

A Pre-Deployment Guide to Ensuring a Successful Claims Operation in an Eastern European Country¹

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Introduction

The U.S. military is deploying for training in Eastern European countries more than ever. Claims against the United States are filed, and claims judge advocates (JA) are responsible for ensuring the claims process is simple and straightforward for the claimants, the host nations, and the United States. Unlike the judge advocate who deploys to Iraq or Afghanistan and has many tools available to prepare him to practice claims law in those theatres,⁴ before now there was very little guidance for claims judge advocates deploying to Eastern European countries. The Foreign Claims Act (FCA)⁵ generally does not apply in these countries, which are members of the Partnership for Peace (PfP) or North Atlantic Treaty Organisation (NATO).⁶ Rather, the claims guidance found in the NATO Status of Forces Agreement (SOFA)⁷ dictates how the U.S. military investigates and adjudicates claims. This article provides claims guidance for JAs deploying to Eastern European countries and explains the pre-deployment steps that a JA should take to ensure a smooth claims operation.⁸ Also, JAs should follow the articles general guidance if deploying to an area outside of Eastern Europe.

Initial Research

After you receive notice that your unit will deploy to a PfP or other Eastern European country, you, as a JA, need to immediately review several documents. First, you should verify whether the country ratified the PfP or is a member of NATO. To determine this, check either the list of PfP countries contained on the Partnership for Peace's or NATO's webpage.⁹ Second, you should check to see which branch of the armed forces has single service claims responsibility for the country to which you will deploy. The branch that has single service responsibility is in charge of claims operations in a particular country, and you will need to coordinate with their claims office before deploying.¹⁰ A current list of single service

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⁴ See, e.g., INT'L & OPERATIONAL LAW DEP'T, THE JUDGE ADVOCATE GENERAL'S LEGAL CENTER & SCHOOL, U.S. ARMY, JA 422, OPERATIONAL LAW HANDBOOK (2006) [hereinafter OPLAW HANDBOOK]. The *Operational Law Handbook* is available at a restricted website on JAGCNET, <http://www.jagcnet.army.mil/> (last visited Mar. 29, 2006). Claims judge advocates deploying to Iraq and Afghanistan have access to a restricted forum on JAGCNET, which contains training materials. Classes taught at The Judge Advocate General's Legal Center and School also focus on the Foreign Claims Act and current claims situations in Iraq and Afghanistan.

⁵ 10 U.S.C. § 2734 (2000).

⁶ North Atlantic Treaty Organisation, The Partnership for Peace, <http://www.nato.int/issues/pfp/index.html> (last visited Mar. 27, 2006) [hereinafter NATO PFP] (providing information on PfP countries and a list of current participating countries).

⁷ Agreement Between the Parties to the North Atlantic Treaty Regarding the Status of their Forces art. VIII, June 19, 1951, 4 U.S.T. 1792, 199 U.N.T.S. 67, available at <http://www.nato.int/docu/basic/txt/b510619a.htm> [hereinafter NATO SOFA].

⁸ This article will not explain how to resolve common claims issues that occur in PfP countries and other Eastern European countries that have joined NATO. North Atlantic Treaty Organisation, The Partnership for Peace, <http://www.nato.int/issues/pfp/index.html> (last visited Mar. 27, 2006) [hereinafter NATO PFP] (providing information on PfP countries and a list of current participating countries). For that, sample scenarios, guidance, and learning lessons will be posted in the claims forum on JAGCNET and on the Center for Law and Military Operations website. The information is not yet available, but will be posted on the following websites; Center for Law and Military Operations, [https://www.jagcnet.army.mil/85256DB7005CECA3\(JAGCNET-DocID\)/HOME?OPENDOCUMENT](https://www.jagcnet.army.mil/85256DB7005CECA3(JAGCNET-DocID)/HOME?OPENDOCUMENT) (last visited Mar. 27, 2006) and JAGCNET, <https://www.jagcnet.army.mil/forums/> (follow "Forums" hyperlink) (last visited Mar. 27, 2006).

⁹ See NATO PFP, *supra* note 6; NATO Member Countries, *supra* note 8.

¹⁰ U.S. DEP'T OF DEFENSE, DIR. 5515.8, SINGLE SERVICE ASSIGNMENT OF RESPONSIBILITY FOR PROCESSING OF CLAIMS (9 June 1990). Under this directive, a particular branch of service is assigned exclusive responsibility for resolving tort claims against the Department of Defense (DOD) in a particular country. *Id.* at Encl. 1.

responsibilities is in the *Operational Law Handbook*¹¹ and can also be obtained by contacting the U.S. Army Claims Service (USARCS) or the U.S. Army Claims Service Europe (USACSEUR). Third, examine any supplementary agreements that may exist between the host nation country and the United States. Examples of current supplementary agreements are in the PfP electronic database. You should contact the foreign torts branch at USACSEUR to find out if a supplementary agreement exists. If there is a supplementary agreement, check to see if it contains any claims related language.¹² For instance, there is an agreement on the settlement of claims between the U.S. Army, Europe (USAREUR) and the Ministry of Defense of the Government of the Republic of Hungary, which applies “to all future activities of the U.S. forces in the territory of the Republic of Hungary.”¹³ Fourth, review the exercise agreement, if one exists, for any claims guidance. Samples of exercise agreements will be in the PfP electronic database. Fifth, review chapter seven of both *Army Regulation (AR) 27-20, Claims*¹⁴ and *Department of the Army Pamphlet (DA PAM) 27-162, Claims*¹⁵ to become familiar with the Army’s implementation of and guidance for its claims program when international agreements exist. Sixth, review Article VIII of the NATO SOFA,¹⁶ which explains the claims procedures between NATO countries.

Coordination with Claims Service

After conducting your initial review of the aforementioned materials, contact the appropriate service’s claims service. In all likelihood, that will mean coordinating with the foreign torts branch at USACSEUR. They will help ensure you are fully prepared to run a successful claims operation in the PfP or NATO country. If no exercise agreement exists, the appropriate headquarters, normally USAREUR or European Command, will negotiate one with the host nation. You should not attempt to negotiate an exercise agreement without prior coordination with and approval of USACSEUR, because personnel there are well-versed in what type of claims language must be in the agreements with specific countries and will help you negotiate an appropriate and legally sound agreement. Myriad claims issues are covered in exercise agreements, making it imperative that you coordinate with USACSEUR.

The NATO SOFA states that the host nation, or receiving State, will investigate and adjudicate in-scope claims between third-parties and the sending State,¹⁷ which, if the U.S. Army is deploying, is the United States. The exercise agreement normally states where the host nation will set up its Receiving State Claims Office (RSCO)¹⁸ or offices so potential claimants can file their claims against the United States. The RSCO’s hours of operation and contact information will be included in the exercise agreement. Also, the agreement should state how long the RSCO will be open after the exercise concludes to allow potential claimants the opportunity to file claims after U.S. forces leave the country.¹⁹ In European countries other than Germany, if U.S. forces conduct maneuvers off of public property without a contract, it may be considered a trespass. The exercise agreement can grant U.S. forces the right to use certain private property or explain how the United States can receive such rights.²⁰ The exercise agreement should also delineate other host nation and sending nation responsibilities with regard

¹¹ See OPLAW HANDBOOK, *supra* note 4.

¹² For example, NATO granted Albania and Macedonia exemptions from paying their normal twenty-five percent share of in-scope SOFA claims as set forth in the NATO SOFA. See Letter to Minister of Foreign Affairs of the former Yugoslav Republic of Macedonia from Mr. Javier Solana, NATO Secretary General (Apr. 5, 1999) (copy on file with authors); see also NATO SOFA, *supra* note 7, ch. VIII.

¹³ Amendment to the “Administrative Arrangement Concerning Procedures for the Operation of the Joint Claims Oversight Commission and the Settlement of Claims Arising From the Activities of U.S. Forces in Connection with the Peace Implementation Force” art. 1, Purpose, May 14, 1997 (on file with authors). The Amendment

shall not be limited to the IFOR/SFOR missions but shall apply to all future activities of the U.S. Forces in the territory of the Republic of Hungary. To the extent that provisions contained in the Claims Arrangement limit its application to the IFOR/SFOR missions, they shall be considered null and void.

Id. art. 2, Applicability. The Amendment also defines a third-party claim, an affirmative claim, and a claimant. *Id.* art. 3, Definitions.

¹⁴ U.S. DEP’T OF ARMY, REG. 27-20, CLAIMS (1 July 2003) [hereinafter AR 27-20]. A new claims regulation is forthcoming.

¹⁵ U.S. DEP’T OF ARMY, PAM. 27-162, CLAIMS PROCEDURES (1 Apr. 1998). A new claims procedures pamphlet is forthcoming.

¹⁶ See NATO SOFA, *supra* note 7.

¹⁷ *Id.*

¹⁸ See, e.g., Annex N (Maneuver Coordination and Damage Claims Procedures) in Exercise Agreement for “Immediate Response 05” Final SJA para. 5a (on file with authors). This exercise agreement (ESA) was between the United States and Bulgaria. The ESA listed an address and phone number of the RSCO. *Id.*

¹⁹ See *id.* para. 5b (“The Bulgarian Ministry of Defense (MOD) Committee will accept and process claims related to the Exercise, during the Exercise and after the MACC closure, following the completion of the Exercise.”).

²⁰ Agreement Between the United States of America and Romania Regarding the Status of United States Forces in Romania para. 3, Oct. 30, 2001 (on file with authors).

to claims, such as the Army's ability to conduct pre-maneuver damage surveys²¹ and the responsibility to report accidents and environmental damage to the host nation.²² For example, an exercise agreement with Romania specifies how scope of employment determinations are made and contains the required bilingual form.²³

The exercise agreement should also include a claims card, which Soldiers can provide to potential claimants if a situation giving rise to a claim occurs. Cards are prepared in both English and the host nation's language. The claims card should explain that claims are filed at the RSCO, contain the RSCO's address, hours, and phone number, and provide guidance as to what information is necessary to file a proper claim. Sample forms will be on the PfP electronic database on JAGCNET.

Training

After the exercise support agreement is negotiated and signed, you, the deploying judge advocate need to properly train your unit on claims operations. Civilians and uniformed personnel deploying with the unit should be provided copies of the claims card and advised to give the card to potential claimants if the former are involved in an accident or other tort. You also must remember to advise U.S. forces not to attempt to settle claims and pay claimants at the scene of the incident. In the past, servicemembers tried to "do the right thing" and paid claimants out of their own pockets, expecting the Army to reimburse them. However, no authority exists to pay the servicemembers,²⁴ and they will not be reimbursed. You should also train your unit on any unique rules in the receiving State. For example, countries have vastly different rules about automobile insurance for rental vehicles.

Environmental Issues

Proper planning for environmental issues saves the command and the claims judge advocate much unnecessary work and prevents the government from paying claims it is not responsible for. Exercise support agreements between the host nation and the United States must include environmental guidance, which is usually in an annex to the agreement.²⁵ The environmental engineer at USACSEUR serves as the subject matter expert for this annex and will coordinate with and assist you in ensuring the command satisfies the annex's requirements. Before you deploy, you should contact the environmental engineer to discuss any critical issues and receive any necessary guidance.²⁶

The environmental annex should allow for a joint investigation and testing of the land where the exercise will take place before the exercise begins. In fact, the annex should specifically list what areas will be tested and how they will be tested. The testing requirement means that any maneuver routes need to be planned early to ensure the proper areas are tested. The host nation should also provide the United States a copy of any pertinent host nation environmental laws and regulations that may impact the military's operations. The annex will list the procedures to be followed in case there is a petroleum spill. This ounce of prevention will ensure that potential claimants are not compensated for preexisting damage. The host nation also benefits by ensuring that the United States compensates claimants for damage it causes.

Miscellaneous Issues

Prior to deploying, you also should let your commander or other appropriate personnel know of any logistical support you will need to effectively run a claims operation. If USACSEUR determines that you should be a foreign claims commission,²⁷ then they will appoint you as one prior to your arrival in the host nation. Foreign claims commissions are the only personnel authorized to complete a scope authorization to determine whether a U.S. servicemember or Department of

²¹ *See id.*

²² *See id.* para. 8.

²³ *Id.*

²⁴ *See* Foreign Claims Act, 10 U.S.C. § 2734 (2000); Personnel Claims Act, 31 U.S.C. § 3721; Military Claims Act, 10 U.S.C. § 2733.

²⁵ A superb example of an annex to an exercise agreement between the United States and Bulgaria is included in the electronic database. This annex contains a complete list of both countries' responsibilities.

²⁶ Mr. Craig Walmsley is USACSEUR's environmental engineer.

²⁷ AR 27-20, *supra* note 15, para. 10-6a.

Defense civilian acted within the scope of his employment.²⁸ Bring a digital camera with you to document situations that may cause potential problems in the future. Arrange to have a translator if necessary. Finally, know how to contact USACSEUR both telephonically and via e-mail.

Conclusion

The claims judge advocate has a very important and exciting role in deployments to Eastern European countries. Advance preparation is the key to ensuring that the host nation is fairly compensated for damage U.S. forces cause and that the United States pays only for damage it causes. Judge advocates should follow this article's guidance whether deploying to an Eastern European country or any other country. The inevitable claims that arise will be handled much more smoothly if, prior to deployment, claims judge advocates make the necessary coordination with USACSEUR and follow the above guidance.

²⁸ See *id.* para. 7-10(b) ("Claims by foreign inhabitants based on acts or omissions outside the scope of official duties are cognizable under Chapter 10."); see also *id.* para. 10-6 (stating that FCCs investigate and adjudicate claims under the FCA); OPLAW HANDBOOK, *supra* note 4 (providing a sample scope certificate).