

Center for Law and Military Operations (CLAMO) Report
The Judge Advocate General's Legal Center and School

The Pursuit to Bring War Criminals to Justice

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Background

There was rioting in cities across the country; coalition forces were under fire and taking casualties; there were multiple civilian deaths as a result of the newly erupted violence. This was neither Iraq nor Afghanistan—it was Kosovo. On 17 March 2004, and for several weeks thereafter, ethnic violence between Kosovar Serbs and Albanians resumed throughout the province of Kosovo.¹ One newspaper described it as follows:

The troubles began in the divided town of Mitrovica in northern Kosovo, where Serbs and Albanians exchanged gunfire and grenades in clashes. Nearly 300 were injured, including 11 French peacekeepers - two seriously. Violence has spread to several towns, with Serbs' houses being set on fire and attacks on offices of the United Nations administration, Unmik. Tensions resurfaced in the flashpoint town of Mitrovica on Tuesday when three Albanian children drowned, allegedly as they were trying to escape from Serbs who chased them with a dog. The boys' deaths came a day after an 18-year-old Serb was wounded in a drive-by shooting in the village of Caglavica in central Kosovo, prompting clashes between Serbs and Nato peacekeepers.²

Since most Americans have been focused on the global war on terrorism in Iraq and Afghanistan, little media attention has been paid to the on-going U.S. deployment in Kosovo. As highlighted by the recent renewal of ethnic tension and resultant violence, however, we should keep in mind that this flashpoint in southeastern Europe is far from being settled. Unfortunately, the virulent enmity on both sides also manifested itself in a host of war crimes. In 1999, Albanian and Serbian families who had been neighbors for years turned on each other. Atrocities were inflicted and committed on both sides. Victims were not spared due to age or gender. Mass graves revealed that entire families were wiped out. Many of these atrocities have been investigated and continue to be the subject of ongoing prosecution as war crimes.³ For judge advocates (JA) of all services, a deployment to Kosovo provides a unique opportunity to gain experience in war-crimes prosecution.

Because it has been five years since American intervention, as a part of a North Atlantic Treaty Organisation (NATO)⁴ force seeking to quell ethnic violence in Kosovo, it is useful to briefly review the history of the conflict. The "Kingdom of the Serbs, Croats, and Slovenes" was also known as the "Kingdom of the Southern Slavs" or Yugoslavia.⁵ Yugoslavia resulted from the Treaty of Versailles (and related international agreements) at the end of the First World War.⁶ During World War II, German and Italian forces invaded and conquered Yugoslavia.⁷ Following the Axis defeat in World War II, Yugoslavia became a communist republic under Marshal Josip Broz Tito and was known as the Federal People's Republic of

¹ BBC News, *Many Die as Kosovo Clashes Spread* (Mar. 17, 2004), available at <http://news.bbc.co.uk/1/hi/default.stm>.

² *Id.*

³ This comment is based on the author's recent professional experiences while deployed to Kosovo from January through March, 2004 [hereinafter Professional Experiences]. The purpose of the deployment was to provide assistance in the prosecution of war crimes with the United Nations Mission in Kosovo (UNMIK) International Prosecutors and law enforcement officials.

⁴ The North Atlantic Treaty Organisation is an alliance of twenty-six countries from North America and Europe committed to fulfilling the goals of the North Atlantic Treaty signed on 4 April 1949. North Atlantic Treaty, Apr. 4, 1949, 63 Stat. 2241, 34 U.N.T.S. 243. Under the Treaty, NATO's fundamental role is to safeguard the freedom and security of its member countries by political and military means. North Atlantic Treaty Organisation, *Frequently Asked Questions*, at <http://www.nato.int/issues/faq/index.html#A1> (last visited 16 June 2004). The NATO is playing an increasingly important role in crisis management and peacekeeping. *Id.*

⁵ See CENTER FOR LAW AND MILITARY OPERATIONS, LAW AND MILITARY OPERATIONS IN KOSOVO: 1999-2001, LESSONS LEARNED FOR JUDGE ADVOCATES (December 2001) [hereinafter LESSONS LEARNED] (containing a concise, but accurate, synopsis of the history of the Kosovo conflict).

⁶ *Id.* at 25 (citing G. RICHARD JANSEN, ALBANIANS AND SERBS IN KOSOVO, AN ABBREVIATED HISTORY 1 (June 1999). Included in the Kingdom of the Southern Slavs were Serbia, Slovenia, Croatia, Bosnia, Herzegovina, Montenegro, Macedonia, Kosovo, and Vojvodina. *Id.*

⁷ *Id.* at 26 (citing WILLIAM T. JOHNSON, DECIPHERING THE BALKAN ENIGMA: USING HISTORY TO INFORM POLICY 9, 22 (1995)).

Yugoslavia.⁸ The country experienced a period of relative calm, owing to Tito's authoritarian regime, which quickly and effectively suppressed any form of rebellion.⁹

Kosovo is a province within Serbia, a republic within Yugoslavia.¹⁰ The vast majority of Kosovars are ethnic Albanians, however, Serbia has deeply entrenched religious and historical ties to the province of Kosovo. Many of the most holy Serbian monasteries lie within Kosovo, which is also the home of the Serbian Orthodox Church.¹¹ The Battle of Kosovo in 1389 marked what many Serbs consider the high-water mark in Serbian history.¹²

Under Tito's regime, the 1974 Yugoslav Constitution made Kosovo an autonomous province within Serbia.¹³ This status sparked a revival of Kosovar Albanian nationalism and a thirst for outright independence. Tito's death in 1980, however, resulted in regional instability and ethnic violence throughout Yugoslavia, including Kosovo.¹⁴ The Albanian thirst for independence collided with traditional Serbian control. Serb nationalism manifested in the rise of Slobodan Milosevic.¹⁵ Milosevic stripped Kosovo of its autonomy causing Kosovar Albanian rioting.¹⁶ He ordered the Serb Army and police units into Kosovo to maintain control and order.¹⁷ By 1992, Milosevic had imposed an effective suppression of Albanian media, language education, protests, and strikes.¹⁸

Meanwhile, Kosovar Albanian leaders met secretly and declared the existence of the Republic of Kosovo.¹⁹ They created a "shadow" Kosovar government, led by Dr. Ibrahim Rugova.²⁰ Rugova employed nonviolent policies and practices, seeking NATO intervention to relieve human rights abuses under the Milosevic regime.²¹ Eventually, Kosovar frustration with Rugova's passive measures manifested itself in the formation of the Kosovo Liberation Army (KLA).²² The KLA began a series of attacks on Serbian authorities, including the Serbian police, border guards, and prominent Serbian leaders.²³ By 1998, the conflict escalated into an internal armed conflict. Thousands were killed and many more were forced from their homes into neighboring Macedonia, Montenegro, and Albania.²⁴

⁸ *Id.*

⁹ *Id.* at 27.

¹⁰ See generally North Atlantic Treaty Organisation, *NATO's Role in Relation to the Conflict in Kosovo*, at <http://www.nato.int/kosovo/history.htm> (last visited Aug 11, 2004) [hereinafter NATO] (providing background information on the Kosovo conflict and an overview of NATO's objectives in the region).

¹¹ NOEL MALCOLM, *KOSOVO: A SHORT HISTORY* 45-46 (N.Y. Univ. Press 1998).

¹² *Id.* at 58-59. Malcolm does an excellent job in identifying and analyzing several accounts of the battle and produces a somewhat comprehensive report. See *id.*

¹³ LESSONS LEARNED, *supra* note 5, at 27.

¹⁴ *Id.* at 28.

¹⁵ *Id.* Milosevic was the product of the Yugoslav Communist regime. He was the protégé of Ivan Stambolic, who became the Prime Minister of Serbia after Tito's death. Milosevic later replaced Stambolic and became the leader of the Serbian Communist Party. Milosevic ultimately became the Yugoslavian President. *Id.*

¹⁶ See NATO, *supra* note 10.

¹⁷ *Id.* As an illustration of Milosevic's reclamation of Serbian control of Kosovo, he conducted a rally at the site of the Battle of Kosovo, near Pristina. Nearly one million Serbs attended the strongly nationalistic Serbian rally. *Id.* In reference to this rally, Noel Malcolm writes: "the adulation he received at the massive Serbian celebration of the 600th anniversary of the Battle of Kosovo on 28 June was comparable, in Yugoslav experience, only to the cult of Tito." MALCOLM, *supra* note 11, at 344.

¹⁸ LESSONS LEARNED, *supra* note 5, at 29.

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.*

²² *Id.*

²³ *Id.* The KLA was locally known as the UCK (Ushtria Clirimtare e Kombatare). The UCK or KLA was a paramilitary group consisting of Kosovar Albanian nationalists. Their stated purpose was to resist Serbian authority and to establish Kosovar independence through the use of armed conflict. *Id.*

²⁴ *Id.* at 34. The conflict yielded an estimated 400,000 refugees. Trained Serb "security" forces in Kosovo responded to KLA attacks in kind with large-scale attacks in Drenica and other regions using military vehicles and weapons and vicious house-to-house raids in which Albanians were killed, beaten, or forced from their homes. *Id.* See ORGANIZATION FOR SECURITY AND COOPERATION IN EUROPE (OSCE), *KOSOVO: THE HISTORICAL AND POLITICAL BACKGROUND, KOSOVO/KOSOVA: AS SEEN, AS TOLD* (1999).

Concern grew in the international community. The United Nations Security Council (UNSC) adopted Security Council Resolution (UNSCR) 1199 on 23 September 1998, which called for an immediate cease-fire, an international presence, and an immediate withdrawal of Serbian security forces from Kosovo.²⁵ On 13 October 1998, member nations of NATO authorized air strikes against Serbia if Milosevic refused to comply with the terms of UNSCR 1199. Milosevic relented and agreed to a cease-fire. The Organization for Security and Cooperation in Europe (OSCE) sent in a team to verify Serbia's compliance with the terms of the cease-fire.²⁶ During the resultant cease-fire, the KLA smuggled weapons in from Albania and continued operations.²⁷ The cease-fire broke down and hostilities (and atrocities on both sides) continued. On 15 January 1999, the Serbs massacred forty-five Albanian civilians in the village of Racak.²⁸ This led to a peace conference at Rambouillet, France; wherein the parties were called on to comply with another peace proposal.²⁹ Ultimately, the Serbs refused to agree to the terms of the proposals at Rambouillet, and the violence intensified.

North Atlantic Treaty Organisation efforts to broker a peaceful solution failed. On 24 March 1999, NATO forces launched Operation Allied Force.³⁰ Operation Allied Force constituted an air campaign against Serbian military targets to end hostilities and allow ethnic Albanians to return to their homes.³¹ Initially, the Serbs intensified their assaults on the Kosovar Albanian forces. After seventy-eight days of bombing, however, the Serbs relented. Serb forces began withdrawal following their agreement to a Military Technical Agreement on 9 June 1999.³² On 10 June 1999, the UNSC passed UNSCR 1244,³³ which thereafter served as the legal authority for both NATO's Kosovo Force (KFOR) and for the United Nations Mission in Kosovo (UNMIK).

KFOR—Then and Now

When initially organized and mobilized in 1999, the NATO-led KFOR was composed of 50,000 troops from over thirty countries.³⁴ Another 7,500 troops deployed to the former Yugoslav Republic of Macedonia, Albania, and Greece to provide rear area support.³⁵ NATO's KFOR was organized into five multinational brigades (MNBs); a lead nation was designated for each MNB.³⁶ Each MNB was assigned to a specific geographic sector.³⁷ The KFOR headquarters is located on a hill overlooking the Kosovar provincial capital of Pristina.³⁸

²⁵ S.C. Res. 1199, U.N. SCOR, 3930th meeting, at 2-3, U.N. Doc. S/RES/1199 (1998). The UNSC acted under Chapter VII of the U.N. Charter and the vote was unanimous, with China abstaining. The resolution "highlighted the impending human catastrophe" and expressed great concern over Serbia's indiscriminate use of excessive force. *Id.*

²⁶ LESSONS LEARNED, *supra* note 5, at 35. The Kosovo Verification Mission (KVM), consisting of an unarmed force of 2,000 members, was charged with the responsibility to monitor and report compliance (and non-compliance) of the terms of the cease-fire. *Id.*

²⁷ *Id.* at 36.

²⁸ *Id.*; see Human Rights Watch, *Yugoslav War Crimes in Racak* (Jan. 29, 1999), available at <http://www.hrw.org/press/1999/jan/yugo0129.htm>. Some of those injured or killed, most of whom were shot in the head at close range or in the back attempting to run away, were children. Many were tortured before they were killed. *Id.* at 3-4. Some critics have disputed the allegations that what occurred in Racak was a massacre. *Id.* at 4-5. Their arguments, however, appear to lack merit. Notably, after the leader of the OSCE's KVM accused the Serbs of responsibility for the massacre, Serbian authorities ordered him out of the country but he refused to leave, setting the stage for a final showdown between the international community and Milosevic. OSCE, *supra* note 24, at 6.

²⁹ LESSONS LEARNED, *supra* note 5, at 36.

³⁰ NATO, *supra* note 10.

³¹ *Id.* at 37.

³² North Atlantic Treaty Organisation, *Military Technical Agreement between the International Security Force (KFOR) and the Governments of the Federal Republic of Yugoslavia and the Republic of Serbia* (June 9, 1999), available at <http://www.nato.int/kosovo/docu/a990609a.htm> [hereinafter MTA]. The MTA contemplated the deployment of the International Security Force (KFOR), into Kosovo as soon as the UNSC adopted UNSCR 1244. The KFOR would "take all necessary action to establish and maintain a secure environment for all citizens of Kosovo" without hindrance from any party. *Id.* art. I, ¶ 2.

³³ S.C. Res. 1244, U.N. SCOR, 54th Sess., 4011th mtg., U.N. Doc. S/RES/1244 (1999).

³⁴ U.S. DEP'T OF DEFENSE COMMAND AND CONTROL RESEARCH PROGRAM, LESSONS FROM KOSOVO: THE KFOR EXPERIENCE 35 (July 2002).

³⁵ *Id.*

³⁶ *Id.*

³⁷ *Id.* at 37.

³⁸ Professional Experiences, *supra* note 3. Kosovo Force headquarters is called "Film City," because the actual headquarters facility is housed in what was formerly a film studio. *Id.*

The National Atlantic Treaty Organisation designated the U.S. as the lead nation for MNB East (MNB(E)) in southeastern Kosovo.³⁹ The U.S. contingent to KFOR was designated “TASK FORCE FALCON” and initially consisted of approximately 8,100 Soldiers from the 1st Infantry Division.⁴⁰ Multinational brigade East headquarters is located at Camp Bondsteel, near the city of Urosevac.

Today, KFOR has a slightly different configuration. There are currently four MNBs. MNB-Center (United Kingdom as the lead nation) is located in Pristina; MNB-Northeast (France as the lead nation) is headquartered in Mitrovica; MNB-Southwest (Germany as the lead nation) is headquartered in Prizren; and MNB-East, which remains at Camp Bondsteel under U.S. command and control.⁴¹ The Kosovo Security Force also includes a non-geographically affiliated MNB known as the Multinational Specialized Unit (MSU), which is a police force with military status and an overall police capability.⁴² The lead nation for the MSU is Italy.⁴³ The MSU conducts patrols throughout the entire province.⁴⁴

The current U.S. contingent at MNB(E) is the 34th Infantry Division, part of the Minnesota National Guard. The 34th “Red Bull” Division assumed its duties on 25 February 2004 from the 28th “Keystone” Division, part of the Pennsylvania National Guard.⁴⁵ The chief legal advisor (LEGAD) at KFOR headquarters in Pristina, currently a German colonel (COL) (an OF-5 position), is appointed on a three-month rotational basis.⁴⁶ The Deputy LEGAD is currently a U.S. Army lieutenant colonel (an OF-4 position) with a longer tour of duty.⁴⁷ Also manning the office of the LEGAD are a British major, a French lieutenant, and a U.S. Army paralegal.

U.N. Prosecutors in Kosovar Courts

This section outlines the source of legal authority under which the NATO sponsored KFOR is established and how U.N. prosecutors are entitled to prosecute criminals, including war criminals, in local Kosovar courts.

United Nations Security Council Resolution 1244 was enacted under Chapter VII of the U.N. Charter.⁴⁸ In particular, the resolution provided the following: (1) “Authorizes Member States . . . to establish the international security presence in Kosovo”⁴⁹ (2) “Requests the Secretary General to appoint . . . a Special Representative to control the implementation of the international civil presence”⁵⁰ and (3) “Authorizes the Secretary General . . . to establish an international civil presence in Kosovo in order to provide an interim administration for the people of Kosovo”⁵¹

³⁹ *Id.*

⁴⁰ LESSONS LEARNED, *supra* note 5, at 41.

⁴¹ North Atlantic Treaty Organisation, *KFOR Structure*, available at <http://www.nato.int/kfor/kfor/structure.htm> (last visited May 18, 2004).

⁴² *Id.*

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ North Atlantic Treaty Organisation, *Change of Command at MNB E - “Keystone” Division Relinquishes Authority to “Red Bull” Division in MNB East*, available at www.nato.int/kfor/chronicle/2004/chronicle_02/09.htm (last visited May 18, 2004).

⁴⁶ North Atlantic Treaty Organisation, Standardization Agreement 2116, NATO CODES FOR GRADES OF MILITARY PERSONNEL (1992, ed. 5). An OF-5 is the NATO equivalent of a U.S. Army colonel (O-6).

⁴⁷ An OF-4 is the NATO equivalent of a U.S. Army lieutenant colonel (LTC) (O-5). *Id.* Lieutenant Colonel Amisi Mubangu currently fills this position.

⁴⁸ S.C. Res. 1244, *supra* note 33.

⁴⁹ *Id.* at ¶ 7. The authorization to establish an international security force is further amplified in Annex 2, ¶ 4: “The international security presence with substantial North Atlantic Treaty Organization participation must be deployed under unified command and control and authorized to establish a safe environment for all people in Kosovo and to facilitate the safe return to their homes of all displaced persons and refugees.” *Id.*

⁵⁰ *Id.* ¶ 6. The Special Representative of the Secretary General (SRSG) issues the regulations for the United Nations Mission in Kosovo (UNMIK) that will empower UN prosecutors to practice in local courts. *Id.* ¶ 10.

⁵¹ S.C. Res. 1244, *supra* note 33, at ¶ 10 (providing the legal authority for the establishment of UNMIK). This provision is further amplified by Annex 2, ¶ 5: “Establishment of an interim administration for Kosovo as a part of the international civil presence under which the people of Kosovo can enjoy substantial autonomy within the Federal Republic of Yugoslavia.” *Id.*

United Nations Mission in Kosovo (UNMIK) Regulation 1999/1 vests “all legislative and executive authority with respect to Kosovo, including the administration of the judiciary” in UNMIK.⁵² The Special Representative of the Secretary General exercises UNMIK’s legislative and executive authority.⁵³

The United Nations Interim Administration Mission in Kosovo, international judges, and prosecutors first appeared in the Kosovar district court in Mitrovica.⁵⁴ Soon thereafter, the SRSG expanded appointments of international judges and prosecutors “to any court or public prosecutor’s office in the territory of Kosovo.”⁵⁵ Incorporating by reference the authority from earlier regulations, *UNMIK Regulation 2001/2* spelled out the authority of the UNMIK international prosecutor as follows:⁵⁶

In exercising such a power, a [sic] international prosecutor shall:

(a) have full rights as a public prosecutor acting as an officer of the government;

(b) undertake, resume or continue a prosecution within 30 days from the date of receipt of the notification referred to in section 1.6; and

(c) not be constrained by requirements or procedures of Articles 403 – 407, inclusive, of the applicable Yugoslav Criminal Procedure Code.⁵⁷

In April 2004, the Kosovars transitioned to an updated criminal procedural code.⁵⁸ The Kosovar criminal laws and procedural codes in existence before hostilities were in effect until April 2004.

Opportunities for JAs

Current operations in Kosovo provide JAs from all services the opportunity to gain first-hand experience in war crimes prosecutions. United Nations Interim Administration Mission in Kosovo prosecutors exercise coextensive authority with Kosovar public prosecutors. Yugoslav criminal law contains several offenses pertaining to the prosecution of war crimes, including genocide,⁵⁹ war crimes against the civilian population,⁶⁰ war crimes against the wounded and sick,⁶¹ war crimes against prisoners of war,⁶² unlawful killing or wounding of the enemy,⁶³ and making use of forbidden means of warfare.⁶⁴ As

⁵² United Nations Interim Administration Mission in Kosovo, *Regulation No. 1999/1* (July 25, 1999), at <http://www.unmikonline.org/regulations/1999/reg01-99.htm>.

⁵³ United Nations Interim Administration Mission in Kosovo, *About UNMIK*, at <http://www.unmikonline.org/intro.htm> (last visited Sept. 24, 2004).

⁵⁴ United Nations Interim Administration Mission in Kosovo, *Regulation No. 2000/6 On the Appointment and Removal from Office of International Judges and International Prosecutors* (February 15, 2000), at http://www.unmikonline.org/regulations/2000/re2000_06.htm. The appointed judges were given authorization “to perform the functions of their office, including the authority to select and take responsibility for new and pending criminal cases within the jurisdiction of the court to which he or she is appointed.” *Id.* Likewise, the prosecutors were given authority “to perform the functions of their office, including the authority and responsibility to conduct criminal investigations and to select and take responsibility for new and pending criminal investigations or proceedings within the jurisdiction of the office of the prosecutor to which he or she is appointed.” *Id.*

⁵⁵ United Nations Interim Administration Mission in Kosovo, *Regulation No. 2000/34 Amending UNMIK Regulation No. 2000/6 on the Appointment and Removal from Office of International Judges and International Prosecutors* (27 May 2000), at http://www.unmikonline.org/regulations/2001/re2000_.htm.

⁵⁶ United Nations Interim Administration Mission in Kosovo, *Regulation No. 2001/2 Amending UNMIK Regulation No. 2000/6, as amended, on the Appointment and Removal from Office of International Judges and International Prosecutors* (12 Jan. 2001), at <http://www.unmikonline.org/regulations/2001/reg02-01.html>.

⁵⁷ *Id.* Articles 403–407 of the Yugoslav Criminal Procedure Code deal with case termination by dismissal, re-initiation of charges, and re-opening of proceedings. LAW ON CRIMINAL PROCEEDINGS (Official Gaz. SFRY, July 1, 1977) (on file with CLAMO).

⁵⁸ PROVISIONAL CRIMINAL PROCEDURE CODE OF KOSOVO (Apr. 6, 2004) (on file with CLAMO).

⁵⁹ CRIMINAL CODE OF THE SOCIALIST FEDERAL REPUBLIC OF YUGOSLAVIA art. 141 (1976).

⁶⁰ *Id.* art. 142.

⁶¹ *Id.* art. 143.

⁶² *Id.* art. 144.

⁶³ *Id.* art. 146.

⁶⁴ *Id.* art. 148.

the UNMIK began administration as the interim civil authority under UNSCR 1244, a host of potential war crimes cases were determined worth pursuing.⁶⁵

Due to the large volume of potential war crimes cases, the chief legal advisor for Allied Forces South (AFSOUTH), COL Richard Pregel, and then-Director of the UNMIK Department of Justice (DOJ), Mr. Paul Coffey, arranged a program to send JAs on temporary duty to Pristina. Their mission was to assist in legal analysis and selection of the best cases to pursue.⁶⁶ Judge advocates from all U.S. services have taken advantage of this unique opportunity.⁶⁷ A JA's duties on this deployment include working with members of UNMIK DOJ's Criminal Division and the Central Criminal Investigation Unit (CCIU).⁶⁸

The Central Criminal Investigation Unit initially had the largest volume of cases for selection and review. One JA reported more than 500 open cases requiring case analysis and review.⁶⁹ The CCIU created a case analysis cell, which included JAs, whose mission was to conduct case analysis and prioritization.⁷⁰ The case analysis cell closed cases not worth pursuing, referred non-war crimes cases to other agencies, and retained the top war crimes cases for additional investigation.⁷¹ After filtering the cases through the case analysis cell, the CCIU forwarded those retained to the DOJ. In an effort to maximize resources on the most important cases, the DOJ also created an analysis cell for further prioritization.⁷² This cell included the DOJ Director, the Chief of the Criminal Division, the Deputy Chief of the Criminal Division, the Director of the CCIU and one JA. This process culminated in a prioritization of the top twenty-five war crimes cases for prosecution in Kosovo.

A JA's duties also include review of cases still under investigation by the CCIU. Reviewing cases and advising investigators on legal issues before a case is referred to a prosecutor enhances the efficacy of a case before formal initiation of proceedings. Judge advocates assist international prosecutors by evaluating the sufficiency of evidence in on-going cases and making recommendations on litigation strategy. Judge advocates also have been involved in drafting motions to initiate war crimes cases in district court and responsive pleadings for cases on appeal.⁷³

For example, one case involved a somewhat detailed analysis of issues involving the applicability of prisoner of war status, combatant immunity, and command responsibility within the context of a daytime assault.⁷⁴ A group of Serbs, led by the accused, swept into a small village. The Serbs came across a group of Albanian men. None of the Albanians were in uniform of any kind. All of the Albanians were members of the KLA, except one. At the approach of the Serbs, the Albanians initially feigned surrender. Yet suddenly, they took up arms and a firefight ensued. One Albanian was killed on the scene and four others were captured. One of those captured was the non-KLA civilian, who had apparently not taken an active part in the hostilities. The bodies of all those captured were unearthed several weeks later.

⁶⁵ Interview with COL Richard Pregel, Legal Advisor, Allied Forces South (AFSouth), in Naples, Italy (Jan. 15, 2004).

⁶⁶ *Id.* Colonel Pregel and Mr. Coffey coordinated this arrangement in the Summer of 2003. *Id.*

⁶⁷ As an illustration of the "purple" nature of this opportunity, Captain Bob Coffey, U.S. Army, Captain Heather Larson, U.S. Air Force, and Lieutenant Bernard Booth, U.S. Navy, have undertaken this deployment. The deployments have ranged from two to four months. Professional Experiences, *supra* note 3

⁶⁸ Professional Experiences, *supra* note 3. The United Nations International Prosecutors and staff constitute UNMIK's Criminal Division. The CCIU members are the law enforcement element at UNMIK. For the organizational structure of UNMIK police, *see* United Nations Interim Administration Mission in Kosovo, *Police Structure*, at <http://www.unmikonline.org/civpol/structure.htm> (last visited Aug. 30, 2004).

⁶⁹ Memorandum for Record, Captain Bobby J. Coffman, subject: After Action Report, Kosovo United Nations Department of Justice (UNDOJ) Legal Support Mission (14 Jan. 2004) (on file with CLAMO).

⁷⁰ Professional Experiences, *supra* note 3.

⁷¹ *Id.* The lack of sufficient admissible evidence led to the decision to close the overwhelming majority of cases. Cases referred to other agencies were non-war crimes cases. The criteria for retaining a case for further investigation and prosecution included the seriousness of the crime, the number of victims, the weight and sufficiency of the evidence, and the availability of resources. *Id.*

⁷² *Id.*

⁷³ *Id.*

⁷⁴ This case is on-going and has been assigned to an international prosecutor. Because the case is on-going, the author elects to omit personal information, dates and exact locations. Professional Experiences, *supra* note 3.

In another case, local Kosovar Albanian villagers vacated their homes after Serbian tanks and paramilitary forces occupied their town.⁷⁵ Many families fled into the hills to live until a safe return was assured. One family sent three teenagers (two girls, one boy) back into the village to collect food from their house. As they were returning to the mountains, they were stopped by five Serbian paramilitaries. The youngest member of the group, the boy, fled immediately. The girls did not flee initially as they were unsure of whether those in the other group were KLA or Serbian.

After determining the group consisted of Serbian paramilitaries, one of the girls (sixteen-years-old) attempted to escape. She was shot from behind as she ran. The bullet entered her hip from behind and exited her thigh. She struggled to hide, finally secreting herself in a streambed approximately 100 meters away.

The Serbs did not pursue the injured girl but detained her older eighteen year-old cousin and took turns raping her. Hiding in the streambed, the other girl was forced to listen to her cousin's screams for more than an hour. When they were done raping her, the Serbs shot their captive. The Serbs also removed one of her eyes, but it was unclear at what point this occurred. The primary suspect was arrested on other charges after termination of NATO bombing. He was awaiting trial on the other charges when he escaped and remains at large.

Conclusion

As recent events have illustrated, the mission in Kosovo is not yet complete. Ethnic tension and cultural divisiveness remain as KFOR and UNMIK continue to strive for a peaceful and lasting resolution in this war-torn province. Bringing war criminals to justice is an important component in asserting the rule of law. A deployment to Kosovo provides JAs with the challenging opportunity to become actively engaged in the prosecution of war crimes. Moreover, it supplies the opportunity to enrich a JA's perspective and experiences by living and working in a NATO command and with U.N. representatives.

⁷⁵ The facts reported here are summarized from the case file from CCIU after it was referred to DOJ for prosecution. This case was assigned to the author after the International Prosecutor to which the case initially had been assigned completed his contract and was re-assigned elsewhere. Because the case is on-going, the author elects to omit personal information, dates and exact locations. *Id.*