, recorded, and reported on the required forms and in accordance with applicable laws and regulations.

11.2 Pay and allowances for designated personnel are the responsibility of the UAE. Pay and allowances will not be paid or reimbursed by TF Falcon or the US government.

11.3 The UAE assumes all responsibility for costs incurred by the Jordanian element.

11.4 Currency to be used in the TF Falcon AOR will be US Dollars or Deutsche Marks.

11.5 The UAE will reimburse the Host Unit for one contract accounting technician hired to track and account for expenses incurred in support of UAE TF.

## **SECTION 12. AIRCRAFT AND VEHICLE MISHAPS**

12.1 Any aircraft and vehicle accident, incident or mishap occurring under this MOA involving designated personnel and/or equipment will be investigated in accordance with US procedures and the applicable laws and regulations of the appropriate national authority.

12.2 In the event of an aircraft or vehicle accident, incident or mishap, only US personnel will recover and secure all aircraft COMSEC material.

12.3 Safety investigations identified in any situation above will be conducted jointly by the Parties' designated representatives.

12.4 The appropriate national authority will conduct collateral investigations.

12.5 The Parties agree that a Commander or other competent authority may lawfully direct members of their government to conduct investigations relating to third party claims brought against their government as a result of aircraft or vehicle mishaps. The Parties further agree that they will, to the extent practicable, cooperate with the persons directed to conduct such an investigation.

## **SECTION 13. LIABILITY AND CLAIMS**

13.1 The Parties agree to waive all claims against one another, other than contractual claims, for any property damage, loss, or destruction of property belonging to the other Party's armed forces, or for death or injury to a Party's military and civilian personnel, if such damage, death, or injury was caused or experienced in the course of official duties performed under or related to this MOA..

13.2 Each Party is solely responsible for third party claims asserted against it for any property

damage, death, personal injury, or medical care caused by that Party. In cases in which responsibility for property damage, death, personal injury, or medical care cannot be clearly affixed to one Party exclusively, the Parties shall consult to determine an appropriate cost-sharing apportionment.

13.3 For purposes of resolving claims, the specific terms of the applicable FMS arrangement, or ACSA if one is concluded between the Parties, will govern in the case of any inconsistency or contradiction between this MOA and the applicable FMS arrangement or ACSA.

#### **SECTION 14. DISPUTES**

Disputes arising under or relating to this MOA will be resolved only by consultation between the Participants and will not be referred to an individual, a national or international tribunal, or any other forum for settlement.

#### **SECTION 15. EFFECTIVE DATE, AMENDMENT, AND TERMINATION**

15.1 This MOA will become effective upon the date of the last signature affixed.

15.2 This MOA may be amended by the mutual consent of the Parties. All amendments will be in writing, and will become effective upon the date of the last written approval.

15.3 This MOA may be terminated by mutual consent of both Parties, or unilaterally by providing 60-day advance notice, in writing, to the other Party indicating the intention to terminate the MOA. Neither the notice to terminate, nor an actual termination, will absolve a Party of financial obligations owed to the other Party, when such obligations were:

- a. Incurred pursuant to this MOA for logistic support; or,
- b. Otherwise incurred in accordance with the terms and conditions set forth in separate FMS cases, or an ACSA, should one be concluded between the Parties.

15.4 The above represents the understandings reached between the representatives of the Minister of Defense of the United Arab Emirates and USAREUR/7A.

COMPLETED ON \_\_\_\_\_, IN DUPLICATE, IN THE ENGLISH LANGUAGE.

FOR USAREUR/7A

FOR THE UNITED ARAB EMIRATES

**ANNEX A TO THE MEMORANDUM OF AGREEMENT (MOA) BETWEEN  
UNITED STATES ARMY EUROPE AND THE UNITED ARAB EMIRATES**

MINISTER OF DEFENSE CONCERNING THE ATTACHMENT OF UNITED ARAB EMIRATES SPECIAL OPERATIONS FORCES, AH-64(C ) APACHES AND CREWS, AND JORDANIAN SPECIAL OPERATIONS FORCES, TO A UNITED STATES ARMY TASK FORCE FOR PARTICIPATION IN OPERATION JOINT GUARDIAN

A. GENERAL.

All requests for logistical support, supplies and services described in this Annex (Sections B through F, below) will be requested and provided only in accordance with separate Foreign Military Sales (FMS) cases or an Acquisition & Cross Servicing Agreement (ACSA) should one be concluded between the Parties. The Parties shall accomplish pricing, invoicing and payment for all reimbursable logistics support in accordance with the terms and conditions set forth in the appropriate FMS case or, if applicable, ACSA.

B. CONCEPT OF SUPPORT.

USAREUR will delegate the administrative authority for the logistics support, supplies and services described in this Annex to UAE TF on a reimbursable basis in accordance with the terms and conditions set forth in the appropriate FMS case or, if applicable, ACSA.

C. LOGISTICS AUTOMATION.

1. UAE TF will be integrated into the Unit Level Logistics System (ULLS), which will allow it to process automated requests for required materiel and equipment.

2. HQDA will provide UAE TF with a Unit Identification Code (UIC).

3. USAREUR will obtain Department of Defense Activity Address Codes (DODAACs) for UAE TF after it has been assigned a UIC.

4. USAREUR will initiate a contract to provide UAE TF with ULLS-A, ULLS-G and ULLS-S4 capabilities. Automation hardware and an operator trained in all three systems will be provided via contract. USAREUR will provide ULLS software.

D. CLASSES OF SUPPLY.

1. Class I (Food/Water). USAREUR will provide UAE TF with Class I in the form of bottled water and MREs, T-pack or Class A rations.

2. Class II (Clothing, Office/Administrative/Housekeeping Supplies, Tools, maps and Geospatial Information). UAE TF will requisition any required Class II items.

a. Organizational Clothing & Individual Equipment (OCIE). UAE TF

personnel will deploy with some of their OCIE requirements. UAE TF may requisition additional OCIE requirements (e.g. cold weather clothing) via its ULLS-S4 account. TF Falcon will not provide OCIE.

b. Chemical Defense Equipment (CDE). UAE TF personnel will deploy with individual CDE (to include protective masks and filters). UAE TF may requisition additional CDE items, except protective masks, via its ULLS-S4 account.

c. Aviation Life Support Equipment (ALSE). UAE TF will deploy with ALSE, but may requisition additional ALSE items via its ULLS-S4 account.

3. Class III(P) (Packaged Petroleum Products). UAE TF will deploy with Class III(P). UAE TF will requisition replenishment stocks via its ULLS-G account.

4. Class III(B) (Bulk Petroleum Products). USAREUR will provide UAE TF with bulk petroleum.

5. Class IV (Barrier/Construction Materiel). UAE TF will requisition Class IV items via its ULLS-S4 account.

6. Class V (Ammunition).

a. UAE TF will be responsible for providing all required ammunition less DODICs specifically made available for its use via FMS or, if applicable, an ACSA.

b. Requests for Class V not available to UN forces, but required to support missions approved and directed by the Commander, TF Falcon, will be provided if available following HQs USAREUR approval.

7. Class VI (Personal Demand Items). UAE TF personnel may purchase Class VI items from AAFES facilities collocated with TF Falcon.

8. Class VII (Major Items of Equipment). USAREUR will loan UAE TF the Class VII items identified below. USAREUR will attempt to satisfy additional UAE TF equipment requirements via loan if the equipment it requests is available.

a. SINGGARS "B" Kits. USAREUR will loan UAE TF (7) RT-1476/ARC-201(V) or RT 1476A/ARC-201A(V) radios.

b. PRC-112 Radios. USAREUR in accordance with the terms of FMS case will lease or sell UAE TF these survival radios.

c. GARMIN GPS XLS. UAE TF will purchase its GPS requirements directly from the vendor.

9. Class VIII (Medical Supplies). UAE TF may submit requests for Class VIII(A)

and VIII(B) items required to support its forces.

10. Class IX (Repair Parts). UAE TF may requisition repair parts for its aircraft or ground equipment using its ULLS-A and ULLS-G accounts, respectively.

#### E. SERVICES.

1. Base Operations (BASOP) Support. USAREUR will ultimately provide the UAE TF with billeting, bath/shower and laundry support at a quality consistent with that provided US forces.

2. Mortuary Affairs. The UAE TF will be responsible for all providing all aspects of mortuary affairs support in case of UAE TF fatalities.

3. Army/Air Force Exchange System (AAFES) and Morale, Welfare and Recreation (MWR) Support. Designated personnel will be authorized access to all AAFES and MWR facilities in the TF Falcon AOR.

4. Medical Services. USAREUR will provide UAE TF with medical support consistent with that provided US forces. The UAE TF will, however, be responsible for strategic aeromedical evacuation.

#### F. MAINTENANCE.

##### 1. Aircraft.

a. The UAE TF is responsible for all scheduled and unscheduled AVUM/AVIM-level maintenance.

b. The UAE TF is responsible for configuration control of its aircraft. USAREUR ICW UAE TF will install COMSEC/ASE "A" Kits in UAE TF AH-64s. "A" Kits will be installed prior to UAE TF's deployment if possible.

##### 2. Ground Equipment.

a. UAE TF is responsible for all organizational through depot level scheduled and unscheduled maintenance.

b. USAREUR will provide UAE TF with emergency vehicle recovery upon request.

#### G. COMMUNICATIONS SUPPORT.

1. The UAE TF will be responsible for bringing its aircraft to US communications standards.

2. The UAE TF will comply with US regulations regarding the use of US

provided communications equipment.

3. USAREUR will provide appropriate communications connectivity to the UAE TF SOF element.

**H. ADDITIONAL CONTRACT SUPPORT.**

1. The UAE TF may elect to establish contracts to provide, maintain and/or operate its facilities and equipment (e.g. to provide facilities for its headquarters, administrative support, storage, maintenance activities or other operational needs such as helipads and parking areas; or to augment its air/ground maintenance capabilities). UAE TF will process requests for contractor support through the TF Falcon Joint Acquisition Review Board (JARB).

2. Any interpreters and accounting personnel needed to support UAE TF will be provided by USAREUR under separate contract and reimbursed by the UAE TF.

**APPENDIX 1: Support Requirements to US Liaison Coordination Element (LCE)**

General: this appendix is intended to capture support requirements for the US LCE assigned to support UAE TF SOF Company. It is understood that the LCE is required for effective integration of the UAE TF SOF Company, and that the LCE would not be required but for the presence of the UAE elements. Accordingly, the UAE agrees to:

1. Reimburse the USSOCOM for transportation from USA to Kosovo Aerial Port of Embarkation and return of 15 USSOF personnel, plus their individual and organizational equipment.
2. Reimburse the USSOCOM for transportation to and from Kosovo Aerial Port of Embarkation of three M1114 HUMMVs.
3. Include the USSOF LCE as part of the UAE TF SOF DODDAC to capture cost for spare parts, consumables and maintenance.

**APPENDIX 2: Configuration of UAE Aircraft and Responsibilities**

<b>Configuration of UAE Aircraft</b>	<b>Responsible Party</b>
UAE Aircraft plumbed for ESSS Operations	UAE
Aux tank – One (1) per aircraft	UAE
Hellfire launchers – Two (2) per aircraft	UAE
Rocket pods – One per aircraft	UAE

SINGGARS – installation of 3 A Kits	USAREUR/CECOM/OLR
SINGGARS Radios – loan of two RT1476/ARC–201(V) or RT–1476A/ARC–201A(V) radios	USAREUR/CECOM/OLR
GPS – installation of antenna per aircraft	UAE
GPS – installation of LRU (B–kit) per aircraft	UAE
ASE– and COMSEC–equipment – installation B–kits	UAE
ASE– and COMSEC–equipment – loading/unloading data–keys	USAREUR
Fire Control Computer (FCC) – installation of higher standard equipment (–9 or higher) per aircraft	N/R EGI Equipped
Modification Work Orders for Turret Control Boxes	N/R EGI Equipped
Roundel marking	UAE
KFOR marking	USG
TEAC 8MM Video Recorders	UAE/CECOM (expedited delivery)
AMPS Map Data Base CDs	USAREUR

### **APPENDIX 3: Training Requirements for UAE Aviators Conducting Aviation Operations with US Army Aviators**

#### **1. References.**

- a. AR 95–1.
- b. TC 1–210.
- c. Applicable Aircrew Training Manual.

#### **2. Commanders Evaluation.**

a. Records review. The purpose is to assess previous aircrew qualification and training and to establish Individual Aircrew Training Folders (IATF) and Individual Flight Records Folders (IFRF).

b. If the folders already exist then they are to be inspected by the gaining unit to insure records standardization and to make the appropriate assignment entries.

c. Commanders will verify that previous relevant qualifications and training are properly documented on the appropriate forms prior to any flights with UAE aviators.

3. **Gunnery Training.** The UAE aviators will meet the same requirements per TC 1–210 and FM 1–140 as the US Army aviators, including a live–fire Table VIII.

4. **Aircrew Coordination Training (ACT).** The UAE aviators will be ACT trained using the US Army ACT program of instruction (POI). Documentation of having completed the US Army ACT training within the previous year is sufficient. If it has been more than one year since completing the US Army ACT training a refresher academics class is required.

5. **Continuation Training.** UAE aviators will meet the same Readiness Level (RL) 1 continuation training requirements as the US Army aviators while assigned to the US unit.

6. **Authorization for Flight.** Only the Aviation Task Force Commander (LTC or above) will approve the mixing of US and UAE aircrews for orientation flights, missions and maintenance test flight purposes.

a. Only US Instructor Pilots (IPs or SIPs) or Maintenance Test Pilots (MTPs) will be authorized to fly in an UAE aircraft.

b. UAE aviators may only fly US aircraft with a US Instructor Pilot (IPs or SIPs) or a US Maintenance Test Pilot (MTP).

#### I. **TAB 1, APPENDIX 3: UAE TRAINING ASSISTANCE PLAN**

1. The UAE training assistance will take place in two phases. The first phase (time permitting) will be given to the entire UAE Aviation TF in their home station in UAE. The second phase will consist of a 5-10 day period in Camp Able Sentry (CAS), Former Yugoslavian Republic of Macedonia (FYROM) dedicated to formal “right seat” rides to familiarize the UAE pilots and leadership with the mission, routes and procedures for supporting the Aviation Task Force.
2. Phase One is envisioned to be based around 16 hours of orientation, instruction and “round table discussion” in UAE. The briefing team would consist of the USAREUR Aviation Assistance Team - Corps Aviation Safety & Standards Division (CASSD). The broad topic areas included in Phase One are as follows:
  - a. General Area Data Video and/or photos of:

- (1) Camp Able Sentry (CAS)

- (2) Camps Bondsteele/Monteith
  - (3) Skopje Airfield
  - (4) Living conditions in general
  - (5) Video/Photo Tour of US AOR
  - (6) Weather extremes (winter and summer)
- b. Theater Specific Aviation Topics
- (1) Mountain Flying Techniques
  - (2) Aircrew Procedural Guide (APG) – Copies provided
  - (3) KFOR Landing Sites
  - (4) Map Preparation
    - (a) Map Issue (6-8 sets) if available, 1:50,000, 1:100,000, & 1:250,000
    - (b) Hazard Overlay
    - (c) Route/Check Point Overlay
  - (5) SPINS/ACO/ATO/NOTAMS (Declassified Copies for instructional purposes)
  - (6) Rules of Engagement (unclassified overview only)
  - (7) Communications Plan
- c. Individual Aviator Topics
- (1) Records Review
  - (2) ISOPREP Instruction (to be filled out in CAS)
  - (3) SAR Procedures
  - (4) PRC-90 and PRC-112 Operations
  - (5) Handheld (Garmin) GPS overview
  - (6) Aircrew Coordination Training (ACT) – Given by TAFT if possible
  - (7) Unique aspects of Performance Planning (PPC) for Kosovo

- d. AH-64 Specific topics
  - (1) Intro to KFOR mission
  - (2) Mission Video Tapes
  - (3) Aircraft Survivability Equipment (ASE) use (dependant on configuration)
  - (4) Mission Profiles:
    - (a) Performance
    - (b) Blackout Operations
    - (c) 2-1/1-1 Avn TACTICAL SOPS
    - (d) Terrain and Weather Issues
    - (e) Lessons Learned
    - (f) Ammunition Configuration
    - (g) FARP operations
    - (h) ERFs Qualification and Flight
- 3. Phase Two – Will consist of detailed mission overview, route review culminating in formal “right seat rides” given by US AH-64 instructor pilots to the UAE pilots in UAE aircraft. Additional subjects will include: inter alia, Condensed Individual Readiness Training (IRT), weapons clearing/safety, Heat/Cold injury training, SAR Review, and Classified ROE briefings.
- 4. The above POI is not all-inclusive and is subject to mutually agreed upon modifications.

## APPENDIX IV-35: JARB OPERATIONS

### CONTINGENCY OPERATIONS FINANCIAL MANAGEMENT IMPLEMENTING INSTRUCTIONS

**1. Purpose.** Proper stewardship is vital in preserving resources for future use. In order to ensure that requirements for contingency operations are reviewed at the appropriate level, a Joint Acquisition Review Board (JARB) process will be utilized. The JARB ensures that all expenditures are for bona-fide needs and reflect the Best Value to the United States to accomplish the mission and achieve required standards.

**2. The Process.** The JARB performs several functions and will review all requirements that may cost **\$2,500.00** or more, as defined by this guidance, in the area of responsibility (AOR). The JARB is responsible for:

- Validating the requirement
- Making a source selection utilizing the Best Value to the United States Government. Available methods are, but not limited to:
  - Host Nation Support
  - Troop Labor
  - Local Purchase through the Joint Contracting Center (JCC)
  - Balkan Support Contract
  - USAREUR Engineering Logistics Center
- Ensuring that inappropriate or unauthorized purchases are not processed
- Documenting the validation and source selection process

**3. Establishment of JARBs.** JARBs will be established in Taszar, Hungary; Tuzla, Bosnia; Skopje, FYROM; Camp Bondsteel, Kosovo, 21<sup>st</sup> TSC, and other locations as required. Meetings will be held as required, usually on a weekly basis but at least once per month.

**4. Process Standardization to Validate Requirements.** Items required to be submitted to the JARB. All requirements projected to cost **\$2,500.00** or more must be reviewed and approved by the JARB prior to commitment of funds. Examples of such requirements that must be boarded are as follows:

- All commercial acquisitions (e.g., PR&Cs) \$2,500.00 or more (decision is that all items on CTA, TDA, etc., that need to be purchased outside normal supply channels need to be “JARB’ed.” The reason for this is that even though the purchase is authorized, it may not be necessary or may be available within an Army system rather than via a PR&C).
- All procurements using bulk-funded PR&Cs. Unless specifically addressed by the JARB in their approval, approval of a bulk-funded PR&C for future requirements is not a blanket approval of all future requirements that are \$2,500 or more using bulk funds.
- All Balkan Support Contract work orders.
- All construction, repair and maintenance requirements.
- All new leases and lease renewals or execution of options.
- All new service contracts and service contract renewals or execution of options.
- All changes to previously approved projects with a net cost growth of 25% or more to the initially approved project.

**A. Sample JARB Packet.** An instructional packet entitled “Requirement Nomination Packet” will be developed by the JARB Secretary [the JARB Secretary may be the G4, Base Camp Coordinating Agency (BCCA), or the ENGR as determined by the TF Commander] and made available to all Requiring Activities (RAs) and Camp Mayors by the local JARB’s secretary (see Enclosure 1). The JARB Secretary is the point of contact responsible for assembling packets and coordinating meetings.

**B. Identification of Costs.** The total value of all resources used in meeting a requirement, even those costs provided within the current O&M budget, must be included in the estimated cost of a requirement. The total life cycle costs of the requirement must also be included. The government estimated cost should be a reasonable estimate of the projected contracted cost. Other factors to be considered in life cycle costing are the incremental cost to: award, administer, and control the contract and contractor along with the incremental cost to order, receive, stock, and account for additional inventory. These incremental costs do not necessarily need to be actually computed but considered in the total life cycle evaluation. **The time spent in identification of the life cycle costs should be proportional to the value or criticality of the project being considered.**

**(1) Life Cycle Costing.** When establishing the total cost of a requirement, requesting activities and board members will consider all life cycle costs. Life Cycle costing includes start-up (including the cost of all resources consumed), sustainment, and termination costs for a project. Some commonly neglected costs requiring consideration are: repairs to bring a facility up to standards, shipment into and out of theater, and contract initiation and termination costs. Interoperability with existing systems must be considered.

**(2) Cost Benefit Analysis.** In order to ensure prudent use of procurement options, requesting activities and board members will evaluate several courses of action to accomplish a mission goal. The advantages and disadvantages of each option will be carefully quantified and compared. Historical data should be used to estimate costs when available. The most effective, and not necessarily the cheapest, course of action should be selected. The final analysis will be which alternative or source provides the best value to the United States Government.

**C. Units / Staff Sections.** Each unit commander/ staff section OIC has the authority to approve the commitment of funds under \$2,500.00. The RM will provide oversight of these activities' PR&Cs to ensure the appropriate commitment of funds.

## **5. Joint Acquisition Review Board (JARB).**

**A. JARB.** The local body responsible for reviewing and validating requirements is the JARB. There are two steps in the JARB process: Step One is the requirement's validation. Step Two is source selection. The appropriate G4 or BCCA chairs the JARB.

**(1) Step 1- Requirements Validation.** The JARB validates the requirement and funds availability (some requirements are approved as an Unfinanced Requirement (UFR) if they are essential and funding is not available). The requestor, or a designated representative, may be required to answer questions from the board. Ad Hoc advisors will be invited as non-voting members at the discretion of the Chair. These advisors will not include prospective contractors. A prospective contractor may be invited to the JARB to answer specific questions posed by the committee, but he or she will be excused after all questions have been answered. The JARB shall not release or disclose to a contractor any information, particularly cost and price data, provided by another contractor in response to the JARB's questions. This is to protect the confidentiality of information and cost and pricing data obtained from different contractors, which is not releasable to other parties who are not directly connected with the contracting process or the JARB. If questions concerning the requirement remain after the JARB review, all efforts will be made to contact the Requiring Activity (RA) for clarification.

**(2) Step Two – Method of Satisfying the Requirement.** The JARB must recommend a method of satisfying the requirement. The board must document the validation and document the basis for selecting either Host Nation Support, Troop Labor, Local Purchase, or the Balkan Support Contract (for example) as the means to acquire the service/supply. For projects estimated **under \$10,000.00**, the documentation may be a summarized statement

that the board considered all life cycle costs, validated the compelling requirement of the project, and determined the recommended source as the best value to the United States Government. For projects with an estimated life cycle cost of **\$10,000.00 or over**, the board must maintain a written summary of the justification used to validate and to select the method of satisfying the requirement. The JARB is not required to select the lowest cost method, but shall consider all factors including price/cost, and make the best business decisions considering all factors. For example, some of the factors to be considered (in addition to price) could be, does the Task Force have sufficient trained resources to do the following:

- Properly write a statement of work or specifications
- Provide contractor escort
- Perform COR or COTR duties
- Administer the contract
- Interoperability with existing systems – consider such things as additional spare parts stockage, connectivity, operational and maintenance requirements, etc.
- Validated required operational / delivery date

#### **B. Independent Government Estimate (IGE) versus a Rough Order of Magnitude (ROM)**

- An Independent Government Estimate (IGE) will be prepared by the requestor using available historical data such as final cost data for previous like project (available from the BCCA / DCSENG or the ACO). Additionally the BCCA / DCSENG can assist the requestor with unique construction projects.
- A Rough Order of Magnitude (ROM) will not be used as an IGE. If the ACO suspects a ROM is going to be used as an IGE the ROM will NOT be requested.

**C. JARB Recommendation.** The JARB has the authority to recommend approval / disapproval and source selection on every project it reviews, regardless of the dollar amount. Each member will have a single vote, and the final decision will be by a simple majority.

#### **(1) Voting members will be as follows:**

G4/J4  
 Base Camp Coordinating Agency (BCCA) / Director of Public Works (DPW)  
 Engineer  
 Camp Mayor(s)  
 RM  
 JCC Representative (must be present at all JARB meetings)  
 G3/J3

#### **(2) Advisors without vote:**

G1/J1  
 G6/J6  
 IRACO  
 Safety  
 JCC Contract Lawyer or SJA  
 DCMA Administrative Contracting Officer (ACO) (must be present at all JARB meetings)  
 Property Book Officer  
 Contractor (called in only to answer specific questions and then be dismissed for remainder of meeting)

\* JARB Members should be the primary staff or deputy.

**D. Board Members.** During the JARB, board members should be actively involved in pursuing the validity of a requirement; ensuring its purchase benefits the operation in the long run. Board

members should research the issues to be voted prior to the JARB. For instance, if an issue involves the purchase of a computer, it's important to ask the DCSIM/IMO/G6/J6 if there are excess computers or if IMAR numbers have been requested. The following are some examples of questions that should be asked by board members during the JARB:

- What is the funding source for the requirement?
- Was this item in your budget?
- How have you gotten along without it for so long?
- Why is this a valid requirement?
- Is there any similar excess property available in the TF, or in another command or agency that could fill the need?
- When considering construction and facility renovation projects, are temporary construction/Red Book Standards and a 3-5 year planning horizon being used?
- Why is the requested quantity needed, and why can't you get by with fewer?
- Why won't a cheaper version suit the need? (Remember that cheaper sometimes means more expensive in the long run, if lower quality products must be replaced more quickly)
- Is the vendor or contractor you recommend the best source/only source you looked at?
- Is this part of a larger project? Will any other purchases need to be made to produce a complete and useable facility, or to produce a complete and functional system?
- Can the item/materials be harvested if we move?
- Do you realize that when you leave here that the property will not go with you and that it stays here with the TF?

**E. Walk-Through or Emergency JARB.** Should a requirement be of such a nature that calling an emergency JARB meeting or waiting for the next JARB will damage the mission of the Task Force, that requirement will go directly to the OJA to validate legal sufficiency and then to the Chief of Staff for his approval or disapproval. These should be extremely rare. Requirements are not to be partially JARB'd (e.g., getting four yes votes and bypassing the other three members). The JARB secretary will include all requirements that are not presented before the full and open JARB, in the minutes of the next JARB. These requirements will be accompanied by written rationale as to the reason the requirement was so urgent and compelling that the JARB procedures had to be bypassed (see Para. 14 for distribution of these minutes).

**F. Chief Of Staff.** Requirements recommended for approval will be submitted to the Chief of Staff or General Officer (depending on dollar value) for approval. Records of the meetings, recommendations and acquisition sourcing of each meeting will be recorded and maintained by the JARB Secretary. The Secretary will schedule meetings, provide advance packets to board members, provide assistance for requestors in the development of their packets, and routinely assess the efficiency and effectiveness of the JARB process.

**G. Legal Review.** All requirements that are recommended for approval by the JARB will be reviewed for legal sufficiency by either the JCC Contract Lawyer or a Staff Judge Advocate with fiscal law expertise. The JARB will not approve a requirement that is determined to be legally objectionable. Legal issues concerning the Balkan Support Contract should be staffed concurrently through the JCC, the Administrative Contracting Officer (ACO), and the USAREUR Office of the Judge Advocate, ATTN: AEAJA-KL, for coordination with the US Army Corps of Engineers Transatlantic Programs legal advisor.

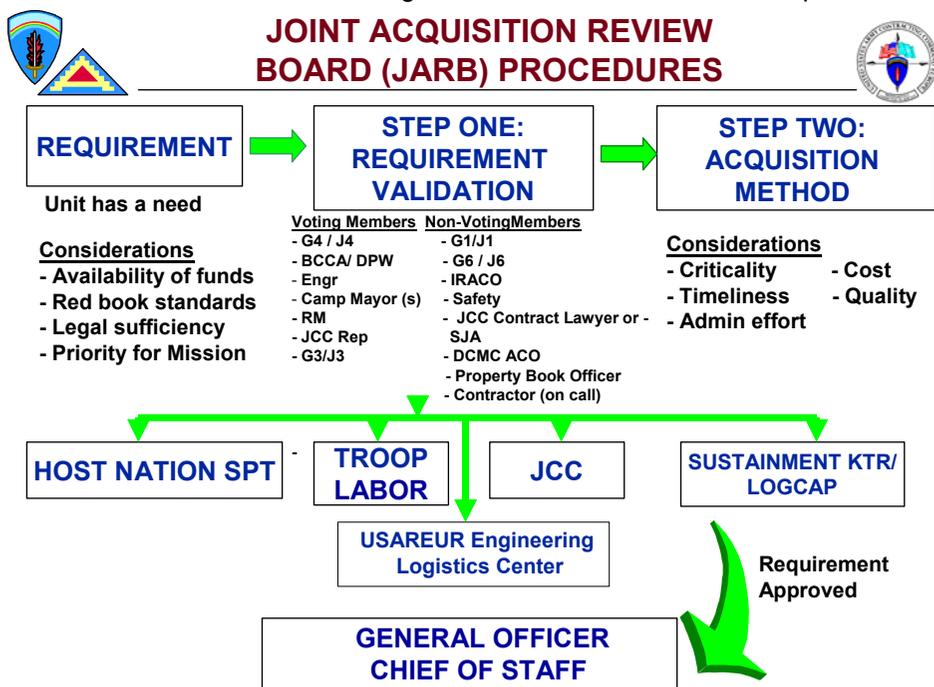
**H. Building Initial JARB Program.** USAREUR Staff Program Managers (PM), upon receipt of an initial or modified OPLAN, will begin building their JARB Program for contingency operations.

**I. Modifying the Implementing Instructions.** Recommended changes to the JARB procedures will be submitted to the Program and Budget Division, USAREUR DCSRM.

**J. ROLE OF THE JCC and ACO Representatives:** The JCC and the ACO are the acquisition expert

advisors to the JARB **and must be present at all JARB meetings**. The JARB must consider the advice rendered. The JCC representative is the only Independent Government Source of information on local contractors, local business climate, and local business conditions. Additionally he can draw upon the resources of US Army Contracting Command - Europe. The ACO is the JARB's expert advisor in the capabilities of the Balkans Support Contractor and the scope of the contract. A summary of the JCC Representative and ACO's comments must be attached to the JARB minutes should the JARB's recommendation run contrary to the expert advice provided.

**K. Flow Chart.** The following flow chart shows how the JARB process works:



**6. BALKAN SUPPORT CONTRACT REQUIREMENTS.**

**A. Funding Approval Levels.** The local Chief of Staff has authority to approve Balkan Sustainment Contract requirements recommended by the JARB costing under \$50K. All Balkan Support Contract requirements costing \$50K or more must be forwarded to USAREUR ODCSLOG for approval/disapproval. (See Enclosure 2).

**B. New Work.** New work is defined as either construction projects or contractual services that the task force requires. The following are the types of projects funded under the category of new work: construction; services (Custodial, administrative, etc.); movement of facilities, structures special equipment; replacement of a military function with a commercial contract; consultation or special expertise not resident in the task force. At the beginning of each FY, ODCSRM provides TF commanders with annual new work funding targets for projects to be completed during the FY. The TF will decide whether to use the Balkan Sustainment Contract or an independent contractor to execute new work projects. If the Balkan Sustainment Contract is used, the Task Force will submit funding to ODCSLOG; and if an independent contractor is chosen, a contract will be awarded though the JCC or other contracting agency. Once approved by the JARB, new work projects will be processed IAW ODCSRM Memorandum, SUBJECT: Funding Policy and Procedures for FY01 New Work in Deployed AOR's (Change 1), dated 1 February 2001.

**7. ALL OTHER REQUIREMENTS.** All other requirements (Non – Balkan Support Contract) will be processed IAW USAREUR Memorandum, SUBJECT: Approval of OMA USAREUR-Funded Purchase Requests and Commitments and Military Interdepartmental Purchase Request Requirements, dated 26 January 2000 (see Enclosure 4; Note: this memorandum, which provides internal controls on approval levels, is currently under review to determine whether it will be updated or discontinued). Regardless of the status of USAREUR guidance on PR&Cs, all requirements in excess of \$2,500, generated by the TF and those generated by HQ, USAREUR in support of the deployed AOR that use USAREUR CONOPS

funds, will be submitted to the JARB for review. These requirements must be JARB'd at the appropriate AOR and forwarded to the appropriate USAREUR Staff office for coordination and approval as required. The following USAREUR Agencies are the proponents for requirements as specified:

<u>REQUIREMENT</u>	<u>PROPONENT (USAREUR Agency)</u>
Personnel / MWR	ODCSPER DSN: 370-9623/9626
Intelligence	ODCSINT DSN: 370-7846/6773
Operational / Training	ODCSOPS DSN: 370-8944/8104
Logistical	ODCSLOG DSN: 370-1962/9004
Communications	ODCSIM DSN: 370-9126/7070
Medical	OSURG DSN: 370-2010/2190
Construction, building renovation, repair	ODCSENGR DSN: 370-1915/8935

Each proponent will first review the requirement to verify whether other USAREUR agencies, or Balkan Sustainment Contract (ODCSLOG), are involved. If this is the case, the proponent receiving the JARB packet from the Task Force will coordinate with other agencies involved to ensure total USAREUR-level visibility in the approval process. For example, all construction, building renovation and repair projects costing \$50,000 or more must be forwarded to ODCSENGR who will coordinate with other agencies as required. Also, if the Task Force JARB's a requirement to construct a new training facility, it will submit the requirement to ODCSOPS (since it is training focused) for coordination with ODCSENGR. Attempts to bypass the JARB process (i.e., obtaining Approving Officer signature from Central Region and the processing the requirement through the Contracting Office without JARB review) violate the intent of the JARB Implementing Instructions and are subject to USAREUR level inquiry.

#### **8. REQUIRE PROPER IDENTIFICATION OF INVOICES / FREIGHT WARRANTS BEFORE PAYMENT.**

Standard Operating Procedures (SOPS) must direct that invoices / freight warrants be certified by the MCT before being submitted to finance for payment. The commander must designate certifying officials. As an additional check and balance, verification of this procedure should be incorporated into the Command Inspection Process Checklist.

**9. DISBURSING FINANCE OFFICE PROVIDE COPIES OF PAYMENT VOUCHERS TO LOCAL RESOURCE MANAGEMENT OFFICE.** In addition to providing a copy of all payment vouchers to the responsible contracting office at the time of disbursement, the disbursing finance office will also provide a copy of all payment vouchers to the responsible RMO.

**10. INVOICES ITEMIZED AND TRANSLATED INTO ENGLISH PRIOR TO ACCEPTANCE.** Qualified interpreters will provide translations of all current financial documents (written in the Host Nation language) to accompany original documents when submitted to finance for payment. This translation will eliminate any potential controversy concerning the legitimacy of transactions and reduce the processing time.

#### **11. JCC CONTRACTING OFFICER'S REPRESENTATIVES (CORs) CONDUCT A MONTHLY RECONCILIATION, IAW USAREUR Reg. 715-3.**

**A. JCC Responsibilities.** The JCC will ensure that the designated Contracting Officer's Representative (COR) performs all duties IAW USAREUR Reg. 715-3 and the COR appointment Letter.

**B. COR.** The COR will verify that the contractor is performing in accordance with the requirements of the contract term, conditions and specifications, to include delivery expectations. Commanders/supervisors must allow appointed CORs to devote sufficient time to perform their COR duties. In some instances, this may require 25% of the individuals' duty time.

**12. LEADERS RECEIVE TRAINING ON BASIC CONTRACTING PROCEDURES.** The JCC will prepare and provide informational instructions to all newly arriving LTCs (and above) and PR&C

Approving Officers. This information must clarify the “do’s and don’ts” of dealing with contractors and contracts; specific rules on ethics and Standards of Conduct; and Contracting Office Points of Contact.

**13. REQUIRING ACTIVITY REPRESENTATIVES “RIGHT SEAT” THE JARB.** Actively identify new personnel rotating into the Area of Responsibility who may be assigned to positions requiring them to submit Requirement Nomination Packets to the JARB. Ensure these individuals are exposed to the JARB as a part of their Right Seat In-processing.

**14. REPORTING RESPONSIBILITIES.** A Copy of all JARB minutes with appropriate signatures affixed must be provided electronically to Balkans Support Contract Program Manager’s Office, the S-3, USACC-E, and USAREUR DCSRM Budget Execution Branch within 24 hours of signature.

**APPENDIX IV-36: HUMANITARIAN ASSISTANCE FUNDING MESSAGES**

Originator: USCINCEUR VAHINGEN GE//ECJ4// 9 of 15  
DTG: 131310Z Aug 99 Precedence: P DAC: General

Subject: **USKFOR PROGRAM APPROVAL AND FUNDING FOR URGENT HUMANITARIAN** [Format for Printing](#)

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PATUZYUW RUFGNOA0830 2251332-UUUU--RUFGNOA.  
ZNR UUUUU  
P R **131310Z AUG 99** FM USCINCEUR VAHINGEN GE//ECJ4//  
TO RUFDAAA/CDR USAREUR HEIDELBERG GE//AEAGC-O//  
INFO RUFDAVC/CDR V CORPS HEIDELBERG GE//AETV-GCO//  
RUEKJCS/SECDEF WASHINGTON DC//USDP//  
RUEKJCS/JOINT STAFF WASHINGTON DC//DJS/J5/J4/ILED//  
RUEKJCS/SECDEF WASHINGTON DC//SOLIC:PK/HA/DSCA:HA//  
RUFDTFA/CDR TASK FORCE FALCON  
RUFGNOA/USCINCEUR VAHINGEN GE//ECJ4-ID/EN/ECMD/ECJA/ECCM/ECJ5-E/  
ECJ6//  
RUETIED/HQ USAREUR HEIDELBERG GE//AEAGF//  
BT  
UNCLAS  
SECTION 1 OF 2  
SUBJ:USKFOR PROGRAM APPROVAL AND FUNDING FOR URGENT  
HUMANITARIAN  
NEEDS  
REFS: A. (S) CDR V CORPS MSG 031831Z AUG 99 SUBJ: REQUEST FOR \$5  
MILLION IN DOD QUICK DISBURSEMENT FUNDS FOR TASK FORCE FALCON  
HUMANITARIAN PROJECTS IN KOSOVO  
B. THE UNDER SECRETARY OF DEFENSE LTR DATED 6 AUG 99, SUBJ: USKFOR

PAGE 2 RUFGNOA0830 UNCLAS  
FUNDING FOR URGENT HUMANITARIAN NEEDS  
1. IN RESPONSE TO REF A, OSD APPROVED THE REQUEST FOR \$5M TO BE  
USED FOR URGENT HUMANITARIAN ASSISTANCE PROJECTS ONLY IN THE U.S.  
CONTROLLED SECTOR OF KOSOVO. THE COST FOR ANY INDIVIDUAL PROJECT  
SHOULD NOT EXCEED \$300K. FUNDS WILL BE PROVIDED BY DSCA  
THROUGH DEPARTMENT OF THE ARMY TO CG USAREUR. THESE FUNDS  
WILL BE AVAILABLE FOR OBLIGATION UNTIL 30 SEP 00. USEUCOM IS  
DESIGNATED THE EXECUTIVE AGENT FOR DOD HUMANITARIAN ACTIVITIES IN  
KOSOVO. HQ USAREUR IS DESIGNATED THE EXECUTIVE AGENT FOR THE  
EXECUTION OF THE \$5M PROGRAM AUTHORITY FOR URGENT HUMANITARIAN  
PROJECTS WITHIN THE USKFOR SECTOR. THIS \$5M INCLUDES ALL FUNDS  
AVAILABLE FROM THE LEGAL AUTHORITIES CONTAINED IN PARA 2.

CENTER FOR LAW AND MILITARY OPERATIONS

2. DOD HUMANITARIAN ASSISTANCE PROJECTS ARE SANCTIONED UNDER THREE DIFFERENT LEGAL AUTHORITIES AS SUMMARIZED BELOW.

NO ASSISTANCE TO MILITARY OR PARAMILITARY ORGANIZATIONS IS PERMITTED. PROJECTS TO BE EXECUTED MUST USE ONE OF THE LEGAL AUTHORITIES AND FIT UNDER ONE OF THE FOLLOWING APPROVED CATEGORIES: ESSENTIAL REPAIRS OF SCHOOLS, REPAIR OF ELECTRICAL GRIDS, MEDICAL SUPPORT AND SUPPLIES, URGENT HUMANITARIAN HOUSING NEEDS, REPAIR OF WATER TREATMENT PLANTS, REPLACEMENT/REPAIR OF FIRE

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AND SANITATION TRUCKS AND PROVIDING DIESEL FUEL TO FARMERS.

A. SECTION 401, TITLE 10, U.S. CODE ESTABLISHES THE HUMANITARIAN AND CIVIC ASSISTANCE (HCA) PROGRAM. THIS ALLOWS U.S. FORCES, IN CONJUNCTION WITH ONGOING MILITARY OPERATIONS, TO PERFORM SMALL-SCALE RUDIMENTARY HUMANITARIAN PROJECTS. SUCH ACTIVITIES MUST PROMOTE THE SECURITY INTEREST OF THE U.S. AND THE COUNTRY IN WHICH ACTIVITIES ARE CARRIED OUT, AS WELL AS THE OPERATIONAL READINESS SKILLS OF PARTICIPATING U.S. FORCES. MILITARY UNITS ATTACHED TO CDR TF FALCON COULD CARRY OUT PROJECTS, SUCH AS RUDIMENTARY REPAIR OF SCHOOLS, PUBLIC BUILDINGS, OR MEDICAL CLINICS AND/OR THE PROVISION OF BASIC MEDICAL CARE IN RURAL AREAS, UNDER THIS AUTHORITY. IF A GIVEN PROJECT IS EXECUTED THROUGH THE HCA PROGRAM, U.S. MILITARY FORCES MUST PROVIDE THE ACTUAL LABOR. BUILDING MATERIALS AND OTHER INCREMENTAL COSTS INCURRED FOR PROJECTS

PERFORMED UNDER SECTION 401 AUTHORITY ARE TO BE FUNDED FROM ARMY OPERATIONS AND MAINTENANCE (O&M) ACCOUNTS. CDR TF FALCON CAN EXECUTE IMMEDIATELY THOSE PROJECTS APPROVED IN THIS MESSAGE, WHICH COMPLY WITH HCA REQUIREMENTS AND FALL WITHIN APPLICABLE FUNDING LIMITS WITHOUT WAITING FOR SUPPLEMENTAL FUNDING, SINCE AVAILABLE O&M CAN BE USED IN THE

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SHORT TERM. IN ACCORDANCE WITH SECTION 401 TITLE 10 USC, CDR TF FALCON MUST COORDINATE PROJECTS WITH USAID AND STATE DEPARTMENT TO ENSURE THE ACTIVITIES COMPLEMENT, AND DO NOT DUPLICATE, ASSISTANCE PROVIDED BY OTHER USG AGENCIES.

SUCH O&M EXPENDITURES MAY BE REIMBURSED FROM THE SUPPLEMENTAL FUNDS AVAILABLE TO DOD FOR HUMANITARIAN ASSISTANCE IN THE REGION.

B. SECTION 2547, TITLE 10, USC PROVIDES THE AUTHORITY TO MAKE AVAILABLE FOR HUMANITARIAN RELIEF PURPOSES, THROUGH THE STATE DEPARTMENT, ANY NON-LETHAL EXCESS SUPPLIES OF THE DEPARTMENT OF

DEFENSE. THIS INCLUDES SHIPMENTS OF SUPPLIES AND EQUIPMENT TO DESIGNATED ORGANIZATIONS.

C. SECTION 2551, TITLE 10, USC PROVIDES AUTHORITY FOR DOD TO CARRY OUT BROADER, MORE EXTENSIVE HUMANITARIAN ASSISTANCE PROJECTS.

PROJECTS WHICH USE CONTRACTORS, INCLUDE THE PURCHASE OF END ITEMS OTHER THAN THOSE USED IN CONNECTION WITH SECTION 401 HCA ACTIVITIES, OR INVOLVE THE PROVISION OF TRAINING OR TECHNICAL ASSISTANCE FOR HUMANITARIAN PURPOSES, WOULD BE CARRIED OUT UNDER THIS AUTHORITY. THE AUTHORITY CAN ALSO BE USED TO PROVIDE TRANSPORTATION OF HUMANITARIAN RELIEF SUPPLIES USING DOD ASSETS OR RESOURCES. INFRASTRUCTURE IMPROVEMENTS APPROVED BY THIS MESSAGE

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SHALL BE LIMITED TO RUDIMENTARY CONSTRUCTION AND BASIC REPAIRS. SALARIES AND OTHER SUPPORT COSTS FOR LOCAL ADMINISTRATION (INCLUDING POLICE, FIRE, AND MEDICAL PERSONNEL) ARE NOT AUTHORIZED.

3. THIS PARAGRAPH CONTAINS SPECIFIC GUIDANCE FOR PROJECTS WITHIN THE SEVEN APPROVED CATEGORIES LISTED IN PARA 2 ABOVE AND ARE EXPANDED BELOW:

A. ESSENTIAL REPAIRS FOR SCHOOLS: THIS IS ONE OF THE MOST STRAIGHTFORWARD AND COMMON USES OF DOD HUMANITARIAN ASSISTANCE. THESE PROJECTS CAN BE JUSTIFIED UNDER EITHER SECTION 401 (IF REPAIRS ARE ACCOMPLISHED BY U.S. FORCES) OR SECTION 2551 (IF CONTRACTS ARE USED).

B. REPAIR OF ELECTRICAL GRIDS (CATEGORY FUNDING LIMIT - \$600K) DOD ASSISTANCE MAY BE PROVIDED TO CARRY OUT RUDIMENTARY REPAIRS TO ELECTRICAL SYSTEMS, RATHER THAN TO MAKE IMPROVEMENTS WHICH WOULD ENHANCE SERVICE TO A LEVEL HIGHER THAN IN PRE-WAR KOSOVO.

PROCEDURES

MUST BE IN PLACE TO ENSURE REPAIRS TO GRIDS IN UROSEVAC, GNJILANE, AND STRPCE COMPLY WITH THESE GUIDELINES.

C. MEDICAL SUPPORT AND SUPPLIES: USE OF DOD FUNDS FOR THESE FUNCTIONS IS WELL ESTABLISHED. PROVISION OF DIRECT MEDICAL CARE BY U.S. MILITARY PERSONNEL IN RURAL AREAS WOULD NORMALLY BE DONE USING

PAGE 6 RUFGNOA0830 UNCLAS

SECTION 401 AUTHORITY TO FUND THE INCREMENTAL COSTS OF SUPPLIES AND MATERIALS. PURCHASE OF EQUIPMENT UNCONNECTED TO DEPLOYMENT OF MILITARY PERSONNEL, OR MEDICAL CARE PROVIDED IN NON-RURAL AREAS WOULD NORMALLY BE CARRIED OUT UNDER SECTION 2551 AUTHORITY.

PURCHASE OF MEDICAL EQUIPMENT SHOULD BE CAREFULLY EVALUATED IN ADVANCE TO ENSURE THAT EQUIPMENT IS PROVIDED TO PUBLIC FACILITIES,

CENTER FOR LAW AND MILITARY OPERATIONS

IS AT AN APPROPRIATE LEVEL OF TECHNOLOGY FOR KOSOVO FACILITIES, AND CAN BE PROPERLY MAINTAINED AND OPERATED BY LOCAL PERSONNEL IN THE FUTURE. IT IS ALSO CRITICAL TO NOTE THAT THERE IS A STATUTORY LIMIT OF \$100,000 FOR ANY ONE END ITEM/PIECE OF EQUIPMENT PURCHASED WITH DOD HUMANITARIAN FUNDS. CDR TF FALCON SHOULD ALSO EXPLORE OPPORTUNITIES TO BUILD OR REPAIR PUBLIC HEALTH CLINICS USING THIS FUNDING.

D. URGENT HUMANITARIAN HOUSING NEEDS: PROJECTS WITHIN THIS CATEGORY MUST BE FOR IMMEDIATE, TEMPORARY REPAIR AND WINTERIZATION OF DAMAGED STRUCTURES. NEW CONSTRUCTION, IMPROVEMENTS, OR PERMANENT

REPAIRS ARE NOT AUTHORIZED UNDER THIS CATEGORY.

E. REPAIR OF WATER TREATMENT PLANTS (CATEGORY FUNDING LIMIT - \$150K): DOD ASSISTANCE MAY BE PROVIDED ONLY TO CARRY OUT RUDIMENTARY REPAIR, RATHER THAN TO IMPROVE WATER SYSTEMS BEYOND

BT

#0830

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Originator: CDR USAREUR DCSOPS HEIDELBERG GE//AEAGC-O// 2 of 13  
DTG: 201153Z Aug 99 Precedence: P DAC: General

Subject: **USKFOR FUNDING FOR URGENT HUMANITARIAN NEEDS** [Format for Printing](#)

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PATUZYUW RUFDAAA3151 2321632-UUUU--RUFGNOA.  
ZNR UUUUU ZUI RUFDMHS2701 2321633  
P **201153Z AUG 99** FM CDR USAREUR DCSOPS HEIDELBERG GE//AEAGC-O//  
TO RUFDTFA/CDR TASK FORCE FALCON//CDR/G3/G5/POLAD//  
RUFDAVU/CDRVCORPS HEIDELBERG GE//AETV-CS/AETV-GC/AETV-GCP/AETV-  
GCO/AETV-GD//  
INFO RUFGNOA/USCINCEUR VAIHINGEN GE//ETCC/ECJ3/ECJ33/ECJ35/ECJ4/ECJ5  
/ECJ8//  
RUFDMOU/CDRUSAREUR DCSOPS HEIDELBERG GE//AEAGC-O//  
RUFDAAU/CDRUSAREUR HEIDELBERG GE//AEAEN/AEAGF/AEAIG/AEAJA/AEAMD  
/AEAPA/AEAGA//  
BT  
UNCLAS  
SUBJ:USKFOR FUNDING FOR URGENT HUMANITARIAN NEEDS  
USAREUR MESSAGE #9908109  
REF/A/ (S) CDR V CORPS MSG 031831Z AUG 99, SUBJ: REQUEST FOR \$5M IN  
DOD QUICK DISBURSEMENT FUNDS FOR TASK FORCE FALCON HUMANITARIAN  
PROJECTS IN KOSOVO

REF/B/ THE UNDER SECRETARY OF DEFENSE LTR DATED 6 AUG 99, SUBJ  
USKFOR

FUNDING FOR URGENT HUMANITARIAN NEEDS

REF/C/ USCINCEUR MSG 131310Z AUG 99, SUBJ: USKFOR PROGRAM APPROVAL  
AND FUNDING FOR URGENT HUMANITARIAN NEEDS

1. DCSA HAS PROVIDED, THROUGH DEPARTMENT OF THE ARMY, TO USAREUR  
\$5M  
TO BE USED FOR URGENT HUMANITARIAN ASSISTANCE PROJECTS. FUNDS ARE  
TO  
USED FOR PROJECTS IN THE U.S. CONTROLLED SECTOR OF KOSOVO ONLY.

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THIS

IS A ONE-TIME ALLOCATION FOR TASK FORCE FALCON PROJECTS IN KOSOVO.

2. USAREUR ODCSRM WILL PROVIDE THESE FUNDS TO V CORPS BY FUND  
ALLOCATION DOCUMENT. THE \$5M IS A TWO-YEAR APPROPRIATION. SPECIAL  
CONTROL MEASURES ARE REQUIRED FOR THE USE AND CONTROL OF THE FUNDS  
PROVIDED. TO CONTROL FUNDS, ENSURE PROPER USE AND FACILITATE  
REPORTING V CORPS ACSR M WILL INITIATE THE FOLLOWING MEASURES:

A. ESTABLISH ACCOUNT PROCESSING CODES (APCS) TO CAPTURE COSTS.  
RECOMMEND SEPARATE APCS FOR EACH AUTHORIZED PROJECT/CATEGORY  
OUTLINED

IN REFERENCE C.

B. IAW REFERENCE C, PARAGRAPH 4, V CORPS WILL CONSTRUCT A MONTHLY  
TIME PHASED OBLIGATION SPENDING PLAN FROM AUG 99 TO SEPT 00, NLT 1  
SEP 99.

C. FUNDS PROVIDED MAY ONLY BE USED TO LIMITS STIPULATED IN REFERENCE  
C AND REITERATED ON THE FAD.

3. USAREUR EXPECTS TO RECEIVE AN ADDITIONAL ALLOCATION OF  
HUMANITARIAN AND CIVIC ASSISTANCE (HCA) PROGRAM FUNDS, TO  
ACCOMMODATE

COSTS INCURRED WHICH ARE ALLOWABLE UNDER SECTION 401, TITLE 10, U.S.

PAGE 03 RUFDAAA3151 UNCLAS

CODE. THESE FUNDS ARE O&M AND ARE A ONE-YEAR APPROPRIATION. FUNDS  
WILL BE USED TO COVER COSTS INCURRED FOR SUPPLIES CONSUMED AND  
EQUIPMENT REPAIRS AS OCCUR IN THE EXECUTION OF AUTHORIZED PROJECTS.  
AUTHORIZED PROJECTS ARE OUTLINED IN REFERENCE C, PARAGRAPHS 3, A  
THRU

G.

A. CDR TASK FORCE FALCON CAN EXECUTE IMMEDIATELY THOSE PROJECTS  
AUTHORIZED UNDER SECTION 401 AUTHORITY.

B. V CORPS WILL ESTABLISH A SEPARATE APC TO CAPTURE AND RECORD COSTS  
EXPENDED UNDER SECTION 401 AUTHORITY.

CENTER FOR LAW AND MILITARY OPERATIONS

C. V CORPS WILL ESTABLISH AN ADDITIONAL APC TO CAPTURE MISSION FUNDS EXPENDED TO SUPPORT HUMANITARIAN OPERATIONS AND REPORT THESE EXPENDITURES TO USAREUR ODCSRM FOR REIMBURSEMENT.

4. THE TASK FORCE FALCON POLAD AND G5 ARE RESPONSIBLE FOR EXECUTION OF THE HUMANITARIAN ASSISTANCE PROGRAM AND ENSURING COMPLIANCE WITH THE RULES AND REGULATIONS GOVERNING USE OF THE FUNDS. THE POLAD AND G5 WILL ALSO ENSURE COMPLIANCE WITH THE REPORTING REQUIREMENTS OUTLINED IN REFERENCE C.

5. REFERENCE C OUTLINES REPORTING FREQUENCY, FORMATS AND AGENCIES TO

PAGE 04 RUFDAAA3151 UNCLAS

RECEIVE REPORTS. REFERENCE C PROVIDES SPECIFIC GUIDANCE FOR EXPENDITURE OF FUNDS FOR HUMANITARIAN ASSISTANCE OPERATIONS AND ALSO PROVIDES THE LEGAL AUTHORITY AND FUNDING LIMITS FOR SPECIFIC PROJECTS.

6. USAREUR ODCSRM POC FOR THIS MESSAGE IS MAJ KINARD, PHONE NUMBER IS DSN 370-8176, UNCLAS E-MAIL (ALL LOWER CASE) IS:

KINARD@HQ.HQUSAREUR.ARMY.MIL.

BT

#3151

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Originator: USCINCEUR VAHINGEN GE//ECJ4// 4 of 15

DTG: 101424Z Sep 99 Precedence: R DAC: General

Subject: **USKFOR PROGRAM APPROVAL FOR URGENT HUMANITARIAN NEEDS**

[Format for Printing](#)

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RATUZYUW RUGFNOA0105 2531453-UUUU--RUGFNOA.

ZNR UUUUU

R 101424Z SEP 99

FM USCINCEUR VAHINGEN GE//ECJ4//

TO RUFDAAA/CDR USAREUR HEIDELBERG GE//AEAGC-O//

INFO RUFDAVC/CDR V CORPS HEIDELBERG GE//AETV-GCO//

RUEKJCS/SECDEF WASHINGTON DC//USDP//

RUEKJCS/JOINT STAFF WASHINGTON DC//DJS/J5/J4/ILED//

RUEKJCS/SECDEF WASHINGTON DC//SOLIC:PK/HA/DSCA:HA//

RUFDTFA/CDR TASK FORCE FALCON

RUGFNOA/USCINCEUR VAHINGEN GE//ECJ4-ID/ECJA/ECCM/ECJ5-E//

RUFDNTEC/HQ USAREUR HEIDELBERG GE//AEAGF//

BT

UNCLAS

SUBJ:USKFOR PROGRAM APPROVAL FOR URGENT HUMANITARIAN NEEDS  
REFS: A. TELEPHONIC INQUIRIES/REQUESTS FROM V CORPS AND TASK  
FORCE FALCON REGARDING USE OF \$5M AUTHORIZATION FOR DISPERSMENT  
OF FUEL FOR MUNICIPAL VEHICLES.

B. USCINCEUR VAIHINGEN GE MESSAGE **131310Z AUG 99** PROVIDED  
CDR USAREUR AUTHORITY AND GUIDANCE FOR THE EXECUTION OF \$5M  
TO BE USED FOR URGENT HUMANITARIAN PROJECTS IN KOSOVO

C. UNDER SECRETARY OF DEFENSE LTR DATED 6 AUG 99, SUBJ: USKFOR

PAGE 2 RUGGNOA0105 UNCLAS

PROGRAM APPROVAL AND FUNDING FOR URGENT HUMANITARIAN NEEDS  
D. CORRESPONDENCE WITH OSD (HA/SOLIC/OUSDP), DSCA (HA-D), AND HQ  
USAREUR (AEAGC-O)

1. IN CONSULTATION WITH OSD, DSCA, AND USAREUR, AND IN RESPONSE TO  
REF (A), APPROVAL IS GIVEN TO UTILIZE EXISTING \$5M FOR THE ISSUANCE  
OF FUEL NEEDED FOR MUNICIPAL VEHICLES (I.E., FIREFIGHTING VEHICLES,  
AMBULANCES, AND TRASH DISPOSAL VEHICLES) WITHIN THE U.S. SECTOR,  
REF(D) REFERS.

2. ALTHOUGH FUEL FOR MUNICIPAL VEHICLES WERE NOT SPECIFICALLY  
ADDRESSED WITHIN REFS (B) AND (C), PRECAUTIONS MUST BE TAKEN  
BY CDR TF FALCON TO PREVENT DIVERSION OF FUEL BY RECIPIENTS  
FOR BLACK MARKET SALES.

3. RECOMMEND CDR TF FALCON WORK CLOSELY WITH KFOR AND UNMIK TO  
ADDRESS A LONG TERM SOLUTION TO PROVIDING FUEL TO MUNICIPAL  
VEHICLES  
WITHIN SECTOR.

4. COSTS ASSOCIATED WITH PROVIDING FUEL TO MUNICIPAL VEHICLES  
SHOULD BE REPORTED AS A SUB-PARAGRAPH TO THE "FUEL TO FARMERS"  
CATEGORY. COSTS SHOULD BE REPORTED AS A SEPARATE LINE ITEM AND NOT  
- REPEAT NOT - ROLLED IN TO THE "FUEL TO FARMERS" FIGURE. FUEL  
PROVIDED TO MUNICIPAL VEHICLES WILL NOT COUNT AGAINST THE CEILING

PAGE 3 RUGGNOA0105 UNCLAS

ESTABLISHED FOR "FUEL TO FARMERS".

5. ECJ4 POCS FOR THIS MESSAGE ARE LTCOL THOMPSON, LTCOL NICHOLSON  
AND MR. ZIMMERMAN. PHONE NUMBERS ARE COMMERCIAL 49 711 680  
4052/5303/8836, FAX IS 49 711 680-5360.

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Originator: USCINCEUR VAIHINGEN GE//ECJ4//

2 of 15

DTG: 291447Z Nov 99

Precedence: R

DAC: General

CENTER FOR LAW AND MILITARY OPERATIONS

Subject: **USKFOR URGENT HUMANITARIAN NEEDS PROGRAM** [Format for Printing](#)

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RATUZYUW RUFGNOA0151 3331523-UUUU--RUFGNOA.  
ZNR UUUUU  
R 291447Z NOV 99  
FM USCINCEUR VAHINGEN GE//ECJ4//  
TO RUFDAAA/CDR USAREUR HEIDELBERG GE//AEAGC-O//  
INFO RUFDAVC/CDR V CORPS HEIDELBERG GE//AETV-GCO//  
RUEKJCS/SEC DEF WASHINGTON DC//USDP//  
RUEKJCS/JOINT STAFF WASHINGTON DC//DJS/J5/J4/ILED//  
RUEKJCS/SECDEF WASHINGTON DC//SOLIC:PK/HA/DSCA:HA/COMPT//  
RUFDTFA/CDR TASK FORCE FALCON  
RUFGNOA/USCINCEUR VAHINGEN GE//ECJ4-ID/EN/ECMD/ECJA/ECCM/ECJ5-E/  
ECJ6//  
RUFDNTEC/HQ USAREUR HEIDELBERG GE//AEAGF//  
BT

UNCLAS

SUBJ:USKFOR URGENT HUMANITARIAN NEEDS PROGRAM

REFS: A. CDR TF FALCON MSG, 101904Z NOV 99 SUBJ: HUMANITARIAN AID  
SPENDING

B. USCINCEUR MSG, 101424Z SEP 99, SUBJ: USKFOR PROGRAM APPROVAL FOR  
URGENT HUMANITARIAN NEEDS

C. USCINCEUR MSG, **131310Z AUG 99**, SUBJ: USKFOR PROGRAM APPROVAL AND  
FUNDING FOR URGENT HUMANITARIAN NEEDS

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D. UNDER SECRETARY OF DEFENSE SLOCOMBE MEMO DATED 6 AUG 99, SUBJ:  
USKFOR FUNDING FOR URGENT HUMANITARIAN NEEDS

E. CDR V CORP MSG, 031831Z AUG 99, SUBJ: USKFOR FUNDING FOR URGENT  
HUMANITARIAN NEEDS AMPN REFS B AND C: PROVIDED GUIDANCE FOR  
HUMANITARIAN ASSISTANCE PROJECTS IN RESPONSE TO REF E.

1. THIS MESSAGE IS A USCINCEUR, DSCA AND OSD/SOLIC/PKHA COORDINATED  
RESPONSE ISSUING POLICY GUIDANCE TO REF A. IN CONFORMITY WITH THE  
PREVIOUS GUIDANCE CONTAINED IN REFS B THRU D, THE FOLLOWING  
SUPPLEMENTAL GUIDANCE IS PROVIDED:

A. REPAIR WATER TREATMENT PLANTS. BASED UPON TFF REQUEST, THE  
CATEGORY FUNDING LIMIT IS INCREASED FROM \$150K TO \$650K. BECAUSE OF  
THE EMERGENCY NATURE OF DOD HUMANITARIAN FUNDING, REPAIRS MUST BE  
RELATED TO WAR DAMAGE AND SHOULD NOT RESULT IN IMPROVING  
INFRASTRUCTURE BEYOND THAT EXISTING IN PRE-WAR YUGOSLAVIA.

B. DIESEL FUEL TO FARMERS. THE REQUEST TO INCREASE THE CEILING FROM  
\$50K TO \$100K TO PROVIDE FUEL TO FARMERS IS DISAPPROVED AT THIS  
TIME, PENDING FURTHER INFORMATION FROM USKFOR INDICATING THAT THIS  
INCREASE IS NECESSARY TO ADDRESS SHORT-TERM EMERGENCY NEEDS,

RATHER  
THAN LONG-TERM RECURRING REQUIREMENTS. RECOMMEND USKFOR  
CONTINUE TO  
WORK WITH INTERNATIONAL AND NGO ORGANIZATIONS TO INCREASE THEIR

PAGE 3 RUFGNOA0151 UNCLAS

SUPPORT WITHIN SECTOR TO MEET THE BULK OF THIS REQUIREMENT.  
C. WELL DRILLING. AUTHORIZATION IS GRANTED TO DRILL WELLS IN RURAL  
AREAS WHERE WATER SOURCES/CAPABILITIES WERE DAMAGED AS A RESULT  
OF  
DESTRUCTION STEMMING FROM THE CONFLICT. ALTHOUGH THE USE OF  
OVERSEAS HUMANITARIAN DISASTER ASSISTANCE AND CIVIC AID (OHDACA)/  
SECTION 2551 AUTHORITY/FUNDING IS APPROVED TO CONTRACT THIS SUPPORT,  
CONSIDERATION SHOULD BE GIVEN TO EXECUTING/FUNDING THIS EFFORT  
THROUGH HUMANITARIAN AND CIVIC ASSISTANCE (HCA), SECTION 401. WHILE  
IT IS EXPECTED THAT ACTUAL LABOR WILL BE PERFORMED BY LOCAL  
CIVILIANS, USKFOR SHOULD ENSURE THAT SOME U.S. MILITARY PERSONNEL  
PARTICIPATE IN THESE PROJECTS, IN AN OVERSIGHT/MANAGEMENT ROLE, SO  
THAT DOD IS NOT IN THE ROLE OF SIMPLY PROVIDING A FUND SOURCE.

NOTE: COSTS DO NOT COUNT AGAINST \$650K FUNDING LIMIT APPROVED IN (1  
A) ABOVE.

D. HEATING FUEL FOR SCHOOLS. PROVISION OF EMERGENCY HEATING FOR  
SCHOOLS USING DOD FUNDS IS DISAPPROVED. SUPPLYING FUEL TO SCHOOLS,  
AS WELL AS HOSPITALS, POLICE STATIONS, GOVERNMENT OFFICES, AND OTHER  
SITES, SEEMS TO BE A LONG TERM REQUIREMENT WHICH SHOULD BE  
ADDRESSED

BY OTHER USG AGENCIES OR INTERNATIONAL ORGANIZATIONS.

E. PURCHASE OF SCHOOL DESKS. AUTHORITY TO PURCHASE SCHOOL DESKS IS

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DISAPPROVED. RECOMMEND USKFOR PURSUE SOURCING OF DESKS THROUGH  
HQ

USEUCOM HUMANITARIAN ASSISTANCE EXCESS PROPERTY PROGRAM, TITLE 10,  
SECTION 2547. IF DESKS ARE AVAILABLE WITHIN THE EUCOM THEATER,  
USKFOR MAY USE THE \$5M AUTHORITY TO TRANSPORT DOD EXCESS PROPERTY.

F. ADDITIONAL \$500K FOR TRANSPORT OF DOD EXCESS PROPERTY.

USCINCEUR WILL SUBMIT OUT-OF CYCLE REQUESTS FOR ADDITIONAL FUNDS TO  
SUPPORT TRANSPORTATION OF EXCESS DOD PROPERTY TO USKFOR AS THESE  
REQUIREMENTS ARISE. UNTIL ADDITIONAL FUNDING BECOMES AVAILABLE,  
USKFOR COULD FUND TRANSPORTATION FOR CRITICAL DOD EXCESS PROPERTY  
BY

PROVIDING FUNDS FROM ITS EXISTING \$5M AUTHORIZATION, UTILIZING  
SECTION 2551 AUTHORITY.

2. THE AFOREMENTIONED SUPPLEMENTAL HUMANITARIAN ASSISTANCE

CENTER FOR LAW AND MILITARY OPERATIONS

AUTHORITIES WILL BE INCLUDED IN THE REMARKS SECTION OF A "NO DOLLAR" FUND AUTHORIZATION DOCUMENT (FAD) ISSUED BY DSCA/COMPT TO USAREUR DCSRM.

3. POCS FOR THIS MESSAGE ARE LTCOL THOMPSON, LT COL NICHOLSON, MR ZIMMERMAN AND MS BARTCH. PHONE NUMBERS ARE DSN 430-4052/5303/8836/5084. COMMERCIAL 49 711 680-4052/5303/8836/5084, FAX IS 49 711 680-5360. UNCLAS EMAIL ADDRESSES (ALL LOWER CASE) ARE: THOMPSSJ@EUCOM.MIL, NICHOLSD@EUCOM.MIL, ZIMMERMA@EUCOM.MIL, AND

PAGE 5 RUGNOA0151 UNCLAS  
BARTCHC@EUCOM.MIL.

BT  
#0151

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Originator: USCINCEUR VAHINGEN GE//ECJ4-ID// 1 of 15  
DTG: 011254Z Dec 99 Precedence: R DAC: General

Subject: **USKFOR URGENT HUMANITARIAN NEEDS PROGRAM** [Format for Printing](#)

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RATUZYUW RUGNOA0286 3351408-UUUU--RUGNOA.

ZNR UUUUU

R 011254Z DEC 99

FM USCINCEUR VAHINGEN GE//ECJ4-ID//

TO RUFDAAA/CDR USAREUR HEIDELBERG GE//AEAGC-O//

INFO RUFDAVC/CDR V CORPS HEIDELBERG GE//AETV-GCO//

RUEKJCS/SECDEF WASHINGTON DC//USDP//

RUEKJCS/JOINT STAFF WASHINGTON DC//DJS/J5/J4/ILED//

RUEKJCS/SECDEF WASHINGTON DC//SOLIC:PK/HA/DSCA:HA/COMPT//

RUFDTFA/CDR TASK FORCE FALCON

RUGNOA/USCINCEUR VAHINGEN GE//ECJ4-ID/EN/ECMD/ECJA/ECCM/ECJ5-E/

ECJ6//

RUFDNTEC/HQ USAREUR HEIDELBERG GE//AEAGF//

BT

UNCLAS

SUBJ:USKFOR URGENT HUMANITARIAN NEEDS PROGRAM

REFS: A. CDR TF FALCON MEMO, DTD 25 NOV 99 SUBJ: HUMANITARIAN

ASSISTANCE INCREASE REQUEST

B. USCINCEUR MSG, 101424Z SEP 99, SUBJ: USKFOR PROGRAM APPROVAL FOR URGENT HUMANITARIAN NEEDS

C. USCINCEUR MSG, **131310Z AUG 99**, SUBJ: USKFOR PROGRAM APPROVAL AND FUNDING FOR URGENT HUMANITARIAN NEEDS

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D. UNDER SECRETARY OF DEFENSE SLOCOMBE MEMO DATED 6 AUG 99, SUBJ:  
USKFOR FUNDING FOR URGENT HUMANITARIAN NEEDS

E. CDR V CORP MSG, 031831Z AUG 99, SUBJ: USKFOR FUNDING FOR URGENT  
HUMANITARIAN NEEDS

AMPN REFS B AND C: PROVIDED GUIDANCE FOR HUMANITARIAN ASSISTANCE  
PROJECTS IN RESPONSE TO REF E.

1. THIS MESSAGE IS A USCINCEUR, DSCA AND OSD/SOLIC/PKHA COORDINATED  
RESPONSE ISSUING POLICY GUIDANCE TO REF A. IN CONFORMITY WITH THE  
PREVIOUS GUIDANCE CONTAINED IN REFS B THRU E, THE FOLLOWING  
SUPPLEMENTAL GUIDANCE IS PROVIDED:

A. REPAIR ELECTRICAL GRIDS. BASED UPON REF A, REQUEST TO INCREASE  
CEILING UNDER THIS CATEGORY FROM \$600K TO \$800K IS APPROVED.  
ASSISTANCE WITHIN THIS CATEGORY MUST CONTINUE TO BE LIMITED TO  
RUDIMENTARY REPAIRS TO ELECTRICAL SYSTEMS, RATHER THAN TO MAKE  
IMPROVEMENTS THAT WOULD ENHANCE SERVICE TO A HIGHER LEVEL THAN IN  
PRE-WAR KOSOVO.

2. THE AFOREMENTIONED SUPPLEMENTAL HUMANITARIAN ASSISTANCE  
AUTHORITY

WILL BE INCLUDED IN THE REMARKS SECTION OF A "NO DOLLAR" FUND  
AUTHORIZATION DOCUMENT (FAD) ISSUED BY DSCA/COMPT TO USAREUR  
DCSRM.

3. POCS FOR THIS MESSAGE ARE LTCOL THOMPSON AND MR ZIMMERMAN.

PAGE 3 RUFGNOA0286 UNCLAS

PHONE NUMBERS ARE DSN 430-4052/5303/8836/5084.

COMMERCIAL 49 711 680-4052/5303/8836/5084, FAX IS 49 711 680-5360.

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THOMPSSJ@EUCOM.MIL, AND ZIMMERMA@EUCOM.MIL.

BT

#0286

## **APPENDIX IV-37: FISCAL LAW IN MILITARY OPERATIONS**

### I. SUPPORTING MULTILATERAL PEACE & HUMANITARIAN OPERATIONS

#### A. UN Participation Act (UNPA) § 7, 22 U.S.C. § 287d-1.

1. Scope. Upon UN's request, President may authorize the following support specifically directed to the peaceful settlement of disputes and not involving employment of armed forces under Chapter VII of the UN Charter—
  - a. Details of Personnel. Up to 1,000 military personnel as observers, guards, or any non-combatant capacity.
  - b. Supplies, Services, & Equipment. Furnishings of facilities, services or other assistance, and the loan of the U.S.'s fair share of supplies and equipment.
2. Reimbursement. Section 723 of the FY 00-01 Foreign Relations Authorization Act (as enacted in Pub. L. No. 106-113) amended the UNPA to add a new Section 10. Section 10 requires the United States to obtain reimbursement from the UN for DoD assistance that is provided to or for an assessed UN peacekeeping operation, or to facilitate or assist the participation of another country in such an operation. The statute provides for several exemptions and grounds for waiver. This requirement to receive reimbursement is not limited to assistance provided under the UNPA, but applies to any authority under which assistance may be provided to as assessed peacekeeping operation.
3. Delegation of authority. The President has delegated authority to direct support to the Secretary of State (SecState). Executive Order 10206 ¶ 1, 16 Fed. Reg. 529 (1951). He has delegated the authority to waive (in national interest) reimbursement to SecState, in consultation with the Secretary of Defense (SecDef). *Id.* ¶ 2.

## B. Drawdowns.

1. *Foreign Assistance Act (FAA) § 506(a)(1), 22 U.S.C. § 2318(a)(1).* Authorizes the President to direct the drawdown of defense articles and services having an aggregate value of up to \$100,000,000 in any fiscal year for unforeseen emergencies requiring immediate military assistance to a foreign country or international organization. *See* Defense and Security Assistance Improvements Act, Pub. L. 104-164 (1996) (increase from \$75M to \$100M).
2. *FAA § 506(a)(2), 22 U.S.C. §2318(a)(2).* Authorizes the President to direct the drawdown of articles and services having an aggregate value of up to \$200M from any agency of the U.S. in any fiscal year for (among other things) counterdrug activities, disaster relief, migrant and refugee assistance, antiterrorism, and non-proliferation assistance. (The Security Assistance Act of 2000 increased the amount from \$150M to \$200M and added antiterrorism and non-proliferation to the permissible uses of this authority.) Of that amount, not more than \$75M may come from DOD resources; not more than \$75M may be provided for counternarcotics; and not more than \$15M to Vietnam, Cambodia and Laos for POW accounting. Drawdowns supporting counternarcotics and refugee or migration assistance require 15 days notice to Congress. *See* Defense and Security Assistance Improvements Act, Pub. L. 105-164 (1996).
3. *FAA § 552(c)(2), 22 U.S.C. § 2348a(c)(2).* Authorizes the President to direct the drawdown of up to \$25M in any fiscal year of commodities and services from any federal agency for unforeseen emergencies when deemed important to U.S. national interests.

## C. Reimbursable Support.

1. *FAA § 607, 22 U.S.C. § 2357* – Authorizes any federal agency to furnish commodities and services to friendly countries and international organizations on an advance-of-funds or reimbursable basis.
2. *FAA § 632, 22 U.S.C. § 2392* – Authorizes the State Department to use its funds to obtain DoD's support under the FAA or Title 10 authorities.

3. *Economy Act, 31 U.S.C. § 1535* – Authorizes the provision of defense articles and services *indirectly* to third countries, the UN, and international organizations on a *reimbursable* basis for another federal agency (*e.g.*, Department of State).
4. *Foreign Military Sales (FMS) – Arms Export Control Act (AECA) §§ 21-22, 22 U.S.C. §§ 2761-62* – Third countries and the UN may enter standard FMS contracts with DoD for the sale of defense articles and services.
5. *Leases – AECA §§ 61-62, 22 U.S.C. §§ 2796-2796a* – Authorizes leases of Defense articles to foreign countries or international organizations, generally on a reimbursable basis.
6. *Acquisition & Cross-Servicing Agreements (ACSA) – 10 U.S.C. §§ 2341-2350* – DoD authority to acquire logistic support without resort to commercial contracting procedures and to transfer support outside of the AECA. Under the statutes, after consulting with the State Department, DoD may enter into agreements with NATO countries, NATO subsidiary bodies, other eligible countries, the UN, and international regional organizations of which the U.S. is a member for the reciprocal provision of logistic support, supplies, and services. Acquisitions and transfers are on a cash reimbursement or replacement-in-kind or exchange of equal value basis.

## II. DOD HUMANITARIAN & DISASTER RELIEF OPERATIONS

- A. Appropriations. \$55.9M in FY2001 for Overseas Humanitarian, Disaster and Civic Aid (OHDACA) programs of the Department of Defense under 10 U.S.C. §§ 401 (only for humanitarian demining), 402, 404, 2547, and 2551.
- B. Humanitarian & Civic Assistance (HCA). 10 U.S.C. § 401. *See also*, DOD Dir. 2205.2, 6 Oct 1994; DOD Inst. 2205.3, 27 Jan 1995.

1. Need for Express Authority.
  - a. *41 U.S.C. § 12*: “No contract shall be entered into for the erection, repair, or furnishing of any public building, or for any public improvement which shall bind the Government to pay a larger sum of money than the amount in the Treasury *appropriated for the specific purpose*.”
  - b. *63 Comp. Gen. 422 (1984)*: “[I]t is our conclusion that DoD’s use of O&M funds to finance civic/humanitarian activities during combined exercises in Honduras, in the absence of an interagency order or agreement under the Economy Act, was an improper use of funds, in violation of 31 U.S.C. § 1301(a).”
2. Scope of Authority. Secretary concerned may carry out HCA in conjunction with authorized military operations of the armed forces in a country if the Secretary determines the activities will promote
  - a. The security interests of the U.S. and the country where the activities will be carried out; and
  - b. The specific operational readiness skills of the servicemembers who will participate in the activities.
3. Limits.
  - a. May not duplicate other forms of U.S. economic assistance.
  - b. May not be provided (directly or indirectly) to any individual, group, or organization engaged in military or paramilitary activities.
  - c. SecState must specifically approve assistance.
  - d. Must be paid out of funds approved and budgeted for HCA.

- e. U.S. personnel may not engage in the physical detection, lifting, or destroying of landmines (except concurrent with U.S. military operations), or provide such assistance as part of a military operation not involving U.S. forces.
4. Definition. HCA means—
    - a. Medical, dental, veterinary care in rural areas;
    - b. Construction of rudimentary surface transportation systems;
    - c. Well drilling and construction of rudimentary sanitation facilities;
    - d. Rudimentary construction and repair of public facilities; and
    - e. Detection and clearance of landmines, including education, training, and technical assistance.
  5. *De minimis* HCA. 10 U.S.C. § 401(c)(4) and DOD Dir. 2205.2, E1.1.1.
    - a. Provides authority for commanders to react to HCA “targets of opportunity” during the course of a military operation. Such activities must be modest in scope and involve only “minimal expenditures for incidental costs.”
    - b. All costs incurred in executing a *De minimis* HCA action are funded from the unit’s O&M account.
    - c. Rule of Thumb: A few soldiers, a few dollars, for a few hours. CINC’s may have promulgated specific guidance regarding the level of effort/funding that falls under the definition of *De Minimus* HCA in their AORs.
    - d. Examples:

- (1) A unit's doctor's examination of villagers for a few hours, with the administration of several shot and the issuance of some medicine, but not the deployment of a medical team for the purposes of providing mass inoculations to the local populace.
    - (2) The opening of an access road through the trees and underbrush for several hundred yards, but not the asphaltting of a roadway.
  6. Exercise-Related Construction (ERC) distinguished. 10 U.S.C. § 2805(a)(2).
    - a. "Funds from this account may only support construction activities necessary for the conduct of U.S. military exercises. *The account is not a foreign assistance program.*" --S. Rep. 355, 102d Cong., 2d Sess. 10 (1992)(emphasis added).
  7. Appropriations. Specifically fenced O&M for HCA. Demining, however, uses OHDACA. *De minimis* HCA is funded from the unit's O&M account.
- C. Transportation of Humanitarian Relief Supplies for NGOs. 10 U.S.C. § 402.
1. Scope of Authority. SecDef may transport to any country, *without charge*, supplies furnished by NGOs intended for humanitarian assistance. Transport permitted only on a *space-available* basis. Supplies may be distributed by U.S. agencies, foreign governments, international organizations, or non-profit relief organizations.
  2. Preconditions. Before transporting supplies, SecDef must determine—
    - a. The transportation of the supplies is consistent with U.S. foreign policy;
    - b. The supplies to be transported are suitable for humanitarian purposes and are in usable condition;

- c. A legitimate humanitarian need exists for the supplies by the people for whom the supplies are intended;
    - d. The supplies will, in fact, be used for humanitarian purposes; and
    - e. Adequate arrangements have been made for the distribution of the supplies in the destination country.
  - 3. Limits. Supplies transported may not be distributed (directly or indirectly) to any individual, group, or organization engaged in military or paramilitary activities.
- D. Foreign Disaster Assistance – 10 U.S.C. § 404.
  - 1. Scope of Authority.
    - a. General. President may direct SecDef to provide disaster assistance outside the U.S. to respond to manmade or natural disasters when necessary to prevent the loss of life. Amounts appropriated to DoD for Overseas Humanitarian, Disaster, and Civic Aid (OHDACA) are available for organizing general policies and programs for disaster relief programs.
    - b. Delegation of Authority. President delegated to SecDef authority to provide disaster relief with SecState’s concurrence and in emergencies when insufficient time to seek SecState concurrence (provided SecDef seeks SecState concurrence as soon as practicable thereafter). Executive Order 12966, 60 Fed. Reg. 36949 (July 14, 1995).
  - 2. Types of Assistance. Transportation, supplies, services, and equipment.
  - 3. Notice to Congress. Within 48 hours of commencing relief activities, President must transmit a report to Congress.
  - 4. Appropriations. Funded from the OHDACA appropriation.
- E. Excess Nonlethal Supplies for Humanitarian Relief – 10 U.S.C. § 2547.

1. Scope of Authority. SecDef may make available for humanitarian relief purposes any DoD nonlethal excess supplies. Excess supplies furnished under statute transferred to DoS, which is responsible for the distribution of the supplies.
2. Limits. Statute does not constitute authority to conduct any activity that, if carried out as a DoD intelligence activity, would require notice to the intelligence committees under 50 U.S.C. §§ 413 et seq.
3. Definition. “Nonlethal excess supplies” means property that is excess under DoD regulations and is not a weapon, ammunition, or other equipment or material designed to inflict serious bodily harm or death.

F. Humanitarian Assistance. 10 U.S.C. § 2551.

1. Scope.
  - a. General. To the extent provided in authorization acts, funds appropriated to DOD for humanitarian assistance shall be used for providing transportation of humanitarian relief and *other* humanitarian purposes worldwide.
  - b. Availability of Funds. To the extent provided in the appropriations acts, funds appropriated for humanitarian assistance remain available until expended .
2. Reports. Statute contains detailed annual reporting requirements.
3. Appropriations. Funded from the OHDACA appropriation.
4. § 2551/§ 401 Distinguished. If it fits § 401 in each and every particular, it’s § 401 HCA. If not (but for humanitarian purpose) it’s § 2551 HA.

III. SPECIAL AUTHORITIES.

- A. CinC Initiative Funds (CIF). 10 U.S.C. § 166a. *See* DoD Appropriations Act for FY 2001, Pub. L. No. 106-259 (2000) (\$25M for CIF in FY 2001 in Defense-wide O&M); DoD Dir. 7280.4, 26 Oct 1993; CJCSI 7401.01A, 30 Jan 1999.

1. Scope. CJCS may provide to CinCs (including NORAD) sums appropriated for the following activities:
  - a. Force training.
  - b. Contingencies.
  - c. Selected operations.
  - d. Command and Control.
  - e. Joint Exercises (including participating expenses of foreign countries).
  - f. Humanitarian and civil assistance.
  - g. Military education and training to military and related civilian personnel of foreign countries (including transportation, translation, and administrative expenses).
  - h. Personnel expenses of defense personnel for bilateral or regional cooperation programs.
  - i. Force protection.
2. Priorities. CJCS should give priority consideration to requests for funds that would (1) enhance warfighting capability, readiness, and sustainability of forces assigned to the commander requesting the funds; (2) be used for activities in a CinC's AOR that would reduce threats to, or enhance, U.S. national security.
3. Relationship to Other Funding. Any amount provided as CinC initiative funds for an authorized activity are "in addition to amounts otherwise available for that activity during the fiscal year."
4. Limits. 10 U.S.C. § 166a(e). Of funds made available—

- a. No more than \$7M may be used to buy end items with a cost greater than \$15,000;
  - b. No more than \$1M may be used to pay the expenses of foreign countries participating in joint exercises;
  - c. No more than \$2M may be used for education and training to military and related civilian personnel of foreign countries; and
  - d. No funds may be used for any activity for which Congress has denied authorization.
- B. Emergency & Extraordinary (E&E) Expenses. 10 U.S.C. § 127.
1. General. Within appropriations made for this purpose, SecDef may pay for any emergency or extraordinary expenses that cannot be anticipated or classified. SecDef may spend the funds appropriated for such purposes as deemed proper; and such determination is final and conclusive upon the accounting officers of the U.S. This authority may be delegated (and redelegated). 10 U.S.C. § 127(b).
  2. Congressional Notification. DoD Authorization Act for FY 1996 revised § 127 to require that SecDef give congressional defense and appropriations committees 15 days advance notice before expending or obligating funds in excess of \$1 million and five days advance notice for expenditures or obligations between \$500K and \$1M. Pub. L. No. 104-106, § 915 (1996).
  3. Appropriations. \$10.616M for Army; \$5.146M for Navy and Marine Corps; \$7.878M for Air Force; and \$30M for SecDef. DoD Appropriations Act for FY 2001, Pub. L. No. 106-259 (2000).
- C. Contingency Operations Funding Authority. 10 U.S.C. § 127a (amended by DoD Authorization Act for FY 1996, Pub. L. No. 104-106, § 1003 (1996)).

1. Applicability. Deployments (other than for training) and humanitarian assistance, disaster relief, or support to law enforcement operations (including immigration control) for which funds have not been provided, which are expected to exceed \$50M, or the incremental costs of which, when added to other operations currently ongoing, are expected to result in a cumulative incremental cost in excess of \$100M. Does *not* apply to operations with incremental costs not expected to exceed \$10M.
  
2. Consequences.
  - a. Waiver of Working Capital Fund (WCF) Reimbursement. Units participating in applicable operations receiving services from WCF activities may not be required to reimburse for the incremental costs incurred in providing such services. Statute restricts SecDef authority to reimburse WCF activities from O&M accounts. (In addition, if any activity director determines that absorbing these costs could cause an Anti-Deficiency Act violation, reimbursement is required.)
  
  - b. Transfer Authority. Authorizes SecDef to transfer up to \$200M in any fiscal year to reimburse accounts used to fund operation for incremental expenses incurred.
  
3. Congressional Notification & GAO Compliance Reviews. Statute contains provisions for both.

4. Overseas Contingency Operations Transfer Fund (OCOTF). DoD Appropriations Act for FY 2001, Pub. L. No. 106-259, Title II (2000). Appropriates \$3.94B of “no-year” funds “for expenditures directly relating to Overseas Contingency Operations by U.S. Military Forces.” These funds may be transferred to O&M accounts, military personnel accounts, Defense Health Program appropriation, procurement accounts, RDT&E accounts, and working capital funds. 1 H.Rep. 106-754, the Conference Report accompanying the Appropriations Act, states this amount covers the estimated costs of continuing operations in Bosnia, Kosovo, and Southwest Asia. See, DoD Reg. 7000.14-R, DOD Financial Management Regulation, vol. 2B, Budget Formulation and Presentation, ch. 17, Contingency Operations (June 2000) and DoD Reg. 7000.14-R, DOD Financial Management Regulation, vol. 12, Special Accounts Funds and Programs, ch. 23, Contingency Operations (Sep 1996).

IV. SECTION 8070 NOTIFICATION. DOD APPROPRIATIONS ACT FOR FY 2001, PUB. L. NO. 106-259, § 8070 (2000).

- A. General. Requires DoD to notify the congressional appropriations, defense, and international relations committees 15 days *before* transferring to another nation or international organization any defense articles or services (other than intelligence services) in conjunction with (a) peace operations under chapters VI or VII of the UN charter or (b) any other international peacekeeping, peace-enforcement, or humanitarian assistance operation. See also DoD Appropriations Act for FY 96, Pub. L. 104-61 § 8117 (1995).
- B. Notice Requirement. The notice required includes:
  1. A description of the articles or services to be transferred;
  2. The value of the articles or services; and

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<sup>11</sup> DOD Appropriations Act for FY 2001 § 8131, Pub. L. No. 106-259, 114 Stat. 661.

None of the funds appropriated in this Act under the heading “[OCOTF]” may be transferred or obligated for [DOD] expenses not directly related to the conduct of overseas contingencies: *Provided*, That the [SECDEF] shall submit a report no later than 30 days after the end of each fiscal quarter to the Committees on Appropriations of the Senate and House of Representatives that details any transfer of funds from the “[OCOTF]”: *Provided further*, That the report shall explain any transfer for the maintenance of real property, pay of civilian personnel, base operations support, and weapon, vehicle or equipment maintenance.

3. With respect to a proposed transfer of supplies and equipment, a statement of
  - a. Whether the inventory requirements of all elements of the armed forces (including the Reserve Components) for the types of articles and supplies to be transferred have been met; and
  - b. Whether the items to be provided will have to be replaced and how the President proposes to pay for such replacement.
  
- C. Congress' Intent. Section 8117 of the DoD Appropriations Act for FY 1996 was originally part of the House DoD Appropriations Bill (H.R. 2126) which was adopted in the first Conference without comment. The House Appropriations Committee expressed concern about the *diversion of DoD resources to non-traditional operations*, such as Haiti, Guantanamo, Rwanda, and the former Yugoslavia. The Committee stated that Congress must be kept fully aware of the use and involvement of defense assets in “essentially non-defense activities in support of foreign policy.” H.R. Rep. No. 208, 104th Cong., 1st Sess. 12 (1995).
  
- D. President's Interpretation. In “acquiescing” in the Appropriations Act, the President expressed concern about section 8117 and pledged to interpret it consistent with constitutional authority to conduct foreign relations and as Commander in Chief. Statement by the President (Nov. 30, 1995).
  
- E. Scope.
  1. Included Activities. Section 8070 affects DoD's use of any statutory authority to furnish articles and services to other countries and international organizations during peace, humanitarian, and disaster relief operations. Examples include—
    - a. Acquisition and Cross-Servicing Agreements during peace and humanitarian assistance operations. 10 U.S.C. §§ 2341-2350.
    - b. Drawdowns for peace and humanitarian assistance operations (Foreign Assistance Act (FAA) §§ 506, 552).
    - c. Humanitarian & Civic Assistance (HCA). 10 U.S.C. §§ 166a(b)(6), 401.

- d. Transportation of humanitarian assistance to the extent the service is provided to another nation or an international organization. 10 U.S.C. § 2551.
  - e. Excess non-lethal supplies for humanitarian relief. 10 U.S.C. § 2547.
  - f. Reimbursable support to other nations and international organizations in connection with peace and humanitarian assistance operations (FAA § 607; UNPA § 7), and reimbursable support to other federal agencies for peace and humanitarian assistance operations to the extent the DoD transfers articles or services to another nation or international organization. 31 U.S.C. § 1535; FAA § 632.
  - g. Landmine clearance activities. FY 1995 DoD Authorization Act, Pub. L. No. 103-337, § 1413 (1994).
2. Excluded Activities. Section 8070 does not affect all DoD activities with other countries and international organizations. Examples of excluded activities include—
- a. Exercises in which the DoD pays the incremental expenses of participating developing countries—including Partnership for Peace (PFP) exercises. 10 U.S.C. § 2010.
  - b. SOF training. 10 U.S.C. § 2011.
  - c. Bilateral/regional conferences and seminars unconnected with peace and humanitarian assistance operations. 10 U.S.C. § 1051.
  - d. LATAM Coop unconnected with peace and humanitarian assistance operations. 10 U.S.C. § 1050.
  - e. Military to military contacts. 10 U.S.C. § 168.
  - f. EDA authorities (FAA § 516) which already have congressional notice requirements equal to or in excess of 15 days.

- g. Support for other nations and international organizations in operations *unrelated* to peacekeeping, peace enforcement and humanitarian assistance (e.g. coalition operations in time of war).

F. Compliance. DoD complies with section 8070 by—

- 1. Notifying Congress before DoD transfers supplies or services in connection with peace or humanitarian assistance operations; or
- 2. Transferring supplies and services in such operations without congressional notification when—
  - a. Providing disaster relief;
  - b. Providing support *without* using funds appropriated to DoD (e.g. “advance of funds” basis); or
  - c. Providing support under an FMS case.

V. CONCLUSION.

MAJ Kevin Walker  
TJAGSA

## **APPENDIX IV-38: IMMINENT DEATH PROCESSING**

TAPD-OEA

10 Feb 2000

SUBJECT: Imminent Death Processing

1. Purpose. To provide an overview of expeditious processing of imminent death cases and the benefits that result when a soldier pending death is expeditiously retired for physical disability.

2. Facts.

a. Expeditious processing of imminent death cases consists of procedures for completing physical disability evaluation and retirement on a 24-hour basis.

b. Imminent death procedures are applied to the cases of Active and Reserve Component soldiers when the Medical Treatment Facility (MTF) determines that the soldier is expected to die within 72 hours from a medical condition incurred or aggravated in the line of duty.

c. No regulatory and statutory requirements are omitted or accomplished after the fact of death. For example, if a line of duty determination is required, retirement is not executed until the required level of determination (informal or formal) per AR 600-8-1, chapter 39 (1986), is approved and confirms an in-line-of-duty finding. Retirement must be executed before death as defined by the laws of the state where the soldier is assigned, or if soldier is outside of the Continental United States, as defined under military medical standards.

d. To protect the interests of the soldier and the government should the soldier recover or improve, the soldier is placed on the Temporary Disability Retired List.

e. The MTF Physical Evaluation Board Liaison officer (PEBLO) and the Installation Retirement Services Officer (RSO) have joint responsibility to counsel the soldier and the soldier's next of kin.

(1) The PEBLO is responsible for counseling the soldier and the soldier's next of kin on the disability evaluation process, the soldier's rights in the process, the Physical Evaluation Board findings, estimated disability compensation, and potential Department of Veterans Affairs (DVA) benefits and programs.

(2) The RSO is responsible for counseling the soldier and the soldier's next of kin on retirement and survivor benefits, to include the Survivor Benefit Plan (SBP), and DVA and Social Security entitlements. The RSO must:

(a) Complete the DD Form 2656 (Data for Payment of Retired Personnel), which indicates the family's desired SBP election; and

(b) Coordinate with HQDA, Army Retirement Services--the Secretary of the Army designee to make SBP elections on behalf of death imminent soldiers.

(3) The Army and Air Force Mutual Aid Association is available to assist the PEBLO or RSO by producing a benefits comparison tailored to the soldier's circumstances. The Association will telefax or email the comparison to the PEBLO and RSO without regard to whether the soldier is a member of the Association. The questionnaire at enclosure 1 must be provided to the Association. The printout is generally available only during the Association's office hours: 0830 to 1630, Eastern Standard Time. The objective of the Association is to be of service to the soldier and his family by providing the maximum information available on benefits. However, as a private institution not under contract to Department of Defense, the Association cannot assume liability for the choices made.

f. Due to the variables that affect benefits, primarily under SBP, this information paper cannot provide an exact monetary comparison of benefits between death on active duty and death in retired status. These variables include: The age of the spouse; whether there are children; the ages of the children and whether any are handicapped; whether a wife is pregnant at time of the soldier's death; specifics of any divorce settlement regarding former spouse entitlement to SBP; effect of remarriage on benefit entitlement; and, whether a single soldier has a relative that would qualify as an insurable interest beneficiary.

g. In most cases when death is imminent, retirement for physical disability provides greater benefits than if death occurs on active duty due to the benefits described below. A summary matrix is attached.

(1) Entitlement to the same active duty death benefits.

(a) Soldiers retired under imminent death procedures are totally disabled soldiers.

Totally disabled soldiers retain coverage under Servicemen's Group Life Insurance (SGLI) up to one year or until the disability ceases to be total in degree, whichever occurs first, with no premium cost during this period.

(b) The death gratuity is payable to certain survivors if the death occurs within 120 days following retirement and is related to service connected causes as determined by the DVA.

(2) Eligibility for DIC and SBP.

(a) Eligible survivors of soldiers who die on active duty are entitled to DVA Dependency and Indemnity Compensation (DIC). They are not entitled to SBP unless the soldier had at least 20 years of federal service. In that case the law directs a “spouse only” election for a married soldier or a “child(ren) only” election for an unmarried soldier with child(ren). No other options are available.

(b) Survivors of retired soldiers who die of a service-connected disability may be entitled to DIC. The DVA should be consulted to ensure eligibility based on the DVA’s marriage requirements and in-line-of-duty considerations.

(c) Soldiers pending disability retirement are eligible to elect SBP and have several election options: Spouse only, children only, spouse and children, former spouse only, former spouse and children; insurable interest; and, no election.

(d) There is a dollar for dollar offset between DIC and SBP for SBP elections of spouse only or spouse and child. However, depending on the retired pay entitlement, SBP may exceed the DIC amount, in which case monies would be payable from both VA and DoD. DIC has no offsetting impact on a child’s SBP receipt. Thus, the flexibility of options available to the soldier pending retirement allows for weighing long term versus short term benefits in light of the number of dependents and their ages.

(e) A single soldier with no children or one dependent child has the election option of “natural person with an insurable interest.” An annuity can be provided to any relative more closely related to the soldier than a cousin or a close business associate with proof of being financially affected by the soldier’s death. This option is not available to single soldiers who die on active duty eligible for retirement.

(f) When a soldier pending retirement is mentally incompetent to make an SBP election, the Secretary of the Army makes the appropriate election on behalf of the soldier. This authority has been delegated to Chief, Army Retirement Services, Office of the Deputy Chief of Staff for Personnel. The RSO coordinates the action.

(3) Eligibility for Supplemental SBP (SSBP). SSBP is the supplemental plan which

increases basic SBP's after-age-62 annuity amount. SSBP is not part of the active-duty death survivor package, even when the member has more than 20 years active federal service. It can only be elected at retirement. It is not connected to DIC; it is payable at age 62 to a qualified surviving spouse in addition to any DIC amounts received.

(4) Possibility of Greater retired pay and greater SBP/SSBP annuity. Retired pay is computed using a multiplier equating to years of service or the disability rating—both limited to 75%. The disability rating for imminent death retirement is 100%. Thus, even a soldier who was eligible to retire for length of service would benefit from death imminent retirement processing because of the higher multiplier used to calculate retired pay as well as the SBP election flexibility afforded by retirement.

(5) Eligibility for Service Disabled Veterans Life Insurance (RH) (SDVI). This is a \$10,000 policy for disabled veterans. A soldier must be retired in order to apply for it.

(a) Totally disabled veterans, may apply for waiver of premiums for the basic policy.

After six months, totally disabled veterans may apply for an additional policy of up to \$20,000.

(b) If the veteran is mentally competent, but physically incapable of signing the application, a statement to that effect can be submitted by his doctor or nurse. The statement must confirm that the veteran was totally aware of what was happening and why he couldn't sign. If he is mentally incompetent, only a court appointed guardian can sign the application.

(c) If the mentally incompetent soldier dies before a guardian is appointed, the soldier's beneficiary may apply for gratuitous SDVI ("ARH"). This is a lump sum payment, the approval of which rests with the DVA.

h. There are two considerations which may result in retirement posing a hardship.

(1) Civilian life insurance: Does the soldier have a civilian policy that provides greater benefits if death occurs on active duty? Usually these are policies offered by military oriented associations. The amount of such a policy should be carefully weighed against the overall entitlement package afforded by retirement.

(2) Hospitalization in a civilian facility: If the soldier is in a civilian facility when retired, the spouse becomes responsible for those medical costs not covered under the soldier's TRICARE plan. While this is a factor to consider, a death imminent soldier who survives but needs additional hospital level care may be transferred to a VA hospital,

where TRICARE is not an issue. The installation Health Benefits Advisor (HBA) should be consulted on this matter.

Frances A. Dennis(202) 782-3064  
USPDA Policy Officer  
Dennis E. Brower(202)782-3002  
USPDA Legal Advisor  
(DSN 662)

**AAFMAA PEBLO/CAO QUESTIONNAIRE**

(No Cover Sheet Required – Page 1 of 1)

AAFMAA  
Ft. Myer, VA 22211  
FAX # (703) 875-0070

CAO/PEBLO Requesting: \_\_\_\_\_  
Address: \_\_\_\_\_  
Phone: \_\_\_\_\_  
FAX: \_\_\_\_\_

**I. SERVICE MEMBER DATA**

- 1. NAME: \_\_\_\_\_ 2. DATE OF BIRTH: MO \_\_\_\_ DAY \_\_\_\_ YR \_\_\_\_
- 3. PRESENT RANK/GRADE: \_\_\_\_\_ 4. DATE OF DEATH: MO \_\_\_\_ DAY \_\_\_\_ YR \_\_\_\_
- 5. SSAN: \_\_\_\_\_ - \_\_\_\_\_ - \_\_\_\_\_
- 6. PAY ENTRY BASE DATE (PEBD): MO \_\_\_\_ DAY \_\_\_\_ YEAR \_\_\_\_
- 7. BASIC ACTIVE SERVICE DATE (BASD): MO \_\_\_\_ DAY \_\_\_\_ YEAR \_\_\_\_
- 8. PRESENT MARITAL STATUS: SINGLE \_\_\_\_ MARRIED \_\_\_\_
- 9. DATE OF PRESENT MARRIAGE: MO \_\_\_\_ DAY \_\_\_\_ YEAR \_\_\_\_

**II. FAMILY DATA**

- 10. CURRENT SPOUSE NAME: \_\_\_\_\_
- 11. SPOUSE DOB: MO \_\_\_\_ DAY \_\_\_\_ YEAR \_\_\_\_
- 12. CHILDREN:
  - #1 \_\_\_\_\_ DOB: MO \_\_\_\_ DAY \_\_\_\_ YR \_\_\_\_
  - #2 \_\_\_\_\_ DOB: MO \_\_\_\_ DAY \_\_\_\_ YR \_\_\_\_
  - #3 \_\_\_\_\_ DOB: MO \_\_\_\_ DAY \_\_\_\_ YR \_\_\_\_
  - #4 \_\_\_\_\_ DOB: MO \_\_\_\_ DAY \_\_\_\_ YR \_\_\_\_
  - #5 \_\_\_\_\_ DOB: MO \_\_\_\_ DAY \_\_\_\_ YR \_\_\_\_
  - #6 \_\_\_\_\_ DOB: MO \_\_\_\_ DAY \_\_\_\_ YR \_\_\_\_

Please complete ALL date fields. Dates are more important than names if names are not readily available.

FOR AAFMA USE: PROCESS DATE: \_\_\_\_\_ INITIALS: \_\_\_\_\_

**APPENDIX IV-39: KOSOVO BACKGROUND BRIEFING CMTC**

**KOSOVO COUNTRY BRIEF**

**COUNTRY OVERVIEW**



*"Dobar dan"*

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Combat Maneuver Training Center

**KOSOVO COUNTRY BRIEF**

**OUTLINE**

**OVERVIEW**

**TERRAIN AND WEATHER**

**HISTORY**

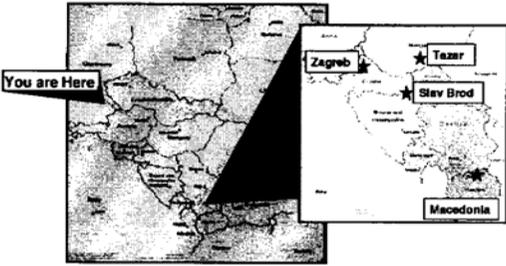
**THE FACTIONS**

**CURRENT ISSUES**

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**KOSOVO COUNTRY BRIEF**

**Where is it?**



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**KOSOVO COUNTRY BRIEF**



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**KOSOVO COUNTRY BRIEF**

**Weather and Terrain**

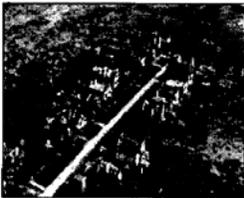


- Weather: Three Zones, Temperate, Continental, Mediterranean
- Temp (F): Tuzla (Jul) 78 (Jan) 28  
Sarajevo(Jul) 80 (Jan) 22  
Pristina (Jul) 77 (Jan) 20
- Size: 19,741 Sq. Miles- Slightly larger than Maryland
- 60% Mountainous terrain covered with forests
- Significant Terrain: Ser Mtns and Bell Drim River
- Other Terrain Features: Mine/Major-Hohandela (Restricted - Compartmentalized)

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**KOSOVO COUNTRY BRIEF**

**General Geography**





Mine fields

UXO's

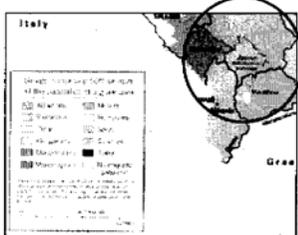
**Destroyed Villages**

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**KOSOVO COUNTRY BRIEF**

### HISTORY (continued)



- 1941 - Controlled by Greater Albania
- WWII - Tito's promise
- 1945 - Albanian Uprisings
- 1974 - Full Autonomy
- 1989 - Comes Milosevic

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**KOSOVO COUNTRY BRIEF**



- January 1992 - state affairs to be run by ministries within the districts.
- Country broken into 29 districts
- 7 districts with make up Kosovo
- Ethnic Make up of Kosovo is mostly Albanian (90%, 10% Serbian)

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**KOSOVO COUNTRY BRIEF**

### BACKGROUND



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**KOSOVO COUNTRY BRIEF**

### BACKGROUND (continued)



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**KOSOVO COUNTRY BRIEF**

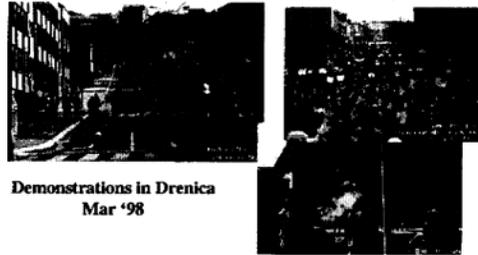
### BACKGROUND (continued)



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**KOSOVO COUNTRY BRIEF**

### BACKGROUND (continued)



Demonstrations in Drenica  
Mar '98

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**KOSOVO COUNTRY BRIEF**

**BACKGROUND (continued)**



**Internally Displaced Persons**  
Villagers from Kistna Recka fleeing FYR forces



**250 vehicle civilian  
convoy destroyed**

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**KOSOVO COUNTRY BRIEF**



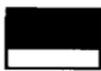
**Late 1998 - Serbian forces on the move in Kosovo**

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**KOSOVO COUNTRY BRIEF**

**THE FACTIONS**

1 Province, 2 Ethnic Groups



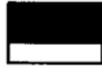




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**KOSOVO COUNTRY BRIEF**

**REGIONAL PLAYERS**



**Yugoslav Army (VJ)  
Vojska Jugoslaviji**

- Approximately 116,000
- Many are untrained conscripts
- Heavy, but older weapons
- Organized in Maneuver BDEs
- Strongest military force in the former Yugoslavia



**Slobodan  
Milosevic  
President, Federal  
Republic of  
Yugoslavia**

**Interior Ministry of Defense  
(MUPs)**

- 120,000 well trained special police
- 150 armored vehicles
- 170 mortars
- light artillery
- Russian made attack helicopters
- anti-aircraft artillery
- 13,000 in Kosovo
- 25,000 ready to enter in 72 hours

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**KOSOVO COUNTRY BRIEF**

**Access and Movement Control**



▲ Police Checkpoint

■ Police Barracks/HQ

★ VJ Checkpoint

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**KOSOVO COUNTRY BRIEF**

**REGIONAL PLAYERS**

Jakup Krasniqi  
"the New LDK" and spokesman for the KLA.

Adem Demaqi, known as "the Balkan Mandela" after spending 28 years in Serbian jails as a political prisoner.

Bujar Bukoshi, "prime minister" of the ethnic Albanians' so-called government-in-exile.





**Ibrahim Rugova  
Leader,  
Democratic  
League of Kosovo**




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**KOSOVO COUNTRY BRIEF**

**Kosovo Liberation Army  
KLA/UCK**

- Est. in 1996
- Started with 2000-5000 members
- Numbers have grown to 20,000
- Small Arms and RPGs
- No armored vehicles
- No artillery
- Limited Light Mortars

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**KOSOVO COUNTRY BRIEF**

**REGIONAL PLAYERS**

**Pandeli Majko  
Prime Minister, Albania**

**Kiro Gligorov  
President,  
The Republic  
of Macedonia**

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**KOSOVO COUNTRY BRIEF**

**UNITED STATES PLAYERS**

**William Walker  
Head of the Kosovo Verification Mission**

**Richard Holbrooke  
U.S. Envoy**

**Christopher Hill  
U.S. Ambassador to Macedonia**

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**KOSOVO COUNTRY BRIEF**

**INTERNATIONAL PLAYERS**

**Kofi Annan  
Secretary-General of the United Nations**

**Javier Solana  
NATO Secretary-General**

**Louise Arbour  
War Crimes Prosecutor**

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**KOSOVO COUNTRY BRIEF**

**United Nation (UN)**

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Combat Maneuver Training Center

**KOSOVO COUNTRY BRIEF**

**International Agencies**

**Organization for Security and  
Cooperation in Europe  
(OSCE)**

**EU/EUHAM**

**European Community  
Humanitarian  
Organization (ECHO)**

**International Committee of  
the Red Cross (ICRC)**

**CARE**

**Doctors without  
Borders (MSF)**

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**KOSOVO COUNTRY BRIEF**

### CURRENT ISSUES

- The Difference Between Bosnia and Kosovo
- Possible Threats (KDOM personnel)
- General Observations (KDOM personnel)
- Land Mine Trends
- Internally Displace Civilians (IDPs)

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**KOSOVO COUNTRY BRIEF**

### Difference Between Bosnia and Kosovo

- Occupation of Serb Territory
- Serb forces which will remain in Kosovo
- Borders with Macedonia and Albania

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**KOSOVO COUNTRY BRIEF**

### Possible Threats

Daily Threats to KOSOVO DIPLOMATIC OBSERVER MISSION (US-KDOM)

- Direct fire (from either side) when moving between police and UCK/KLA controlled areas.
- Indirect fire while operating in UCK/KLA territory.
- AT mines when entering or leaving UCK/KLA territory.
- Poor road conditions (bad maintenance, heavy use, and twisty mountainous roads), significant movement of armored vehicles, farm tractors, horse carts, and free roaming cattle and other livestock in the interior.
- Hostile crowds (Serbian and Kosovar Albanian) and the unpredictable nature of the UCK/KLA.
- Nightly celebratory fire in and around the US-KDOM facility / cities.

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**KOSOVO COUNTRY BRIEF**

### General Observations

- Serb "security" ops against the civilians and UCK/KLA elements.
- "Security" operations can be joint VJ and police actions.
- President Rogova vs. KLA.
- The move for independence by the Kosovar Albanians was aided by the unrest in Albania - not a symptom of Albanian unrest.
- Increased "security" operations through September resulted in more and more IDPs living in primitive conditions. IDPs were not returning to homes due to perceived threat of Serb retaliation or persecution.

TRAIN TO WIN  
Combat Maneuver Training Center

**KOSOVO COUNTRY BRIEF**

### Kosovo - Landmine Trends

- Serb military and police forces have employed anti-personnel mines along Albanian, FRY borders; occasionally employed anti-tank mines.
- UCK/KLA forces have mainly employed anti-tank mines.
- Most UCK/KLA mines point obstacles, either command detonated or simple pressure fused.
- Mines not marked.
- Expect UCK/KLA to increase use of anti-tank mines around their strong holds and hides through the winter and spring (if they can get them across the border).

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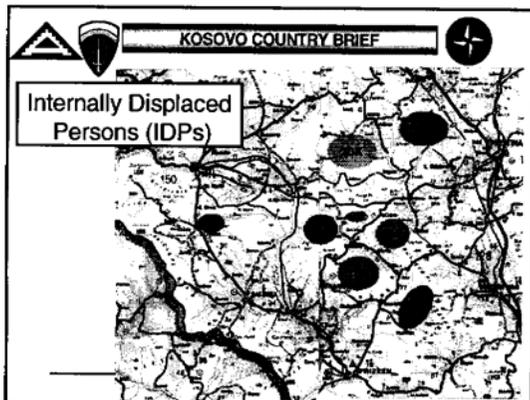
**KOSOVO COUNTRY BRIEF**

### KOSOVO ALBANIAN REFUGEES IN EUROPE

Location	Number of Refugees
UK	8,000
Germany	25,000
Switzerland	22,000
Bosnia Herzegovina	10,000
Serbia	20,000
Kosovo	210,000 within Kosovo
Montenegro	25,000
Macedonia	3,000
Albania	18,500
<b>WORLD TOTAL</b>	<b>100,000</b>

SOURCE: UNHCR, September, Jan 1999

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Combat Maneuver Training Center



**APPENDIX V-1: COUNTRIES SUPPORTING KOSOVAR REFUGEES<sup>1</sup>**

- **Over 600,000 Kosovar Refugees worldwide to date (May 14, 1999).**

- **The location and number of refugees:**

➤	<b>Albania</b>	<b>359,000</b>	➤	<b>Macedonia</b>	<b>132,500</b>
➤	<b>Bosnia- Herzegovina</b>	<b>32,300</b>	➤	<b>Montenegro</b>	<b>68,200</b>

- **Refugees evacuated from Macedonia and Albania as of April 25, 1999:**

➤	<b>Austria</b>	<b>324</b>	➤	<b>Israel</b>	<b>106</b>
➤	<b>Belgium</b>	<b>676</b>	➤	<b>Norway</b>	<b>1,104</b>
➤	<b>Croatia</b>	<b>88</b>	➤	<b>Poland</b>	<b>635</b>
➤	<b>France</b>	<b>348</b>	➤	<b>Sweden</b>	<b>5,000</b>
➤	<b>Germany</b>	<b>9,974</b>	➤	<b>Switzerland</b>	<b>33</b>
➤	<b>Iceland</b>	<b>23</b>	➤	<b>Turkey</b>	<b>4,002</b>

- **Nations accepting refugees on a temporary basis:**

➤	<b>Australia</b>	<b>4,000</b>	➤	<b>Malta</b>	<b>100</b>
➤	<b>Austria</b>	<b>5,000</b>	➤	<b>Norway</b>	<b>6,000</b>
➤	<b>Canada</b>	<b>5,000</b>	➤	<b>Poland</b>	<b>1,000</b>
➤	<b>Denmark</b>	<b>1,500</b>	➤	<b>Romania</b>	<b>1,500</b>
➤	<b>Germany</b>	<b>10,000</b>	➤	<b>Sweden</b>	<b>5,000</b>
➤	<b>Finland</b>	<b>10,000</b>	➤	<b>Turkey</b>	<b>20,000</b>
➤	<b>Iceland</b>	<b>100</b>	➤	<b>United States</b>	<b>20,000</b>

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<sup>1</sup> E-mail from MAJ Donna L. Barlett, Chief, Operational Law, Office of the Staff Judge Advocate, U.S. Army Reserve Command, to LTC Willis C. Hunter, Staff Judge Advocate, JTF Provide Refuge (May 14, 1999) (on file with CLAMO).

**APPENDIX V-2: PRESIDENTIAL DETERMINATION NO. 99-23**

**THE WHITE HOUSE**

Office of the Press Secretary

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For Immediate Release May 18, 1999

May 18, 1999

Presidential Determination  
No. 99-23

**MEMORANDUM FOR THE SECRETARY OF STATE**

SUBJECT:           Determination Pursuant to Section 2(c)(1) of the  
                          Migration and Refugee Assistance Act of 1962, as Amended

Pursuant to section 2(c)(1) of the Migration and Refugee Assistance Act of 1962, as amended, 22 U.S.C. 2601(c)(1), I hereby determine that it is important to the national interest that up to \$15 million be made available from the U.S. Emergency Refugee and Migration Assistance Fund to meet urgent and unexpected humanitarian requirements associated with the Kosovo crisis.

These funds will be used to meet the urgent and unexpected needs of refugees, displaced persons, victims of conflict, and other persons at risk due to the Kosovo crisis. These funds may be used, as appropriate, to provide contributions to governmental, international, and nongovernmental organizations. As necessary, funds will also support requirements associated with the U.S. program to provide refuge in the United States for up to 20,000 Kosovar refugees, and for administrative expenses of the Bureau of Population, Refugees, and Migration.

You are authorized and directed to inform the appropriate committees of the Congress of this determination and the use of funds under this authority, and to arrange for the publication of this determination in the Federal Register.

**WILLIAM J. CLINTON**

**APPENDIX V-3: DoD/DHHS MOA**

Interagency Agreement Between  
The Department of Health and Human Services  
and  
The Department of Defense  
In Support of Kosovar Refugees

I. Purpose

This interagency agreement establishes the basis for certain services to be provided to the Department of Health and Human Services (HHS) by the Department of Defense (DOD). Under the provisions of this Agreement, HHS, Administration for Children and Families (ACF), Office of Refugee Resettlement (ORR) will reimburse DOD for support to Kosovar refugee processing at DOD facilities.

II. Authority

This agreement is entered into in accordance with sections 411(b) and 412(b)(3) of the Immigration and Nationality Act (INA) (8 U.S.C. 1521(b) and 1522(b)(3)). This Agreement governs activities described herein and authorized pursuant to section 412 (b) (3) of the INA (8 U.S.C. 1522(b)(3)).

III. Scope of Work

Section 412(b)(3) of the INA authorizes the Secretary of HHS to make arrangements, including cooperative agreements with other Federal agencies, for the temporary care of refugees in the U.S. in emergency circumstances, including the establishment of processing centers. Specifically, funds provided under this Agreement will be used to support the processing of Kosovar refugees at DOD facilities. HHS agrees to pay for only the incremental costs incurred by DOD to provide the support. Incremental costs are those costs that DOD would not incur except to provide the support under this agreement. HHS reserves the right to reclaim any goods, equipment, or facilities purchased or constructed with HHS funds. Processing costs may include, but are not limited to, preparation and establishment of appropriate billeting, administrative, medical, and laundry facilities, ground transportation, food services, and communications support.

HHS will provide \$20.0 million for the incremental costs DOD expects to incur to provide support under this agreement. DOD will notify HHS if funds expenditure approaches 90 percent of the allocated amount.

IV. Period of Agreement

This agreement is effective from April 30, 1999 through September 30, 1999. This agreement may be amended or canceled upon mutual written agreement of the parties. Signatories will review this agreement 60 days prior to the end of the fiscal year if DOD support is projected to extend beyond the effective date set forth in this agreement.

V. Project Officers

DOD  
Lt. Col. Dave Hough  
OSD, PK/HA (703-695-7164)

HHS  
Loren Bussert (202) 401-4732  
Office of Refugee Resettlement

VI. Funds Transfer Instructions

ORR will transfer \$20.0 million to DOD through the Online Payment and Collection (OPAC) system. These funds may only be drawn down as costs are incurred. The accounting data are as follows:

HHS/ACF/ORR  
Agency Code: 75-03-0030  
Appropriation Number: 7591503  
Common Accounting Number: 9G991131  
Object Class Code: 25.39

DOD/Army O & M  
Agency 21  
Appropriation 2192020 (O & M)

Amount: \$20.0 million

VII. Approval

This agreement is entered into on behalf of the Department of Health and Human Services and the Department of Defense by the undersigned duly authorized individuals.

Original Signed Date 5/4/99  
John T. Monahan  
Principal Deputy Assistant  
For Children and Families

Original Signed Date 5/4/99  
James A. Schear  
Deputy Assistant Secretary for  
Peacekeeping and Humanitarian Affairs

Temporary Care of Kosovar Refugees at DOD Facilities in the U.S.

Necessary costs include, but are not limited, to the following:

Food Costs

Food Services and Contract Personnel

Equipment and Basic Supplies

Miscellaneous Consumables, as necessary

(Sheets/towels, Cleaning supplies, etc.)

Miscellaneous contracts (custodial, phone hookups, grounds, etc.)

Supplies and Fuel

Quality of Life Material

(Recreational equipment, etc.)

Utilities

Interpretation and translation as necessary and not available from the JVA

Ground Transportation for Refugees

**APPENDIX V-4: U. S. VOLUNTARY SETTLEMENT AGENCIES**

**Bureau of Population, Refugees, and Migration  
Participants In Department Of State (PRM) Reception  
And Placement Program for Kosovar Albanians**

<b>United States Voluntary Settlement Agencies</b>	
<p><b>Bureau of Refugee Services (IOWA)</b> Iowa Department of Human Services 1200 University Avenue, Suite D Des Moines, Iowa 50314 (515) 283-7999</p>	<p><b>Church World Service (CWS)</b> Immigration and Refugee Program 475 Riverside Drive New York, New York 10115-0050 <a href="http://churchworldservice.org">churchworldservice.org</a> (212) 870-3304</p>
<p><b>Episcopal Migration Ministries (EMM)</b> The Episcopal Church Center 815 Second Avenue New York, New York 10017 <a href="http://www.dhfms.org/emm/">http://www.dhfms.org/emm/</a> (212) 867-8400</p>	<p><b>Ethiopian Community Development Council, Inc. (ECDC)</b> 1038 South Highland Arlington, Virginia 22204 (703) 685-0510</p>
<p><b>Hebrew Immigrant Aid Society (HIAS)</b> 333 Seventh Avenue New York, New York 10001-5004 (212) 967-4100</p>	<p><b>Immigration &amp; Refugee Services of America (IRSA)</b> 1717 Mass. Ave., NW, Suite 200 Washington, DC 20036 (202) 797-2105</p>
<p><b>International Rescue Committee (IRC)</b> 122 East 42nd Street-12th Floor New York, New York 10168-1289 <a href="http://noprofits.cor/gallery/alpha/irc">http://noprofits.cor/gallery/alpha/irc</a> (212) 551-3000</p>	<p><b>Lutheran Immigration and Refugee Service (LIRS)</b> 390 Park Avenue South New York, New York 10016-8803 (212) 532-6350</p>
<p><b>United States Catholic Conference (USCC)</b> Migration and Refugee Services 3211 Fourth Street, NE Washington, DC 20017 <a href="http://nccbuscc.org">http://nccbuscc.org</a> (202) 541-3169</p>	<p><b>World Relief Refugee Services (WRRS)</b> PO Box WRC Nyack, New York 10960 (914) 268-4135</p>

**APPENDIX V-5: AGENCIES IN SUPPORT OF OPERATION  
PROVIDE REFUGE<sup>1</sup>**

• **Governmental Organizations**

➤ **U.S. Department of Health and Human Services (DHHS)**

❖ **Office of Refugee Resettlement (ORR)** (part of DHHS' Administration for Children and Families)

ORR coordinated all the governmental and nongovernmental organizations in ensuring the health and safety of the refugees and resettlement into communities across the country.

❖ **U.S. Public Health Service (PHS)**

Conducted the medical screenings for all the refugees as part of their processing into the U.S and operated a fully staffed medical clinic. The screening included a physical examination, X-rays and blood tests. The clinic provided emergency acute care services, general physicians, pediatricians, OB/GYN, nurses, physician assistants, and emergency medical technicians.

▪ **PHS Commissioned Corps<sup>2</sup>**

- ❖ Office of Emergency Preparedness
- ❖ Food and Drug Administration
- ❖ Indian Health Service
- ❖ Health Care Finance Administration
- ❖ Health Resources Services Administration
- ❖ Substance Abuse Mental Health Services Administration.

❖ **Center for Disease Control and Prevention**

Handled the medical records on each of the refugees, compiling medical histories and tracking past or potentially current communicable conditions. Any refugee who was diagnosed with a communicable condition, such as tuberculosis, was fully treated at Fort Dix before resettlement.

➤ **Department of State (DOS)**

➤ **Department of Transportation (DOT)**

<sup>1</sup> See Headquarters, U.S. Army, Fort Dix, Force Projection Directorate, Operations Order 99-005 ¶ 1(b)(1) (25 May 1999) (on file with CLAMO); see also E-mail from William S. Spraitzar, Army War College, to COL John E. Baker, Ft. Know, KY (May 11, 1999) (on file with CLAMO).

<sup>2</sup> See Message, 221700 (EDT) May 99, JTF Provide Refuge, subject: JTF Provide Refuge SITREP 20 (22 May 1999) [hereinafter SITREP 20] (on file with CLAMO).



- **Department of Veteran's Affairs**
  - **Department of Justice (DOJ)**
    - ❖ **Federal Bureau of Investigation (FBI)**
    - ❖ **Immigration and Naturalization Service (INS)**

Responsible for processing refugees into the U.S. and establishing their INS files through refugee interviews.
  - **Department of Treasury (DOJ)**
    - ❖ **Customs Service**
  - **National Security Council (NSA)**
  - **Defense Logistics Agency (DLA)**
  - **Defense Intelligence Agency (DIA)**
  - **Disaster Medical Assistance Team (DMAT)**

Represented 13 different teams from 12 different states.<sup>3</sup>
  - **State of New Jersey (state and local police, state government)**
- **Nongovernment Organizations:**
    - **American Red Cross (ARC)**
    - **Immigration and Refugee Services of America (IRSA) (Joint Volunteer Agency (JVA))** [NOTE: see also Appendix V-4]
      - ❖ Voluntary agency providing refugee resettlement services in support of Department of State (DOS) and DHHS programs.
      - ❖ Managed the sponsorship process as the JVA at Fort Dix.
      - ❖ Provided interpreters and prepared the paperwork necessary to ensure that each family was provided appropriate sponsorship by one of the ten national resettlement agencies that can officially sponsor these families.



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<sup>3</sup> See *id.*

**APPENDIX V-6: DOD-DHHS SUPPORT/CONTRACT  
RESPONSIBILITIES**

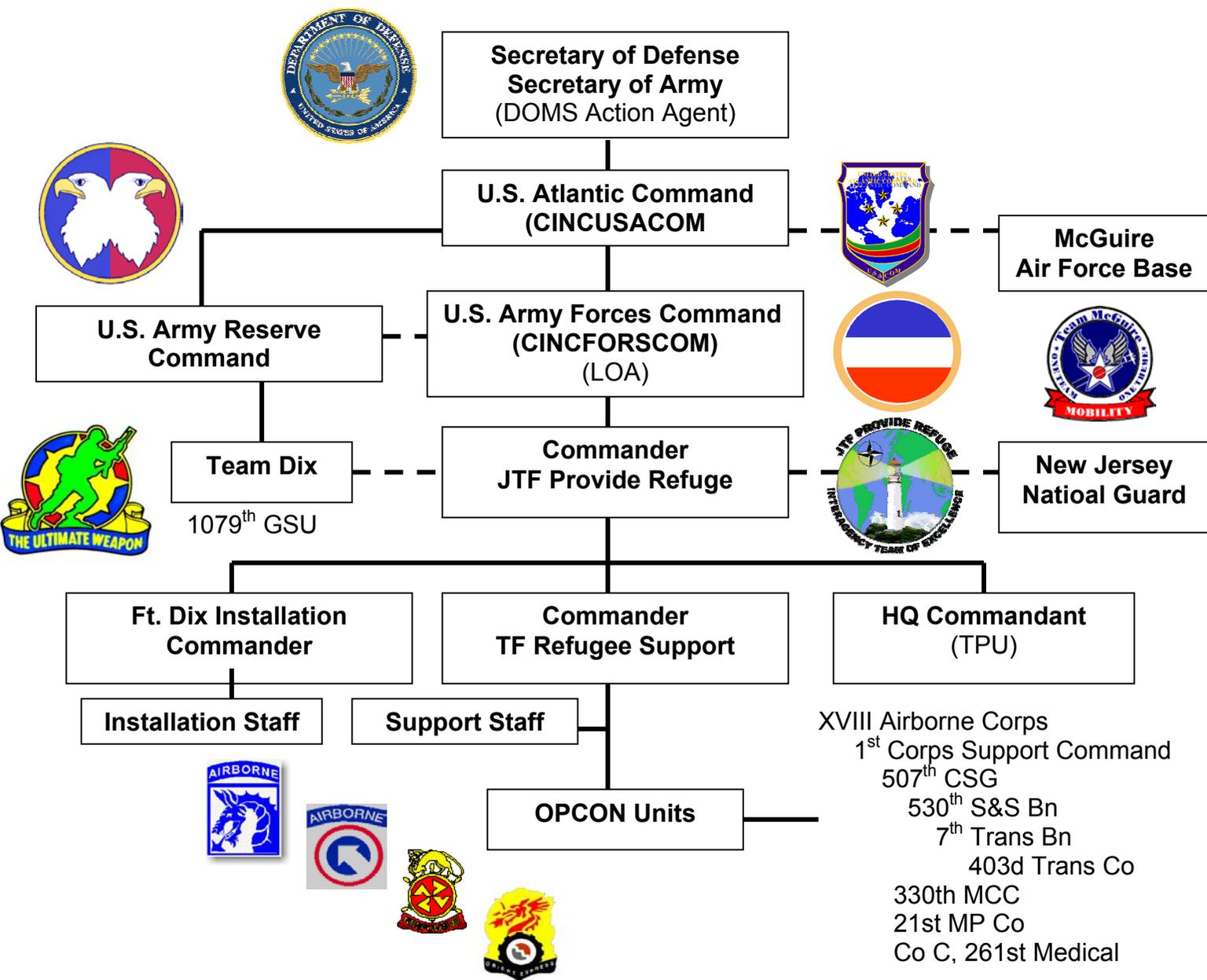
- **DHHS support/contract for:**<sup>1</sup>
  - Transportation to CONUS (Charter Aircraft)
  - Transportation from point of arrival to the Joint Task Force Village
  - Medical Care (incl. U.S. Public Health Service)
  - Food Services
  - Housekeeping
  - Security
  - Immigration processing (performed by U.S. Immigration and Naturalization Service (INS))
  
- **DoD support of the Department of Health and Human Services:**<sup>2</sup>
  - Arrival Departure Airfield Control Group operations.
  - Transportation of refugees from McGuire Air Force Base to Ft. Dix, N.J.
  - All physical facilities for the operation.
  - Dining facility operations for the refugees.
  - Exchange operations for the refugees.
  - Chaplain coordination for religious support.
  - Joint Information Bureau and media support operations.
  - Infrastructure and support items for in-processing and interview facilities.
  - External perimeter security.
  - Communications and information management support.
  - All housing management operations for the refugees.
  - Utilities, building maintenance, grounds maintenance, and refuse removal.
  - Support for refugee quality of life, i.e., soccer, entertainment support.

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<sup>1</sup> E-mail from MAJ Donna L. Barlett, Chief, Operational Law, U.S. Army Reserve Command, to LTC Willis C. Hunter, Staff Judge Advocate, JTF Provide Refuge (May 14, 1999) (on file with CLAMO).

<sup>2</sup> See U.S. Army Forces Command, After Action Review, Operation Provide Refuge, <http://freddie.forscom.army.mil/macaw/Word/jtfpraar.doc> (last visited July 2, 2001) (on file with CLAMO).

**APPENDIX V-7: JTF PROVIDE REFUGE COMMAND AND CONTROL  
STRUCTURE<sup>1</sup> AND UNITS IN SUPPORT<sup>2</sup>**



<sup>1</sup> See E-mail from MAJ Donna L. Barlett, Chief, Operational Law, U.S. Army Reserve Command, to LTC Willis C. Hunter, Staff Judge Advocate, JTF Provide Refuge (May 14, 1999) (on file with CLAMO).

<sup>2</sup> See Message, 131700 (EDT) May 99, JTF Provide Refuge, subject: JTF Provide Refuge SITREP 11 (13 May 1999) [hereinafter SITREP 11] (on file with CLAMO); Message, 151700 (EDT) June 99, JTF Provide Refuge, subject: JTF Provide Refuge SITREP 44 (15 June 1999) [hereinafter SITREP 44] (on file with CLAMO); U.S. Army Forces Command, After Action Review, Operation Provide Refuge, <http://freddie.forscom.army.mil/macaw/Word/jtpraar.doc> (last visited July 2, 2001) (on file with CLAMO).

**APPENDIX V-8: JOINT TASK FORCE PROVIDE REFUGE**  
**GENERAL ORDER #1**

Joint Task Force \_\_\_\_\_  
General Order #1

1. This order is applicable to all U.S. military and DoD civilian personnel attached, assigned, or under the operational control of Joint Task Force \_\_\_\_\_.
2. PURPOSE: This order establishes command policy concerning the conduct of JTF \_\_\_\_\_ personnel within areas designated for Kosovar refugees and while interacting with the refugees. This includes the policy on alcoholic beverages, use of privately owned automobiles, and fraternization with the refugees.
3. The following activities are prohibited:
  - a. JTF \_\_\_\_\_ personnel will not enter areas designated for Kosovar refugees unless on official duty or official business or otherwise approved by competent authority;
  - b. JTF \_\_\_\_\_ personnel will not purchase goods from or sell goods on behalf of refugees. "Goods" is hereby defined to include property, services and currency. This list is not exhaustive and could be expanded.
  - c. JTF \_\_\_\_\_ personnel will not fraternize with migrant personnel. Fraternization is defined as associating in an informal, personal or intimate manner which reflects a familiarity that is inappropriate for the workplace.
  - d. JTF \_\_\_\_\_ personnel will not engage in any conduct that creates an actual or perceived conflict of interest between their military duties and their personal activities.
  - e. JTF \_\_\_\_\_ personnel will not engage in any physically intimate or sexually oriented activities with migrant personnel.
  - f. JTF \_\_\_\_\_ personnel will not knowingly take or use supplies that are meant for the use of refugees, unless instructed otherwise by competent authority.
4. This order is punitive. Persons subject to the Uniform Code of Military Justice may be punished under Article 92, UCMJ for violating a lawful general order. DoD civilians may face adverse administrative action.
5. Unit commanders and supervisors are charged to ensure all appropriate personnel are briefed on the content of this order.

6. This general order will expire upon the completion of Operation \_\_\_\_\_ unless earlier rescinded, waived or modified.

7. Direct all inquiries, comments and suggested amendments to JTF \_\_\_\_\_, ATTN: Legal Advisor.

XXXXXXXXXX

XXXXXXXXXX

Commander, Joint Task Force \_\_\_\_\_

**APPENDIX V-9: JOINT TASK FORCE PROVIDE REFUGE STAFF  
JUDGE ADVOCATE STANDARD OPERATION PROCEDURE**

Joint Task Force  
Provide Refuge  
Fort Dix, NJ  
4 June 1999

**Staff Judge Advocate**

Standard Operating Procedure

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**Applicability:** This SOP applies to all personnel in the Staff Judge Advocate section.

**Chapter 1.**

**General Information.**

**1.1. Purpose.** The SOP prescribes operating procedures and administrative policies for the Joint Task Force Provide Refuge Staff Judge Advocate.

**1.2. References.** Related publications are: DOMS Execute order OIO636Z May 99, USACOM Execute Order OIO933Z May 99, and FORSCOM Execute Order O11333Z May 99.

**1.3. Responsibilities.** All members of the Staff Judge Advocate section will adhere to the policies and procedures prescribed in this SOP.

**Chapter 2.**

**General Duties and Responsibilities of SJA Personnel.**

**2.1. General.** The mission of the legal staff will be executed under the guidance of the Staff Judge Advocate.

**2.2. Responsibilities of the Staff Judge Advocate.**

- a. Provide legal advice to the Task Force Commander and Staff.
- b. Attend daily staff meetings to provide input and obtain information.
- c. Provide relevant input to the daily SITREP.
- d. Review the daily SITREP to identify legal issues and obtain information.
- e. Attend Law Enforcement staff meetings each Wednesday.
- f. Tour the refugee housing areas at least once daily to observe conditions and identify potential legal problems.
- g. Observe refugee in-processing to identify potential legal problems.
- h. Check the SJA in-box on the second floor at least twice daily.
- i. Coordinate legal issues with the Fort Dix SJA.
- j. Coordinate legal issues with the USARC SJA.
- k. Coordinate legal issues with the FORSCOM SJA, Operational Law Division.

- l. Respond to all JTF Taskings.
- m. Coordinate law enforcement issues through the JTF Provost Marshal.
- n. Maintain copies of all legal documents in file folders.
- o. Provide copies of all legal documents to the JTF Historian.
- p. Save all non-personal e-mail traffic for historical review.

### **Chapter 3.**

#### **SJA Operating Procedures.**

##### **3.1. SJA operations.**

- a. Staffing. The SJA section is staffed with a single officer who must be available 24-hours per day. The normal duty day is O830-1730, Monday - Saturday.
- b. Physical Training. The SJA section conducts PT each duty day at O630 or alternatively, during the lunch hour.
- c. Daily Meetings. The SJA meets daily with the JTF staff in the Command Conference Room (Basement of Bldg. 5957). This meeting is usually held from 1600 to 1700 each duty day. The SJA should also attend the Joint Agency Meeting held at O900 each morning in the same location.
- d. Weekly Meetings. Each Wednesday there is a Law Enforcement personnel meeting in the JTF conference room. Meetings are normally held at 1300.

##### **3.2. SJA Support .**

a. Administrative Support. The SJA section may obtain some administrative support from the Fort Dix SJA office in Building 5418 (phone 562-3043). Support may consist of research assistance, supplies, or personnel support.

b. Transportation.

1. On-Post. The SJA section has been provided a GSA vehicle for on post transportation. The vehicle must be re-dispatched each Monday at the Installation motor pool located on Delaware Avenue across the street from the Fort Dix Fire Station.

2. Off-Post. There is a New Jersey Transit bus available for transportation to the Moorestown and Cherry Hill Malls. The bus stop is located at the corner of Pemberton-Wrightstown Road and Pennsylvania Avenue (in front of the installation transportation office). A published bus schedule is available in the SJA office.

c. Communications. The SJA section has traditional telephone, cellular phone, fax, e-mail, and internet communications facilities. The SJA's phone number is (609)562-

5299; cell phone number is (609)413-4063. Incoming fax number is (609) 562-4144 (the fax is located in the J-3 section). NOTE: cell phone usage inside the headquarters building is virtually impossible.

d. Quarters. SJA personnel have quarters in the Fort Dix BOQ (Bldg. 5254).

e. Meals. SJA personnel will be issued a government meal card. Meals are available in the dining facility located in Bldg. 5432, located on 6th Street between Pennsylvania and Delaware Avenues.

f. Shopping. Fort Dix has a large PX/Commissary complex. All items normally found on a large base are available as well as several specialty shops offering flowers, rental cars, optical shop, computer repairs, and laundry facilities. An ATM machine is also located in the PX area. The PX/Commissary complex is located near the intersection of Texas Avenue and Pemberton-Wrightstown Road at the McGuire Air Force Base entrance gate. Fort Dix also has a Burger King, Shoppette, and gas station located near the PX/Commissary complex.

g. Laundry. Fort Dix has a full support laundry at very inexpensive prices. The laundry is located at the intersection of Pemberton-Wrightstown Road and Pennsylvania Avenue. Laundry is normally returned within 48-72 hours. The JTF also has established a laundry pick-up point in the building with the dining facility. This service operates from 0600-0800 Monday thru Friday. Additionally, the BOQ has washing machines and dryers available free of charge to residents.

h. Medical. SJA personnel utilize the troop medical clinic in building 5660 for medical support. This clinic is located at the south end of the cantonment area (near the correctional facility) just off of Doughboy Loop on 1 6th Street. Phone number is 562-2680.

i. Haircuts. A barbershop and a hairdresser are available at the PX.

#### **Chapter 4.**

#### **Routine Points of Contact for SJA Personnel .**

**4-1. USARC SJA Office.** COL Gary Casida or LTC Willis Hunter may be reached at (404) 464-8058/8048. The fax number for the USARC SJA office is (404) 464-8060. The DSN access number for Fort McPherson is 367.

**4-2. FORSCOM SJA Office.** MAJ Pat Koepp can be reached at (404) 464-3836; fax is (404) 464-2792. The DSN access number is 367.

**4-3. Fort Dix SJA Office.** LTC Paul Grimstad can be reached at (609) 562-5258. His home number is 702-8087. To dial from an on-post phone simply dial the last five digits of the phone number (2-5258).

**4-4. Office of the Judge Advocate General, International and Operational Law.** MAJ Neoma White is the OTJAG POC. She can be reached at (703) 588-0143. There is

also an Emergency Operations Center in Washington that can reach her 24-hours a day (703) 695-2971/1898.

## **Chapter 5. Military Support to Civilian Authorities.**

**5-1. Introduction.** Military Support to Civil Authorities (MSCA) is unlike any other DoD operational mission. The DoD plays a supporting role only to another Lead Federal Agency (LFA). It is the empowering statutes of the LFA that allow the DoD to participate at all, and which require the DoD to provide support to individuals or communities only through and at the request of the LFA.

**5-2. The Role of the Judge Advocate.** Judge Advocates deploying to a Task Force established in CONUS to support civil authorities must be aware of applicable statutes and DoD regulations. Often, JAs and the Commanders they advise, have little or no experience operating in such support missions. While the following general principles provide a start point for evaluating mission parameters and a Commander's legal authority to act, JAs must have ready access to governing statutes and directives in order to properly advise their clients.

### **5-3. MSCA Rules.**

a. MSCA directives establish parameters concerning types and amount of support DoD may provide to the LFA; which Federal, state and local authorities may receive support; and specify under which statute reimbursement shall be made. See, DoDD 3025.15, Military Support to Civil Authorities, and DoDD 3025.15, Military Assistance to Civil Authorities.

b. DoD must receive a written request from the LFA, which sets forth at a minimum: acknowledgement and statutory basis to reimburse DoD costs, and identification of specific requirements, not capabilities. For example, a request for transportation should indicate whether for personnel or supplies (requirement), but should not ask for a truck company (capability). The DoD will determine, among its available resources, what type of transportation unit is best suited to fulfill the request.

c. SECDEF or SECARMY must approve the initial LFA request for assistance prior to any DoD component providing support. Acting prior to such approval may relieve the LFA from providing reimbursement for any DoD funds expended. Once the initial support mission is approved, a defense coordinating officer (DCO) or task force commander may thereafter be authorized to act on behalf of the SECARMY and accept additional requests for support. Such a delegation to a DCO or task force commander will be delineated in the Execute Order, or a subsequent Fragmentary Order.

d. The LFA has responsibility for executing the mission, whatever that may be; *DoD operates in a supporting role only*. DoD can act only in consonance with the legal authority of the LFA and only in response to specific support requests. DoD cannot “volunteer” to do more than what the LFA requests. In operational terms, this is “mission creep.” In MSCA terms, it is improper use of DoD personnel, resources and funds.

e. The DCO, task force commander, or other DoD representative to the LFA, should assist the LFA to identify and leverage the interagency assets available. Where appropriate, the DCO or task force commander should assist the LFA to consider practical, cost-effective alternatives to DoD support. For example, use of commercial transportation methods may be quicker and cheaper than use of DoD transport. DoD resources are used to supplement the LFA and support provided by other Federal agencies, and must not exceed that which is properly requested and authorized.

## **Chapter 6.**

### **Recurring Legal Issues**

**6-1. Alcoholic Beverages.** JTF Order Number 1, dated 11 May 1999, prohibits the introduction, possession, use, sale, transfer, or consumption of any alcoholic beverage within the limits of the Welcome Center Village or refugee housing areas. Task Force personnel may engage in moderate consumption of alcoholic beverages when off-duty and in areas away from the Welcome Center Village or refugee housing areas.

**6-2. Court-Martial Jurisdiction.** Active duty soldiers remain under the UCMJ jurisdiction in their home unit. Reserve and National Guard soldiers will be attached to GCM jurisdiction of the Fort Dix Commander on an as needed basis, or in accordance with their orders placing them on active duty.

### **6-3. Deaths.**

- a. **Dead on Arrival.** The INS does not consider persons who are dead upon arrival at McGuire Air Force Base as refugees. Accordingly, their bodies will immediately be released for transport to the Burlington County Hospital for creation of a death certificate. Muslim law requires that the body be bathed in accordance with religious beliefs and be buried before the next sunrise. As a result, if there is no sign of foul play, the body will quickly be released to a nearby Muslim funeral home for burial. Funeral costs are the responsibility of DHHS.
- b. **Death After Arrival.** Any death occurring in the refugee housing areas will be treated by law enforcement authorities as an unexplained death. The DoD Police will respond when called and secure the scene for evaluation by CID. CID will respond and conduct a crime scene analysis and coordinate with FBI. The body will be handled in accordance with normal police procedures, in

consultation with DHHS, INS, and Muslim advisors.

- 6-4. Fraternalization.** JFT Order Number 1, dated 11 May 1999, prohibits task force personnel from engaging in fraternization with refugee personnel. Fraternization is any association in an informal, personal, or intimate manner, which reflects a familiarity or favoritism that is inappropriate for the workplace.
- 6-5. Military Police Security and Investigative Jurisdiction**
- a. Military police and DoD police will provide security at traffic control checkpoints at the outer perimeter of the Task Force area.
  - b. Upon receiving a report of crime in the housing areas, DoD police will respond and make the initial evaluation as to whether the possible offense is misdemeanor or felony offense. For misdemeanor offenses, the case will be reported to the DoD Criminal Investigations Unit (CIU). For felony offense, the case will be reported to the Fort Monmouth CID. Whichever investigative unit responds will handle the case in accordance with normal investigative procedures, ensuring coordination with DHHS and INS.
- 6-6. Pornography** JTF Order Number 1, dated 11 May 1999, prohibits the introduction, possession, transfer, sale, creation, or display of any pornographic or sexually explicit materials. The Order is drafted very broadly with the intent to preclude display of nudity or semi-clothed persons. Refer to the Order for additional details.
- 6-7. Religious Support.**
- a. The First Amendment to the Constitution of the United States precludes the Federal Government from the establishment of any religion or religious practice. One exception to this provision is that the Government may provide military chaplains to minister to the needs of soldiers and their families.
  - b. In recognition of this legal exception, Army regulations restrict chaplains from providing direct religious support to civilians, including refugees. Accordingly, a distinction must be made between direct and indirect religious support. Direct support would be preaching or leading a religious service. Indirect support would be providing a place for religious services, procuring a civilian minister to lead the services, providing necessary equipment and seating, and meeting with and counseling refugees.
- 6-8. Rules of Engagement.** The JTF Commander approved Rules of Engagement on 5 May 1999. Essentially, the rules can be summarized as follows:
- a. Task Force personnel retain their inherent right of self-defense as well as the right to defend any other person who needs help;

- b. Outside of the Welcome Center Village and refugee housing areas, the DoD Police and MPs retain the right to maintain good order and discipline. Inside the Village and refugee housing areas, the DHHS and INS have that responsibility. DoD Police and MPs may be called to assist if they become unable to carry out their responsibility.
- c. MPs will maintain traffic checkpoints at the outer perimeter of the Welcome Center Village. These checkpoints are intended to prevent unauthorized personnel from getting access to the Welcome Center Village and refugee housing areas.
- d. If a criminal act occurs at the refugee housing areas, the INS and DHHS representatives will immediately contact the DoD Police Department to come to the scene and secure the crime scene, as well as restore order if necessary. The DoD Police Department will then determine whether the DoD Criminal Investigative Unit (CIU) should investigate the offense or whether the Army Criminal Investigative Division (CID) should investigate it. All criminal acts by civilians will be referred to the Fort Dix Special Assistant United States Attorney in the Fort Dix Staff Judge Advocate Office.

**6-9. Weapons.** JTF Order Number 1, dated 11 May 1999, prohibits the purchase, possession, use, or sale of privately owned firearms, ammunition, explosives, or any introduction of these items into the Provide Refuge Welcome Center Village and refugee housing areas.

**6-10. Weddings.** Refugees may wish to be married while residing at Fort Dix. If this happens, an application for a marriage license must be obtained from the New Hanover Township Registrar in Cookstown, NJ. The Registrar's name is Mr. Martin Poinsett and his phone number is (609) 758-7149.

The legal requirements for marriages are as follows:

- a. If the bride and groom are over 18, parental permission is not required. If either is over 16, but younger than 18, a parent must give written approval. If either is under 16, they must have the approval of the Municipal Judge;
- b. A fee of \$28 is required for the application for a marriage license, plus there is a \$5 fee to get the license certified and filed after the wedding;
- c. One witness must sign the marriage license application;
- d. The parties must physically go to the New Hanover Municipal Building, or alternatively, someone can go to the building and be appointed as an Assistant Registrar. Once appointed as Assistant Registrar, they come back and collect the paperwork to take to the Registrar;
- e. There is a 72-hour waiting period after the application is filed;
- f. The license is good for 30 days, in the State of New Jersey, only;
- g. At the wedding, it will be necessary to have two (2) witnesses;
- h. After the wedding, the license must be returned to the Registrar so he can apply the official seal and file it with the State of New Jersey.

## **APPENDIX V-10: MILITARY SUPPORT TO CIVIL AUTHORITIES**

### **BASIC PRINCIPLES**

#### MILITARY SUPPORT TO CIVIL AUTHORITIES BASIC PRINCIPLES

#### "DON'T GET OUT AHEAD OF YOUR AUTHORITY"

Military Support to Civil Authorities (MSCA) is unlike any other DoD operational mission. The DoD plays a supporting role only to another Lead Federal Agency (LFA). It is the empowering statutes of the LFA that allow the DoD to participate at all, and which require the DoD to provide support to individuals or communities only through and at the request of the LFA.

Judge Advocates deploying to a Task Force established in CONUS to support civil authorities must be aware of applicable statutes and DoD regulations. Often, JAs and the Commanders they advise, have little or no experience operating in such support missions. While the following general principles provide a start point for evaluating mission parameters and a Commander's legal authority to act, JAs must have ready access to governing statutes and directives in order to properly advise their clients.

1. MSCA directives establish parameters concerning types and amount of support DoD may provide to the LFA; which Federal, state and local authorities may receive support; and specify under which statute reimbursement shall be made. See, DoDD 3025.1, Military Support to Civil Authorities, and DoDD 3025.15, Military Assistance to Civil Authorities.
2. DoD must receive a written request from the LFA, which sets forth at a minimum: acknowledgement and statutory basis to reimburse DoD costs, and identification of specific requirements, *not* capabilities. For example, a request for transportation should indicate whether for personnel or supplies (requirement), but should not ask for a truck company (capability). The DoD will determine, among its available resources, what type of transportation unit is best suited to fulfill the request.
3. SECDEF or SECARMY must approve the initial LFA request for assistance *prior* to any DoD component providing support. Acting prior to such approval may relieve the LFA from providing reimbursement for any DoD funds expended. Once the initial support mission is approved, a defense coordinating officer (DCO) or task force commander may thereafter be authorized to act on behalf of the SECARMY and accept additional requests for support. Such a delegation to a DCO or task force commander will be delineated in the Execute Order, or a subsequent Fragmentary Order.

4. The LFA has responsibility for executing the mission, whatever that may be; *DoD operates in a supporting role only*. DoD can act only in consonance with the legal authority of the LFA and only in response to specific support requests. DoD cannot "volunteer" to do more than what the LFA requests. In operational terms, this is "mission creep." In MSCA terms, it is improper use of DoD personnel, resources, and funds.

5. The DCO, task force commander, or other DoD representative to the LFA, should assist the LFA to identify and leverage the interagency assets available. Where appropriate, the DCO or task force commander should assist the LFA to consider practical, cost effective alternatives to DoD support. For example, use of commercial transportation methods may be quicker and cheaper than use of DoD transport. DoD resources are used to supplement the LFA and support provided by other Federal agencies, and must not exceed that which is properly requested and authorized.

**APPENDIX V-11: J3 OPERATIONS STANDARD**  
**OPERATING PROCEDURES**

Joint Task Force  
Provide Refuge  
Fort Dix, NJ  
10 May 1999

**J3 Operations**

Standard Operating Procedures

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**Applicability.** This SOP applies to all personnel in the Office of the J3 Operations.

**1-1. Purpose.** The SOP prescribes operations procedures and administrative policies for the J3, Joint Task Force, Operation Provide Refuge.

**1-2. References.** The related publications are: DOMS Execute Order 010636Z May 99, USACOM Execute Order 010933Z May 99, and FORSCOM Execute Order 011333Z May 99.

**1-3. Responsibilities.** All members of the J3 staff will adhere to the policies and procedures prescribed in this SOP.

**1-4. Explanation of acronyms and abbreviations.**

The glossary explains acronyms and abbreviations used in this publication.

**Chapter 2**

**General Duties and Responsibilities of J3 Members.**

**2-1. General.** The mission of the Operations Section will be executed under the guidance of the Joint Operations Officer (J3).

**2-2. Responsibilities of the J3 Section.**

- a. Provide current operations update and tracking.
- b. Prepare daily SITREP.
- c. Develop estimates and future plans based on mission and refugee flow.
- d. Track incoming and outgoing refugee flow.
- e. Provide Civil-Military coordination and planning.
- f. Prepare and conduct Command briefings.
- g. Prepare and update Commander's Critical Information Requirements (CCIR).
- h. Prepare and track JTF taskings.
- i. Conduct Provost Marshal coordination.
- j. Conduct flight tracking and manifesting.

- k. Prepare JTF training plan and track conduct of training.
- l. Provide safety management and integrate risk management to the JTF.

**2-4. The Assistant J3 responsibilities.**

- a. Report directly to the J3.
- b. Interface with the JTF Command Group and staff primaries on J3 matters.
- c. Designate the J3 Battle Captain and provide operational supervision of the Joint Operations Center (JOC).
- d. Review and recommend content of the daily command briefing.

**2-6. The Battle Captain responsibilities.**

- a. Is directly responsible to the Assistant J3.
- b. Recommend JOC staffing and shift arrangement.
- c. Enforce JOC policies and procedures.
- d. Supervise and coordinate the operation of his/her JOC shift. As appropriate, has the authority to act for the Assistant J3 or the J3. Provide overall coordination and direct supervision of the J3 JOC staff.
- f. Conduct the shift change brief as required.
- g. Review applicable incoming and outgoing messages and correspondence.
- h. Establish priority of actions within the JOC. Task appropriate action officers to accomplish incoming actions and establish suspense dates/times for completion.
- i. Advise the J3 and Assistant J3 of situations requiring command attention.
- j. Coordinate all briefings; serve as primary JOC briefing officer. Ensure that all decisions, orders, and taskers are documented, disseminated, and executed.
- k. Ensure that classified material is treated in accordance with AR 380-5.
- l. Act as the primary action officer for coordination of staff input for the production of the After Action Report (AAR) upon termination of the JTF.

**2-7. Operations officer responsibilities.**

- a. Act as chief during J3 Chief's absence and be familiar with the duties and responsibilities of the J3 Chief.
- b. Coordinate all JTF actions among the task force action officers and task force members, as appropriate.
- c. Ensure required reports and responses are prepared and dispatched to meet established suspenses.
- d. Prepare, coordinate, and present the J3 portion of daily command briefings.
- e. Conduct interface of J3 representatives on JTF issues.
- f. Receive subordinate command SITREPs and take appropriate action.
- g. Control status of taskings.
- h. Review and submit the JTF daily SITREP.
- i. Maintain status charts and situation maps required by the J3 Chief.
- j. Supervise and coordinate the operation of a J3 shift in a 24-hour operation.
- l. Ensure classified material is processed and controlled in accordance with AR 380-5.
- l. Coordinate all briefings. Serve as the primary J3 briefing officer. Ensure that all decisions, orders, and taskings are documented, disseminated, and executed.

**2-8. Operations Non-commissioned Officer (NCO) responsibilities.**

- a. Supervise the physical layout, security, and police of the JOC.
- b. Be responsible for security and accountability of classified documents within the JOC. Maintain the safe and ensure the proper destruction of classified documents.
- c. Assist the OPSEC officer with OPSEC overwatch for the JOC.
- d. Supervise the assistant operations NCOs.
- e. Control distribution.
- f. Read all incoming messages and correspondence. Effect and track appropriate routing. Assist the JOC Battle Captain in monitoring taskers and determining appropriate action on all incoming correspondence.
- h. Maintain incoming and outgoing message reading files in marked 3-ring binders.
- i. Receive, edit, and secure release of final copy messages.
- j. Coordinate establishment and control of suspense dates.
- k. Maintain JOC historical files in concert with the Admin NCO.
- l. Establish and maintain map files and applicable charts.
- m. Maintain status charts and situation maps required by the shift leader.
- n. Assist in preparation of Operations Plans (OPLANs) and orders.
- o. Assist in preparation of SITREPs, situation briefings, briefing books, and visitors' reading file.
- p. Assist in presentation of the daily situation briefing. Ensure that the briefing area and resources are ready. Be prepared to brief visitors to the JOC.
- q. Coordinate Training and Audiovisual Support Center (TASC) audiovisual and computer requirements.
- r. Provide periodic training of all JOC personnel to maintain proficiency.
- s. Identify and coordinate the training requirements for JTF personnel.
- t. Responsible for JOC property. Control assigned JOC vehicles when provided.
- u. Establish and maintain duty rosters of all shifts and capture workload data for each JOC member for the duration of the operation. Coordinate meals, breaks, and work schedules for J3 members.

**2-9. Assistant Operations Non-commissioned Officer responsibilities.**

- a. Control access to the JOC to only required personnel.
- b. Maintain the JOC Access Roster.
- c. Control the visitors' log.
- d. Coordinate escort of visitors.
- e. Inform the Operations NCO of any attempt to remove classified or unauthorized items from the JOC.
- f. Act as a message courier and perform other administrative and clerical functions as determined by the Operations NCO.
- k. Assist the Operations NCO in maintaining reports, charts, maps, etc.
- l. Assist the Operations NCO in orderly closing of the JOC upon termination of the operation.
- m. Assist the Operations NCO with physical security of the JOC.
- k. Be familiar with the duties of the Operations NCO.
- p. Maintain key control for workstations, and secure telephone unit IIIs (STU IIIs).

1. Monitor Cable News Network (CNN), and prepare videotapes of significant news segments for use during briefings, or as appropriate.

**2-10. Liaison Officer (LNO) responsibilities.**

- a. Be directly responsible to the JTF J3.
- b. Attend all staff briefings and shift change meetings in the JTF.
- c. Advise supporting commands on any matters involving the operation. Investigate status of all actions (actual, potential) which affect JTF units or personnel.
- d. Read all JTF distribution. Highlight applicable text.
- e. Maintain a staff journal at their LNO desk.

**2-11. Administrative Non-commissioned officer responsibilities**

- a. Manage staffing of administrative cell.
- b. Maintain JOC computer local area network (LAN) system.
- c. Establish administrative support priorities.
- d. Consolidate staff journal input. Maintain staff journal binder.
- e. Coordinate administrative support from attached support personnel.
- f. Maintain the JOC historical files.
- g. Supervise the J3 administrative personnel in their functions.
- h. Establish and maintain a consolidated list of points of contact (POC), telephone directories/organization directories of supporting headquarters and agencies.
- i. Maintain a message/correspondence/telephone or verbal conversation record file.
- j. Maintain the action officer suspense file.
- k. Determine and coordinate means of transmission for outgoing messages.
- l. Maintain the JOC reference library.
- m. Requisition supplies and the maintenance of equipment, including STU IIIs, telephones, safe combinations, copiers, shredders, computers, and typewriters.
- n. Maintain an adequate supply of blank forms.
- o. Monitor housekeeping of the JOC.
- p. Act as Operations NCO during reduced manning or in the absence of the Operations NCO.
- q. Control/issue expendable supplies.
- r. Coordinate with staff for JOC duty personnel, and maintain the J3 duty roster.

**2-12. Deployment representative responsibilities.**

- a. Provide deployment flow information to JTF staff.
- b. Monitor the refugee processing status.
- c. Develop/coordinate initiatives which enhance the visibility of refugee status.

**2-13. Future plans representative responsibilities.**

- a. Develop plans specifically focused to potential contingencies, including Contingency plans (CONPLANS), OPLANS.
- b. Serve as the primary interface with FORSCOM G-3 Plans staff in coordination with the FOC liaison officer.
- c. Provide Staff recommendations and updated information.
- d. Provide information relating to all components (COMPO 1, 2, 3).

**2-14. Training responsibilities.**

- a. Recommend and validate individual training requirements.
- b. Maintain current status of Task Force training.
- c. Oversee pre-employment training requirements.

**2-15. Military Support to Civil Authorities (MSCA) representative responsibilities**

**2-15-1. General**

Requests for military assistance normally are passed up from local officials, through the state (governor), and then to the President. Upon the President making a declaration of a national emergency, federal agencies are employed through the Federal USARC Management Agency (FEMA) to render assistance. Downward coordination is from FEMA to the Department of Defense (DOD), to Director of Military Support (DOMS), to FORSCOM, through USARC and then to the RSC/DRC/EAD/EAC. This process may take several hours to several days, depending upon the magnitude of the emergency and the forces requested/required.

**2-15-2. Procedures**

Requests for military assistance may not always pass through formal channels, as described above. If requests are received at the JTF level, they should be passed as applicable through the J3, to the CofS, and then to the CJTF. The CJTF may authorize the loan of military equipment up to 90 days, and may authorize volunteer personnel to be placed on active duty status for a limited time. Requests must be submitted in writing. The following information should be obtained from any requester:

- a. Name, address, telephone number of requester, organization or agency, and title of the requester.
- b. Brief statement of situation, to include location, specific support required, and an estimate of the time needed.
- c. What assistance has been requested/provided by the National Guard, other military departments, or FEMA.

**2-15-3. Immediate Response**

Any commander may determine the situation to be an imminent serious condition beyond the capabilities of local or state government to respond. If an imminent serious condition, the commander may authorize support to local or state officials in the emergency to reduce loss of life and human suffering. If the commander determines that the situation is not as described above and declines to provide assistance, or if the situation is beyond the JTF capability, a message will be sent to FORSCOM, forwarding the request and outlining the reasons it was not acted upon.

**2-15-4. Functions.**

- a. Coordinate funding requirements for liaison personnel with appropriate agencies.
- b. Serve as functional expert liaison with all non-governmental agencies.  
Coordinate JTF issues through the FORSCOM and USACOM liaison officers.
- c. Provide augmentation to JOC for 24-hour coverage.

**2-16. Provost Marshal representative.**

- a. Review force protection correspondence and evaluate the terrorism counteraction programs and provide guidance and assistance as required.
- b. Integrate intelligence, counterintelligence, criminal intelligence, operations security (OPSEC) information, physical security, and security activities into terrorism counteraction planning and exercises.
- c. Maintain interface with the FORSCOM PM offices to ensure a smooth flow of military police (MP) information.
- d. Maintain liaison with U.S. Army Criminal Investigation Command USACIC).
- e. Coordinate personal protective services for general officers/high risk personnel.
- f. Coordinate criminal investigative support to prevent/respond to a terrorist incident or threat.
- g. Maintain liaison with the Federal Bureau of Investigation (FBI) and other civilian law enforcement agencies.
- h. Oversee the security of JTF facilities and sensitive material from criminal threats and terrorists activities.
- i. Coordinate PM representative support. Advise the J3 on unresolved issues.
- j. Review message traffic and take action, within the PM functional area or as directed by the J3.
- k. Attend twice daily JTF staff meetings, as required.
- l. Provide input to the daily Situation Report. (SITREP)
- m. Prepare reports and staff estimates.
- m. Prepare and submit the section After Action Report upon termination of operation.
- n. Apply Operational Security (OPSEC) measures as outlined in AR 530-11.
- o. Coordinate and monitor traffic control points.
- p. Coordinate with outside agencies for threat analysis.
- q. Provide liaison to the lead federal agency, the International Red Cross, the Installation Provost Marshal, and other local, state, and federal law enforcement agencies.
- q. Coordinate with DoD police to support the installation reaction force.

**2-17. Safety representative will:**

- (1) Provide guidance and assist in developing and integrating safety in all operations to include-
  - (a) Ensure statutory compliance/Liability Limitation.
  - (b) Safety guidance to the CJTF and subordinate commanders and staff.
  - (c) Coordinate with higher headquarters, MACOMs, U.S. Army Safety Center, and civilian agencies to ensure current safety procedures are understood and followed
  - (d) Conduct special safety briefings and seminars as needed.
  - (e) All personnel operating vehicles will observe the posted speed limits. When speed limits are not posted the maximum speed limit is 55.
  - (f) Transportation of troops and civilians in military vehicles will be conducted in accordance with Fort Dix regulations.

(g) Initial report. Any accident classified as a class A or B must be reported as soon as possible to the Task Force Headquarters.

1. All accidents classified as class C or D will be reported within 24 hours of mishap occurrence. A submit a follow-up report when complete information is available.
2. Provide rescue and medical assistance within capabilities.
3. Take appropriate fire protection in case of fire, flammables or a possibility of fire.
4. If injuries are involved, call for medical aid and transportation on published MEDEVAC frequency.
5. Contact Military Police for all accidents.
6. Notify the Task Force Headquarters of accident and any known details.

C. Upon accident notification the Task Force Operations center will:

- (1) Complete report form with details of accident.
- (2) Contact closest DOD facility or local community emergency response team for fire and rescue services. Advise responders of any HAZMAT concerns, if required.
- (3) Alert appropriate service/command safety representative.
  - (a) FAX form to appropriate service representative.
  - (b) Follow up with courtesy phone call.

**TELEPHONIC ACCIDENT REPORT FORM**

**NAME / RANK OF CALLER:**  
**PHONE NUMBER OF CALLER:** **DATE/TIME:**  
**UNIT INVOLVED IN ACCIDENT:**  
**TYPE OF ACCIDENT: (circle one)**      **GROUND**      **AIRCRAFT**  
**LOCATION OF ACCIDENT:**      **ON POST**      **OFF POST**  
**VEHICLE INVOLVED (circle one):**      **YES**      **NO**  
**AIRCRAFT INVOLVED (circle one):**      **YES**      **NO**  
**TYPE VEHICLE/AIRCRAFT: (If unknown, describe color, markings, etc.)**  
**NUMBER OF PERSONNEL INVOLVED:**      **MILITARY**      **CIVILIAN**  
**NUMBER OF PERSONNEL:**      **INJURED**      **DECEASED**  
**NAME / RANK OF PERSONNEL INVOLVED:**  
**DESCRIPTION OF ACCIDENT:**  
**FOR AIRCRAFT MISHAPS PARACHUTES? YES NO      HOW MANY?**

**Chapter 3**  
**Security**

**3-1 General.** The JOC is a restricted area located on the third floor of building 5957. The JOC Operations Sergeant performs as Security Manager for the JOC. The J3 Provost Marshal has overall staff responsibility for physical security and force protection.

**3-2 Physical Security.**

- a. Threat. Report fire, bomb threats, unauthorized attempts to access the JOC.
- b. All JTF personnel are authorized unescorted access within the JTF area.
- c. Visitors not assigned to the JTF will be escorted in the JTF and TF Village.

### **3-3. Classified material**

- a. AR 380-5 applies to all document handling, processing, storage, and transmissions.
- b. The assistant operations NCO will control classified documents. Classified documents will not be taken from the JOC without permission of the J3. JOC members will check daily to ensure that security directives and control procedures are followed.
  - (1) SECRET documents may be removed from the JOC with J3 approval.
  - (2) All other documents may be removed from the JOC area without permission.
  - (3) Classified containers will be emptied and waste stored until there is an adequate amount for destruction. Place classified waste only in appropriately marked containers.
  - (4) The Assistant Operations NCO will conduct daily security checks.

### **3-4. JTF safeguarding of classified material evacuation plan**

- a. When circumstances permit, secure classified material as follows:
  - (1) Place all classified material into the nearest General Service Administration (GSA) approved container, lock the container, and vacate the building.
  - (2) The Operations NCO will ensure all safes within the agency are locked prior to vacating the building.
- b. When circumstances do not permit, secure classified material as follows:
  - (1) Gather all classified material in your work area and hand-carry it with you as you vacate the building.
  - (2) Upon reaching the assembly point, all personnel hand carrying classified material will notify the operations NCO or Watch Officer. The operations NCO or Watch Officer will take custody of the classified material.
  - (3) In the event of an urgent evacuation of the building, it may be necessary to leave classified material unsecured in the building. The individual leaving the unsecured classified material will advise the Operations NCO as soon as possible after exiting the building and reaching safety. The Operations NCO will then advise the J2 representative of all classified material which was not secured.
- c. Based on the circumstances requiring evacuation, the Watch Officer or Operations NCO will determine the assembly point.

### **3-5. Routine destruction of classified information**

- a. The JOC will account for and destroy classified materials on a daily basis.
- b. The Operations NCO will collect, process, and destroy classified materials.

### **3-6. Counter-Terrorism**

During a Terrorist Threat Condition (THREATCON) BRAVO, consideration will be made to augment the Assistant Operations/Security NCO with Military Police at the JTF Headquarters entrance.

**3-7. Automatic data processing equipment**

a. Privacy Act, For Official Use Only (FOUO), and sensitive information will be processed ONLY on systems accredited as Unclassified Sensitive 2 (US2) or higher.

b. All software, hard disks, and floppy data disks brought into the JOC will be checked with the approved anti-virus program before release for use in the JOC.

c. No personally owned equipment or software, to include laptop computers, will be introduced into the JOC without advance coordination.

d. Under no circumstances will Automated Information System equipment, software, or floppy disks be moved from their location.

## **Chapter 4 Operations Procedures**

**4-1. JOC Operations**

a. Staffing. The JOC is normally operated on two 12-hour shifts for short duration and three 8-hours shifts for extended operations. Duty hours for each shift are as follows:

	Extended		Short Duration
Shift 1	0700-1530	Shift 1	0730-2000
Shift 2	1500-2330	Shift 2	1930-0800
Shift 3	2300-0730		

b. Shift Changeover Procedures. The JTF staff sections will conduct informal continuity briefings with their replacements the end of their shifts.

c. Daily meetings. The JTF staff will meet with the JTF Command Group twice daily at 0800 and 1800 in the CCR, building 5957 unless otherwise directed by the CJTF. The CJTF may also require on-call meetings. The J3 will notify staff sections of unscheduled meetings are announced. Staff sections are responsible to answer staff and Command Group questions and prepare an informal command update for each meeting.

d. The J3 will prepare a summary of taskers and comments from the Command Group and principal staff. The J3 or Chief of Staff will provide guidance and taskers to appropriate staff agencies.

g. Shift Changeover Procedures.

(1) The CAT Chief will conduct a formal shift changeover briefing with the incoming shift personnel and the outgoing shift personnel.

(2) The general format of the changeover briefing follows.

<b>SHIFT CHANGEOVER TOPICS</b>
<b>Current refugee status</b> <b>Significant actions completed last shift (by directorate)</b> <b>Significant actions to be completed next shift</b>

<p><b>Ongoing actions</b> <b>Taskers w/suspense time/date</b> <b>Closing comments</b> <b>Shift changeover should include, as a minimum J1, J2, J3, J4, staffs as needed.</b></p>
--

## **Chapter 5**

### **Administration**

#### **5-1. General.**

- a. The Operations Officer will provide general supervision of the JOC.
- b. Immediate or flash messages will be picked up as soon as possible after notification. The Operations Officer/NCO will coordinate for pickup times for routine and priority messages
- c. Record all telephone messages and requirements on the Optional Form (OF) 271, Telephonic or Verbal Conversation Record.
- e. Keep a copy of all correspondence (OF 271) in a historical record file.
- f. Each JOC member will maintain a staff journal containing an operations summary with a brief account of actions taken within their area of responsibility.

#### **5-2. Incoming messages**

- a. All incoming message traffic will be routed through the Operations Sergeant for action/distribution.
- b. The Operations Sergeant will scan all messages, highlight key information, annotate or recommended distribution, batch (action and no action) and pass to the J3.
- c. The Battle Captain will review and assign an action agency using the JTF tasking system.
- d. The Operations Sergeant will:
  - (1) Stamp and enter the date in the lower right hand corner of the first page.
  - (2) Assign the document a sequential alpha-numeric number using "I" for incoming and "O" for outgoing correspondence. An example would be "I7 or O13". This number should be placed near the "received" date in the lower right hand corner.
  - (3) Complete the LOG (see figure 5-1) for all messages received.
  - (4) Copy and distribute the action and information messages received from the Operations Officer.
  - (5) Place one copy of all messages in the applicable 3-ring binder for reference.
  - (6) Place another copy in the daily reading file for circulation to key personnel identified on the routing slip attached.
  - (7) Maintain a historic message file in binders marked for the operation/exercise.

#### **5-3. Outgoing correspondence preparation and processing**

- a. Correspondence preparation procedures:
  - (1) Staff Action Officer will:
    - (a) Prepare initial draft correspondence of action.
    - (b) Keep a copy of incoming correspondence and or outgoing action.
    - (c) Forward draft correspondence electronically to Admin NCO.
  - (2) Admin NCO will:

- (a) Log action in log.
- (b) Type final outgoing action.
- (c) Pass completed action back to the action officer.
- (3) Staff Action Officer will:
  - (a) Append supporting documents (and disk, if GCCS) to outgoing action.
  - (b) Obtain approval/release of action from J3 /Battle Captain.
  - (c) Pass action to Admin and suspense it for return from admin cell.
  - (d) Ensure Automatic Digital Network (AUTODIN) messages are taken to the communications center for transmission, receipt, stamping, and returned to Admin NCO.
  - (e) Ensure GCCS messages along with disk of text are taken to the Ft Dix GCCS operator to add headings and ensure transmittal to addressees. Ensure completed action is returned to the admin NCO.
  - (f) Reassemble outgoing original message with supporting documentation.
  - (g) Make distribution. Ensure copy goes to originating staff to clear action officer's suspense and information copies provided to pertinent staff offices.
  - (h) File completed action with supporting documentation in outgoing files.
  - (i) The admin section will maintain a control log which tracks processing from initial receipt by clerk typists to dispatch of the finished action.
  - (j) The Admin NCO is responsible for prioritization of work by the admin team. He/she will ensure that work is completed timely or by the designated suspense. The Admin NCO coordinates with the J3/Battle Captain in all cases of conflict in priorities and inability to meet designated suspenses.

**5-4. Reading Files.** The Admin NCO will prepare reading files for the J3 and CJTF.

a. CJTF Reading Files

- (1) Prepare the CJTF reading file in two sections. (classified and unclassified) Arrange the messages in date-time-group (DTG) sequence (newest on top). Highlight the DTG, FROM ADDRESS, and SUBJECT lines. Divide the sections into increments corresponding to the CJTF update meeting schedule.
- (2) Retire each message when its tasks are complete, its guidance is superseded, or its information is more than 48 hours old.
- (3) Prepare bullet summaries as cover sheets for each section. The summaries highlight message changes, SITREP updates, and other items of interest to the CJTF.
- (4) Prepare two CJTF reading files for each day. Keep the files current and available for review by the CJTF or JTF CofS.

b. JOC Reading File.

- (1) Prepare the JOC reading file in a three ring binder for all messages. Arrange the messages in DTG sequence (newest on top).
- (2) Mark "CG" in the upper right corner of messages also placed in the Command Group Reading File. Place a tape flag on the edge of the top right corner of messages in the current CJTF Reading File. Keep the tape flag on the message as long as the message remains in the CJTF Reading File.
- (3) Retire messages from the JOC reading file when they are five days old. File retired messages by originating headquarters in DTG sequence (newest on top).

**5-5. Message log (see figure 5-1)**

- a. Document Files.
  - (1) Document folders are numbered consecutively.
  - (2) The first folder contains the most recent document, which is filed on top in front of the folder.
  - (3) The first folder does not have an ending document number until the folder is full (approximately two inches thick). When the folder is full, write the last document number on the folder and start a new document folder with the beginning message number to be placed in the new folder, leaving the ending document number blank.
- b. Identify Document for Filing.
  - (1) Pick up all logged/reproduced messages from the Admin NCO.
  - (2) Separate incoming (I) documents from outgoing (O) documents.
  - (3) Place documents in numerical order and file them beginning with an (I) for incoming or (O) for outgoing messages/correspondence.
- c. Suspense File.
  - (1) Photocopy the incoming document, coordinate assignment of a suspense date, and send a copy to the action office.
  - (2) Place incoming document with the suspense copy in suspense file.
  - (3) After the action officer responds to the suspense:
    - (a) Pull the incoming document out of the suspense file.
    - (b) Photocopy the outgoing document and attach copy to the incoming document pulled from suspense file. Place them in the completed file.
    - (c) Place the original incoming document with the outgoing response and submit for appropriate distribution.

#### **5-6. SITREP Development Procedures**

- a. Review SITREPs, orders, and messages from DOMS, DA, USACOM, FORSCOM, USARC, TF Village, supporting installations, and others agencies for items to include in the JTF SITREP.
- b. Coordinate with JTF staff sections to confirm/reconcile SITREP information.
- c. Staff sections will electronically provide daily SITREP input to the J3, NLT 1700.
- d. Continue to follow changes or new information throughout the day and make entries on the work copy of the SITREP as necessary.
- d. Follow-up unresolved issues that would impact SITREP preparation.
- e. SITREP officer will make distribution to the entire JTF staff, assigned LNOs and other agencies as directed. Post copies of the SITREP in the SITREP binder.
- f. Ensure addressee listing includes: JCS, DOMS, USACOM, FORSCOM, USARC, XVIII ABN Corps, other affected commands, all primary JTF staff members and CONUSAs, as appropriate.
- g. Start new SITREP file. Save on hard drive, floppy diskette, and a shared drive.

#### **5-7. Training**

- a. General. The mission of the JTF demands that the JTF staff be capable of reacting promptly, accurately, and decisively during the operation.
- b. Responsibilities
  - (1) The J3, has primary staff responsibility for JTF training.

(2) Each coordinating/special/ personal staff agency will ensure that all JTF staff personnel attend required training sessions.

(3) Staff sections will conduct training, as required, in order to ensure that JTF members are prepared to assume the responsibilities to which they are assigned.

## **Chapter 6**

### **STANDING DOWN/FACILITY MAINTENANCE REQUIREMENTS**

#### **6-1. General**

Termination of JTF Provide Refuge may be directed only by DOMS, USACOM and the FORSCOM Commander.

#### **6-2. Inactivation**

Standing down of the JOC will be accomplished in phases commencing prior to the termination of the operation based upon the operational level of activity. Initially, personnel requirements will be reviewed. Personnel will be released as they are no longer needed to sustain operational levels.

#### **6-3. Stand down checklist**

- \_\_\_ JTF Inactivation message published and disseminated.
- \_\_\_ JOC Staff Journal completed and closed out.
- \_\_\_ Staff worksheets, notes, files organized and secured.
- \_\_\_ In/out boxes emptied of working materials; actions completed.
- \_\_\_ Classified documents returned to Administrative NCO and secured.
- \_\_\_ Classified trash shredded and/or destroyed in accordance with AR 380-5.
- \_\_\_ Unclassified trash removed from the JOC.
- \_\_\_ Supplies properly stored or returned.
- \_\_\_ Equipment borrowed returned to staff sections or appropriate post agency.
- \_\_\_ Situation maps and charts taken down and destroyed, or stored.
- \_\_\_ JOC vacuumed and returned to orderly and neat condition.
- \_\_\_ Draft AAR provided to J3.

CHARLES A. TODD  
LTC, GS  
JTF J3

**GLOSSARY**

AAR	After-Action Report
ADP	Automated Data Processing
ADSW	Active Duty for Special Work
AFRC	Armed Forces Reserve Centers
AGR	Active Guard Reserve
AIG	Address Indicator Group
AIS	Automated Information Systems
ALO	Authorized Level of Organization
AMDF	Army Master Data File
AMOPES	Army Mobilization/Operations Planning and Execution System
AR	Armor/Army Regulation
ARPERSCOM	U.S. Army Reserve Personnel Center
AT	Annual Training
BDU	Battle Dress Uniform
BI	Background Investigation
CCIR	Commander's Critical Information Requirements
C-Day	Unnamed Day Deployment
CIO	USAR Chief Information Office (formerly DCSIM)
CJTF	Commander, Joint Task Force
CLRP	Command Logistics Review Program
CLRT	Command Logistics Review Team
CofS	Chief of Staff
COMPO	Component Code
CONPLAN	Contingency Plan
CONUS	Continental United States
CONUSA	Continental United States Army
CRC	CONUS Replacement Center
CSS	Combat Service Support
D-DAY	Beginning of a contingency operation or of hostilities
DA	Department of the Army
DAMPL	Department of the Army Master Priority List
DCG	Deputy Commanding General
DCO	Defense Coordinating Officer/Disaster Control/Deputy Commanding Officer
DCSIM	Deputy Chief of Staff, Information Management (now known as IO)
DCSINT	Deputy Chief of Staff, Intelligence
DCSLOG	Deputy Chief of Staff, Logistics
DCSOPS	Deputy Chief of Staff, Operations
DCSPER	Deputy Chief of Staff, Personnel
DCSRM	Deputy Chief of Staff, Resource Management
DMOS	Duty Military Occupational Specialty
DMOSQ	Duty Military Occupational Specialty Qualified
DOD	Department of Defense

DOMS	Director of Military Support
DTG	Date Time Group
DUIC	Derivative Identification Code
E-DATE	Date of Status Change of a Unit (Effective Date)
FAO	Finance And Accounting Office
FAX	Facsimile
FEMA	Federal Emergency Management Agency
FMC	Fully Mission Capable
FOC	FORSCOM Operation Center
FONECON	Telephone Conversation
FORMDEPS	FORSCOM Mobilization Deployment Planning System
FORSCOM	U.S. Army Forces Command
GCCS	Global Command and Control System
HS	Home Station
IDT	Inactive Duty For Training
IPR	Inprocess Review
IRR	Individual Ready Reserve
JCS	Joint Chiefs of Staff
JTF	Joint Task Force
JOC	Joint Operations Center
JULLS	Joint Universal Lessons Learned
M-Day	Mobilization Day
MSC	Major Subordinate Command
MTOE	Modification Table Of Organization And Equipment
MUTA	Multiple Unit Training Assembly
NLT	Not Later Than (Date)
OCAR	Office of the Chief, Army Reserve
OMA	Operation and Maintenance, Army
OMAR	Operation and Maintenance, Army Reserve
OPCON	Operational Control
OPORD	Operation Order
OPSEC	Operations Security
PA	Public Affairs
PM	Provost Marshal
POD	Point Of Debarkation
POE	Point Of Embarkation
POM	Preparation for Overseas Movement
RSC	Regional Support Command
PSRC	Presidential Selected Reserve Call-up
RCUCH	Reserve Component Unit Commanders Handbook
RPA	Reserve Personnel, Army
SIDPERS	Standard Installation Division Personnel System
SIR	Serious Incident Report
SITREP	Situation Report
SJA	Staff Judge Advocate
SOP	Standing Operating Procedure

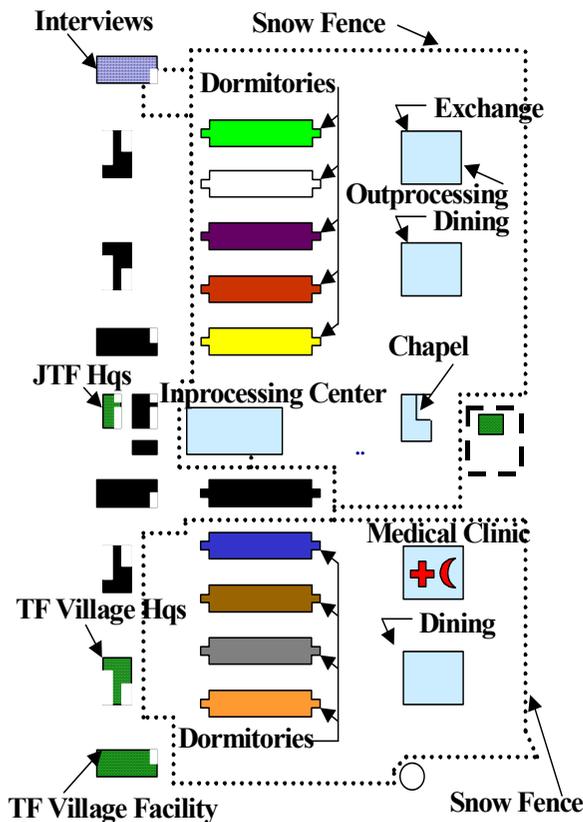
CENTER FOR LAW AND MILITARY OPERATIONS

SRC	Standard Requirement Code
STU III	Secure Telephone Unit (Third Generation)
TBD	To Be Determined
TDA	Tables Of Distribution And Allowances
TDY	Temporary Duty
THREATCON	Threat Condition
TOE	Tables Of Organization And Equipment
TPFDD	Time-Phased Force Deployment Data
TPFDL	Time-Phased Force Deployment List
TPU	Troop Program Unit
TF	Task Force
TTAD	Temporary Tour of Active Duty
UIC	Unit Identification Code
JOC	USARC Operations Center
USACOM	United States Atlantic Command
USAR	U.S. Army Reserve
USARC	U.S. Army Reserve Command
USR	Unit Status Report
ZULU	Time Zone Designator of Greenwich Mean





# The Village



✓ The heart of the “Village” is an area of brick barracks that have been converted into dormitories to house up to 3000 refugees. Each dormitory has colored doors matching the map on the left.

✓ Each dormitory floor has separate male and female restroom and shower facilities. The shower areas have curtains for privacy.

✓ On the first floor of each dormitory are a prayer room, a television room, a children’s play room, a classroom, and a “store” where free goods are distributed.

✓ Within the village are two dining facilities, a shopette, the in-processing center, the Public Health Service medical clinic, the out-processing center, an interagency interview and office area, and large, open grassy areas.



# The Location of the Hamlet





# The Hamlet

Immigration and Naturalization Service

Dining Facility

- ✓ The Hamlet has four dormitories that can house up to 1200 people.
- ✓ The dormitories have the same features as those in the "Village."
- ✓ One dining facility supports the "Hamlet."
- ✓ A first aid station provides medical support.
- ✓ Refugees shuttle by bus between the "Hamlet" and the "Village" for interviews and medical screening.

Medical Aid Station

Dormitories

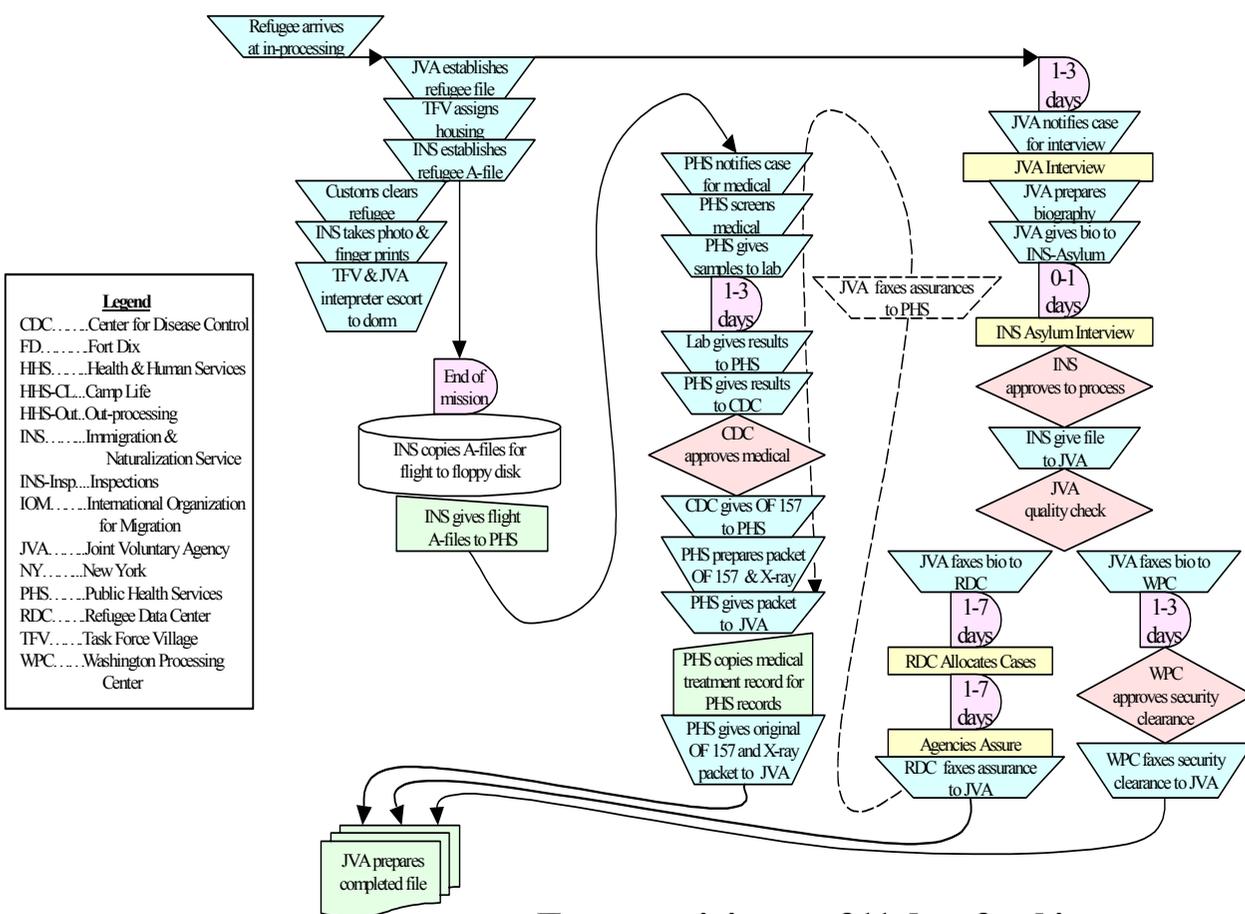
Snow Fence

**APPENDIX V-13: REFUGEE IN-PROCESSING**



# Initial Processing Through Assignment of a Sponsor

(graphics by Goldberg)



Expect a minimum of 11 days for this process <sup>19</sup>

**APPENDIX V-14: LAW ENFORCEMENT MOA**

MEMORANDUM OF AGREEMENT

BETWEEN

THE DEPARTMENT OF HEALTH AND HUMAN SERVICES,

THE IMMIGRATION AND NATURALIZATION SERVICE,

JOINT TASK FORCE PROVIDE REFUGE,

AND

THE DoD POLICE DEPARTMENT AT FORT DIX,

This agreement is made by and between The Department of Health and Human Services, represented by Lieutenant Jerry Gates, hereinafter referred to as DHHS, The Immigration and Naturalization Service, represented by Henry Bakely, hereinafter referred to as INS, Joint Task Force Provide Refuge, represented by LTC Willis Hunter, hereinafter referred to as JTF, and The DoD Police Department at Fort Dix, represented by Chief Steve Melly, hereinafter referred to as DoD Police

1. Purpose.

This interagency agreement establishes responsibilities and procedures for providing security for Kosovo refugees and JTF personnel, as well as responsibilities and procedures for handling and processing crimes committed within refugee housing areas, hereinafter known as The Village and The Hamlet.

2. Scope of Agreement.

Security within The Joint Task Force Welcome Center is divided between the JTF/DoD Police and the DHHS/INS. The JTF and DoD Police provide security at traffic control checkpoints located at the outer perimeter of the Refugee Welcome Center. This security is intended to deter uninvited visitors and provide the first level of Force Protection security. DHHS and INS provide security at The Village and The Hamlet. This security is intended to prevent refugee personnel from departing from the United States Port of Entry without proper authority.

JTF and DoD Police personnel cannot lawfully provide assistance to INS personnel in preventing the unauthorized departure of refugee personnel. Accordingly, JTF and DoD Police personnel have been instructed not stop any person or vehicle leaving the refugee complex, unless there is evidence of a criminal act committed by the departing person or persons. If they

become aware that refugee personnel are departing The Village or The Hamlet, they are authorized to notify INS personnel, however, they may not detain fleeing refugee personnel.

DHHS and INS personnel are responsible for preventing the unauthorized departure of refugee personnel from the housing areas, however, these agencies are not equipped or trained to provide law enforcement services with The Village and The Hamlet. Accordingly, whenever criminal activity is reported to DHHS or INS security personnel, they will immediately notify the DoD Police for assistance. The DoD Police will respond to the crime scene in the same manner as they would for any other crime on the Fort Dix military installation.

Misdemeanor offenses will be investigated by the Fort Dix Criminal Investigations Unit (CIU). Initially felony offenses will be investigated by the Fort Dix CIU and then referred to the Fort Monmouth Resident Agency CID. CID will coordinate with the Federal Bureau of Investigation (FBI) to determine FBI interest, however, CID will have primary jurisdiction.

3. Implementation:

a. This MOA becomes effective upon signature of the parties and will remain in effect until amended, revised, superseded or terminated.

b. This MOA will be reviewed as required and may be amended or revised at any time by consent of the parties.

FOR Joint Task Force: \_\_\_\_\_ FOR DHHS: \_\_\_\_\_

DATE: \_\_\_\_\_ DATE: \_\_\_\_\_

FOR DoD Police: \_\_\_\_\_ FOR INS: \_\_\_\_\_

DATE: \_\_\_\_\_ DATE: \_\_\_\_\_

**APPENDIX V-15: RULES OF ENGAGEMENT ANNEX**

**ANNEX E (RULES OF ENGAGEMENT) TO OPERATION PLAN 99-01**

**1. SITUATION.** The JTF developed "Rules for the Use of Force" and "Rules for Interaction" for JTF personnel.

**2. MISSION.** To ensure the proper use of force and interaction of personnel with the refugee population is understood by all JTF personnel.

**3. EXECUTION.**

**a. Concept of Operations.** Print this information on wallet size cards and ensure all personnel, government, non-government, and voluntary agency personnel read, understand, and carry on their person.

**b. Tasks to units.** Ensure all personnel within units and agencies comply with the concept of operations.

**c. Coordinating Instructions.**

(1) Rules for the use of force.

(a) You are always authorized to use reasonably necessary force to defend yourself and others.

(b) Avoid using force if you can accomplish your duties without it.

(c) Use the minimum force necessary when the use of force is authorized.

(d) You may use force to apprehend civilians whose actions threaten serious bodily injury or death. Apprehended persons will be detained for delivery to the custody of U.S. Marshals as soon as practicable.

(e) Rules for the use of deadly force. Deadly force is authorized only as a last resort when all three of the following circumstances are present:

[1] Lesser means have been exhausted or are unavailable.

[2] The risk of death or serious bodily harm to innocent bystanders is not significantly increased by the use of deadly force; and

[3] The purpose of using deadly force is one or more of the following:

{a} Self-defense to avoid death or serious bodily injury, including defense of another,

{b} Prevention of a crime which could result in the death or serious bodily injury of any person,

{c} Prevention of the destruction of public utilities or similar critical infrastructure vital to public health or safety, damage to which would imperil life, or

{d} Detention of persons who have attempted to commit one of the serious offenses above, but only if escape of the person would pose an imminent danger of death or serious bodily injury to military or law enforcement personnel or to any other person.

**ANNEX E (RULES OF ENGAGEMENT) TO OPERATION PLAN 99-01**

(2) Rules of interaction.

(a) The Joint Task Force 350 commander and installation commander retain the inherent authority to maintain order and security on the installation, and to take reasonable steps to provide for the safety of both persons and facilities on the installation.

(b) U.S. forces retain the right to defend both themselves and others.

(c) Except when necessary to quell a disturbance or come to the defense of another, only individuals authorized by the lead federal agency are permitted to enter the Welcome Center.

(d) Joint Task Force 350 personnel are always authorized to come to the defense of others, and to quell disturbances caused by persons anywhere on the installation, to include within the Welcome Center when the responsible civilian security authorities are unable to carry out their responsibilities.

(e) Security of refugees on the installation is the primary responsibility of the Department of Health and Human Services (the lead federal agency) and Immigration and Naturalization Service Security.

(f) Security of refugees off the installation is a function of local law enforcement.

(g) Fraternization with the refugees is prohibited. Avoid even the appearance of playing favorites.

(h) Ensure all actions maintain and preserve the dignity and respect of the refugees.

(i) Smile, be friendly, be courteous, but avoid unnecessary familiarity.

(j) Be a good listener and be responsive to refugee complaints.

(k) Do not negotiate with or make promises to refugees.

**4. SERVICE SUPPORT.** Omitted.

**5. COMMAND AND CONTROL.** Omitted.

**APPENDIX V-16: STATEMENT OF GRATUITOUS SERVICES**

STATEMENT OF GRATUITOUS SERVICES

As a Kosovar refugee in the United States, I am currently living at the Task Force Open Arms Village, Fort Dix, New Jersey, where the U.S. Government and other agencies are providing me food, shelter, medical care and all the necessities of life. I appreciate this assistance and welcome the opportunity to contribute my services on a gratuitous and voluntary basis. These services may include improving and maintaining our living area in the Task Force Open Arms village, preparation of food and administrative services for refugees, distribution of goods and materials for refugees, preparation for emergencies involving refugees, translating, assisting the Task Force Commander and his staff in performing their duties, and any other task I am capable of and willing to perform, and that is not prohibited by statute. I understand that I cannot replace a government employee, and cannot perform work that would otherwise be performed by a government employee. I offer to provide these services effective this date without any expectation of compensation. I expressly agree that my services will be performed without pay, and that I will not, solely because of these services, be considered an employee of the United States government or any instrumentality thereof. I waive any future claim of compensation against the United States for services provided from the date of this statement until I am no longer a guest of the United States government and residing at the Task Force Open Arms Village, Fort Dix, New Jersey, regardless of any past or current employment agreements with the United States.

\_\_\_\_\_

Printed Name of Refugee

\_\_\_\_\_

Signature of Refugee

\_\_\_\_\_

Printed Name of Witness

\_\_\_\_\_

Signature of Witness

\_\_\_\_\_

Date