Criminal Investigative Policy & Oversight

Evaluation of
Military Criminal Investigative Organizations'
Investigative Effectiveness Regarding
U.S. Forces Civilians Stationed Overseas

Report Number 9950009I

September 7, 1999

Office of the Inspector General
Department of Defense

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Acronyms

AFOSI	Air Force Office of Special Investigations
DoDDS	Department of Defense Dependents Schools
MCIO	Military Criminal Investigative Organization
NCIS	Naval Criminal Investigative Service
SOFA	Status of Forces Agreement
UCMJ	Uniform Code of Military Justice
USACIDC	U.S. Army Criminal Investigation Command
USFJ	United States Forces, Japan

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September 7, 1999

MEMORANDUM FOR ASSISTANT SECRETARY OF DEFENSE (FORCE MANAGEMENT POLICY)
GENERAL COUNSEL OF THE DEPARTMENT OF DEFENSE
ASSISTANT SECRETARY OF THE NAVY (FINANCIAL MANAGEMENT AND COMPTROLLER)
ASSISTANT SECRETARY OF THE AIR FORCE (FINANCIAL MANAGEMENT AND COMPTROLLER)
AUDITOR GENERAL, DEPARTMENT OF THE ARMY

SUBJECT: Evaluation Report of the Military Criminal Investigative Organizations' Investigative Effectiveness Regarding U.S. Forces Civilians Stationed Overseas (Report No. 9950009I)

We are providing this report for review and comment. Comments from the Army, Navy, Air Force, and United States Forces, Japan, were considered in preparing the final report.

DoD Directive 7650.3 requires that all recommendations be resolved promptly. As a result of management comments received, we revised and redirected draft Recommendation B. We request that additional comments on Recommendation B1, specifically from the General Counsel, Department of Defense, be provided by October 15, 1999. If management nonconcurs with any recommendation, the comments should state the specific reasons for the nonconcurrence and propose alternative actions, if appropriate.

We appreciate the courtesies extended to the evaluation staff. Questions on the evaluation should be directed to Dr. Charles McDowell, Evaluation Program Director, at (703) 604-8769 (DSN 664-8769) or Ms. Phyllis Brown, Evaluation Project Manager, at (703) 604-8810 (DSN 664-8810). See Appendix D for the report distribution.

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Office of the Inspector General, DoD

Report No. 9950009I **September 7, 1999**

(Project No. 80G-P008)

Evaluation of the Military Criminal Investigative Organizations' Investigative Effectiveness Regarding U.S. Forces Civilians Stationed Overseas

Executive Summary

Introduction. Approximately 299,000 civilians and dependents currently accompany the Armed Forces overseas. Generally, the United States has no criminal law jurisdiction over U.S. civilians or dependents of civilian and military personnel when they accompany the Armed Forces overseas. Serious criminal acts committed by these American civilians are usually investigated by the Military Criminal Investigative Organizations (MCIOs).[1] The MCIOs conducted over 1,900 investigations involving allegations of serious offenses committed by American civilians overseas from 1995 through 1997.

Objective. Our primary objective was to evaluate Department of Defense and the Military Criminal Investigative Organizations' authorities, policies, and procedures for conducting criminal investigations involving civilians who accompanied U.S. Forces stationed overseas. The evaluation also focused on the effectiveness of interaction among the Military Criminal Investigative Organizations, Department of Defense officials, military commanders, and host nation authorities in support of MCIO investigations of civilians supporting U.S. Forces overseas.

Results. The Military Criminal Investigative Organizations conduct effective investigations of U.S. Forces civilians stationed overseas who commit serious crimes. In addition, working relationships and communications with host nation authorities are in place and appear to be effective (Finding A). Although

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[1] The MCIOs are the U.S. Army Criminal Investigation Command; the Air Force Office of Special Investigations; and the Naval Criminal Investigative Service, which services the Navy and the Marine Corps. The MCIOs are responsible for investigating most major crime in the Military Departments, including general crimes and fraud. Initiation of investigations by the MCIOs is authorized by DoD Instruction 5505.3, "Initiation of Investigations by Military Criminal Investigative Organizations," July 11, 1986.

investigators dedicate significant time and resources to the investigation of crimes committed by U.S. civilians overseas, these investigations rarely result in a criminal prosecution due to the lack of prosecutive jurisdiction by the United States Government. On April 18, 1997, a Joint Overseas Jurisdiction Advisory Committee submitted a report to Congress addressing criminal law jurisdiction over civilians accompanying the Armed Forces overseas. The report recommends and provides legislative changes to close jurisdictional gaps with respect to civilians accompanying the Armed Forces overseas. Our evaluation determined that a significant number of serious[2] offenses committed by U.S. civilians stationed overseas are not being reported to the Congress (Finding B). This is because DoD Directive 5525.1, "Status of Forces Policies and Information," which sets forth reporting requirements on U.S. civilians stationed overseas is limited to cases reserved by a foreign country and those cases released by foreign authorities to the U.S. for disposition. Not included are serious cases investigated by the Military Criminal Investigative Organizations in which the host country had no interest or which were not referred or reported to the host country. As a result, Congress is unaware of the actual amount of serious crime committed under these circumstances and cannot take such information into consideration to effect legislative decisions.

During this evaluation we interviewed commanders and other personnel having official interest in misconduct committed by U.S. civilians overseas. They expressed concern over the inadequacy of administrative sanctions and the amount of time and resources committed to programs that deal with civilian misconduct. Although these issues were beyond the scope of this evaluation, civilian misconduct programs overseas may warrant further study. At Appendix A is an observation on this subject.

Summary of Recommendation. We recommend that the DoD General Counsel, as the proponent for DoD Directive 5525.1, "Status of Forces Policy and Information," modify annual reporting requirements to include all MCIO investigations of founded,[3] serious offenses committed by civilians stationed overseas.

Management Comments. The Army, Navy, Air Force, and United States Forces, Japan (USFJ) comments are responsive to the finding on the overall

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[2] For purposes of this report, serious crimes include: murder, rape, manslaughter & negligent homicide, arson, robbery & related offenses, aggravated assault, child abuse, drug distribution and drug possession with intent to distribute.

[3] For purposes of this report, a founded offense is defined as a criminal offense adequately substantiated by a MCIO investigation.

investigative sufficiency, liaison and working relationships with host country counterparts reflected in the evaluation report. The Army, Navy, and Air Force concurred with Finding B regarding a lack of a mechanism for reporting serious founded offenses investigated by the Military Criminal Investigative Organization in which the host country has no interest or which were not referred/reported to the host country. The USFJ stated that reporting of serious founded offenses in which the host country has no interest or which were not referred or reported to the host country are reported using the Defense Incident-Based Reporting System. Although the Army concurred in Finding B, they noncurred in the recommendation to modify the reporting requirements of DoDD 5525.1. The Army stated that the Secretary of the Army is designated the Executive Agent only for maintaining and collating information received on the basis of reports submitted in accordance with DoDD 5525.1 and has not been given the authority to establish, as a matter of DoD policy, new reporting requirements. See Part I for a discussion of management comments and Part III for the complete text of the management comments.

Evaluation Response. We believe that the concurrences by the Army, Navy, and Air Force on the lack of reporting data on serious crimes committed overseas by civilians accompanying the U.S. Forces identified in this report reflect the valid need for this data to be reported to the Congress. As a result, we have revised and redirected Recommendation B to the Department of Defense General Counsel.

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Part I - Evaluation Results

Evaluation Background

U.S. civilians who accompany the Armed Forces overseas include DoD employees and their families; contractors and their family members; and military dependents. While the number of military personnel assigned overseas has decreased due to the end of the cold war, the number of U.S. civilians overseas has not decreased significantly. At present approximately 299,000 civilians, including dependents, accompany 224,000 military members overseas.[4] Additionally, U.S. civilian employees play a significant in-theater role during military operations and deployments. Many of them are contractor employees who are not under the direct supervision of military commanders. Contractor employees are relied upon for a variety of support activities, including technical assistance and advice; the maintenance of weapon systems and equipment; training; and logistical support.

Prosecutive jurisdiction over U.S. Forces abroad, both military and civilian, is usually governed by Status of Forces Agreements (SOFAs), which are treaties between the United States and the host nations. SOFAs define those offenses subject to the exclusive jurisdiction of the respective parties and those over which jurisdiction is shared. In cases of shared (concurrent) jurisdiction, SOFAs set out which party will have primary jurisdiction. As originally enacted, the Uniform Code of Military Justice (UCMJ) was intended to apply to civilian employees and dependents accompanying the Armed Forces aboard. However, in 1960, the U.S. Supreme Court ruled that it is unconstitutional to subject civilians to military law during peacetime.[5] Therefore, in the case of civilian misconduct, there is typically no issue of shared jurisdiction to resolve, so the SOFA is largely irrelevant. The problem with this arrangement is that unless a crime offends the host-nation, e.g., it results in injury to a local national or damage to public or private property of the host nation, the host nation will typically have little interest in pursuing prosecution. Absent these concerns, local prosecutors are likely to view the offense as an "American problem" and take no action. In these cases, military commanders are restricted to administrative sanctions. Contractor employees hired to perform work overseas may also be sanctioned by their employers.

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[4] Statistics extracted from the "Worldwide Manpower Distribution by Geographical Area," December 31, 1997, prepared by the DoD, Washington Headquarters Services Directorate for Information Operations and Reports.

[5] See Kinsella v. Singleton, 361 U.S. 234 (1960) and Grisham v. Hagan, 361 U.S. 278 (1960), and McElroy v. United States ex rel. Guagliardo, 361 U.S. 282 (1960).

Evaluation Objective

The primary objective of this evaluation was to assess DoD and Military Criminal Investigative Organization (MCIO) authorities, policies, and procedures for conducting criminal investigations involving U.S. Forces civilians stationed overseas. The evaluation also focused on the effectiveness of interaction among the MCIOs, DoD officials, embassy officials, military commanders, judge advocates, and host nation authorities in support of MCIO criminal investigations of U.S. Forces civilians overseas.

Scope and Methodology

Work Performed. The evaluation focused on the policies and procedures used by the MCIOs that guide their investigations involving U.S. Forces civilians stationed overseas. Further, our evaluation examined the interaction among the MCIOs, DoD officials, military commanders, judge advocates, embassy officials, and host nation authorities with respect to support for MCIO criminal investigations of U.S. Forces civilians overseas.

We reviewed DoD and MCIO authorities, policies, and procedures for initiating and conducting investigations into allegations of serious crimes committed by U.S. Forces civilians stationed overseas. We requested and received computer-generated data from the MCIOs on investigations of these cases. The data they provided covered the period from January 1995 through December 1997 and was limited to serious crimes. Over 1,900 investigations were identified by the MCIOs. Using this data, we reviewed a sample of closed investigations at the respective MCIO records repositories. The sample review consisted of closed investigative files based upon all investigations conducted in or near the 10 locations we visited overseas. We also interviewed agents, commanders, staff judge advocates, representatives from the Department of Defense Dependents Schools, foreign law enforcement officials, foreign prosecutors, and U.S. embassy officials at these same overseas locations. In addition, we visited the Military Services international law offices responsible for reporting on the exercise of foreign criminal jurisdiction.

Limitations. This evaluation did not review the Federal criminal law jurisdiction pertaining to civilians who accompany the Armed Forces overseas. Section 1151 of the National Defense Authorization Act for Fiscal Year 1996 required the Secretary of Defense and the Attorney General to review and provide a report on criminal law jurisdiction over civilians accompanying the Armed Forces in the field outside the United States. A Joint Overseas Jurisdiction Advisory Committee was formed, and on April 18, 1997, the committee submitted a report with recommendations to Congress.

Evaluation Results

Evaluation Period and Locations. This evaluation was performed from March 1998 through September 1998. Overseas locations included Germany, Italy, Japan, and Korea.

During this evaluation we talked with several overseas commanders and other officials involved in civilian misconduct programs overseas. As a result of the issues and concerns they identified, we believe the area of civilian misconduct programs overseas may require further study. At Appendix A is an observation on this subject.

Finding A. MCIO Investigations of Civilians Stationed Overseas

The MCIOs conduct effective investigations of U.S. Forces civilians overseas who are alleged to have committed serious crimes. Working relationships and communications with host nation authorities are in place and appear to be effective. However, the time and resources dedicated to the investigation of crimes committed by U.S. civilians overseas rarely results in prosecution and often result in inadequate administrative punishment or in no action at all. As a result of this paucity of sanctions, justice is not served, and the rights of individuals - including victims - are not always adequately secured.

Policies and Procedures for Conducting Investigations of Civilians Stationed Overseas

10 U.S.C. § 802 (Art. 2, UCMJ). Explicitly sets forth those persons who are subject to UCMJ jurisdiction.

Department of Defense. DoD Directive 5505.1, "DoD Criminal Investigation Standards, Policies, Procedures," February 13, 1985, and DoD Instruction 5505.3, "Initiation of Investigations by Military Criminal Investigative Organizations," July 11, 1986, provide policy for initiation of investigations and investigative standards, policies, and procedures.

U.S. Army Criminal Investigation Command (USACIDC). Army Regulation 195-2, "Criminal Investigation Activities," October 3, 1985, covers Department of the Army policy on criminal investigative activities, and delineates responsibility and authority between Military Police and USACIDC. Procedures for CID agents conducting investigations are provided in USACIDC Regulation 195-1, "Criminal Investigation Operational Procedures," October 1, 1994.

Naval Criminal Investigative Service (NCIS). SECNAV 5520.3B, "Criminal and Security Investigations and Related Activities within the Department of the Navy," January 4, 1993, covers jurisdiction and responsibility for conducting criminal and security investigations and related activities within the Department of the Navy. Procedures for conducting investigations are provided in the NCIS Agent Manual, Volume 3, updated October 1998.

Air Force Office of Special Investigations (AFOSI). AFOSI Instruction 71-101, "Criminal Investigations," August 1, 1997, outlines AFOSI authority to initiate and conduct criminal investigations and defines the role of Air Force

Security Forces (formerly Security Police) in investigations of narcotics and other offenses. Procedures for conducting investigations are provided in AFOSI Manual 71-118, "General Investigative Methods," November 4, 1996.

DoD and MCIOs Policies and Procedures. We reviewed the DoD and MCIO policies that govern basic organizational relationships and set forth the procedures for investigations of crimes committed overseas. We found that those publications adequately delineate the MCIOs' roles and responsibilities. A patchwork of international treaties and agreements (including Status of Forces Agreements), policies of the host government, and the MCIOs' own implementing regulations, determine the MCIOs' investigative authority and responsibility outside the United States. MCIO procedures for conducting investigations do not generally distinguish between investigations conducted in the U.S. and those conducted overseas: these procedures are designed to accommodate all investigations. Our discussions with agents, MCIO headquarters personnel, and commanders in the field did not reveal any unnecessary duplication or overlap in roles and functions.

MCIOs' Investigations of Civilians Overseas

MCIO Case Reviews. During a three-year period over 1,900 investigations of civilians were conducted overseas by MCIOs. Using these investigations as a baseline, we reviewed 103 Army investigations, 110 Navy investigations, and 59 Air Force investigations at their respective records repositories. Case files reviewed consisted of all closed investigations that had been conducted in or near the 10 locations we visited overseas. The case files we reviewed were found to be complete with a Report of Investigation; documentation showing what, if any, liaison was made with the host law enforcement community; and the final action taken (when known).

Impediments. We interviewed twenty-two agents experienced in conducting criminal investigations of U.S. civilians stationed overseas to determine what, if any, problems may be unique to overseas investigations of U.S. civilians. Overall, the agents we interviewed stated that they have the necessary tools, equipment, and resources to perform their duties, and that they are aware of the communication channels that are in place to provide assistance on any host nation requirements. Interpretation of host nation laws and language assistance are normally provided by local nationals assigned to the MCIO offices and/or to the staff judge advocate offices. However, discussions with agents revealed a variety of impediments that may be experienced when conducting investigations on U.S. civilians overseas. For example:

o The MCIOs expend considerable time and resources on the investigation of U.S. civilians stationed overseas. Agents stated that they spend anywhere from 10 to 30 percent of their time on such investigations. Disposition of these cases

usually involves administrative actions or, in some cases, no action at all. Criminal prosecutions rarely occur. In addition, the agents we interviewed stated that it is difficult to get U.S. Attorneys interested in cases because of the lack of Federal prosecutive jurisdiction, resource constraints, and the logistical problems associated with locating witnesses in foreign countries and securing their cooperation.

o Open military bases, such as many of those found in Germany, provide easy access for previously identified offenders and the outside community. Where overseas bases are open, the process of screening incoming personnel is essentially eliminated. This renders certain administrative actions ineffective and facilitates re-entry and the threat of repeat offenders.

o Although working relationships with host nation law enforcement officials and prosecutors are good, obtaining reports and information from them is usually slow and adds to the amount of time required to complete investigations. In some locations the MCIOs are asked to conduct the initial investigation and provide a report of investigation to the host nation law enforcement agency; however, the host nation law enforcement agencies then routinely re-investigate the cases. Although joint investigations are conducted with local host nation law enforcement agencies, methodologies, investigative techniques, and legal systems often differ and can create conflict and misunderstanding.

o The level of seriousness and interest in crimes is often viewed differently by the host nation. For example, rape by a husband in Korea is not considered a crime under Korean law. In Japan, one is considered (and treated as) a juvenile up to the age of 20. *Inter se* cases - those that only involve U.S. citizens and interests - are generally given low priority by host nation law enforcement officials and, as a result, often go unprosecuted.

o Knowledge that the United States does not have criminal jurisdiction may serve as an encouragement to offenders.

Sample Cases. Agents at all the locations we visited expressed concern and frustration over investigations of offenses that are considered felonies and that result in inadequate punishment. The following cases illustrate incidents in which U.S. civilians overseas were alleged to have committed serious offenses:

o In February 1997, a non-appropriated fund employee at a Marine Corps base was investigated for stealing approximately $10,000 of nonappropriated funds. The funds were to be used as payment for an off-base delivery service. Local national law enforcement authorities declined investigative or prosecutive jurisdiction based on the employee's status under the SOFA agreement. The employee admitted to stealing the money. She had previously stolen $175.00 from the office petty cash. Records show the employee made no restitution. Her employment was terminated.

o In November 1995, a nineteen year old dependent was investigated for illegal drug activity. Investigation substantiated that he was involved in the use and sale of marijuana, hashish, LSD, and methamphetamines to active duty U.S. military members and students at a Department of Defense Dependents Schools (DoDDS) high school. Local national law enforcement officials were notified, and they advised the MCIO investigators that they had also developed criminal intelligence on the subject. However, following an alcohol-related traffic accident, he left Japan. Records on the offender showed a pattern of misconduct while he was overseas. Investigative reports included assault; vandalism/damage to government property; shoplifting; firing a pellet pistol from a vehicle, which hit a pedestrian in the face; underage drinking; and black-marketing. His records of administrative punishment for his misconduct included 100 hours of community service; revocation of Exchange and Class VI privileges; a one year suspended barment from the base; three years barment from the military base; and a suspended removal from a Naval activity. Final administrative action consisted of a letter of revocation of command sponsorship and denial of reentry approval.

o In January 1997, a civilian employee was investigated for submitting three false Living Quarter Allowances applications during the period January 1993 through January 1997. The three applications were for advanced rent. In January 1993, the employee submitted an application to rent an apartment using "key money" in the amount of $46,452.00. Key money is a lump sum payment paid at the initiation of a rental contract. The interest earned by the landlord serves as the actual rent. At the termination of the rental contract, the key money is returned to the renter. The employee subsequently submitted two fraudulent applications that depicted he was paying monthly rent. For the two subsequent fraudulent rental agreements the employee received $80,604.00. Local law enforcement officials interviewed the landlord and determined advanced rent had only been paid for the initial lease. An Army CID investigation disclosed the subject conspired to commit, and committed, the offenses of fraud, theft, and false official statements against the U. S. Government. Loss to the U.S. Government was $127,056. The subject was terminated from his government position.

o In 1996, an Air Force civilian employee was investigated for taking inappropriate photographs of and for inappropriately touching young females. The subject had a business in which he performed magic shows and used young females as his assistants. The business was not associated with the military base. At least 24 victims were interviewed who stated that he took photographs of them in lascivious poses and inappropriately touched them. Previous investigations revealed that he had been investigated for the same type of allegations by the Air Force Office of Special Investigations in 1983 when he was an active duty military member. The subject admitted to the offenses. He was terminated from his civilian position, barred from the installation, and asked to leave Okinawa. A review of the investigative record did not reveal any local national law enforcement involvement.

o In May 1996, an investigation was conducted on a retired military member who ran a fraudulent car sales business overseas. His victims would either make a down payment or pay in full for American cars to be delivered overseas. His victims stated that deliveries of the cars were never made, and losses were placed at $115,887. A permit to operate the business had been obtained from the local government city hall. After the local authorities were briefed on the matter, they issued a subpoena; however, the subject fled the country. AFOSI investigators interviewed him in the United States, and he admitted that four individuals paid in full for vehicles that were never delivered. The subject stated that he would not provide any additional information unless he was criminally charged. An attempt to present the case to the United States Attorney in Washington, D.C., was made, but it was declined due to "lack of venue."

o In 1997, a seventeen year old dependent was investigated for the use, possession, and distribution of marijuana and Ritalin. Other investigations on the same person included simple assault (May 1995); larceny (July 1995); simple assault (July 1995); driving under the influence, communicating a threat and dependent misconduct (April 1996); destruction-damage-vandalism to Government property (June 1996); and unlawful entry (December 1996). The subject admitted to the use, possession, theft, and distribution of Ritalin, and to the use and possession of marijuana. The case was briefed to the local national police; however, they declined to pursue the matter. The base commander issued an order to bar the dependent from several military facilities; however, he returned to the United States before receiving the order.

o In December 1996, a civilian spouse attacked her active duty husband with a kitchen knife and stabbed him in the right shoulder blade. The victim was treated at a local hospital, and the case was investigated by the local national law enforcement agency. However, the local national prosecutor stated he would open the case for information purposes only, but that he would not prosecute. Based upon the subject's sworn confession, the Staff Judge Advocate opined that the subject had committed the offense of aggravated assault. Investigative records showed only administrative action was pending.

o In September 1996, investigators determined a sixteen year-old dependent student committed arson at a DoDDS high school in Europe. An investigation by the Area Fire Marshall determined that the fire was intentionally set. Damage was placed at $151,734. The student provided a signed sworn statement admitting that he intentionally set the fire. The student was expelled from the high school and barred from all non-essential base facilities. In March of 1998, the student was investigated for rape, simple assault, and threats against other high school students at a different military facility. On March 25, 1998, the base commander issued an order barring the student from the base. A review of the investigative record did not reveal any local national law enforcement involvement.

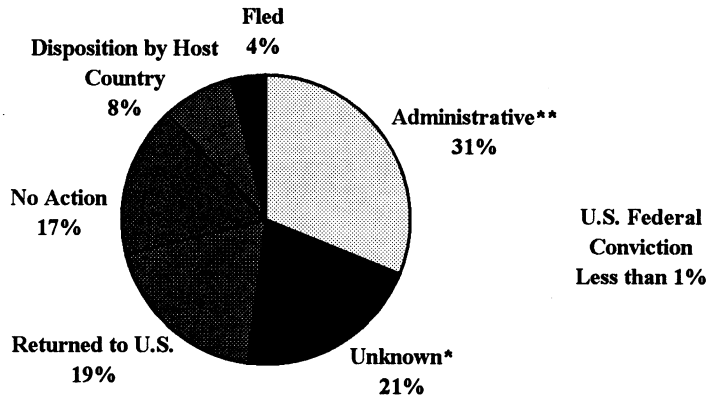
o During the period of May 1994 to February 1995, the eighteen year-old dependent son of a civilian employee was investigated for rape, indecent assault, and carnal knowledge against seven different victims. The victims' ages ranged from 12 to 15. The Staff Judge Advocate opined there was sufficient evidence to believe the subject committed the criminal offenses of carnal knowledge and simple assault. Prosecutive jurisdiction resided with the host nation; however, the subject departed the country and an investigation was not initiated by the local national law enforcement officials. The Assistant U.S. Attorney, Guam, was notified but declined prosecution stating that since the offenses occurred in the prosecutive jurisdiction of the host country, the U.S. Attorney's office did not have prosecutive jurisdiction.

o In May 1995, an eighteen year-old dependent in Japan was investigated for allegedly engaging in sexual intercourse/sexual misconduct with two thirteen year-old victims. The investigation was conducted jointly by the Air Force and local national law enforcement officials. Local officials had previously investigated the same subject for breaking into an off-base automatic teller machine. The subject was arrested and placed in jail for breaking into the ATM machine. He was released from jail on that charge but placed back in jail by local national law enforcement officials based on the allegation of carnal knowledge. Local national law enforcement officials opined that the local prosecutor was not interested in prosecuting the case because the subject was only eighteen years old, and he was again released from jail. In Japan, one is not considered an adult until the age of 20. In addition to the offenses committed off base, the subject's driving privileges were suspended for a period of six months for accumulated points and driving off base under age (under 18).

These ten examples illustrate the type of serious crimes committed by U.S. civilians stationed overseas. All of them were investigated by the appropriate MCIO, and all of the allegations were considered founded by judge advocates. As these cases illustrate, prosecutive jurisdiction by the host nation was not always assumed or possible, and where administrative sanctions were applied, they were generally limited to revocation of installation privileges and employment status.

Actions Taken on MCIO Investigations. We also evaluated the data to determine what types of actions were taken on the 275 MCIO investigations we reviewed. The files showed 427 actions taken on civilians. Civilian personnel and family members are not normally subject to disciplinary action under the UCMJ. Commanders have the authority to take appropriate administrative actions to correct misconduct of civilians under their jurisdiction. Acts of misconduct by family members and civilians are subject to a wide range of administrative sanctions. Administrative sanctions can include, but are not limited to the following: verbal counseling, letters of warning, community service, suspension of exchange and/or commissary privileges, barment from military installations and facilities, and early return to the United States. Figure 1 shows the breakdown of

the 427 actions taken and recorded in the 275 MCIO investigations. In addition, in our interviews, host country officials did not indicate an interest in being informed of the outcome of those cases the host country released to the U.S. for disposition. In cases in which the host country did exercise jurisdiction, agents stated that many cases are disposed of through out-of-court settlements by cash restitution payments.



*Action Taken Not in MCIO File.
**Suspensions, Community Service, Letters of Warning, etc.

Figure 1. Actions taken on 275 MCIO investigations.

The Coordination and Liaison Process

Interviews Conducted Overseas. Our interviews with personnel at overseas bases included commanders, judge advocates, administrative personnel associated with civilian misconduct programs, Department of Defense Dependents Schools (DODDS) officials, and MCIO investigators and other law enforcement personnel associated with the military installations. MCIO agents are responsible for keeping appropriate commanders informed of the status of open investigations and for notifying them of significant changes or developments. Agents routinely coordinate their investigations with judge advocates to determine if their investigations are complete and legally sufficient. In addition, any coordination

with host national law enforcement agencies is documented in the Report of Investigation prepared by the investigating agent. The MCIO offices that we visited typically had local national employees who served as investigative assistants. In several cases, agents themselves were fluent in the host country language.

We talked with host country representatives from Germany, Italy, Japan, and Korea. These interviews included twelve host country law enforcement officials; five prosecutors representing Germany, Italy, Japan, and Korea; and embassy officials in Italy and Korea. Our discussions centered on inter-agency communications and working relationships. Overall, the host country officials stated that working relationships and communications were good. They emphasized the continuing need for good communications, joint training, and compliance with SOFA.

DoD Dependents Schools. We were able to talk with four DoD Dependents Schools officials during our on-site visits. They stated that their coordination and working relationships are mainly with family advocacy personnel, military police, and civilian misconduct officials; however, when serious crimes are investigated by the MCIOs, their working relationships with the MCIO agents have been favorable.

On January 6, 1997, the Director of the Department of Defense Education Activity issued a memorandum to all DoD Dependents Schools principals on "Reporting Procedures for Suspected Child Abuse." The memorandum emphasized compliance requirements for reporting suspected child abuse to the Family Advocacy Program and announced a review of the current regulations and policies for dealing with suspected child abuse. On January 27, 1998, DoD Education Activity Regulation 2050.9, "Department of Defense Education Activity Family Advocacy Program Process and Procedures for Reporting Incidents of Suspected Child Abuse and Neglect," was published to improve guidance and procedures on identifying and reporting child abuse.

Legislative Action

Background. Since 1965, proposals have been put before Congress to resolve the lack of jurisdiction over U.S. civilians who accompany the Armed Forces overseas. Proposals have included making crimes committed outside U.S. territory prosecutable in U.S. courts; amending Title 10 (Armed Forces) to subject civilians to some of the substantive provisions of the UCMJ (which has extraterritorial application); and revising jurisdiction under Title 18 (Crimes and Criminal Procedure) by expanding the special maritime and territorial jurisdiction of the

United States to cover nationals or citizens of the U.S. serving with, employed by, or accompanying the Armed Forces outside the U.S. Thus far, none of these recommendations have been enacted into law.

Public Law 104-106. Section 1151 of the National Defense Authorization Act for Fiscal Year 1996 required the Secretary of Defense and the Attorney General to review and make recommendations concerning the appropriate forum for criminal jurisdiction over civilians accompanying the Armed Forces in the field outside the United States (see 10 U.S.C. §802). On May 14, 1996, a Joint Overseas Jurisdiction Advisory Committee was formed. On April 18, 1997, the committee published its "Report of the Advisory Committee on Criminal Law Jurisdiction Over Civilians Accompanying the Armed Forces in Time of Armed Conflict," and forwarded it to the Secretary of Defense, the Attorney General, and to Congress. The Committee found that two jurisdictional gaps existed with respect to civilians accompanying the Armed Forces overseas.

> First, civilians accompanying the armed forces in the field during military operations overseas, not involving a war declared by Congress, are not subject to the criminal jurisdiction of the United States for many crimes that they might commit....The committee also addressed a second jurisdictional gap. It is well known that civilians accompanying the armed forces overseas are not subject to the criminal jurisdiction of the United States, except those criminal statutes that have extraterritorial application. Thus, civilians employees of DoD and the Services, civilian contractors, and the family members of such civilians and of servicemembers are not subject to United States jurisdiction for most offenses overseas.

While such civilians may be subject to the criminal jurisdiction of the host country, the host nation often is not interested in prosecuting offenses by United States citizens. The report makes two recommendations: first, extending court martial jurisdiction to cover civilians accompanying the Armed Forces during contingency operations so designated by the Secretary of Defense; and, second, extending the jurisdiction of Federal courts to try serious offenses committed by persons accompanying the Armed Forces overseas.

Summary

The MCIO policies and procedures that govern investigations of U.S. civilians who accompany the Armed Forces abroad are adequate. In addition, working relationships and communications with host nation authorities are in place and working. The MCIOs devote considerable resources and time to conducting these investigations, and the offenses that are investigated are, for the most part, substantiated. However, unless criminal prosecutive jurisdiction is assumed by the host nation, only administrative sanctions can normally be applied by U.S. authorities. We believe the number of serious crimes committed by civilians

overseas, as illustrated in the examples previously noted, is a concern that cannot normally be adequately addressed through the use of administrative sanctions. The growth in the number of civilians overseas will not substantially abate and even has the potential for increasing. The growing DoD reliance on the use of civilian employees and contractor employees for mission accomplishment supports this assumption.[6] We found the MCIO investigations of U.S. civilians overseas thorough and complete. However, until legislative changes are made, as pointed out in the "Report of the Advisory Committee on Criminal Law Jurisdiction Over Civilians Accompanying the Armed Forces in Time of Armed Conflict," most criminal offenses committed by civilians overseas will continue to receive only administrative sanctions, which are often incommensurate to the offense.

Management Comments and Evaluation Response

Management Comments. The Army and the Air Force concurred with the overall finding regarding effective investigations of U.S. Forces civilians overseas and the liaison, and working relationships with host country counterparts. The Naval Criminal Investigative Service concurred with the report. Although not required to comment, United States Forces, Japan (USFJ), agreed that policies and procedures governing investigations of U.S. civilians who accompany the Armed Forces abroad are adequate and provided the following additional comments. To

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[6] During the evaluation, personnel in the International and Operations Law Division at Headquarters, United States Air Force, expressed concerns on jurisdictional issues that pertain to contractors involved with contingency operations. Contractors work with the military in some areas assisting commanders in performing missions; dress in combat gear; are issued combat equipment; and are co-mingled with military personnel. Concerns revolve around (1) how contractors serving in a combat environment should be treated under international rules of war; and, (2) whether or not their offenses can be treated as war crimes and whether or not the offenders are subject to host country laws.

clarify any misconceptions on SOFA jurisdiction over U.S. civilians overseas, the USFJ recommended changes to the second paragraph on page 2 and the last sentence on page 15 of the draft report. The USFJ also pointed out that the last sentence on page 16 is confusing and provided clarification. The complete text of management's comments is in Part III.

Evaluation Response. We consider management comments to be fully responsive and have largely incorporated the suggested changes by USFJ for clarification purposes.

Finding B. Reporting Investigations of Serious Crimes Committed by Civilians Overseas

Statistical data provided to the Senate Armed Services Committee by DoD lacks information concerning a significant number of investigations of serious crimes committed by U.S. civilians stationed overseas. These serious crimes are investigated by the MCIOs. This lack of information occurs because the reporting requirements of DoD Directive 5525.1, "Status of Forces Policies and Information," are limited to cases reserved by a foreign country and those cases released by foreign authorities to the U.S. for disposition. As a result, information concerning a problem area that affects the U.S. military posture overseas is not being presented to Congress and could affect legislative decisions on jurisdictional issues overseas.

DoD Reporting Requirement to Congress

DoD Directive 5525.1, "Status of Forces Policies and Information," August 7, 1979, establishes DoD policy and procedures on trial by the foreign courts and the treatment in foreign prisons of United States military personnel, nationals of the United States serving with, employed by, or accompanying the Armed Forces of the United States, and the dependents of both, and provides uniform reporting on the exercise of foreign criminal jurisdiction. The directive implements the Senate's Resolution on ratification of the North Atlantic Treaty Organization Status of Forces Agreement. The directive is implemented by the Services through a Joint Regulation, AR 27-50, SECNAVINST 5820.4G, AFJ 151-706 (formerly AFR 110-12), "Status of Forces Policies, Procedures, and Information," January 14, 1990.

DoD Directive 5525.1 designates the Department of Army as the Executive Agent for maintaining and collating information on the exercise of criminal jurisdiction by foreign tribunals over U.S. personnel. The Army submits an annual report to the DoD General Counsel, and that office in turns forwards the report to Congress. The purpose of the report is to inform Congress of the effect of SOFA implementation on U.S. personnel. The report is a statistical summary of instances in which host countries exercise jurisdiction over crimes committed by military and civilian personnel covered by SOFAs. These reports, based on information furnished by the military departments, cover the period of December 1 through November 30. Submissions to the annual report are required not later than 120 days after the close of the reporting period. On July 7, 1997, Change 2, to DoD

Directive 5525.1, amended reporting requirements for submission to the annual report to require the reporting of all criminal cases brought against United States personnel and punishable by incarceration. Previous reporting requirements consisted of all criminal cases brought against United States personnel.

Serious Offenses Committed by U.S. Civilians Accompanying the Military Forces

Level of Investigative Responsibility. The MCIOs are the DoD law enforcement organizations responsible for conducting felony-level investigations (which are generally defined as offenses under the UCMJ punishable by death or confinement for more than one year). Offenses of a less serious nature are generally investigated by the Service military law enforcement organizations.[7]

MCIO Investigations. Our evaluation revealed that the number of serious offenses committed by U.S. civilians who accompany the Armed Forces overseas and that are investigated by the MCIOs is significant. Data returns from the MCIOs show over 1,900 civilian investigations conducted overseas during a three-year period. At the MCIOs' records centers we reviewed 275 closed investigative files on serious crimes committed by U.S. civilians at overseas locations. These investigations took place in Germany, Italy, Japan, and Korea. We found the crimes investigated met the level of responsibility for investigations by the MCIOs. In addition, with few exceptions, the offenses committed had been coordinated with the appropriate judge advocates for determining probable cause. The investigative files we reviewed consisted of the following offenses: murder/death (4); rape (22); theft (55); aggravated assault (18); child/sex abuse (30); drugs (107); arson (28); and others (11).[8] In reviewing the files, we noted that the host country exercised jurisdiction in only a few cases, even though the investigations were considered founded offenses by judge advocates. Figure 2 shows the percentages of cases in which the host country exercised jurisdiction.

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[7] Service military police organizations are responsible for law and order in the Services and provide investigative support for crimes that fall below the MCIOs investigative jurisdiction. For the most part, the investigative activity of these police investigators is restricted to misdemeanor-level crimes and is limited to the boundaries of military installations or ships.

[8] Others consist of bribery; misuse of Government property; invasion of privacy; black market activities; and indecent assault.

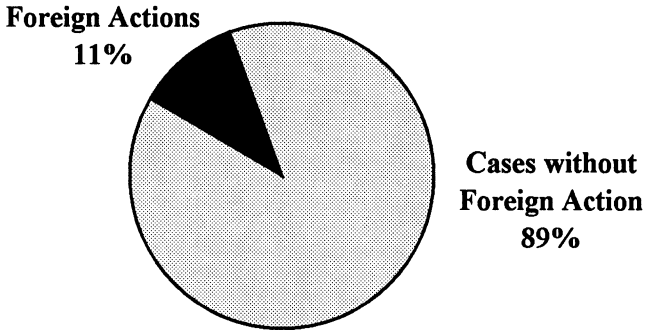

Figure 2. Actions Taken by Foreign Jurisdictions on MCIO Investigations.

DoD Report on Exercise of Criminal Jurisdiction by Foreign Tribunals. We reviewed the annual DoD report on exercise of criminal jurisdiction by foreign tribunals to determine the number of serious crimes committed by U.S. civilians and dependents overseas which are reported to the Congress. For this evaluation, the latest available DoD report on "Statistics on the Exercise of Criminal Jurisdiction by Foreign Tribunals Over United States Personnel" covered the period 1 December 1995 – 30 November 1996. Reporting requirements identified in Change 2 of DoD Directive 5525.1, July 2, 1997, are not reflected. In reviewing the annual report we noted that the number of reported serious cases reserved by the foreign country and those released to the United States is approximately half the number of cases investigated and reported to us by the MCIOs. Appendixes B and C contain extracts from the annual report for the period 1 December 1995 – 30 November 1996, on serious offenses reported. The DoD reporting system does not account for the actual number of serious offenses committed by U.S. civilians who accompany U.S. Forces overseas. Currently there is no mechanism for reporting serious founded offenses investigated by the MCIOs in which the host country has no interest or which were not referred or reported to the host country. The recent DoD Joint Committee Task Force "Report of the Advisory Committee on Criminal Law Jurisdiction Over Civilians Accompanying the Armed Forces in Time of Armed Conflict" supports this. The report states: "The committee was unable to find statistical data regarding recent cases that are not being prosecuted by host countries."

Summary

The current void in criminal prosecutive jurisdiction prevents the United States from prosecuting a significant number of serious offenses committed by U.S. civilians who accompany the Armed Forces overseas. Current reporting requirements to the Congress by DoD does not include serious cases investigated by the MCIOs in which the host country has no interest or which were not referred or reported to the host country. These cases represent the majority of serious offenses committed overseas by civilians accompanying the Armed Forces. We recognize that the current DoD reporting requirement consists of only statistical data on the exercise of criminal jurisdiction; however, we believe there should be a reporting mechanism to identify those serious crimes committed by civilians overseas, which are investigated and founded. Without reporting all serious crimes that are investigated and considered founded, the number and extent of criminal offenses being committed by civilians accompanying the Armed Forces overseas are not visible and cannot be taken into consideration by the Congress for legislative changes on jurisdictional issues.

Recommendation, Management Comments, and Evaluation Response

B. Notwithstanding the original purpose of the reporting requirements of DoD Directive 5525.1, "Status of Forces Policy and Information," we recommend that the Army, as Executive Agent, modify reporting requirements to include founded offenses of crimes investigated by the Military Criminal Investigative Organizations when either the host country or the U.S. has primary right of jurisdiction. In the alternative, DoD should establish a separate reporting vehicle presumptively under the auspices of the Under Secretary of Defense for Personnel and Readiness to provide this information to Congress. The report should include the number, type of offense, and disposition.

Army Comments. The Army concurred in the need to collect and report data regarding crimes committed overseas by civilians accompanying the U. S. Forces. However the Army nonconcurred in using the SOFA reporting vehicle, for which it is the executive Agent, to report such information to Congress.

Navy Comments. The Naval Criminal Investigative Service concurred with the report.

Air Force Comments. The Air Force Office of Special Investigations (AFOSI) concurred with the finding and recommendation. The Air Force stated that the AFOSI's Criminal and Counterintelligence, Terrorism Information System maintains the capability to report the number of serious founded offenses committed by U.S. civilians who accompany or support U.S. Forces at overseas Air Force installations. The system also maintains the capability to report the number of serious founded offenses referred to the host country, as well as the number accepted or declined for prosecution by the host nation.

United States Forces, Japan (USFJ) Comments. The USFJ disagreed that no mechanism currently exists for reporting serious founded offenses investigated by MCIOs in which the host country has no interest or which were not referred or reported to the host country as stated on page 21 of the draft report. USFJ stated that these types of offenses are reported using the Defense Incident-Based Reporting System.

Evaluation Response. The Army, Navy, and Air Force concurrences in the lack of a reporting mechanism for reporting data on serious founded offenses that are investigated by the Military Criminal Investigative Organization in which the host country has no interest or which were not referred and/or reported to the host country is considered responsive. Although USFJ stated that reporting of serious founded offenses investigated by the MCIOs in which the host country has no interest or which were not referred or reported to the host country are reported using the Defense Incident Based Reporting System, that system is not fully implemented. The Army accurately points out that the thrust of DoD Directive 5525.1 is to monitor the treatment of U.S. citizens subjected to foreign judicial and penal systems and does not specifically encompass the failure of foreign jurisdictions to prosecute civilians accompanying the U.S. Forces. While it is arguable whether the aim of the Directive has a "very different and limited purpose" or that the information sought to be reported is "not directly relevant to the exercise of foreign jurisdiction," it appears however to be an extension of the language of the Directive. Nonetheless, we believe the reporting of this data under the Directive is achievable and would also provide critical information to the intended target audience (Congress).

As a result of the management comments received and the valid need for this data to be reported to the Congress, we have revised and redirected our recommendation.

B.1 We recommend that the Department of Defense General Counsel, as the proponent for DoD Directive 5525.1, "Status of Forces Policy and Information," modify the annual reporting requirements to include the reporting of all Military Criminal Investigative Organizations' investigations of founded, serious offenses committed by civilians stationed overseas.

Part II - Additional Information

Appendix A. Observation

Condition. Overseas commanders devote a significant amount of time and considerable resources to the administration of misconduct programs dealing with U.S. civilians. Most of the offenses they deal with are crimes committed by military dependents, and those offenses are typically investigated by the military law enforcement organizations. Commanders are concerned that the void in criminal prosecutive jurisdiction for U.S. civilians overseas limits their ability to maintain discipline, and that the imposition of administrative sanctions is inadequate and ineffective.

Discussion. On August 25, 1998, at the request of Lieutenant General John B. Hall, Jr., Commander, Headquarters, U.S. Forces Japan, we visited his staff to discuss problems associated with criminal prosecutive jurisdiction over U.S. civilians who accompany the Armed Forces overseas. The problems they cited include:

- The lack of prosecutive authority over family members who commit offenses when the host country declines to assume responsibility for prosecuting these cases.

- The absence of effective systems for dealing with juveniles or family members who are adults who commit offenses overseas. Administrative sanctions are not always adequate or effective.

- The amount of time and resources expended on civilian misconduct issues, which is viewed as excessive and which may adversely impact on mission requirements.

Although our evaluation focused on "serious offenses" committed by U.S. civilians overseas (particularly those that result in investigations conducted by the MCIOs), we talked with representatives from each Service dealing with the full range of civilian misconduct overseas. Each Service has mechanisms in place to handle misconduct by U.S. civilians. The Army, for example, has a Civilian Misconduct Action Authority; the Navy uses a system called the Civilian Administrative Forum; the Air Force uses a Disciplinary Action Program; and the Marines have a Dependents and Civilians Misconduct Program. These are the programs that work for and with commanders on adjudicating misconduct committed by U.S. civilians overseas. At U.S. Forces Japan, concern was expressed about the amount of time commanders must expend administering civilian misconduct programs and the potential adverse impact this has on mission requirements. The majority of misconduct committed involves misdemeanors, and the subjects of these offenses are, for the most part, juveniles. Our conversations with commanders and other

personnel associated with U.S. civilian misconduct revealed that they did not believe that administrative actions were always appropriate or adequate.

The issue of administering civilian misconduct programs overseas is complex and requires significant resources within each Service. We believe the Overseas Civilian Misconduct Programs of the military services may warrant further study.

Appendix B. Cases Involving U.S. Civilian Employees and Dependents Reserved by the Foreign Country, December 1, 1995, to November 30, 1996[9]

Type of Offense	Army	Navy	Air Force
Murder	1	1	1
Rape	4	1	1
Manslaughter & Negligent Homicide	13	1	2
Arson	3	1	0
Robbery, Larceny & Related Offenses	164	10	21
Forgery & Related Offenses	7	0	0
Aggravated Assault	46	0	5
Drugs	51	8	1

[9] Statistics extracted from the "Report of Statistics on the Exercise of Criminal Jurisdiction by Foreign Tribunals Over United States Personnel," December 1, 1995, to November 30, 1996, prepared by the Department of Army as executive agent for DoD.

Appendix C. Cases Involving U.S. Civilian Employees and Dependents Released to the U.S. for Disposition, December 1, 1995, to November 30, 1996[10]

Type of Offense	Army	Navy	Air Force
Murder	0	0	1
Rape	0	1	0
Manslaughter & Negligent Homicide	0	0	0
Arson	1	0	0
Robbery, Larceny & Related Offenses	73	10	6
Forgery & Related Offenses	0	0	0
Aggravated Assault	9	0	0
Drugs	1	3	0

[10] Statistics extracted from the "Report of Statistics on the Exercise of Criminal Jurisdiction by Foreign Tribunals Over United States Personnel," December 1, 1995, to November 30, 1996, prepared by the Department of Army as executive agent for DoD.

Appendix D. Report Distribution

Office of the Secretary of Defense

Under Secretary of Defense for Personnel and Readiness
Assistant Secretary of Defense (Command, Control, Communications and Intelligence)
General Counsel, Department of Defense
Deputy General Counsel (Inspector General)
Director, Defense Criminal Investigative Service

Department of the Army

Assistant Secretary of the Army (Financial Management and Comptroller)
Assistant Secretary of the Army (Manpower and Reserve Affairs)
General Counsel, Department of the Army
Inspector General, Department of the Army
Auditor General, Department of the Army
Deputy Chief of Staff for Operations and Plans
Judge Advocate General, Department of the Army
    Chief, International and Operational Law Division
Commander, Army Criminal Investigation Command
Commander, Intelligence and Security Command

Department of the Navy

Assistant Secretary of the Navy (Financial Management and Comptroller)
General Counsel, Department of the Navy
Director, Naval Criminal Investigative Service
Inspector General, Department of the Navy
Judge Advocate General, Department of the Navy
    International Law, Department of the Navy
Counsel for the Commandant (Marine Corps)

Department of the Air Force

Assistant Secretary of the Air Force (Financial Management and Comptroller)
General Counsel, Department of the Air Force
Inspector General, Department of the Air Force
Judge Advocate General, Department of the Air Force
    International and Operations Law Division, Department of the Air Force

Department of the Air Force (continued)

Commander, Air Force Office of Special Investigations
Chief of Security Police for the Air Force

U. S. Marine Corps

Deputy Chief of Staff for Plans, Policies and Operations, Headquarters, U.S. Marine Corps
Inspector General, Headquarters, U.S. Marine Corps

Other Defense Organizations

Commander, U. S. Forces Japan
Director, Defense Logistics Agency
General Counsel, Defense Logistics Agency
Director, National Security Agency
Director, Department of Defense Education Activity
Inspector General, National Security Agency
Inspector General, Defense Intelligence Agency

Non-Defense Federal Organizations

Chairman and ranking minority member of each of the following congressional committees and subcommittees:

Senate Committee on Appropriations
Senate Subcommittee on Defense, Committee on Appropriations
Senate Committee on Armed Services
Senate Committee on Governmental Affairs
House Committee on Appropriations
House Subcommittee on Defense, Committee on Appropriations
House Committee on Armed Services
House Committee on Government Reform
House Subcommittee on National Security, International Affairs, and Criminal Justice, Committee on Government Reform
House Subcommittee on Government Management Information and Technology

Part III – Management Comments

DEPARTMENT OF THE ARMY
OFFICE OF THE DEPUTY CHIEF OF STAFF FOR OPERATIONS AND PLANS
400 ARMY PENTAGON
WASHINGTON DC 20310-0400

REPLY TO
ATTENTION OF

DAMO-ODL 2 Aug 99

MEMORANDUM THROUGH ~~ACTING DEPUTY CHIEF OF STAFF FOR OPERATIONS AND PLANS~~
DIRECTOR ARMY STAFF
ASSISTANT SECRETARY OF THE ARMY
(MANPOWER AND RESERVE AFFAIRS)

FOR DEPARTMENT OF DEFENSE INSPECTOR GENERAL, DEPUTY ASSISTANT INSPECTOR GENERAL, CRIMINAL INVESTIGATIVE POLICY AND OVERSIGHT

SUBJECT: Draft Evaluation Report of the Military Criminal Investigative Organization's Investigative Effectiveness Regarding U.S. Forces Civilians Stationed Overseas—INFORMATION MEMORANDUM

1. This memorandum is in response to the DODIG's request for a review and comment on the attached draft report, SAB. The Army concurs with the need to capture statistics regarding crimes committed by Department of Defense (DOD) civilians accompanying the force overseas that are not prosecuted by the host nation; however, it nonconcurs with the recommendation to add this reporting requirement to DOD Directive (DODD) 5525.1, Status of Forces Policy and Information.

2. The following summary outlines the Army's issues regarding the attached subject report and recommends changes:

a. Reference page ii, statement "Our report endorses the [Overseas Jurisdiction Advisory Committee's] findings and recommendations" to seek legislation to close criminal jurisdictional gaps with respect to civilians accompanying the Armed Forces Overseas.

Recommendation. Change to read: Our report endorses the Committee's findings and recommends that consideration be given to seeking legislation to extend criminal jurisdiction over civilians accompanying the Armed Forces overseas.

Reason. Agree that the administrative sanctions available to commanders do not adequately address the serious nature of some offenses committed by civilians overseas, but do not concur with the adoption of both legislative proposals recommended by the Committee. The Department of the Army is addressing this issue in conjunction with a bill, S. 768, "Military and Extraterritorial Jurisdiction Act of 1999."

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DAMO-ODL
SUBJECT: Draft Evaluation Report of the Military Criminal Investigative Organization's Investigative Effectiveness Regarding U.S. Forces Civilians Stationed Overseas—INFORMATION MEMORANDUM

b. Reference page ii; page 18, Finding B; and page 22, recommendation.

Recommendation: Delete recommendation to modify the reporting requirements of DODD 5525.1 to require report of founded offenses of crimes investigated by the Military Criminal Investigative Organizations.

Reasons:

(1) DODD 5525.1 implements the Senate Resolution accompanying the Senate's consent to ratification of the North Atlantic Treaty Organization Status of Forces Agreement (SOFA). DODD 5525.1 establishes policy to ensure that United States citizens subject to trial in a foreign tribunal be afforded the procedural safeguards under the applicable SOFA, a fair trial, decent treatment and conditions in confinement, and visitation by commanders or representatives of the United States. DODD 5525.1 requires the reporting of cases in which a host nation exercises criminal jurisdiction over a United States citizen. This reporting requirement was established to determine the effectiveness and impact of the applicable SOFA. Because that Directive has a very different and limited purpose, it is inappropriate to include the responsibility to report founded offenses that were investigated but, not prosecuted by a foreign nation. The reporting requirement of DODD 5525.1 should not be modified to include information that is not directly relevant to the exercise of foreign criminal jurisdiction.

(2) We also note that the Secretary of the Army is designated the Executive Agent only for maintaining and collating information received on the basis of reports submitted in accordance with DODD 5525.1 He has not been given the authority to establish, as a matter of DOD policy, new reporting requirements.

3. This action has been coordinated with SAGC (MS. Sajer), DAJA(COL Graham), and USACIDC (COL Marksteiner).

RICHARD A. CODY
Major, General, GS
Director of Operations
Readiness and Mobilization

Mr. Porter/681-4868

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DEPARTMENT OF THE NAVY

HEADQUARTERS
NAVAL CRIMINAL INVESTIGATIVE SERVICE
WASHINGTON NAVY YARD BLDG 111
716 SICARD STREET SE
WASHINGTON DC 20388-5380

5300
Ser 006/9U0015
28 June 1999

MEMORANDUM FOR DEPUTY ASSISTANT INSPECTOR GENERAL, DEPARTMENT OF DEFENSE (CRIMINAL INVESTIGATIVE POLICY AND OVERSIGHT)

SUBJECT: Evaluation of Military Criminal Investigative Organization' Investigative Effectiveness Regarding U.S. Forces Civilians Stationed Overseas (Project No. 80G-P008)

Concur with report.

T.W. FISCHER
By Direction

DEPARTMENT OF THE AIR FORCE
AIR FORCE OFFICE OF SPECIAL INVESTIGATIONS

MEMORANDUM FOR SAF/IGX

JUN 11 1999

FROM: AFOSI/CV
1535 Command Drive, Suite C-302
Andrews AFB, MD 20762-7002

SUBJECT: AFOSI Comments on DoD/IG Draft Report, Project 80G-P008

1. AFOSI concurs with the overall DoD/IG evaluation regarding investigative sufficiency, liaison and working relationships with host country counterparts as reflected in Finding A.

2. AFOSI concurs with the DoD/IG evaluation regarding lack of a mechanism for reporting serious founded offenses investigated by the Military Criminal Investigative Organization (MCIO) in which the host country has no interest or which were not referred/reported to the host country. We also concur with the DoD/IG recommendation to modify reporting requirements to the U.S. Army regarding founded offenses of crimes investigated by MCIO's when either the host country or U.S. has primary right of jurisdiction. AFOSI's Criminal and Counterintelligence, Terrorism Information System (CACTIS) maintains the capability to report the number of serious founded offenses committed by U.S. civilians who accompany or support U.S. Forces at overseas Air Force installations. CACTIS also maintains the capability to report the number of serious founded offenses referred to the host country, as well as the number accepted or declined for prosecution by the host nation.

DAVID R. FRAZELLE
Colonel, USAF
Vice Commander

"PRESERVING OUR LEGACY, PROTECTING THE FUTURE"

HEADQUARTERS
UNITED STATES FORCES, JAPAN
APO AREA PACIFIC 96328-5068

28 Jun 1998

MEMORANDUM FOR: PACOM IG

FROM: USFJ/J02

SUBJECT: Evaluation Report of the Military Criminal Investigative Organization's Investigative Effectiveness Regarding U.S. Forces Civilians Stationed Overseas (Project No. 80G-P008) (Your ltr, 30 April 1999)

1. We have reviewed the DOD IG report and agree policies and procedures governing investigations of U.S. civilians who accompany the Armed Forces abroad are adequate. Nonetheless, prosecution gaps do exist when handling civilians who commit serious offenses overseas.

2. The second paragraph on page 2 (Evaluation Background) suggests there are some misconceptions about the effect of the SOFA on this issue. Specifically, the fourth sentence implies the 1960 Supreme Court decision prohibiting the court-martial of civilians during peacetime relies on the SOFA to be the authority for prosecution of civilians. The opposite is more accurate. If we were able to court-martial civilians during peacetime, the SOFA would resolve issues of concurrent jurisdiction. Since we cannot, the SOFA becomes largely irrelevant, and civilians are at the mercy of local prosecutors, similar to any non-SOFA status American who commits a crime in Japan. We propose the paragraph be amended to reflect the language in attachment 1.

3. The last complete sentence on page 15 once again suggests the SOFA gives host countries jurisdiction over U.S. civilians, when in fact they have jurisdiction because they are a sovereign nation and a person in their country, regardless of citizenship, is subject to their laws. We recommend the clause "under most Status of Forces Agreements," be deleted from this sentence.

4. The last complete sentence on page 16 is confusing. It states "the decline in the number of civilians overseas will not substantially abate and even has the potential for increasing". It seems to suggest that the number of civilians overseas is decreasing and will likely continue to decrease at an even more rapid rate. However the following sentence says the opposite. A better word in this sentence may be "growth" instead of "decline". This clarifies the sentence and makes it consistent with the one that follows it.

5. We disagree with the reports assertion on page 21 that there is currently no mechanism for reporting serious founded offenses investigated by MCIO's in which the host country has no interest or which were not referred or reported to the host country. Although these incidents are not reported under DOD Directive 5525.1, Status of Forces Policies and Information, they are reported as per the Under Secretary of Defense for Personnel and Readiness DOD Directive 7730.47M, Defense Incident-Based Reporting System (DIBRS).

6. We also disagree with the use of the term "primary right of jurisdiction" in the recommendations on page 22. Using "primary" implies both countries have jurisdiction, which rarely occurs with civilian misconduct. In fact, concurrent jurisdiction cases are already reported. The reason civilian misconduct eludes the Status of Forces reports is that Japan does not have *primary* jurisdiction in the vast majority of these cases, but rather *exclusive* jurisdiction. If the DIBRS reports are deemed to be inadequate, this sentence should be amended to mandate reporting of offenses committed by civilian employees and dependents accompanying U.S. Forces overseas. Details will also need to be included to identify to what degree an offense needs to be substantiated to make it reportable. For example, if a military member makes a statement that accuses her dependent husband of physical abuse, would that be sufficient to trigger the reporting requirement? Another issue concerns whether to report acts that do not violate host-nation law, though they would be crimes in the U.S. The reports should address, for example, the case of a civilian who has a sexual relationship with a 13-year-old in a country that has established 12 as the age of consent. Finally, since these new reporting requirements would involve cases that often do not progress past the "allegation" stage, we recommend that the name of the individual not be included in the required report.

EDWARD A. SPOHN
Colonel, United States Army
Chief of Staff

Attach:
Proposed change, para., 2, Evaluation Report

Attachment #1 to USFJ/J02 reply to Military Criminal Investigative Organization's Investigative Effectiveness Regarding U.S. Forces Civilians Stationed Overseas Project No. 80G-P008, 30 April 1999 Inquiry

The following language is our proposed change to the second paragraph of page 2 of (Evaluation Report) of the Military Criminal Investigative Organization's Investigative Effectiveness Regarding U.S. Forces Civilians Stationed Overseas Project No. 80G-P008, 30 April 1999.

> Prosecutive jurisdiction over U.S. forces abroad, both military and civilian, is usually governed by status of forces agreements (SOFAs), which are treaties between the United States and the host nations. SOFAs define those offenses subject to the exclusive jurisdiction of the respective parties and those over which jurisdiction is shared. In cases of shared (concurrent) jurisdiction, SOFAs set out which party will have primary jurisdiction. As originally enacted, the Uniform Code of Military Justice (UCMJ) was intended to apply to civilian employees and dependents accompanying the armed forces abroad. However, in 1960, the U.S. Supreme Court ruled that it is unconstitutional to subject civilians to military law during peacetime. Therefore, in the case of civilian misconduct, there is typically no issue of shared jurisdiction to resolve, so the SOFA is largely irrelevant. The problem with this arrangement is that unless a crime offends host-nation sensitivities, e.g., it results in injury to a local national, or damage to public or private property of the host nation, the host nation will typically have little interest in pursuing prosecution. Absent these concerns, local prosecutors are likely to view the offense as an "American problem" and take no action, leaving a commander's administrative actions as the only available remedies.

EVALUATION TEAM MEMBERS

This report was produced by the Office of the Deputy Assistant Inspector General for Criminal Investigative Policy and Oversight, Office of the Assistant Inspector General for Investigations, Inspector General, Department of Defense.

Phyllis M. Brown – Project Manager

David M. Oberholtzer – Criminal Investigator

Debra R. Morehead – Management Assistant