Operational Claims in Bosnia-Herzegovina and Croatia

Major Jody M. Prescott
Officer-in-Charge, Fort Richardson Law Center, Alaska

Introduction

During any non-combat deployment of U.S. forces into or within a foreign country (a receiving state), there may be injuries to the person or property of the U.S. forces, the receiving state, or the inhabitants of the receiving state. This article explains the various statutory authorities under which such claims are ordinarily settled. As a case study, this article focuses on the recent deployment into Bosnia-Herzegovina and Croatia by forces from the United States and other troop-contributing nations.

During the negotiations which led to the Status of Forces Agreements (commonly known as the Dayton SOFAs) and the Paris peace accords, which generated the General Framework Agreement for Peace (GFAP),[1] the negotiators discussed claims issues, among other things. The representatives of Bosnia-Herzegovina and Croatia expressed concern over the manner in which claims had been handled during the tenure of the United Nations protection force. They wanted a rigorous, jointly-administered claims arrangement to avoid the problems that they experienced with the United Nations claims system. The current stabilization force claims process accommodates the receiving state's concerns. Each troop-contributing nation settles claims against it using its own claims processes and funds.[2] The actual processes to be used in settling claims, however, continued to evolve as the subsequent implementation agreements were negotiated. The claims provisions that were negotiated in later agreements were often completely different than those in the preceding agreements.

Statutory Authority

Claims against U.S. forces which arise from non-combat operation-related damages in receiving states are ordinarily settled under two different statutory grants of authority: the Foreign Claims Act[3] (FCA) and the International Agreements Claims Act.[4] Under the FCA, meritorious claims for property losses, personal injury, or death caused by military personnel or members of the civilian component of the U.S. forces may be settled "[t]o promote and [to] maintain friendly relations" with the receiving state.[5] Claims are investigated, adjudicated, and settled or denied by military or civilian attorneys who serve as foreign claims commissioners.[6] The foreign claims commissioners apply local law and customs to determine liability and the amount of any award, and their decisions on claims are final.[7] Such claims are paid entirely with U.S. funds, but the claimants receive payment in the local currency.[8]

The International Agreements Claims Act allows settlement of meritorious claims against the United States pursuant to U.S. obligations under international law. A status of forces agreement (SOFA) is the most common form of agreement to trigger application of the statute. In such cases, the terms of the applicable SOFA would provide the mechanisms for investigating and settling (or denying) claims against U.S. forces.

The following example illustrates the application of the International Agreements Claims Act. Under the statute, the SOFA and subsequent agreements in effect between the Federal Republic of Germany and the United States[9] control the settlement of claims in Germany. Pursuant to those agreements, the

---

1. Bosnia and Herzegovina-Croatia-Yugoslavia: General Framework Agreement for Peace in Bosnia and Herzegovina with Annexes, Dec. 14, 1995, Bosn.-Herz., 35 I.L.M. 75 [hereinafter GFAP]. The Dayton SOFAs are appendices to the General Framework Agreement for Peace and were signed in Dayton, Ohio on 21 November 1995 and in Brussels, Belgium two days later. *Id*. at 102, annex 1-A, app. B [Agreement Between the Republic of Bosnia and Herzegovina and the North Atlantic Treaty Organization (NATO) Concerning the Status of NATO and Its Personnel]; *id*. at 104 [Agreement Between the Republic of Croatia and the North Atlantic Treaty Organization (NATO) Concerning the Status of NATO and Its Personnel].

2. IFOR [Implementation Force] Claims Office Sarajevo Standard Operating Instructions (1st Revision) (21 July 1996) [hereinafter IFOR Claims Office Sarajevo SOI] (copy on file with the U.S. Army Claims Service, Europe); *id*. attachment A [The Legal Bases for the IFOR Claims Operation in Bosnia-Herzegovina] at 1.

3. 10 U.S.C. § 2734 (1994).

4. *Id*. § 2734a. "Where a claim is covered by a treaty provision requiring adjudication and payment by a receiving state, the receiving state's claims process normally is the claimant's exclusive remedy, rather than the Foreign Claims Act process." U.S. Dep't of Army, Reg. 27-20, Claims, para. 10-4 (1 Aug. 1995) [hereinafter AR 27-20]. *See id*. para. 7-12.

5. 10 U.S.C. § 2734(a).

6. AR 27-20, *supra* note 4, para. 10-14. "In exigent circumstances, a qualified non-lawyer employee of the Armed Forces may be appointed to a foreign claims commission . . . ." *Id.*

7. *Id.* para. 10-12f(4).

8. *Id.* para. 10-11e.

defense costs offices throughout Germany investigate, adjudicate, and settle (or deny) claims against U.S. forces that are incident to service, or "in-scope."[10] The defense costs offices pay the claimants then submit a schedule for reimbursement to the U.S. Army Claims Service, Europe, which reimburses seventy-five percent of the amounts paid.[11] The International Agreements Claims Act authorizes this type of reimbursement to the receiving state only when the United States is a party to an agreement which contains cost-sharing provisions.[12] "Non-scope" or "ex gratia" claims—those claims resulting from the private tortious acts of members of the U.S. forces—fall under the FCA. For this type of claim, the defense costs offices investigate, review the claim, and make payment recommendations to the U.S. Army Claims Service, Europe, [13] where foreign claims commissioners consider the claim de novo and settle or deny the claim under the FCA.[14] Claims adjudicators at the U.S. Army Claims Service, Europe, make independent judgments under German law as to the merits of the claims and the proper amounts to be awarded.[15]

The Foreign Claims Act in Detail

In Bosnia-Herzegovina and Croatia, U.S. forces use the FCA to settle or to deny claims. [16] The International Agreements Claims Act is inapplicable under the Dayton SOFAs because: (1) the agreements contain no cost-sharing measures and (2) the agreements are between implementation force representatives and the receiving states, not between the United States and the receiving states.

Applicability

The FCA applies outside of the United States, its territories, and its possessions.[17] The national and local governments of receiving states, as well as their inhabitants, [18] are proper FCA claimants.[19] Enemy or "unfriendly" nationals or governments, insurers and other subrogees,[20] inhabitants of the United States, and U.S. military and civilian component personnel who are in the receiving state incident to service are not proper claimants.[21] In addition to the restrictions as to who can be a proper claimant, the Army's implementing regulation for the FCA lists twenty-seven different types of claims that may not be allowed. These include claims for which payment would not be in the

9. *See* Agreement Between the Parties to the North Atlantic Treaty Regarding the Status of Their Forces, June 19, 1951, 4 U.S.T. 1792, 199 U.N.T.S. 67 [hereinafter NATO SOFA]; Agreement to Supplement the Agreement Between the Parties to the North Atlantic Treaty Regarding the Status of Their Forces with Respect to Foreign Forces Stationed in the Federal Republic of Germany, Aug. 3, 1959, 14 U.S.T. 531, 481 U.N.T.S. 262 [hereinafter Supplementary Agreement]; Administrative Agreement Concerning the Procedure for the Settlement of Damage Claims (Except Requisition Damage Claims) Pursuant to Article VIII of the Agreement Between the Parties to the North Atlantic Treaty Regarding the Status of Their Forces [NATO SOFA], dated 19 June 1951, in Conjunction with Article 41 of the Supplementary Agreement to that Agreement, as well as for the Assertion of Claims Pursuant to Paragraph (9), Article 41 of the Supplementary Agreement (SA), Oct. 8-Dec. 6, 1965 [hereinafter Administrative Agreement] (1997 update on file with U.S. Army Claims Service, Europe)."

10. Administrative Agreement, *supra* note 9, pt. A, paras. 3, 5, 15.

11. *Id.* pt. B, paras. 19, 21, 26-30.

12. 10 U.S.C. § 2734a(a) (1994).

13. Administrative Agreement, *supra* note 9, paras. 63-64.

14. AR 27-20, *supra* note 4, para. 7-11b.

15. Based on these de novo adjudications, some claimants are paid more than the defense costs offices recommended. During fiscal year 1996, 81 German ex gratia claims were received and processed at the U.S. Army Claims Service, Europe. Fifty-nine were paid, for a total amount of $143,885.74. Memorandum from MAJ William Kern, Chief, Operational Claims, U.S. Army Claims Service, Europe, to MAJ Jody M. Prescott, subject: Ex Gratia Claims (17 Sept. 1997).

16. The U.S. Army has single service responsibility for claims arising against U.S. forces in Bosnia-Herzegovina and Croatia. Memorandum, John H. McNeill, Senior Deputy General Counsel, Office of General Counsel, U.S. Dep't of Defense, to Colonel John P. Burton, Legal Counsel, Joint Chiefs of Staff, subject: Assignment under DOD Directive 5515.8 of the Department of the Army as the Single-Service Claims Authority for Operation Joint Endeavor (12 Mar. 1996). This designation means that the U.S. Army is the only service ordinarily authorized to settle claims against U.S. forces in the Bosnian Theater. U. S. DEP'T OF DEFENSE, DIR. 5515.8, SINGLE SERVICE ASSIGNMENT OF RESPONSIBILITY FOR PROCESSING OF CLAIMS (9 June 1990).

17. 10 U.S.C. § 2734(a).

18. Whether one is an "inhabitant of a foreign country" for purposes of the FCA is not dependent upon citizenship. The test is "whether the claimant dwells in and has assumed a definite place in the economic and social life of the foreign country." U.S. DEP'T OF ARMY, PAM. 27-162, CLAIMS, para. 7-4c(1)(a) (15 Dec. 1989) [hereinafter DA PAM 27-162].

19. 10 U.S.C. § 2734(a).

20. *Id.* §§ 2734(a), (b).

21. AR 27-20, *supra* note 4, para. 10-7b.

best interest of the United States and claims for losses resulting from combat, contractual disputes, and domestic obligations.[22]

To be allowable, a claim must result from a negligent or wrongful act or omission;[23] such acts or omissions are termed "non-combat activities."[24] *Army Regulation 27-20* defines "non-combat activities" as those which are "essentially military in nature, having little parallel in civilian pursuits, and which historically have been considered as furnishing a proper basis for payment of claims."[25] Examples include maneuvers, heavy convoys, and test firings of weapons.[26] Claims that result from "combat" or "combat-related" activities are not allowed.[27]

Claims Submission Procedure

Claimants under the FCA must ordinarily present their claims in writing to an authorized official within two years of the accrual of the claim.[28] Claims officials may accept verbal claims, but the claims must be reduced to writing within three years of accrual.[29] Written claims must state the time, place, and nature of the incident; the nature and extent of the damage, loss, or injury; and the amount claimed.[30]

Foreign Claims Commissions

A one-member foreign claims commission can settle or deny claims for less than $15,000.[31] A three-member commission can settle claims for less than $50,000 and can deny claims for any amount.[32] Claims between $50,000 and $100,000 can be settled by the commander of the U.S. Army Claims Service at Fort Meade, Maryland.[33] Claims for more than $100,000 can be settled only by the Secretary of the Army.[34]

Foreign claims commissions are required by regulation to make "[e]very reasonable effort" to "negotiate a mutually agreeable settlement on meritorious claims."[35] If a foreign claims commission intends "to deny a claim, [to] award less than the amount claimed, or [to] recommend an award less than claimed but in excess of its authority," it must notify the claimant accordingly and give the claimant an opportunity to submit additional information before a final decision is made.[36] Once the foreign claims commission issues its final decision and the claimant signs a claims settlement form, the claim is certified to the local Defense Finance and Accounting Office for payment in local currency.[37]

---

22. *Id.* para. 10-9a-aa.

23. "[T]ortfeasors need not be acting within the scope of their employment [for] their wrongful acts or omissions [to] result in cognizable claims . . . ." DA PAM 27-162, *supra* note 18, para. 7-4e(3)(e).

24. AR 27-20, *supra* note 4, para. 10-8a.

25. *Id.* glossary § II at 73.

26. *Id.*

27. These terms are defined as: "Activities resulting directly or indirectly from action by the enemy, or by the U.S. Armed Forces engaged in, or in immediate preparation for, impending armed conflict." *Id.* at 72. "Peacekeeping" or "peace enforcement" operations present significant problems with the practical application of these definitions. Under United States law, "incidents arising out of training for combat and the operation of military facilities not directly involved in combat actions often will not be classified as combat activities and thus might be payable, although the purpose of the training or operation of the facilities may be to prepare for combat operations . . . ." DA PAM 27-162, *supra* note 18, para. 7-4e(2). The various claims conferences held by the NATO troop-contributing nations since the beginning of the operation have revealed a lack of consensus regarding the application of these concepts to claims.

28. 10 U.S.C. § 2734(b)(1) (1994); AR 27-20, *supra* note 4, paras. 10-5, 10-6a.

29. AR 27-20, *supra* note 4, para. 10-6a.

30. *Id.* United States forces in Bosnia-Herzegovina and Croatia devised bilingual claims forms to assist claimants in filing and properly documenting their claims. A standard form was not used, because different claims forms were required in different parts of the former Yugoslavia to address local cultural sensitivities. For example, many Croatian claimants preferred forms written in so-called "New Croatian," rather than Serbo-Croatian. Some claimants in the Republika Srpska preferred forms in Cyrillic, rather than Latinic, script.

31. *Id.* para. 10-15a. A non-lawyer foreign claims commissioner can only settle claims for $2500 or less. *Id. See supra* note 7.

32. AR 27-20, *supra* note 4, para. 10-15b.

33. *Id.* para. 10-15c.

34. *Id.* para. 10-15d.

35. *Id.* para. 10-12f (5).

36. *Id.* para. 10-12f.

The Legal Bases for Claims Activities in Bosnia-Herzegovina and Croatia

The Dayton SOFAs and the Balanzino Letter

The Dayton SOFAs provide that "[c]aims for damage or injury to government personnel or property, or to private personnel or property of the [receiving state] shall be submitted through governmental authorities of the [receiving state] to the designated NATO representatives."[38] The actual process to be followed in settling claims in Bosnia-Herzegovina was addressed in correspondence between NATO Acting Secretary General Sergio Balanzino and the Minister of Foreign Affairs for Bosnia-Herzegovina. If civil suits were brought against NATO personnel for actions performed in their official capacity, the implementation force commander could issue a certificate to that effect and remove the case to the "standing claims commission to be established for that purpose."[39]

> [A]ny appeal that both of the Parties agree to allow from the award of the Claims Commission shall, unless otherwise agreed by the parties, be submitted to a Tribunal of three arbitrators. The provisions relating to the establishment and procedures of the Claims Commission, shall apply, *mutatis mutandis*, to the establishment and procedures of the Tribunal. The decisions of the Tribunal shall be final and binding on both parties.[40]

The Technical Arrangements

Military representatives of the implementation force and the receiving states entered into technical arrangements[41] to implement the Dayton SOFAs and the GFAP. The claims commission and tribunal processes were described in greater detail in claims annexes to the technical arrangements.[42] The claims commission would consist of four members—two representatives of the implementation force and two representatives from the receiving states, all of whom must be legally qualified.[43] The claims commission was authorized to decide questions of liability and quantum and to order payment in accordance with its decisions.[44]

Payment orders were to be paid with funds from either NATO (implementation force) or troop-contributing nations, as appropriate.[45] Ordinarily, claims were to be submitted no later than ninety days from the date of discovery of the damage, and payment was to be made to injured parties no later than ninety days after the claim had been settled.[46] If the implementation force or a troop-contributing nation did not comply with a payment order, the payment order would be sent to NATO Headquarters in Brussels for payment.[47] The receiving states were required to pay claims brought by the implementation force or a troop-contributing nation against nationals of the receiving states.[48] The receiving states could then recoup these costs themselves from the responsible local national parties.[49]

The claims annexes also provided that a receiving state governmental agency would serve as the primary office to accept,

37. United States forces in Bosnia-Herzegovina make payments in Deutschemark on both sides of the Inter-Entity Boundary Line. Payments in Croatia are made in Kuna.

38. GFAP, *supra* note 1, at 102, annex 1-A, app. B, art. 15 [Dayton SOFAs].

39. Letter from Sergio Balanzino, NATO Acting Secretary General, to Muhamed Sacirbey, Minister of Foreign Affairs, Republic of Bosnia and Herzegovina, para. 4(a) (Nov. 23, 1995) [hereinafter Balanzino Letter]. In civil suits involving the private tortious acts of NATO personnel, the implementation force commander has the authority to issue a certificate, at the defendant's request, to the local court to have the proceedings delayed until such time as the NATO soldier could appear to defend himself before the court. *Id.* para. 4(b).

40. *Id.* para. 5. A copy of this letter, and identical versions addressed to the Croatian and Yugoslavian Foreign Ministers, were sent to the members of the NATO Political Committee. Memorandum from Allen L. Kleiswetter, Acting Chairman, to the Members of the Political Committee (24 Nov. 1995).

41. *See, e.g.*, Technical Arrangement Between the Government of the Republic of Bosnia and Herzegovina and the Implementation Force, Dec. 23, 1995 [hereinafter Technical Arrangement] (copy on file with U.S. Army Claims Service, Europe). The technical arrangements, at least with respect to claims matters, are practically identical. For simplicity, this article will therefore only reference the technical arrangement with the Republic of Bosnia and Herzegovina. At the April 1997 NATO Sending States Claims Conference in Paris, some of the representatives of the sending states indicated that they did not know whether their respective members on the NATO political committee were aware of the claims procedures under the technical arrangements.

42. *Id.* Claims Annex. The Claims Annex is referred to as Annex 17.

43. *Id.* Claims Annex, para. 3.

44. *Id.*

45. *Id.* Claims Annex, para. 4.

46. *Id.*

47. *Id.*

to investigate, and to adjudicate claims, much like the defense costs offices do in the Federal Republic of Germany.[50] Under the provisions of the claims annexes, the claims commission would then resolve disagreements between the implementation force (or the troop-contributing nations) and the receiving state agency tasked with handling claims.[51] If the parties to the claim still disagreed after the claims commission decision, the matter would be referred to the arbitration tribunal.[52] The decisions of the arbitration tribunal would be final and binding on both parties.[53]

The Claims Appendices

The parties to the agreement further refined and modified the claims processes in the claims appendices to the claims annexes. Under these agreements, decisions of the claims commissions must be unanimous.[54] Cases in which there was no unanimous decision would be referred to the arbitration tribunal "for final determination."[55] Claimants who were dissatisfied with the decision of the claims commission decision could appeal to the arbitration tribunal under the procedures set forth in the claims appendices.[56]

The Bosnian Protocols and the Zagreb Implementation Force Claims Procedures

The legal advisor to the implementation force recognized the administrative difficulties inherent in having government agencies of the receiving states serving as the primary bodies to conduct claims intake, investigation, and adjudication.[57] In the spring of 1996, representatives from the implementation force and the receiving states agreed to additional implementing arrangements that streamlined the claims process. The implementation force legal advisor negotiated separate agreements with the Ministry of Justice, Federation of Bosnia-Herzegovina, and the Ministry of Justice, Republika Srpska. The agreements give troop-contributing nations the primary responsibility for claims intake, investigation, and adjudication.[58] In case of unresolved disputes, the Sarajevo implementation force claims office would attempt to mediate a solution.[59] The claims commission was reserved to "hear appeals from either the claimant or the national contingent claims officer when a claims dispute [could not] be resolved between the claimant and the unit responsible for the loss or damage."[60]

Similarly, arrangements with the Croatian government give troop-contributing nations the primary responsibility for resolving claims against them.[61] The Zagreb implementation force claims office would attempt to mediate disputes between the "claimant[s] and the national contingent claims officer."[62] "Claims that [could] not be otherwise settled [would] be sent to the Claims Commission for resolution."[63] Claimants were allowed "three months after the redeployment out of Croatia of

---

48. *Id.*

49. *Id.*

50. *Id.* Claims Annex, para. 6. *See supra* note 9.

51. Technical Arrangement, *supra* note 41, Claims Annex, para. 7.

52. *Id.* Claims Annex, para. 8.

53. *Id.* Claims Annex, para. 5.

54. *Id.* Claims Annex, app., para. 5 (copy on file with U.S. Army Claims Service, Europe). The appendix to the Claims Annex is entitled "Claims Commission Procedures.

55. *Id.*

56. *Id.* Claims Annex, app., para. 6.

57. IFOR CLAIMS OFFICE SARAJEVO SOI, *supra* note 2, attachment A, at 4.

58. Protocol Made on 4 April 1996 Between the Ministry of Justice of the Republic of Srpska and the IFOR Claims Officer, Apr. 4, 1996, para. 3 [hereinafter Srpska Protocol] (copy on file with U.S. Army Claims Service, Europe). The terms of the Srpska Protocol and the Federation of Bosnia-Herzegovina Protocol are identical.

59. *Id.*

60. *Id.* para. 4. Interestingly, this paragraph appears to interpret the term "claimant," which is found in the Claims Appendix to Annex 17, as not including a troop-contributing nation. *See* Technical Arrangement, *supra* note 41, Claims Annex, app., para. 6

61. Zagreb IFOR Claims Procedures, paras. 2A-2C (1996) [hereinafter Zagreb Procedures] (copy on file with U.S. Army Claims Service, Europe).

62. *Id.* para. 2C.

63. *Id.*

the national contingent force alleged to have caused any injury or damage" to file their claims.[64]

Issues Regarding Claims Activities in Bosnia-Herzegovina and Croatia

The Efficacy and Competence of the Claims Commissions and Arbitration Tribunal

Although the decisions of the claims commissions[65] and the arbitration tribunal are supposed to be final and binding under the technical arrangements and its subsequent agreements, the position of the United States is that these agreements are not binding on the United States. This position is premised on the fact that the United States is not a party to these agreements; therefore, compliance with the agreements would violate the provisions of the FCA and the statutory mandate that decisions of foreign claims commissioners are final and conclusive.[66] However, there is value in having independent bodies review claims disputes and make recommendations as to fair and reasonable settlements. In recognition of this value, the United States will participate in the claims commission and arbitration tribunal hearings in good faith, but without accepting the decisions of those bodies as final and binding.[67]

The United States was not alone in its position toward the decisions of the claims commissions and the arbitration tribunal. At the Mons NATO Sending States Claims Conference in October 1996, the legal advisor for Supreme Headquarters, Allied Powers, Europe (SHAPE) concurred with the French delegation's proposal that the troop-contributing nation against whom a claim is brought be allowed to appoint one of the stabilization force claims commissioners. Because the decisions of claims commissions must be unanimous, the French proposal had the practical effect of ensuring that no decision could be taken which was not satisfactory to the troop-contributing nation involved. At the Paris NATO Sending States Claims Conference in April 1997, the delegations all agreed that the decisions of the arbitration tribunal could not be final and binding against them on claims disputes.[68] As a first step to resolving this problem, the SHAPE legal advisor agreed with the French delegation's proposal.[69]

Damages to Transportation Infrastructure

Under the terms of the Dayton SOFAs, the receiving states agreed to "provide, free of cost, such facilities NATO needs for the preparation for and execution of the operation."[70] "Facilities" are defined as "all premises and land required for conducting the operational, training, and administrative activities by NATO for the operation as well as for accommodations of NATO personnel."[71] NATO is allowed to use the airports, roads, and ports of the receiving states without paying "duties,

---

64. *Id*. para. 2D. Under the Claims Annex to the Technical Arrangement, claimants in the Republic of Bosnia and Herzegovina are ordinarily required to submit claims "within 90 days of the date of discovery" of damage. *See* Technical Arrangement, *supra* note 41, Claims Annex, para. 4. This requirement is reaffirmed in the Srpska Protocol and the Federation of Bosnia-Herzegovina Protocol. *See* Srpska Protocol, *supra* note 58, para. 1.

65. Although none of the pertinent documents explicitly grants the claims commissions the power to make final and binding decisions, this power has accreted over time. Under the Claims Annex to the Technical Arrangement, they may "take decisions" on liability and the kind and scope of damage, and they may order payment. *See* Technical Arrangement, *supra* note 41, Claims Annex, para. 3. Further, the claims commissions have the authority to obtain expert testimony to help them decide issues in cases before them and to direct the parties to provide them with whatever information they require. *Id*. Claims Annex, para. 4.

66. 10 U.S.C. § 2735 (1994); AR 27-20, *supra* note 4, para. 10-12f(4). Accordingly, if a claimant were to bring a case before a U.S. court resulting from the denial of a claim by a foreign claims commission, the court could only review the case to determine whether the foreign claims commission had followed the appropriate regulations in deciding the case, not whether the decision was correct. *See* Rodrigue v. United States, 968 F.2d 1430, 1432-34 (1st Cir. 1992). Although the claimants in *Rodrigue* contested the denial of their claim under the related Military Claims Act (10 U.S.C. § 2731), the same principle of finality of the administrative ruling would apply.

67. In its first case before the Croatian Arbitration Tribunal, the United States informed the tribunal that it did not accept the final and binding nature of any decision the tribunal might reach, but that it wished to participate in the arbitration tribunal process in good faith to find a pragmatic resolution to the case before the tribunal. Respondent's Statement of Defence at 1, Feliks, d.o.o. v. United States (Feb. 26, 1997) (copy on file with U.S. Army Claims Service, Europe). The tribunal did not contest the assertion. The United States found the tribunal's decision to be reasonable and paid the claim in accordance with the decision.

68. As a precondition to participation in the implementation force, all of the non-NATO troop-contributing nations expressly agreed "to be responsible for claims for damages arising out of [their soldiers'] acts and omissions and made by third parties from the nation in which the damage in question occurred." Letter from Gran Berg, Swedish Ambassador to Belgium, to Javier Solana, Secretary General, NATO (Dec. 19, 1995). In an exchange of letters, the non-NATO participants also agreed to "waive all claims against each other and other non-NATO contributing nations for damage to property owned or used by, and injury to personnel belonging to, their contingents in the [implementation force]." *Id*.

69. The Croatian Arbitration Tribunal used the London Court of International Arbitration Rules (L.C.I.A. rules) in *Feliks*. Feliks, d.o.o. v. United States (Feb. 26, 1997) (copy on file with U.S. Army Claims Service, Europe). Under the L.C.I.A. rules, the neutral third member of the arbitration tribunal makes a decision on the case if the other members are unable to agree. *See* L.C.I.A. Rules, art. 16.3 (1985). Accordingly, a decision can still be made on a case in which the troop-contributing nation does not agree.

70. GFAP, *supra* note 1, at 102, annex 1-A, app. B, art. 14 [Dayton SOFAs].

71. *Id.* art. 1.

dues, tolls, or charges," but cannot "claim exemption from reasonable charges for services requested and received . . . ."[72]

During the course of the operation, the wheeled and tracked vehicles of the troop-contributing nations have used the roads extensively in both Bosnia-Herzegovina and Croatia. Before the operation, the vehicles of the former warring factions and the United Nations protection force also used many of the same roads. Claimants have filed two large claims for road damage against the United States, one for approximately $10,000,000 in Croatia and one for DM 8,600,000 in Bosnia-Herzegovina. At the Paris NATO Sending States Claims Conference, the SHAPE legal advisor suggested that these alleged damages to the roads, the so-called main supply routes, should be claims against the stabilization force itself, not the individual troop-contributing nations. Further, it was the consensus of the delegations present that these claims should be waived as the unavoidable results of conducting the operation (similar to combat damages).[73] The delegations concurred with the SHAPE legal advisor's suggestion that he forward this issue to the NATO political committee for resolution.

Applicable Receiving State Law with Regard to Liability and the Amount of Awards

United States forces ordinarily apply receiving state law in adjudicating claims against them under the FCA. Croatia has made substantial progress in recodifying the law of the former Yugoslavia. Both the Federation of Bosnia-Herzegovina and the Republika Srpska appear to provisionally apply the law of the former Yugoslavia.[74] Fortunately, with regard to tort law and the appropriate measure of awards, the law of the former Yugoslavia is still substantially applicable in Bosnia-Herzegovina and Croatia.[75]

The ordinary standard of tort liability in Bosnia-Herzegovina and Croatia is comparative negligence.[76] Certain former Yugoslavian tort concepts, however, are quite different from ordinary Anglo-American law. For example, under the concept of "presumed fault," "whoever causes damage to another has an obligation to compensate for it, unless he or she can prove the damage was caused without his or her fault."[77] The principle of presumed fault is perhaps similar to that of a rebuttable presumption in Anglo-American law, for "only the mildest degree of fault is presumed."[78] In the administrative settlement of claims by U.S. forces, however, this concept rarely plays a role.

The largest single category of claims against U.S. forces results from vehicular accidents.[79] Using standard pricing guides[80] and estimates from local repair facilities, it is fairly easy to determine an objective basis upon which to pay the claim for property damage to the automobile. Cases of personal injury, however, are much more difficult to resolve. Under the law of Bosnia-Herzegovina and Croatia, so-called "immaterial damages," or what Anglo-American jurisprudence would recognize as damages for pain and suffering, are payable. As a basis for their negotiations in personal injury cases in both Bosnia-Herzegovina and Croatia, U.S. forces use a standardized compensation table for damages such as physical pain, fear, and mental anguish.[81]

---

72. *Id.* art. 9. Non-temporary improvements made to receiving state infrastructures during the course of the operation "shall become part of and in the same ownership as that infrastructure. Temporary improvements or modifications may be removed at the discretion of the [stabilization force commander], and the facility returned to as near its original condition as possible." *Id.* art. 17.

73. The entities that comprise Bosnia-Herzegovina agreed to, and Croatia endorsed, the proposition that "the [implementation force] and its personnel shall not be liable for any damages to civilian or governmental property caused by combat damage or combat-related activities." GFAP, *supra* note 1, ann. 1-A, art. VI, para. 9(a).

74. IFOR CLAIMS OFFICE SARAJEVO SOI, *supra* note 2, attachment I, at 1.

75. Zakon o Obveznim Odnosima [The Law on Obligatory Relations]. The Zagreb and Sarajevo implementation force claims offices compiled the first translations and comparative analyses of applicable Bosnian and Croatian tort law in June and July 1996, respectively. Distribution of the translations and analyses to the troop-contributing nations' claims activities did not begin until late July 1996. From the beginning of the operation until the late summer of 1996, U.S. forces in Bosnia-Herzegovina and Croatia relied on general principles of U.S. tort law in settling less complex claims. Larger, more complex claims were deferred until the legal issues could be properly analyzed.

76. IFOR CLAIMS OFFICE SARAJEVO SOI, *supra* note 2, at 7.

77. Zakon o Obveznim Odnosima [The Law on Obligatory Relations] art. 154(1).

78. IFOR CLAIMS OFFICE SARAJEVO SOI, *supra* note 2, attachment I, n.1.

79. For example, during the period between 10 January and 10 February 1997, U.S. forces paid 58 claims in Bosnia. Of those claims, 25 resulted from vehicular accidents; 13 from crop damage; 9 from damage to residential property; 6 from the detonation of ordnance; 2 from damage to private roads; and 1 each for damage to public roads, personal property, and livestock. Memorandum from SSG Ross Steele, Claims NCOIC, 1st ID, Task Force Eagle, to MAJ Jody M. Prescott, subject: Monthly Breakdown, Task Force Eagle Claims (23 Feb. 1997) (copy on file with U.S. Army Claims Service, Europe).

80. EurotaxSchwacke Gmbh, Schwackeliste (May 1997). The Schwackeliste is a listing of used car valuations similar to the Automobile Red Books published by National Market Reports, Inc. in the United States.

81. IFOR CLAIMS OFFICE SARAJEVO SOI, *supra* note 2, attachment J.

Conclusion

Claims activities in the Bosnian Theater of Operations[82] involve the most complex set of claims regimes in which U.S. forces have ever worked. As of 7 May 1998, U. S. forces had already received 1770 claims in Bosnia-Herzegovina, for a total claimed amount of $11,814,276.[83] Of these claims, 1104 have been paid, for a total amount of $1,124,785.[84] In addition, 391 claims had been filed against U.S. forces in Croatia, for a total amount of $11,733,205.[85] Of these claims, 254 have been paid, for a total amount of $408,550.[86]

The business of investigating, adjudicating, and settling claims in Bosnia-Herzegovina is very time-consuming and difficult because of the force protection requirements, the difficult roads, the shattered economy, and the widespread destruction caused during the war. These problems are not as significant in Croatia. United States foreign claims commissions rely heavily on the U.S. civil-military affairs teams to provide the required translators and to make the investigations and personal contacts necessary to settle the claims.

The prompt payment of meritorious claims contributes to the peace process in Bosnia-Herzegovina and Croatia by promoting friendly relations between the troop-contributing nations and the receiving states. The payment of such claims also serves the interests of force protection, an aspect of claims activities that is of particular use to field commanders in operations such as Joint Endeavor and Joint Guard.

---

82. For U.S. forces, the Bosnian Theater of Operations includes Austria, the Czech Republic, Hungary, and Slovakia, as well as the countries that comprised the former Yugoslavia.

83. Memorandum from MAJ William Kern, Chief, Operational Claims, U.S. Army Claims Service, Europe, to MAJ Jody M. Prescott, subject: May Statistics (7 May 1998).

84. *Id.*

85. *Id.*

86. *Id.*