CHAPTER FOUR

THE CINC-TO-CINC MEETING

(U) The Near CINC-to-CINC Meeting

( ), Ironically, General Otis had been working for some time to have a face-to-face meeting with the Commander in Chief (CINC) of GSFG, General Mikhail M. Zaytsev. General Otis said the purpose of the meeting would have been "...to know the other guy better. I want to get a feel for how he thinks; how he would react in certain situations." It seemed to General Otis that the procedures for exchanging information or reaching agreements between the two headquarters were backwards. Face-to-face meetings between the generals should come first, and then the liaison people could take over the follow-on actions.[1]

( ) When General Otis assumed command of USAREUR in April 1983 there had been no recent CINC-to-CINC meetings, except for the brief, social meeting the former CINC, General Frederick J. Kroesen, had with CINCGSFG in Berlin during his farewell tour of the command. US-Soviet tensions over Afghanistan and other issues had precluded such meetings. With the warming of relations between the United States and the Soviet Union under the leadership of Gorbachev, in late 1984 it was thought that a CINC-to-CINC meeting might be arranged. General Zaytsev had responded positively to General Otis' invitation and suggested a late March meeting. General Otis was seeking national-level permission to conduct the meeting when the Nicholson Incident intervened to preclude any sort of normal CINC-to-CINC meeting.[2]

( ) General Otis remained convinced that it would have been extremely useful if he had previously met with General Zaytsev, and had been able to call him up immediately after the shooting. He thought that he and General Zaytsev could have discussed the incident and sought ways to defuse the situation. However, he felt a previous face-to-face meeting was a prerequisite to this type of frank telephone exchange. Such an early telephone call might have prevented the incident from escalating to the subsequent levels of rhetoric, which may have been caused by lack of information on the intent of both sides. After the incident General Otis began pushing for an early face-to-face meeting with his counterpart, which eventually led to the Shultz-Dobrynin agreement that such a meeting should take place.[3]

(U) Approval for the Meeting

( ) Approval for General Otis to meet with General Zaytsev was not a sure thing. USAREUR was pressing for an early meeting so that the situation could be resolved satisfactorily, which would allow USMLM to get on with its mission. However, an interesting battle of wills was developing between the Secretary of State and the Secretary of Defense. Secretary Shultz seemed intent upon closing the incident and getting on with bettering relations with the Soviets, while Secretary Weinberger early on took a deep, personal interest in the incident and the Nicholson family, and had no intention of allowing it to be resolved on terms favorable to the Soviets.

(U) Secretary Weinberger had been quoted as demanding that the Soviets apologize for murdering Major Nicholson prior to any CINC-to-CINC meeting. (For more information on the apology issue, see the section on "Follow-on Sanctions," Chapter 3.) However, when DoD spokesman Michael Burch was asked on 4 April if an apology was necessary before the two commanders could meet, he hedged on the question and said that it should be answered after a date for the meeting was set. When asked point blank if there would be a meeting without an apology, he answered: "I don't know. I just can't say at this point." During follow-up questioning he did say that the two secretaries were not at odds on the question, and that he did not know if Secretary Weinberger would go so far as to say that there would never be a meeting if the Soviets did not apologize. The Secretary just thought it was a reasonable first step.[4]

(U) Although not a prerequisite for the CINC-to-CINC meeting, Secretary Weinberger did add a new demand that same day during an interview. He said that he thought it was vital the Soviets provide some form of compensation for Mrs. Nicholson. He added:[5]

> There's no way you can compensate a family like that in any material way. But, on the other hand, they have been deprived of parental and other support, and some kind of compensation for such a brutal act seems to me to be absolutely required.

(U) Apparently the disagreement was resolved, and on 5 April it was announced that although it was appropriate for the Soviets to apologize for the murder of Major Nicholson, and to pay compensation to his family, meeting these demands was not a precondition for the CINC-to-CINC meeting.[6]

( ) US policy on the advisability of holding the CINC-to-CINC meeting and, more importantly, what our goals would be at the meeting was outlined in a memorandum from President Reagan to Secretary Weinberger on 7 April. The impact of this memorandum upon both the upcoming meeting and the subsequent negotiations with the Soviets was such that it is quoted in its entirety:[7]

> ( ) It is important that Major Nicholson's murder not be followed by a return to the status quo ante. We owe Major Nicholson, his family, and future generations of service men and women to come, the solace and future confidence that can only come from proper resolution of this specific act as well as Soviet actions to prevent its recurrence. As we pursue these ends, we should keep in mind that our objective is to get results in both areas. I believe results will best be achieved by dealing privately and firmly in a prompt meeting with Soviet authorities.
>
> ( ) Toward this end you are requested to have the Commander in Chief, US Army, Europe (CINCUSAREUR), arrange an early meeting with the Commander in Chief, Group of Soviet Forces in Germany (CINCGSFG). The purposes of the meeting are:
>
> - First, to express firmly our belief and expectation that an apology is due Major Nicholson's survivors and the United States Government. In addition, appropriate compensation should be offered to the family.
>
> - Second, to insist that actions be taken by the Soviet Union to insure that acts of brutality, such as Major Nicholson's murder, will not recur.
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> ( ) At the meeting, the US representative should make the following points:
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> - The United States is increasingly concerned over the failure of the Soviet Union to respond in a responsible manner to the shooting of Major Nicholson and denial of medical assistance.

- This act is totally inconsistent with the manner in which the military liaison missions have operated over many years. The denial of medical assistance was an inhumane act and contrary to all standards of human behavior.

- As a professional soldier, I am sure you will agree with me that the treatment of Major Nicholson by your soldiers was totally contrary to the standards of our profession.

- Secretary Shultz has made clear to Ambassador Dobrynin the implications that this tragic incident could have on US-Soviet relations unless we are able to deal with it constructively. Ambassador Dobrynin has informed Secretary Shultz that you have instructions for dealing with this issue.

- We believe that the Soviet Union should provide:

-- An apology to Major Nicholson's family and the United States Government.

-- Compensation for Major Nicholson's family. While material compensation can in no way satisfy the sense of loss Major Nicholson's family feels, it would help replace the loss of support to his family. This step is founded in law and expected in relations between responsible parties.

-- Instructions to the soldiers and officers under your command so that there will never again be a recurrence of this tragedy. The troops under my command are under firm instructions that under no circumstances should they use violence against any members of the Soviet military liaison mission. I ask that you issue similar instructions to the officers and men under your command.

( ) In raising the points on the apology and compensation, CINCUSAREUR should not allow a negative response to deter him from addressing the key issue of the procedures. The apology and compensation issues will be addressed at the political level if a satisfactory response

is not forthcoming. CINCUSAREUR, however, must press to receive a positive Soviet response on our request that instructions be issued in GSFG to insure that this type of tragic incident is not repeated.

( ) On 9 April JCS informed USEUCOM and USAREUR that Secretary Weinberger had approved the CINC-to-CINC meeting and relayed President Reagan's instructions and goals for the meeting. JCS indicated that a meeting in Western territory was highly desirable. USAREUR and USEUCOM were to develop plans for timing, venue, and meeting details, and were to send them to JCS for Secretary Weinberger's approval.[8]

(U) Early Planning for the Meeting

( ) Although permission to hold the CINC-to-CINC meeting and the president's goals were not passed to USAREUR until 9 April, there had been extensive prior planning about what should be accomplished at the meeting. The USAREUR headquarters documentation from shortly after the incident contains various possible scenarios, to include a CINC-to-CINC meeting. On 1 April General Fiala had forwarded a plan to General Otis, who was in the United States. He envisioned an early meeting between USMLM and SERB to set up a meeting between the two headquarters' chiefs of staff, at which the two chiefs would agree to the time, place, and agenda for the CINC-to-CINC meeting. His proposed agenda for the CINC-to-CINC meeting included:

- Request status of CINCGSFG response to CINCUSAREUR's protest letter, if one had not been received prior to the meeting. If response had been delivered, then necessary responses could be given at that time.

- Review history of treatment of military liaison missions in both zones, with emphasis on the US record of no deaths or injuries versus the Soviet record of beatings, violence, and now a murder.

- CINCUSAREUR would express concern over how this could happen and would show the instruction card given to US soldiers to insure SMLM members were not harmed. He would ask the Soviets what their instructions were to their soldiers.

- He would solicit CINCGSFG agreement that use of force was unacceptable. He would affirm the need for timely and factual notification and reporting of any encounters, accidents, or detentions involving military liaison missions.

( ) By 3 April two primary objectives for any negotiations with the Soviets had begun to emerge:

- Establish concrete actions GSFG will take to prevent future acts of violence against US and Allied MLM personnel on duty in East Germany.

- Allow no reduction of the US and Allied MLM right of free access (collection capabilities) in East Germany.

( ) From the first, this second objective was to be of more importance to USAREUR and USMLM than it was for senior headquarters and Washington. There was a great deal of concern that future USMLM collection operations would be severely encumbered, or even stopped altogether. General Fiala was worried that USMLM might be closed down because there were people in Washington who thought the worth of its collection gains was outweighed by the risks for creating incidents.[9]

( ) At this point, with the incident still fresh in mind, a very hard line was being taken in internal USAREUR discussions as to possible responses to different types of Soviet behavior. There was firm agreement that the US course of action should be based on the Soviet response to CINC-USAREUR's protest letter. If there was no response or an unsatisfactory response, USAREUR thought the Allies should implement the second level of sanctions (see "Follow-on Sanctions," Chapter 3). The USAREUR staff thought it was essential the Soviets respond with a full explanation of the incident prior to any CINC-to-CINC meeting.

( ) USEUCOM was ambivalent about the advisability of the meeting, and on 4 April it forwarded to Washington a list of the pros and cons of a CINC-to-CINC meeting. Although USEUCOM thought the meeting would be useful for allowing the United States to express its anger over the incident and for establishing Soviet responsibility for the murder of Major Nicholson, it was afraid the Soviets would admit guilt in private and then carry on a misinformation campaign in public. USEUCOM agreed it would be desirable if the Soviets would guarantee the safety of USMLM members and their free access to unrestricted areas in East Germany, but thought it was possible the Soviets might further reduce USMLM access in East Germany or might fail to complete any agreed actions to resolve outstanding problems. However, USEUCOM said it would support General Otis' participation in the meeting if General Zaytsev's response gave an "indication of genuine concern on the part of the Soviets regarding the development of an appropriate solution to this matter."[10]

( ) The Soviets attempted to sidestep the issue by calling in Colonel Lajoie on 6 April and having Colonel Pereverzev, Chief of SERB, deliver a non-paper from General Zaytsev:

> In accordance with the understanding reached in Washington General of the Army M.M. Zaytsev, Commander in Chief of the Group of Soviet Forces in Germany, agrees to meet with General G. Otis, Commander in Chief of US Army, Europe, to completely close the issue of the incident involving the crew of vehicle no. 23, of the US Military Liaison Mission to the Commander in Chief, GSFG. It is proposed that the meeting be held in Wuensdorf or Potsdam (at the Soviet Officers Club).

( ) In the discussion after delivery of the non-paper, Colonel Lajoie said that in anticipation of the complexity of the staff work that would be necessary to close the issue, it was likely that General Otis would prefer an early CINC-to-CINC meeting to give impetus to the staffs, with the staffs then being entrusted with the task of working out the necessary details. He thought that General Otis would prefer the meeting take place at USMLM's Potsdam House rather than at either of the proposed Soviet sites. He said that a clear, prominent expression of regret should be forthcoming from the Soviets, one not buried somewhere on the back page of a TASS news release. He stated the United States would insist on a prohibition of the use of deadly force against any military liaison mission member, just as USAREUR banned the use of force against members of SMLM.

( ) Colonel Pereverzev replied that he only had authority to read the paper, to answer questions about it, and to pass on US views to GSFG headquarters. He said the important part was that the meeting be held. If General Otis desired to meet at Potsdam House, he would relay this information as well as proposals for the mechanics of arranging the meeting. He noted that the Soviets had already expressed regret over the death of Major Nicholson in the official statement made by the Soviet Embassy in Washington, and reiterated that the Soviet position remained that the responsibility for his death must be borne by the United States.

( ) Colonel Pereverzev also agreed to relay the US demand that the Soviets prohibit the use of deadly force against military liaison mission members, but stated that even

US regulations required its guards to act in the same way as Soviet guards, regardless of the identity of the trespasser. He seemed to be genuinely surprised when Colonel Lajoie produced copies of the standard SMLM warning cards (AE Form 3231) issued to every soldier, which specifically prohibited the use of force against SMLM members.

( ) Afterwards, Colonel Lajoie told USAREUR that the proper sequence might be an early CINC-TO-CINC meeting, followed by staff negotiations, and -- after careful consultations with the British and French -- a final meeting between the two CINCs to close the incident. He noted that the non-paper had made no mention of finding "possible measures to prevent incidents," a phrase which had been used by Ambassador Dobrynin during his meeting with Secretary Shultz on 30 March. This was a disturbing note in that it had become one of USAREUR's major objectives for the meeting.[11]

( ) When relaying Colonel Lajoie's report to General Otis, General Fiala proposed several options for the meeting. General Otis turned down the options of not agreeing to a meeting until after he had received a formal response from General Zaytsev as well as that of the two chiefs holding a preliminary meeting to work out details for the CINC-TO-CINC meeting. He wanted an early meeting without preliminary staff consultations, preferably by 10 or 11 April. For planning purposes, he agreed that the location for the meeting should be either at USMLM's Potsdam House or at the SMLM facility in Frankfurt. USMLM, in the meantime, was to take no further steps pending instructions from Washington.[12]

(U) <u>The Soviet Response</u>

( ) The Chief of SMLM delivered General Zaytsev's response to General Otis' protest letter on 10 April. While delivering the letter to General Fiala -- General Otis was still in the United States -- General Shevtsov commented that CINCGSFG had thoroughly reviewed the incident and would like to meet with General Otis to agree on how such incidents could be precluded in the future. He said that a preparatory meeting should take place between the GSFG Deputy Chief of Staff and the Chief of USMLM in order to formulate an understanding in advance of the CINC-TO-CINC meeting.

( ) However when the CINCGSFG letter was translated, it turned out to be a restatement of the Soviets' public line on the incident. General Zaytsev said that a review of the incident revealed that all responsibility for the incident lay

with the American side. While he regretted the tragic results, he rejected General Otis' protest of the incident and all accusations against the staff of GSFG and the Soviet guard, and asked that General Otis take active measures to ensure strict compliance by the American side with the Huebner-Malinin Agreement, in particular paragraph 10, which guaranteed freedom of travel "except [for] places of disposition of military units."

( ) General Zaytsev's version of the incident was that "violators" wearing camouflage uniforms in a vehicle with dirt-smeared license plates had penetrated a closed military installation and attempted to flee when detected by the guard. He contended that Major Nicholson would not have been shot if he had complied with the guard's orders, and pointed to the "fact" that Sergeant Schatz was not harmed since he had followed the guard's instructions. He stated that medical assistance was provided as soon as possible, and reiterated the Soviet claim that Sergeant Schatz had refused to leave the car and had not attempted to provide first aid. The statement that rankled most claimed that "military members of GSFG when convinced that the violators are members of USMLM have not, do not, and in the future have no intention of using weapons to detain or evict violators of restricted areas." He charged that the Chief of USMLM had not presented an objective report on the incident. He proposed that a preliminary meeting be held by their staffs to determine questions subject to discussion and to "examine possible measures for preventing similar incidents in the future," after which he and General Otis could have a personal meeting "in order to conclude the investigation of this incident." The implied agreement to seek measures that would insure the safety of USMLM members somewhat mitigated the overall negative aspects of the letter. (See Appendix B for complete text of the CINCGSFG letter.)

( ) Also on 10 April, General Fiala forwarded a letter through General Shevtsov to General Zaytsev in which he acknowledged that he had received his letter and would forward it to General Otis. He said that he had been instructed by General Otis to tell him that a preliminary meeting between the staffs was not necessary, and that they should hold a CINC-to-CINC meeting as soon as possible after noon on 11 April.[13] (See Appendix B for text of General Fiala's letter.)

( ) At 1125 on 11 April Colonel Pereverzev presented Colonel Lajoie with a response from the GSFG Chief of Staff in which he reiterated the Soviet desire to have a preliminary meeting, and said that General Zaytsev expected a personal

response from General Otis to his proposals. (See Appendix B for text of General Krivosheyev's letter.) In the subsequent discussion, Colonel Lajoie reminded the Soviets that General Otis thought it was essential to register concern at the appropriate level and to provide a stimulus to the respective staffs to develop effective measures to preclude the recurrence of such incidents. Colonel Pereverzev said that he was under instructions to do no more than serve as a conduit for communications and that he would relay the information.

( ) In an unofficial aside, Colonel Pereverzev said that it was unrealistic to expect GSFG headquarters to respond to the American proposals in one day, highlighting the Soviet proclivity for doing things by the numbers since their system did not encourage improvisation and spontaneity. He further suggested that the American side check its archives for a report of the CINC-to-CINC meeting conducted on 5 April 1962, and that it might serve as a formula for the venue of the current meeting. The 1962 meeting had been conducted in two parts, the first part at the Soviet's Potsdam Officers Club and the second part at USMLM's Potsdam House. (For more information on the 1962 meeting, see below, "Final Preparations for the Meeting.")

( ) General Otis, back at USAREUR headquarters from his trip to the United States, was briefed on the contents of the letter at 1300 on 11 April. He initially wanted to talk directly to General Zaytsev on the telephone, but neither SERB or SMLM could provide the necessary telephone numbers or assistance for completing the call. As a consequence, he sent a second letter on 11 April to General Zaytsev accepting his offer to have a personal meeting and proposing that they meet either that day or at the latest on 12 April. He said that "due to the nature of this serious situation I propose that we meet immediately without preliminary staff meetings." Although he preferred to meet General Zaytsev at SMLM in Frankfurt, he said he would accept USMLM's Potsdam House as an alternative site. General Otis had been informed by JCS the previous day that Washington had reversed its position against a meeting in Potsdam, and that he could meet General Zaytsev in Potsdam if that would insure the meeting was conducted as soon as possible. (See Appendix B for full text of General Otis' letter.)

(S) That same day Colonel Lajoie went back to SERB at 1755 to deliver General Otis' letter. He later recalled, "To say that this letter took the Soviets by surprise would greatly understate the case. The dumbfoundment and incredulity in their eyes could not be missed." This particular meeting was

attended by General-Major Y.I. Serov, GSFG's equivalent of the Deputy Chief of Staff for Intelligence.

( ) Colonel Lajoie explained General Otis' desire was to have an early meeting with General Zaytsev, which would be followed by detailed working sessions by the two staffs, and perhaps by a second ceremonial meeting of the two CINCs to approve and certify the measures agreed upon by the two staffs. General Serov did not think such an unplanned meeting would be very fruitful and, regardless, it was not probable that General Zaytsev would be able to attend a meeting on such short notice. When Colonel Lajoie replied that he could not think of a more significant item for the general's schedule, General Serov stated that General Zaytsev was extremely interested in concluding this issue, and in moving on to a more stable, "confidence-building" type of relationship between the two sides.

( ) Interestingly enough, with the presence of General Serov and Colonel Lajoie, the meeting could have met CINCGSFG's requirement for a preliminary meeting between these two individuals to set an agenda and iron out the mechanics of the CINC-to-CINC meeting. However, Colonel Lajoie stated that he was available only to discuss times and places and could not discuss agenda items. The Soviets rejected that idea and expressed disbelief that the American side would go into such a meeting without staff preparation. The Soviets said they would convey General Otis' letter and inform General Zaytsev of this discussion. They assured Colonel Lajoie that General Zaytsev would make an expeditious decision about the meeting and that he would be promptly informed. As Colonel Lajoie concluded, "The ball [was] now in their court."[14]

(U) <u>Report on the USAREUR Investigation of the Incident</u>

(U) It was absolutely essential that General Otis have the complete facts of the incident before he met with General Zaytsev. General Zaytsev's letter was just the latest example that the Soviets would continue to adhere to their interpretation of the Nicholson Incident.

( ) General Otis had been concerned from the first that an accurate report of the incident be compiled, and had directed on 25 March that Sergeant Schatz be debriefed by a professional debriefing team. Sergeant Schatz was debriefed that same day by members of the 766th Military Intelligence Detachment.[15]

( ) The investigating officer, Colonel Walter L. Hatcher, Deputy Commander of 1st Personnel Command, was briefed

at 1400 that afternoon, and was informed that he would be assisted by Major Joel D. Miller, USAREUR Office of the Judge Advocate, and CW2 Jerold J. Unruh, Special Agent in Charge at the Berlin Criminal Investigation Division. Because of his location, Mr. Unruh had already started gathering information that first morning after the shooting. The investigation officially commenced in Berlin on 26 March and the findings were completed on 9 April -- just in time to be of assistance to General Otis as he prepared for his meeting with General Zaytsev.16

(U) The narrative portion of the report, which briefly outlined the events of the first 2 days of the incident, will not be repeated as it did not deviate significantly from the expanded account of the incident provided in Chapter 1. However, the sworn statements and the graphics contained in the enclosures and exhibits portion of the report were very helpful during the research phase of this study. The report's findings were of great interest and are quoted below:17

- That Major Nicholson and Sergeant Schatz were complying with valid orders in furtherance of a lawful mission.

- That Major Nicholson and Sergeant Schatz were experienced, knowledgeable, and competent for the performance of their mission and that Sergeant Schatz was a credible witness.

- That the Ludwigslust portion of the tour was considered routine and low risk.

- That at no time prior to, during, or after the shooting of Major Nicholson was the tour in a Soviet restricted area.

- That Major Nicholson, while unarmed and in an unrestricted area, was shot without warning by a Soviet soldier.

- That under threat of deadly force Sergeant Schatz was prevented from administering first aid to Major Nicholson.

- That Soviet behavior after the shooting was callous and inhumane.

- That the chief and all members of USMLM and other involved US military members in Berlin conducted themselves professionally, competently, and compassionately during and after the incident.

It should be noted that General Otis approved the findings of the investigating officer.

(U) Colonel Hatcher observed that his investigation had been inhibited by the prohibition against visiting the scene and interviewing the Soviet military personnel associated with the events. This historian had the same problem when he was conducting his research in Berlin, and assumes that Colonel Hatcher was denied access for the same reason -- the Soviets were sure to say no.

( ) Colonel Hatcher's report also addressed an issue that was central to establishing the facts of the Nicholson Incident -- the truthfulness of Jessie Schatz. As the only American participant who survived the incident, his testimony was the only record we may ever have as to what actually occurred at Ludwigslust. During the course of the research for this study, there were some who expressed a certain amount of skepticism about portions of Sergeant Schatz's account of the incident. None could offer any hard facts, just a sense that from their experience with these types of situations, portions of his story just did not quite ring true. In contrast, Mr. Unruh, an experienced criminal interrogator, said that he saw no indication that Sergeant Schatz was being deceptive or withholding any information during his interviews, and that his account seemed truthful and complete to the best of his ability. Colonel Hatcher agreed and stated that Sergeant Schatz's attitude and reactions during his interview seemed credible within the context of the investigation. Both Colonel Lajoie and Lieutenant Colonel Kelley said that after one year of extensive questioning by all sorts of interrogators and interviewers, Sergeant Schatz had not deviated from his story in any significant detail. This historian interviewed Sergeant Schatz one year after the incident and, outside of his irritation at being interviewed by still another outsider, he came across as a forthcoming and credible witness.[18]

(U) Punishment for the Guard

( ) An interesting footnote to the incident surfaced on 9 April, when "a reliable Western journalist in Bonn with good contacts with the Soviet Embassy" said he had been informed that the soldier who had shot Major Nicholson had been arrested and brought up on charges. The sources told the journalist that the soldier was an ill-disciplined draftee from the provinces. The Reuters news service subsequently picked up the story and added that "informed Soviet Bloc sources" had also said that it was a case of a young, inexperienced soldier panicking when he came across Major Nicholson and reaching for

his rifle too quickly. (These accounts tended to confirm Sergeant Schatz's description of the guard and his actions that day, see Chapter 1, "The Tour.") The sources had insisted that it was a regrettable accident and was not a sign of a "get-tough" attitude toward the MLMs. In spite of extensive efforts by US intelligence agencies, no confirmed information was developed that the guard had been arrested or punished. General Fiala viewed it as a "controlled leak," and even the Reuters' story speculated that the information might have been passed in order to show the Soviets were dealing with the case and to defuse Western outrage over the killing.[19]

(U) Final Preparations for the Meeting

( ) USEUCOM had previously instructed USAREUR to prepare a plan for conducting the CINC-to-CINC meeting and forward it for approval. USAREUR was preparing to forward the proposed plan on 10 April, when it was informed by USEUCOM to keep it "informed" on plans for the meeting.[20]

( ) Demonstrating an interesting congruence of thought patterns in East and West, on 11 April retired General Bruce C. Clarke, who had been CINCUSAREUR in 1962, telephoned USAREUR headquarters to recommend that the staff examine the records of his meeting with CINCGSFG - the same suggestion made by Colonel Pereverzev earlier in the day. Research by the USAREUR headquarters Military History Office produced a number of useful documents, to include after-action reports and actual transcripts of the 1962 CINC-to-CINC meeting. Until then, the entire Nicholson incident had been handled by the CAT on a close-hold basis. General Fiala would subsequently cite the failure to involve the historian at an early date as one of the lessons learned during these events.[21]

( ) In 1962 the East Germans had attempted to immobilize a USMLM tour vehicle by firing shots at its tires, and one shot had ricocheted into the rear window. Fortunately, no one was injured in this incident. There were several parallels between the 1962 CINC-to-CINC meeting and the upcoming one: Both meetings resulted from a violent act against a USMLM tour, both CINCUSAREURs had strong desires to meet with their counterparts, and both CINCUSAREURs' primary goals were to secure assurances that such incidents would not occur in the future and to normalize mission operations under the provisions of the Huebner-Malinin Agreement. However, where General Clarke had accepted oral assurances that the Soviets would cease violent acts toward military liaison mission members -- as we shall see in upcoming sections -- during the 1985 meetings the American side would try to secure some sort of written agreement.

( ) USMLM representatives noted that during the discussions setting up the 1985 CINC-to-CINC meeting, Colonel Pereverzev often would use the 1962 meeting as a precedent. USAREUR also used the experience of the 1962 meeting: Besides the previously mentioned idea of having a split meeting in Potsdam -- and thus breaking the venue logjam -- the 1962 meeting also gave the Chief of Staff the idea of giving the lead in the upcoming staff discussions to the Deputy Chief of Staff, Operations (see Chapter 6). Perhaps one of the most useful points suggested by the 1962 meeting was that the Soviets responded to decisive actions. It was only after General Clarke had effectively shut down USMLM operations by returning most of its staff to Berlin and had directed that members of SMLM could not travel without US escort, that the Soviets started to deal seriously with the situation. It was obvious at the 1962 meeting and during other negotiations with the Soviets (see Chapter 5, Prior USAREUR-GSFG Negotiations) that they valued their SMLMs in West Germany and were prepared to negotiate in a positive manner if they thought there was some danger the missions would be eliminated. It should be kept in mind, however, that all that was accomplished in 1962 was a return to the status quo, and although the level of violence decreased, the Soviets and East Germans soon began harassing the tours again.[22]

( ) Preliminary USAREUR planning for the 1985 meeting called for it to be conducted in a strict, business-like manner. There would be no social amenities, other than coffee. The only attendees would be the two CINCs, interpreters, and stenographers. It was envisioned that CINCUSAREUR would discuss the Nicholson Incident and press CINCGSFG to issue instructions that would insure there would be no recurrence of violent acts against military liaison mission personnel. Follow-on discussions would focus on obtaining some form of apology for the murder, and would address the matter of compensation for the Nicholson family.

( ) As in the past, major issues would be coordinated with the Allies both before and after the meeting, but in this period just prior to the meeting they were to be informed only of its date and purpose.[23]

( ) USAREUR prepared two news releases to be used at the conclusion of the meeting: one for a successful meeting where agreements were reached and at least some US objectives were met, and one for an unsuccessful meeting where no agreement was achieved and no US objectives were accomplished. The command strongly urged that the news be released at USAREUR headquarters, and that USAREUR be allowed to answer appropriate

questions by the media. It further recommended release at the earliest possible time. USEUCOM disagreed, however, and ruled that Washington would be the more appropriate setting for the news release. It thought that spokesmen at the White House, State Department, or Defense Department could better handle the political sensitivity, policy implications, and timing requirements involved in this situation.[24]

( ) By the morning of 12 April General Otis had carefully formulated his strategy for conducting the meeting and was prepared to meet immediately if General Zaytsev responded positively to his 11 April letter (see above). If General Zaytsev responded with still another demand for preliminary staff meetings, General Otis was prepared to depart for Potsdam and notify CINCGSFG that he was on the way and would be accompanied only by his executive officer, translators, and stenographers.[25]

( ) It was of some interest how General Otis prepared for his role at the meeting. General Fiala subsequently said that the USAREUR staff needed to do little to get General Otis ready, because he already knew what he wanted to accomplish. He was provided a notebook with back-up information and data for his use in preparing for the meeting, as well as extensive historical information on past CINC-to-CINC meetings -- especially the 1962 meeting -- and a personal profile of General Zaytsev. General Otis had been getting a lot of input on point-counterpoint issues from USEUCOM, JCS, and other agencies in Washington (especially from Secretary Weinberger and General John W. Vessey, Jr., JCS Chairman), but nothing on how to conduct negotiations with the Soviets themselves. He was to comment later that a "how-to-do-it" book on negotiating with the Soviets should be written for future negotiators. During a strategy session with USAREUR staff members, he said that he was interested in presenting a solid argument but was not concerned with winning, because Soviet decisions would not be made at the table -- they would come from Moscow.[26]

( ) It was beginning to appear that General Zaytsev would not agree to a meeting prior to the expiration of General Otis' 12 April deadline, when Colonel Lajoie was informed at approximately midday on the 12th that General Zaytsev had agreed to meet with General Otis between 1700 and 1800 hours that day!

( ) The Soviets said they were prepared to discuss four issues during the meeting:

- The complete closing of the 24 March incident.

- Observance of the Huebner-Malinin Agreement.

- Measures to prevent incidents with Allied military liaison mission personnel.

- Expansion of confidence building measures.

( ) Colonel Lajoie was told that besides General Zaytsev, the Soviet party would consist of General Serov, General Shevtsov, Colonel Pereverzev, and two translators. General Zaytsev agreed to a split venue for the meeting: the Soviet's Potsdam Officers Club and USMLM's Potsdam House.

( ) General Otis accepted the invitation and immediately departed for Berlin. His party consisted of his executive officer, Colonel P. L. McFadden, as well as a stenographer and a translator from USAREUR headquarters. Colonel Lajoie and Lieutenant Colonel Kelley would join his party in Berlin. His plane landed in Berlin at 1650, and General Otis arrived at Glienicke Bridge at 1750, where he was waved through without formalities. He was met at the other side of the bridge by an honor guard, which provided full honors. His party was escorted to the Soviet Officers Club by vehicles with flashing lights, and it was noted that guards had been posted at every intersection to insure that all traffic had been stopped. General Otis was greeted by General Zaytsev inside the club and escorted upstairs to a conference room, where the meeting began on time at 1800.[27]

(U) <u>The Meeting</u>

( ) The first session at the Potsdam Officers Club, which ran from 1800 until 2000, was conducted in a business-like atmosphere, with both generals making their points in strong but polite terms. General Zaytsev began by saying that the basis of this first meeting was not exactly as had been planned. (He was referring to the previously planned CINC-to-CINC meeting.) He said, "As CINCGSFG, I deeply regret what transpired on 24 March. It is truly unfortunate." He went on to say that the Soviet investigation had shown it was not a murder, but a tragic accident brought on by Major Nicholson's actions.

( ) General Otis began by saying: "Today we are at peace. It is both our desires to be at peace and train our soldiers for peace." General Otis said that the situation being discussed was about both sides' liaison teams having

General Glenn K. Otis, CINCUSAREUR

Soviet General Mikhail M. Zaytsev, CINCGSFG

access to unrestricted areas. He pointed out that Major Nicholson was next to a clearly marked vehicle, was wearing a recognizable uniform, and was shot in broad daylight. He stated that as an experienced soldier, Major Nicholson would not have run from a guard with a weapon. He emphasized that when SMLM members were apprehended, they were returned unharmed to their compound in Frankfurt. In the most telling statement, he charged that after Major Nicholson had been shot, neither adequate nor timely medical attention had been provided by the Soviets. General Otis asked General Zaytsev to instruct his forces to show the same discipline in using force that he would wish American soldiers to use in dealing with SMLM members.

( ) General Zaytsev responded that there was a misunderstanding. He contended that his forces already had instructions not to use force against USMLM members -- that they had not in the past and would not in the future use force against clearly recognizable USMLM members. He further contended that if Major Nicholson had adhered to the requirements of Article 10 of the Huebner-Malinin Agreement to stay out of restricted areas and had complied with the guard's orders, "his life would have been spared."

( ) General Otis strongly disagreed with this line of thought, and reiterated that USAREUR regulations prohibited the use of force in any of the circumstances described by General Zaytsev. Even though USMLM members were not "authorized to violate the [Huebner-Malinin] Agreement, I would expect your soldiers [to] apprehend and turn them over to me for necessary discipline." He noted that Major Nicholson could not have been running away since he was shot in the chest. In any event, this was not the first time that shots had been fired, and he listed past incidents where Soviet and East German soldiers had fired at USMLM members. He said it was obvious that Soviet soldiers could not properly identify an everyday American uniform, and at that point put Major Nicholson's uniform on display in order to show its distinctive patches. The blood-stained uniform had a dramatic impact on those present at the meeting.

( ) General Zaytsev said that Major Nicholson had been observed taking pictures inside the building, and that neither his nor Sergeant Schatz's patches were visible. The guard was acting in compliance with military regulations, and had fired to apprehend and not to kill. He had fired at Major Nicholson's legs from a distance of 50 meters, but the bullet had accidentally gone into his chest. He contended that the guard would not have used his weapon if Major Nicholson's actions had not forced him to do so. Sergeant Schatz had refused to leave

the vehicle -- he said he was acting under orders. A doctor had been called, and he later said that Major Nicholson had died in 7 to 10 minutes.

( ) General Otis rebutted that Sergeant Schatz had tried to leave the vehicle to provide assistance, that he had been forced back into the vehicle, and that it had been more than one hour before he had been invited to leave the vehicle. He further contended that it was doubtful Major Nicholson would think there was anything of intelligence value in the shed since numerous photographs of Soviet tanks were already available. (General Otis had brought along pictures of Soviet tanks that were in open-source reference works.)

( ) General Zaytsev replied:

> I have written testimony from the sentry. He did nothing wrong with regard to the use of force. No one wants to kill the soldiers of America. Present day Soviet soldiers have great respect for Americans....The soldier cannot be indicted. The investigation will continue and perhaps new evidence will be developed.

( ) He charged that in past incidents USMLM members had used their vehicles as weapons. Although he said the investigation would continue, he claimed it had been proven that Major Nicholson had been gathering military intelligence inside a restricted area. He contended his soldiers had seen inside the vehicle a camera, a video camera, a tape recorder, and a device for locating precise coordinates.* He thought Major Nicholson had been trying to establish the coordinates of military vehicles for military intelligence purposes. In a cryptic definition of the unstated rules of the game he said, "You can recon, but you can't take pictures."

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* ( ) Actually, of the equipment alleged by the Soviets to have been in the vehicle, only the camera and tape recorder were present. There was no video camera in the vehicle, and the coordinate-locating device they claimed to have seen was probably the windshield-mounted compass, which could have been found in many American civilian vehicles. SOURCE: Memo, COL J.L. Greife, C/ODCSI Col Div, to USAREUR DCSI, n.d., ca. 18 Apr 85, subj: Inventory of Collection Equipment. AEAGB-C(HO). OADR.

( ) When General Otis asked him point blank how he could guarantee nonrecurrence of this tragic event, General Zaytsev said that it could be prevented by strict adherence to the provisions of the Huebner-Malinin Agreement (stay out of restricted areas) and a categorical prohibition of provocative behavior by mission members (stop running over Soviet soldiers and disregarding East German traffic laws).

( ) General Otis agreed it was important that the Huebner-Malinin Agreement be strictly adhered to by both sides, but insisted that it was important both sides agree not to use deadly force against mission members if they were found in restricted areas. He said US general sentry rules were similar, but an important distinction was that our sentries were instructed not to use deadly force when apprehending SMLM members. He thought it was important they agree that mission members would be given diplomatic status, and that deadly force would not be used, absent an attack on the sentry.

( ) General Zaytsev read the GSFG regulation on detaining mission members:

> During the detention of foreign military liaison mission personnel it is strictly prohibited to use physical force or weapons, or to search personnel or vehicles. No threats are to be made. You may speak to mission members only about matters related to the detention.

( ) He contended that the sentry had not been in violation of this regulation. He said Major Nicholson had seen that it was a guarded area, should have complied with the guard's orders, had chosen to run to the vehicle, and had left the guard with no choice but to defend himself since USMLM vehicles had been used as weapons in the past. "In this case, the fault was on the American side."

( ) General Otis brushed aside this argument and focused on the main issues:

- What precisely did Article 10 in the Huebner-Malinin Agreement mean?

- What constituted "provocative acts?"

The second question was particularly interesting. General Otis said:

> ...provocative means different things to different people. Your team uses cameras and so do mine. Is that provocative? Is it done in a military area, but not in PRAs or TRAs? Your team can take pictures in nonrestricted areas....In...preventing recurrences, is it necessary that we reiterate our policy on the use of deadly force? Because without [a clear policy] our teams could be put in danger of [their] lives.

( ) At that point General Zaytsev gave examples of what he considered provocative actions. He listed incidents in which it was alleged that USMLM members had kicked a Soviet soldier and had run over a soldier with their vehicle. He said the Soviets had not used weapons during either incident. He then added, "There is an item we need to be clear on. I too want to support the Huebner-Malinin Agreement." He said that papers had been exchanged between the two headquarters on establishing PRAs and TRAs, and although this had not changed the agreement, they had become a recognized point of the agreement under international law.

( ) General Otis responded to the provocative act charges by listing several instances in which USMLM vehicles had been fired at, and added tellingly that there were no instances when SMLM members had ever been shot at. After several exchanges about the need to define clearly what strict compliance with Article 10 would be and the need to reaffirm that deadly force should not be used against military liaison mission members, General Otis asked if they could agree to a written statement on means of preventing the recurrence of the use of deadly force.

( ) General Zaytsev replied that he did not see the need for nor have the authorization to issue a written statement, but he did agree to report General Otis' proposals to higher headquarters. He added that they seemed to have the same understanding of the Huebner-Malinin Agreement, and that each side should concentrate on preventing accidents and incidents.

( ) General Otis said: "I have no desire, General Zaytsev, to issue any joint statement....What I do ask is an agreement as soldiers that we leave this meeting able to say to subordinates and superiors" that there is agreement on the following three points:

- Strict adherence to the Huebner-Malinin Agreement.

- Instructions to each liaison mission to do nothing illegal.

- Reaffirm to the commands that deadly force against mission members was not authorized.

( ) At that point, General Zaytsev said: "No recurrences will happen." General Otis agreed that since both of their policies were similar and they were planning on reiterating those rules to their soldiers, "A Major Nicholson event will not happen again." General Zaytsev responded, "I agree."

( ) Before ending this first half of the meeting, General Otis reemphasized that the circumstances in no way justified the murder of Major Nicholson. He then stated that it was reasonable for the Soviet Government to issue an apology for this tragic event, and that under international law it should pay compensation to the Nicholson family. He asked that these two demands be conveyed to the Soviet Government.

( ) General Zaytsev responded that it was a tragic and regrettable incident, and that no one had wanted the American major to die. However, after a careful investigation they had concluded that they were totally guiltless and saw no grounds to support a request for compensation. He emphasized that this answer had been coordinated and cleared in advance in anticipation of the US request.

( ) The two CINCs agreed that the results of their respective investigations differed considerably, and that the matter could be discussed further by their designated representatives. Both also agreed that this disagreement should not prevent a discussion of more productive issues such as confidence-building measures. At approximately 2000 the first half of the meeting ended and both parties moved to USMLM's Potsdam House.*

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* ( ) Although the US side had insisted on a "no frills" meeting for the first session, the Soviets made a surprise offer of refreshments. General Otis accepted reluctantly and the US delegation hurried through what turned out to be a rather elaborate meal. SOURCE: Ltr, Lajoie to Jeszenszky, 6 January 1988. cited above. OADR.

( ) The second portion of the meeting began at 2040 and was conducted during a working dinner. Both sides had made most of their major points during the first session and after restating their key issues again, moved on to discussing confidence-building measures. This was a free-flow conversation with both CINCs finding many areas in which they agreed. Both agreed that there should be strict adherence to the Huebner-Malinin Agreement, and that force should not be used by or against mission members. General Zaytsev thought it was unfortunate this incident had risen out of military channels, and that they should have been able to settle it between themselves. General Otis responded that he would like to have General Zaytsev's telephone number so that they could talk sooner in the future. General Zaytsev said that they could have reached a settlement if he had not been absent. General Otis was noncommittal on this statement. He did however bring up the idea of exchanging observers during exercises and training activities. General Zaytsev thought this was a good idea and that something could be worked out on a mutual basis.

( ) One of the key confidence-building measures discussed was the stabilization of the PRA situation. In recent years it had gotten out of hand, and large areas in both commands had been declared PRAs. General Otis proposed that they go back to the original intent of Article 10 of the Huebner-Malinin Agreement, which had simply referred to "places of disposition of military units" as being restricted. General Zaytsev said that philosophically he found much merit in the proposal, but had no authority to discuss it at this meeting. He proposed that it be settled during the upcoming staff discussions.

( ) In the end it was agreed that staff discussions between their respective staffs would prepare proposals to be reviewed by the two CINCs. General Otis pressed for early staffing and a near-term meeting with General Zaytsev to consider the results. General Zaytsev agreed to early staff discussions, but demurred on another CINC-to-CINC meeting to review the results before June or July. The meeting was concluded at 2215, and General Otis immediately made a telephone report of the meeting to General Lawson at USEUCOM and then departed for Heidelberg.[28]

( ) In summation, there were both failures and successes at the meeting. The Soviets had not agreed to accept the blame for Major Nicholson's death, nor would they issue an official apology or pay compensation to the Nicholson family. General Zaytsev did agree to forward the two US demands to higher headquarters. On the positive side, General Zaytsev had made a

profound statement of regret about the tragic incident, and had agreed to announce to his forces a strict policy that prohibited the use of physical force and weapons in any apprehension of military liaison mission members. It was hoped that the upcoming staff discussions would produce positive results in formulating confidence-building measures to improve US and Soviet military relations in Germany.[29]

( ) General Zaytsev's behavior at the meeting was of interest. Unlike the stereotypical Soviet General who storms around and uses abusive language, his low-key approach throughout the meeting was both polite and patient, and yet he remained firm in his defense of the Soviet version of the incident. General Otis observed, "Throughout the discussion General Zaytsev's demeanor, words, appearance, and body language all indicated a man who truly believed what he was saying."[30] General Otis found him to be a "down-to-earth, grassroots soldier -- not a soldier-diplomat." He had come with a written script and initially had read solely from the script. General Otis noted that:[31]

> He didn't appear to be the kind of guy who was comfortable playing that role. And it seemed apparent to him that there was no logic to his script, which seemed to make him uncomfortable. After the first hour, he either ran out of script or just abandoned it.

(U) Aftermath of the Meeting

( ) Immediately after the CINC-to-CINC meeting USAREUR headquarters began working actions in two main areas. The first area required USAREUR to provide information to higher headquarters and indirectly to the media, as both the State and Defense Departments prepared to answer the expected onslaught of media inquiries. The second, and by far more important, area of concentration was in preparing for the upcoming staff discussions between USAREUR and GSFG.

(U) In the early morning hours after the meeting, USAREUR forwarded to Washington a recommended news release and possible questions and answers to be used in briefing the media. Both products were well thought out and succinct, but would not be used until an interagency press release could be developed. Instead, the joint State-Defense press guidance for 13 April only confirmed that there had been a meeting and that there would be further discussions with the Soviets in the near future, but the answer to any substantive question on the meeting would be no comment.[32]

(U) On 15 April the State Department began to present a more complete picture of the meeting. By that time, not only was it acknowledging that the meeting had taken place, but some details of the meeting were being provided by "other officials." They, for instance, revealed that State and Defense had resolved their conflict over proceeding with the meeting prior to receiving an apology by agreeing that it would be a good platform from which to argue forcefully for an apology and compensation. It was also announced that it was expected the two generals would meet again in the "near future."[33]

(U) The official US Government version of the meeting was presented in an interagency press release on 16 April:[34]

> A meeting between General Glenn K. Otis, Commander-in-Chief, US Army, Europe, and General Mikhail M. Zaytsev, Commander-in-Chief, Group of Soviet Forces Germany, took place April 12 in Potsdam to discuss the killing of Major Arthur D. Nicholson and means whereby such incidents may be prevented in the future. The first half took place at the Potsdam Soviet Officers Club and the second half at the US Military Liaison Mission House in Potsdam. The meeting began at approximately 6:00 PM local time and ended at approximately 10:30 PM local time.
>
> We obtained agreement from the Soviets that they will not permit use of force or weapons against the members of our military liaison mission in the future. They also agreed to refer our demand for an apology, and compensation to the Nicholson family, to higher authority.

(U) In response to press questions the State Department spokesman said that it was too early to judge the results of the meeting, but he noted that the Soviets had agreed to take steps to prevent the use of force against members of USMLM, while emphasizing that the Soviets had not apologized or agreed to provide compensation. When asked if the US Government would pursue these issues, he answered that they would be pursued on a "political level." He also confirmed that the two generals and their representatives would continue to meet. When asked about the rumor that the Soviet sentry had been punished, he said he had no confirmation of that story.[35]

(U) This official version of the meeting, along with other developed material, began to appear in various news stories between 16 and 18 April. Mostly they repeated the interagency press release and the questions and answers provided by State, with a few interesting variations. For instance, the Associated Press dispatch speculated that a proposed name change of GSFG to "Soviet Forces in the German Democratic Republic" might be a signal the Soviets were going to drop all pretense of still being a "conqueror" in East Germany, and thus close the Allied military liaison missions -- which they considered an irritation.[36] (It should be noted that the name change did not take place, and the Soviets continued to demonstrate by their actions that they were willing to put up with the "irritation" of Allied MLMs in return for having their SMLMs in West Germany.)

(U) Even more interesting was a Washington Post story that quoted Soviet leader Mikhail S. Gorbachev as saying the Nicholson incident could very well lead to changes in the ground rules on how military liaison missions in Germany operated, and that such an "incident should never happen again." It was also reported that both Gorbachev and other Soviet officials had refused to accept Soviet responsibility for the Nicholson shooting and maintained that the United States was to blame for his death. The story went on to say the Nicholson incident was not expected to preclude the projected summit meeting between Mr. Gorbachev and President Reagan.[37]

( ) The USAREUR headquarters staff, in the meantime, had begun preparations for the upcoming staff discussions. Members of USAREUR's Office of the Deputy Chief of Staff, Intelligence (ODCSI) had brainstorming sessions at which they developed some interesting ideas on confidence-building measures to discuss with the Soviets. Although not all of these proposals would be presented to the Soviets, they revealed an interesting range of thought. They included:[38]

- Periodic CINC-to-CINC and staff-level meetings.

- Balanced and mutual reduction of restricted areas.

- Development of clear definitions of "places of disposition of military units" and "provocative acts."

- Use of readily identifiable uniforms and vehicles by military liaison mission personnel.

- Establishing effective troop education programs on the proper treatment of MLM personnel.

- Strict adherence by MLM personnel to local laws and regulations.

- Strictly cooperative behavior by MLM personnel immediately prior to and during detentions.

- Exchanging observers from various levels at different types of schools, training, and exercises.

- Instituting soldier exchange programs between military units, to include MLM personnel visiting the other side's mission compound.

- Allowing "opposition" security personnel to accompany MLM tours on a periodic basis.

- Development of a communications "hot line."

(U) Concurrently, the Office of the Judge Advocate (OJA) was developing memorandums on the international law aspects of the incident and the negotiations with the Soviets. In the course of transmitting one of these memorandums to CINCUSAREUR, Brigadier General Ronald M. Holdaway, the USAREUR Judge Advocate, strongly recommended that his office be a direct participant in the upcoming staff discussions. General Otis noted on this memorandum on 24 April that he agreed with General Holdaway; General Fiala further noted that he would be sure OJA was involved in the staff discussions.[39]

(U) Actually, OJA had been involved peripherally at least since 2 April, when General Holdaway had forwarded a memorandum on "The Huebner-Malinin Agreement." This was followed by a memorandum on "The Use of Force by Soviet and US Guards" on 3 April. The author of this second memorandum, Major H. Wayne Elliott, Chief of the International Law Division, had sat in on a CAT meeting on 5 April and had come away convinced that "a lawyer should be in the room with the CINC" at the CINC-to-CINC meeting.[40] However, at that point, there had been a perception by some USMLM and ODCSI participants that there were no legal issues involved in the incident, and no action had been taken on Major Elliott's recommendation that OJA should be represented at the CINC-to-CINC meeting.[41] General Fiala would subsequently say, "The main lesson learned from the meeting was that it had international implications and negotiations would be tough. We should have taken someone from the International Law Division to the meeting."[42]

(U) It was obvious after the CINC-to-CINC meeting that the upcoming staff discussions would have international law implications and Major Elliott was later appointed a member of the USAREUR negotiating team. In the interim he continued to turn out the same thoughtful, well-researched memorandums he had been producing from the first. One early memorandum had forcefully argued for prosecuting an international claim against the Soviets for damages in the death of Major Nicholson.[43] (There will be more discussion on the "compensation" issue in upcoming chapters.)

(U) On 16 April Major Elliott prepared a memorandum addressing the thorny question of "restricted areas" and cautioned that, when both parties adopted the same meaning for a treaty provision over a period of years, a binding "customary rule of international law" might be created between the states involved. In this instance it did not apply since the Soviets had not properly advertised, nor had the Allies accepted, this area as being restricted. Interestingly enough, the same binding customary rule of international law, which might have allowed certain areas to be considered "restricted" through acceptance by both parties, also could be applied to the general practice of both the Soviets and the Allies to only detain and ultimately release violators of restricted areas.[44]

(U) The rumor that the Soviets might change the name of GSFG and unilaterally terminate the Huebner-Malinin Agreement -- and thus close the missions -- was addressed in an Elliott memorandum on 17 April. He argued that the agreement had no termination clause, and that its termination would require mutual agreement by both states. He admitted that the Soviets could make it impossible to continue operating the missions from a practical standpoint, but reasoned that the United States should protest the closure on the grounds that the Soviets could not unilaterally terminate an international agreement. He thought the maintenance of this legal position might be important in future US-Soviet treaty relations.[45] Fortunately, the Soviets never did try to terminate the Huebner-Malinin Agreement during the course of the staff negotiations, but Major Elliott's paper was a valuable vehicle for allowing the USAREUR staff to consider a worst-case scenario.

( ) A review of USAREUR headquarters actions and thinking on several key issues as of 18 April will give some indication of staff planning during this period. By 18 April General Otis was preparing a letter to General Zaytsev proposing that the staff discussions begin no later than 15 May, and that they have a follow-up CINC-to-CINC meeting in

June or July. A USAREUR headquarters review indicated that two of the sanctions imposed on the Soviets -- not participating in social events and providing only minimum support to the missions -- were only temporary sanctions that would be lifted at the appropriate time. However, the sanctions of denying interzonal travel and requiring SMLM members to wear visible rank insignia instead of plain leather jackets were both considered permanent restrictions that would be continued because they caused operational difficulties for SMLM members in their intelligence role. In addition, an Allied Tripartite Rapid Reaction Committee had been created on 15 April, and was capable of convening within 48 hours to discuss MLM or other joint interest crises. The three Allied headquarters were exchanging SMLM information daily, and were developing a direct, secure-line communications system for future emergencies.[46]

( ) Part of this interim planning, however, was changed on 18 April when General Fiala briefed General John K. Vessey, the Chairman of the Joint Chiefs of Staff, and General Richard L. Lawson, USEUCOM Deputy Commander.* General Vessey informed General Fiala that Secretary Weinberger and Secretary Shultz had agreed there would be no further CINC-to-CINC discussions until there was a change in the Soviet position on the apology and compensation issues. Staff discussions between the two headquarters could take place, but only for the purpose of developing procedures for preventing future incidents. The 15 May starting date proposed by General Otis was acceptable. General Vessey went on to say the President had decided that the Soviet response to the Nicholson Incident would be the "bellwether for overall US-Soviet relations." USAREUR was instructed: "Do not let the Nicholson Incident go away." The Soviets had been told that the next move was up to them, and that the United States intended to give them the chance to do what was correct. He said that USAREUR and GSFG could not be disconnected from the overall scheme. Even though General Zaytsev might not have the political clout to change things, the Soviet leadership had been informed what was expected of them and should respond accordingly. Although the restriction

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* (U) General Lawson had been, and would remain, a key player in the chain of command between USAREUR and JCS. He ran USEUCOM on a day-to-day basis because the Commander, General Bernard W. Rogers, was also the Supreme Allied Commander and was stationed at the NATO headquarters in Belgium.

on future CINC-to-CINC meetings was a hindrance, focusing the staff discussions on establishing procedures to prevent future incidents was a positive development. It appeared at that point the issues of securing an apology and compensation from the Soviets would be resolved at higher levels of the US Government.[47]

(U) The Soviet Interpretation of the Meeting

(U) The next Soviet move, however, was not a positive one. On 22 April the Soviet Embassy in Washington issued a press statement that contradicted the 16 April American statement, which had said the Soviets had pledged not to use force against US military liaison mission members. The Embassy statement said they "had not renounced the right to take legitimate steps to stop an unknown intruder on an espionage mission."

> The actions of the Soviet sentry were completely lawful. They were not taken against a member of the US military mission, as such, but against an unknown intruder who was carrying out an intelligence mission and did not comply with the warnings of the sentry.

It accused the State Department of distorting the facts of the meeting, and then went on to distort the American statement by claiming it had said the Soviets would consider paying compensation. In fact the American statement had said only that General Zaytsev had agreed to pass on the US demand to higher authority.

(U) Although the Soviets made the same assertions during a meeting at the State Department on 22 April, they did not mention they had released a statement to the press. First to the Soviets, and then to the press when asked about the Soviet statement, the State Department said the Soviet interpretation of the issue was unacceptable, and reaffirmed its previous version of the Otis-Zaytsev meeting. State Department "sources" told the media they were surprised and puzzled by the Soviet statement, and speculated that it might have arisen from differences between military and civilian authorities in Moscow.[48]

(U) The situation was further clouded when a "Western intelligence source" alleged in a 23 April news story that Major Nicholson had carried out an earlier "spy mission" in which he had sneaked into a Soviet tank and photographed the interior. Much in the same vein as earlier news stories which

had depicted the 24 March USMLM tour as an intelligence gathering mission (see Chapter 2), the source alleged that members of the Western MLMs were famed for their risk-taking and occasionally dangerous missions. He also recounted an incident from the prior year in which a French MLM member had been killed when his vehicle had been rammed head-on by a heavy-duty East German military vehicle. "...Some members of the liaison teams regarded [it] as a thinly disguised homicide." Complaints by the French military commander had led to Soviet promises to prevent similar occurrences.[49]

(C) Soviet behavior after the 1984 ramming incident did influence the US reaction to the current situation. On 22 May 1984 in the vicinity of Halle, East Germany, a French MLM vehicle had been deliberately rammed by an East German Army vehicle. The ramming had resulted in the death of the NCO driver of the French vehicle as well as injuring two other passengers. This particular ramming was only one of a series of rammings of vehicles belonging to all three Allied MLMs. The French commander was allowed by his government to handle personally the French response to the incident. Official protests were made by all three Allied military headquarters, and the Soviets orally promised the incidents would stop. It is interesting to note that the incident was kept within military channels, and was handled in a low-key manner by the French. The failure of the Soviets to adhere to their oral promise to end such violent acts against MLM members would become important during the upcoming staff discussions.[50]

(C) These and the early April stories were not the first reports on MLM activities to appear in the media. In a story published exactly one year earlier, on 23 April 1984, a great deal of detail had been provided about the alleged intelligence gathering mission of the MLMs. It had said that monitoring opposing forces for hostile intent was the primary mission of all four MLMs, and asserted that the three Allied missions cooperated very closely in monitoring Soviet and East German military units. The "American diplomat" source had added prophetically:[51]

> There is a great deal of lore about the MLMs. It's not a quiet, refined bunch of people. It's like playing under the basket in the NBA. [National Basketball Association] There's a lot of shoving. Only in extreme cases do fouls get called.

( ) Of course, all of this open discussion about the classified mission of USMLM did not go unnoticed by USAREUR headquarters. Major Tom Smith, one of the CAT members, was of the opinion that the "source" of the more recent leaks was a "green suiter" (a member of the US Army) because the source was very knowledgeable of USMLM operations. Colonel Parnell thought that intelligence agencies should be directed to locate the source of the leak, and that USEUCOM should officially protest to The Stars and Stripes its lack of editorial responsibility for running a story that was "inflammatory and clearly not in the security interests of the US." Although a security probe was run, Major Smith later said that the identity of the "source" was never discovered.[52]

( ) Perhaps the most perceptive thoughts on the leak were provided by Colonel Lajoie. He doubted that a "Western intelligence source" would have knowingly revealed the earlier Nicholson mission because he would have known the severe damage this would cause to USMLM's mission accomplishment and its personnel's safety, and would have realized that the Soviets would use the information in the present situation. He pointed out that after the earlier mission, Major Nicholson and Major Clyde L. Evans (who had actually gone into the tank) had been called back to Washington to brief numerous agencies in the intelligence community. Considering the normal distribution of intelligence reports, there must have been thousands of US Government officials who were aware of the details of the mission. He speculated that the leak may have come from an official who perceived USMLM as a constant annoyance in the greater scheme of US-Soviet relations, and who may have wanted the mission to be closed down.[53]

(U) The US Response to the Soviet Position

( ) In spite of the leak problem, General Otis still had to deal with the immediate situation of what would happen next vis-a-vis the Soviets. When queried by Major General John H. Mitchell, the Berlin Commander, as to how he should behave toward the Soviets, whom he met on an almost daily basis, General Otis forwarded the 18 April instructions from General Vessey and told him to:[54]

> Take a hard line with the Soviets. They speak with two voices (Zaytsev versus Moscow). No unnecessary contacts. Be polite but distant. Major Nicholson is gone, but not forgotten.

/) On 26 April the Interagency Group's response to the Soviet statement was passed to the State and Defense Departments for implementation. Measures to be taken included:[55]

- General Otis should initiate immediate contact with his Soviet counterpart to discuss ways to prevent incidents of violence against our MLM. He should also press for written confirmation from the Soviet side of their instructions that force or weapons will not be used against members of the USMLM.

- USAREUR should resume continual overt surveillance of the Soviet MLMs in the Federal Republic of Germany, and coordinate with the French and British.

- The State Department must continue, through diplomatic channels, to emphasize the unacceptability of the Soviet April 22 statement, demand clarification of the Soviet position, insist on Soviet adherence to the agreement reached by Generals Otis and Zaytsev, and continue to press our demands for an apology and compensation.

- One Soviet military attache stationed in Washington should be declared persona non grata.

(U) Assistant Secretary of State Burt called in a Soviet Embassy official on 26 April to emphasize the unhappiness of the United States with the Soviet response to the Nicholson shooting, to demand clarification of the 22 April Soviet statement, and to raise all of the above mentioned issues, as instructed by the Interagency Group. In order to insure the Soviets did "not take lightly our concerns," a Soviet assistant military attache was declared persona non grata. The State Department press statement on the meeting emphasized that the PNG had been in response to the "unacceptable Soviet position on the killing" of Major Nicholson. Subsequently, a "high-ranking State Department official" would acknowledge to the press that the expulsion was a rather mild act of retaliation and was meant only to signify how deeply upset the United States Government and the American people were over the Soviet failure to accept responsibility for Major Nicholson's murder. The statement also said that General Otis would be "pursuing with the Soviets his mandate for further discussions to prevent incidents of violence against our military liaison mission."[56]

(U) Soviet Countermoves vs US Countermoves

(U) The Soviets showed that they also were capable of exerting pressure through the news media. In an interview with an American newspaper on 25 April, General Zaytsev was reported to have said that the Soviet sentry was "fulfilling his duty" by shooting Major Nicholson, a clear indication the sentry would not be disciplined. He did acknowledge, however, that the decision not to reprimand the soldier had been made by higher Soviet officials. He went on to repeat many of the assertions about the incident he had made at the CINC-to-CINC meeting, and added that the US version was "a distortion -- [it had] nothing to do with reality." He gave no indication about what steps would be taken to preclude such incidents in the future.

(U) The occasion for the interview was the Soviet-sponsored ceremony commemorating the World War II linkup of US and Soviet Forces at Torgau on the Elbe. Although the US Government officially boycotted the 25 April ceremony, it was attended by US veterans from the 69th Infantry Division. General Zaytsev said he was there as a veteran of the Soviet Army that had liberated the area in 1945, not as the Soviet commander in Germany. In response to the announcement 2 days later that the United States would not take part in joint ceremonies with the Soviets to commemorate the end of World War II and Austrian independence, a joint group of US and Soviet veterans announced they were starting a campaign they hoped would lead to every April 25th being celebrated as "Elbe Day." The Soviet veterans were confident their legislature would approve the holiday, and the US veterans hoped to accomplish the same goal in the US Congress.[57]

( ) On the same day as the Zaytsev interview, Arthur Burns, the US Ambassador to the Federal Republic, met with Vyacheslav Kochemasov, the Soviet Ambassador to East Germany, and made a personal, nonpolitical suggestion that the Soviets send a note of condolence to Major Nicholson's widow. He said this would be seen as a positive, human gesture, and could lessen the tension arising from the incident. When Ambassador Kochemasov began repeating the usual Soviet litany as to how the US was at fault, Ambassador Burns interrupted him to say the question of fault had already been discussed, and that was not his purpose in raising the matter. Ambassador Kochemasov replied that the causes of the incident could not be ignored in any discussion on apology. He claimed that actions and resolutions in the US Congress had forced the Soviet side to take a position on principle. He said that while the Soviets regretted the incident, they also protested the violation of

their restricted area by the tour. He asked why the US did not apologize for USMLM's violation of the PRA. He added that the issue had been fully discussed by the two CINCs, and they had agreed that the MLMs "must not violate the sovereignty of the GDR," that the 1947 agreement must be strictly adhered to, and that Major Nicholson had been in a military area. Ambassador Burns said that there was no sense in pursuing the issue since the Soviet Ambassador did not appear to understand his humanitarian suggestion. Ambassador Kochemasov said he understood, and that he was not a machine. Somewhat defensively he asked, "Do you think we are happy [with] what happened?"[58]

( ) In view of all the turmoil as to what had been said and agreed to at the CINC-to-CINC meeting, USAREUR asked higher headquarters on 28 April for clarification as to whether it should continue planning for staff discussions. It also forwarded a proposed letter from General Fiala to the GSFG Chief of Staff, which suggested beginning the staff discussions on 15 May.[59]

(S) General Vessey responded on 29 April that the Soviet interpretation of the meeting had required a change in his 18 April instructions (see above). Rather than sending a letter from General Fiala requesting the start of staff discussions, USAREUR was instructed to prepare a letter from General Otis to General Zaytsev requesting another CINC-to-CINC meeting to discuss ways to prevent incidents of violence against MLM members. General Otis should insist on written confirmation from the Soviets of their instructions that force or weapons would not be used against MLM members, regardless of the reason. If needed, the USAREUR and GSFG staffs could do follow-up work, and should report their findings in 30 days. General Vessey also briefly outlined the actions the State Department would be taking in accordance with the 26 April Interagency Group decisions. He concluded by directing that USAREUR -- after coordinating with the British and French -- resume overt surveillance of SMLM.[60]

(S) On 30 April USAREUR forwarded to higher headquarters General Otis' proposed letter, in which he reviewed the points he and General Zaytsev had agreed to at their meeting, quoted the GSFG policy procedures for detaining MLM members, and asked for confirmation that these were in fact GSFG's policy procedures. Since there had been public statements which had served to confuse the agreements they had reached, General Otis said it was necessary they meet again to resolve these issues prior to beginning the staff discussions.

( ) In the same message, USAREUR informed higher headquarters that it was taking actions to conduct overt surveillance of SMLM and that the British and French would conduct surveillance operations within their capabilities. The command also sought guidance on US policy in regard to Soviet attendance at upcoming national holiday celebrations -- the British Queen's Birthday, French Bastille Day, and US Independence Day. Traditionally, the Soviets had been invited to Allied national holiday celebrations, which the MLMs observed with social events such as parties and picnics. In still another question about participating in social events, USAREUR asked about the expected attendance by members of the US Allied Contact Section at SMLM's celebration of Victory-in-Europe (V-E) Day. Members of SMLM in Frankfurt traditionally observed V-E Day by placing a wreath in a Soviet Cemetery near Butzbach, which was in a PRA. They normally took along other Soviet nationals who were stationed in the Frankfurt area, and were escorted into the PRA by members of the US Allied Contact Section. In the past, members of the US Allied Contact Section had been invited to the reception which followed the ceremony. And, as in the past, the Soviets had already requested special rations for the occasion. USAREUR recommended that the SMLM members only be escorted to Butzbach in order to conduct the ceremony in the PRA, and that US Allied Contact Section personnel not attend the reception. It further recommended that the Soviet request for special rations be denied.[61]

( ) USEUCOM concurred with the proposed letter and the USAREUR plan for minimum support of SMLM's V-E Day celebration. It also recommended that the Soviets not be invited to Independence Day celebrations.[62] General Vessey concurred on 30 April with the proposed letter, exclusion of the Soviets from the US Independence Day celebration,* and USAREUR's plan for minimum support of the Soviet celebration of V-E Day. Suggested guidance for the British and French would be provided at a later date.[63]

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* ( ) Colonel Lajoie subsequently would finesse the whole issue by cancelling USMLM's Independence Day picnic due to Potsdam House being renovated. It was hoped the Soviets would conclude it had been cancelled due to the Nicholson shooting. The cancellation also would give the Allies more latitude in deciding whom they would invite to their national holiday celebrations, since -- under these circumstances -- they would not be perceived as breaking ranks with the United States. SOURCE: Msg, CUSMLM to ODCSI (AEAGB-C[HO]), 161300 May 85, subj: USMLM Independence Day Picnic. OADR.

( ) While USAREUR was staffing these more stringent sanctions against the Soviets, the Soviets began reacting to the sanctions which had already been imposed. On 30 April the Deputy Chief of SERB asked Lieutenant Colonel Kelley why USAREUR headquarters had not responded to SMLM-F's protest about its personnel being denied permission to go to Bonn or to the other SMLMs in the Federal Republic, and of the reduction of its rations. He said that although he did not generally support the use of reciprocity in such matters, some kind of retaliation could occur in the absence of relief for SMLM in Frankfurt. He asked Kelley's assistance in resolving the issues.

( ) Lieutenant Colonel Kelley cautioned USAREUR that the Soviets could retaliate by making Potsdam a PRA, or by limiting USMLM to strictly 14 tour personnel. As a consequence, he recommended the Soviets be told that SMLM-F's requests were "under study," which was the same answer the Soviets had been giving to USMLM's queries about the status of reducing PRAs in East Germany. He further recommended that the ration of American coffee being given to SMLM -- the only example of reduced rations provided by the Soviets -- be given to USMLM, and that USMLM would be happy to pass on to SMLM the coffee the Soviets had been providing to them.[64]

( ) Of more immediate concern to Lieutenant Colonel Kelley and other members of USMLM was the addition on 30 April of CINCUSAREUR's restrictive touring guidance to USMLM's standing operating procedures. This formal statement of USMLM touring guidance replaced General Gordon's 1 April informal "play it cool" instructions, which were thought to have been temporary. General Otis wanted to insure that USMLM personnel would continue to be "more careful on tours." He reminded them that although General Zaytsev had said GSFG policy prohibited violence against mission members, he had justified in the same breath the actions of his sentry at Ludwigslust. In the absence of Soviet concern for their safety, USMLM personnel were to take steps to reduce as much as possible the likelihood of shooting incidents. USMLM personnel were to constantly weigh risks versus gains and attempt to avoid situations which would provide a pretense for violent acts by either the Soviets or East Germans. They were told a tour must assume that whenever it entered an armed sentry's area of responsibility, it was in danger. If a tour sighted an armed guard or had reason to suspect that an armed guard was present, it was to immediately break off coverage of the target. "No one will ever be criticized for failing to cover a target because the potential risk is judged to be too great."[65]

( ) 30 April was a busy day on many fronts. In addition to the above mentioned events, in Washington the State Department called in a Soviet Embassy official and presented a note asserting a claim for compensation on behalf of Major Nicholson's family. The note stated:[66]

> The United States holds the Soviet Union responsible under international law for the wrongful actions of the members of the Soviet Armed Forces that resulted in the death of Major Nicholson. The United States requests, therefore, that the Soviet Union provide prompt, adequate and effective compensation for the bereaved family of the slain officer as required by every consideration of humane treatment and customary law among nations.

( ) The Soviet Embassy official responded that US and Soviet interpretations of the event were at variance, and he was unable to accept a note based solely on the US interpretation. He did agree to transmit all of the information in the note to Moscow. He concluded by noting what he called the "problem of various public statements." He thought that there was a kind of action-reaction at work in this situation, and that it was best not to go public.[67]

( ) US military circles were discussing Soviet public statements and the language used in those statements. As early as 26 April Colonel Lajoie had cautioned that part of the controversy might be over not what had actually been said at the meeting, but in the interpretation of those words by both sides. He noted that although General Zaytsev had said it was his command's policy not to use violence against USMLM members, he had contended consistently that Major Nicholson had been an unrecognized intruder on the sentry's post. General Zaytsev had agreed only to reiterate the GSFG detention instructions to his soldiers. Colonel Lajoie thought the US side had taken this as a pledge not to use violence against USMLM members in the future, when General Zaytsev probably had meant only to say that they would not commit acts of violence if they knew the intruder was a member of USMLM. Following that line of reasoning, Colonel Lajoie said, "If you're dead, you must be an intruder." In his opinion the Soviets never meant to make such a promise, and he did not recommend that sanctions be initiated against them because of the unacceptability of their public statements.[68]

( ) On 1 May, in a review of Soviet public statements on the incident and the meeting, USEUCOM said the Soviets had consistently attempted to justify the murder of Major Nicholson on the basis of his being an unknown "intruder." USEUCOM argued that the US side should refute publicly this and other

Soviet claims because it feared the international community would believe the Soviet claims, if they were not challenged by the US side. The Soviet Union should not be allowed to "explain its way out of the situation." Major Nicholson's shirt and the USMLM vehicle, as well as any other supporting evidence, should be shown to the media to demonstrate that there could not have been any confusion as to the identity of the USMLM tour.[69] (Although the shirt and vehicle were not exhibited, a much more extensive, "for the record" version of the Nicholson Incident was later released to the media.)

( ) General Otis thought there must have been a misunderstanding within the Soviet hierarchy as to what had been agreed to at the meeting. He said the confusion had begun with the erroneous statement issued by the Soviets' Washington Embassy right after the meeting. The facts were that he and General Zaytsev had formulated an agreement that force and violence would not be used against MLM personnel, but General Zaytsev had never varied from the Soviet position that his sentry had shot an unknown intruder, and that Major Nicholson had been at fault. They had not reached an agreement on the apology and compensation issues.[70]

( ) General Otis' 1 May letter to General Zaytsev, in which he outlined his understanding of what had been accomplished at their first meeting and requested an early meeting to confirm their agreements, was delivered simultaneously on 2 May to SERB in Potsdam and SMLM in Frankfurt. (See Appendix B for text of letter.) The 10-minute meeting at SERB was uneventful, with the Soviets promising to deliver the letter as soon as possible. The Chief of SERB did say that it had been his understanding the next meeting would be between the staffs, and wondered what purpose would be served by another CINC-to-CINC meeting if General Otis' questions were answered in General Zaytsev's response. Colonel Lajoie merely referred back to the wording of the letter and said that he was not authorized to speculate or amplify on the text.[71]

( ) The meeting for delivering the letter to the Chief of SMLM in Frankfurt, however, lasted for over an hour. During the meeting, General Shevtsov raised several questions about sanctions that had been imposed on SMLM. Although Major Wyckoff purposely was not very responsive, General Shevtsov tried very hard to reestablish the good working relationship SMLM had previously enjoyed with the US Allied Contact Section. He was particularly apologetic for the reduced-rations question having been raised to higher levels, and readily agreed that the 9-12 pounds of coffee being furnished each week was well within the minimum support required by the

Huebner-Malinin Agreement. In passing, General Shevtsov provided a soldier's viewpoint of the Soviet general guard instructions. He said that a sentry who followed his orders properly was immune from prosecution. Only commanders in the sentry's chain of command could safely approach a sentry on duty. He said the sentry regulations were approved by the Supreme Soviet and could not be altered by GSFG.[72]

( ) Although General Shevtsov was not aware of it, the sanction of continuous, overt surveillance of SMLM tour vehicles was being reimposed on 2 May.[73]

( ) After having said at the 30 April State Department meeting that too much was being said in the media (see above), on 1 May the Soviets released a new statement through TASS entitled: "Would It Not Be Better To Take A Responsible Approach?" Although the TASS statement only reiterated previous Soviet contentions on the Nicholson Incident, it did present a new slant on the Soviet version of the Otis-Zaytsev meeting. The Soviets asserted the two generals had agreed that weapons "have not been used, are not used, and will not be used" -- even in situations where MLM personnel did not observe agreed upon rules of conduct. Although the statement absolved the guard of misconduct and did not offer an apology or compensation, it was a public reiteration of the Soviet pledge not to use weapons against USMLM personnel. It allowed the Soviets to get the non-use-of-force issue back on the public record, without appearing to have made a concession.

( ) The TASS statement told the Soviet people for the first time that the United States had demanded an apology and compensation for the killing of Major Nicholson. While expressing "regret" for the outcome of the incident and a "human understanding for the suffering of Major Nicholson's family," it made clear the Soviets had no intention of complying with US demands for either.

( ) Of great interest to the United States was that the TASS release made no mention of the Soviet defense attache being declared persona non grata. It simply said that "certain steps" had been taken by Washington, "which have evoked widespread protest."

( ) The more moderate line of the TASS statement seemed to indicate the Soviets were aware they had made a mistake in appearing to have reneged on the agreements reached at the Otis-Zaytsev meeting and were attempting to get the situation back to where it had been before the Soviet Embassy's statement

had clouded the issue. By not referring to the PNG, the Soviets also seemed to be signaling that they wished to avoid further escalating the controversy.[74]

( ) Colonel Lajoie said the statement's reference to the Nicholson family's suffering was probably as close to an apology as the Soviets would ever offer. He noted, however, the two CINCs had not agreed that violent acts had not happened and would not happen to MLM members, only that they should not happen. General Otis had not accepted General Zaytsev's formula that the sentry had not violated GSFG's policy against committing violent acts against MLM members since Major Nicholson was an unidentified intruder; and General Zaytsev had not accepted General Otis' contention that violent acts should not be committed against USMLM members, regardless of the circumstances. General Zaytsev seemed to be saying that it was not the responsibility of Soviet sentries to ensure that unidentified intruders were not USMLM members; it was the responsibility of USMLM members to stay away from Soviet military facilities.[75]

(U) General Zaytsev confirmed this latter point in a 5 May letter that answered the BAOR commander's letter of protest (see above). After brusquely dismissing any British interest in the incident -- "the incident...is the exclusive concern of bilateral relations between GSFG and the Ground Forces of the USA in Europe" -- he went on to state:[76]

> I am deeply convinced that the most reliable guarantee of the safety of members of military liaison missions is contained in strict observation of their agreements of 1946 and 1947. [The Soviets had concluded MLM agreements similar to the Huebner-Malinin Agreement with the British in 1946 and the French in 1947.]

(U) On 13 May General Zaytsev further clarified his position on this and other related issues, which had been raised in General Otis' 1 May letter requesting confirmation of agreements reached at their meeting. General Zaytsev charged that "it was not the Soviet side which initiated new assertions and formulations concerning the actual circumstances of the incident." He continued: "The Soviet position was presented to you with extreme clarity at our last meeting. I consider it advisable to present it once more."

(U) He reiterated that strict observance by the members of their MLMs of the Huebner-Malinin Agreement would guarantee

their safety -- the agreement permitted complete freedom of travel "except for places of disposition of military units." He added that the mutual acceptance of the PRA concept had ensured the effectiveness of this provision of the agreement, and he saw no basis for revising this provision of the agreement. (As had been predicted by Major Elliott, the Soviets were using the "customary rule of international law" to justify continuing the use of PRAs rather than the more restrictive "except for places of disposition of military units" provision of Huebner-Malinin. See above.)

(U) Next he confirmed their agreement that members of the MLMs must not take any provocative actions. He noted that General Otis had not mentioned in his letter the Soviet contention that a corollary of this was that members of the MLMs should strictly respect the laws of the country where they were located.

(U) Last, but certainly not least, he confirmed they had agreed that both sides had policies against committing acts of violence against members of MLMs. But he stressed that this policy differed from the actions required of a sentry on his post when he detected an intruder who failed to submit to his demands.

(U) He concluded by advising that the two staffs should begin working on practical measures to preclude future incidents. Although he saw no need for a CINC-to-CINC meeting at this time, he would attend one in Potsdam on 16 May, if General Otis thought it was still necessary.[77] (See Appendix B for full text of letter.)

( ) General Otis noted that General Zaytsev had put in writing that the Soviets would not use force against members of MLMs. It was clear, however, that General Zaytsev was going to hew to the party line that this policy did not preclude Soviet guards from shooting "unidentified intruders." General Otis concluded that this was as far as General Zaytsev could go, and recommended that the US side accept his statement of renunciation of force against MLM members. As a consequence, he did not think another CINC-to-CINC meeting would be useful at that time.

( ) General Otis advised addressing the divergence between the US and Soviet versions of the facts of the incident in the staff discussions and dealing with the apology and compensation issues in diplomatic channels. Overall focus of the staff discussions would be on interpreting provisions of

the Huebner-Malinin Agreement and on developing measures to preclude recurrences of violent incidents.[78]

(U) US-Soviet Agreement to Begin Staff-Level Discussions

( ) USEUCOM concurred with General Otis' assessment of the situation and recommended to JCS that the staff discussions commence as soon as possible.[79] On 15 May JCS agreed that staff-level discussions would be more appropriate than another CINC-to-CINC meeting and requested that the proposed agenda be reviewed in Washington prior to presentation to the Soviets.[80]

(U) On 15 May Major Wyckoff passed an oral message to SMLM in Frankfurt that General Otis agreed it was not necessary to have another CINC-to-CINC meeting prior to the staff-level discussions and that General Otis would send a letter in the next few days explaining his thoughts for the staff-level discussions.[81]

(U) General Otis' 16 May letter said that, after reviewing the points presented in General Zaytsev's 13 May letter, another meeting between them was not necessary prior to staff-level discussions; he was instructing his staff to arrange for these discussions immediately. General Otis said he expected the discussions to develop procedures to insure the physical safety of all MLM personnel -- irrespective of circumstances or conditions -- and to find a mutually agreed upon interpretation of movement restrictions of their respective missions. He proposed that the discussions begin on 23 or 24 May.[82] (See Appendix B for text of letter.)

( ) General Otis' letter was delivered simultaneously on 17 May to SMLM and SERB. The SMLM representative received the letter without comment. The Chief of SERB, however, said the Soviets were eager to begin the staff-level discussions, and immediately began to discuss preliminary arrangements for the meetings.[83]

( ) On 20 May Colonel Lajoie was informed by SERB that General Zaytsev had agreed to beginning the staff-level discussions on 23 or 24 May.[84]

(U) With the staff-level discussions now a certainty, the USAREUR staff increased the pace of its preparations for the first meeting. These preparations and the meeting itself will be discussed after Chapter 5, which provides background information on prior US Army and Soviet Army negotiations in Germany.

CHAPTER FOUR FOOTNOTES

1. Intvw, Mr. Stacy w/GEN G.K. Otis, CINCUSAREUR, 7 Aug 86. OADR.

2. (1) Ltr, GEN M. Zaytsev, CINCGSFG, to GEN Otis, 31 Jan 85, no subj. UNCLAS. (Copy in USMLM Unit Hist, 1985, p. 59. [info used UNCLAS].) (2) Msg, CINCUSAREUR (AEACC) to USCINCEUR (ECDC), et al., 211210 Mar 85, subj: Proposal for CINCUSAREUR - CINCGSFG Meeting. OADR.

3. GEN Otis Intvw. OADR.

4. Msg, SECDEF to AIGs 8798 & 8799, 042258 Apr 85, subj: DoD News Briefing. UNCLAS.

5. The Stars & Stripes (Eur ed), 4 Apr 85, p. 24. UNCLAS.

6. (1) Msg, SECSTATE to All Eur Dipl Posts, 050525 Apr 85, subj: Eur Daily Press Guidance 4/04/85. (2) The Stars & Stripes (Eur ed), 6 Apr 85, p. 5. Both UNCLAS.

7. Memo, Pres Ronald Reagan to Hon C.W. Weinberger, SECDEF, 7 Apr 85, subj: Meeting with Soviet Authorities on Major Nicholson's Murder. OADR.

8. Msg, JCS (CJCS) to USCINCEUR, 091255 Apr 85, subj: Approach to Soviets on Killing of Major Nicholson. OADR.

9. MG Fiala Intvw. OADR.

10. Msg, USCINCEUR (ECCS) to JCS (J5), 041821 Apr 85, subj: MAJ Nicholson Incident. OADR.

11. (1) Msg, CUSMLM (AEUS) to CINCUSAREUR (AEAGB-C[HO]), et al., 062030 Apr 85, subj: Meeting With Chief, Soviet External Relations Branch, GSFG. (2) Msg, CINCUSAREUR (AEAGX) to AMEMBASSY Bonn (POL-MIL), 081508 Apr 85, subj: SAB. Both & OADR.

12. (1) Memo, w/incl, "P.M." (COL P.L. McFadden, CINCUSAREUR's Exec Off) to USAREUR CofS, 8 Apr 85, subj: Meeting with Chief, Soviet External Relations Branch, GSFG. AEACC. (2) Msg, AMEMBASSY Bonn to SECSTATE, 081051 Apr 85, subj: US Military Liaison Mission Meeting With Soviet Military Representatives. Both & OADR.

13. (1) Ltr, GEN Zaytsev to General Otis, 9 Apr 85, no subj. No. 157. UNCLAS. (2) Ltr, MG Fiala to GEN Zaytsev, 10 Apr 85, no subj. UNCLAS. (3) Msg, CINCUSAREUR (AEAGX) to JCS (CJCS), 101320 Apr 85, subj: Soviet Military Position on MAJ Nicholson Affair. OADR. (4) MFR, MAJ Wyckoff, 10 Apr 85, subj: Exchange of CINC Letters. AEAGX-ACS. (5) Msg, CUSMLM to ODCSI (AEAGB-C[HO]), 111000 Apr 85, subj: Reaction to Zaytsev LTR. (6) USMLM Unit Hist, 1985, p. 107. (4) - (6) OADR.

14. (1) Ltr, GEN-COL G.Krivosheyev, GSFG CofS, to MG Fiala, 11 Apr 85, no subj. No. 164. UNCLAS. (2) Ltr, GEN Otis to GEN Zaytsev, 11 Apr 85, no subj. UNCLAS. (3) Msg, CUSMLM to ODCSI (AEAGB-C[HO]), 111300 Apr 85, subj: GSFG Response to C/S USAREUR Letter of 10 April. OADR. (4) Msg, CINCUSAREUR (AEAGX) to USCINCEUR (ECDC/ECCC), 111915 Apr 85, subj: CINC to CINC Meeting. OADR. (5) Msg, JCS (CJCS) to USCINCEUR (ECDC), 102258 Apr 85, subj: Soviet Military Position on MAJ Nicholson Affair. OADR. (6) Msg, CUSMLM (AEUS) to CINCUSAREUR (AEAGB-C[HO]), 111930 Apr 85, subj: Delivery of 11 Apr CINCUSAREUR Letter to SERB. OADR.

15. (1) Msg, ODCSI (AEAGB-C[HO]) to CUSMLM, 250825 Mar 85, no subj. (2) Msg, CUSMLM to ODCSI (AEAGB-C[HO]), 251100 Mar 85, subj: Debriefing. (3) Intvw, Mr. Stacy w/Sgt J.G. Schatz. ALL & OADR.

16. (1) Sworn Statement by CW2 J.J. Unruh, Sp Agt in Charge, Berlin CID, 9 Apr 85. UNCLAS. (2) Chronology compiled by MAJ Smith, 24-25 Mar 85. OADR. (3) Ltr, CPT E.R. Manske, USAREUR Asst AG, to COL W.L. Hatcher, 1st PERSCOM DCdr, 25 Mar 85, subj: Appointment of Investigating Officer. UNCLAS. (4) Memo, w/Report of Proceedings of Investigating Officer, COL Hatcher to CINCUSAREUR, 9 Apr 85, subj: AR 15-6 Investigation of the Fatal Shooting of Major A.D. Nicholson, Jr. (info used UNCLAS).

17. COL Hatcher Rept of AR 15-6 Invest. (info used UNCLAS).

18. (1) Ibid. (info used UNCLAS). (2) CW2 Unruh Statement, 9 Apr 85. UNCLAS. (3) EX 28 of AR 15-6 Invest, Investigating Officer's Statement (COL Hatcher), no date. (4) Intvw, Mr. Stacy w/COL Roland Lajoie, C/USMLM, 3 Apr 86. (5) Intvw, Mr. Stacy w/LTC L.G. Kelley, USMLM NAVREP, 3 Apr 86. (6) Intvw, Mr. Stacy w/Sgt J.G. Schatz, USMLM, 3 Apr 86. (3) - (6) & OADR.

19. (1) Msg, w/MG Fiala note, AMEMBASSY Bonn to SECSTATE, 091620 Apr 85, subj: MLM Shooting Incident. OADR. (2) Reuters News Story, 10 Apr 85, Mr. Mark Wood, "Soviet Guard Who Shot US Major Faces Disciplinary Measures." UNCLAS. (3) Msg, ASAC Eur (AEAGB-C[CM])to 66th MI GP (IAGPE-OI-M), et al., 100827 Apr 85, subj: Collection Emphasis Tasking. (4) Msg, USCINCEUR to JCS/DIA, 101120 Apr 85, subj: Collection Emphasis Tasking. (3) - (4) OADR.

20. (1) Msg (draft), CINCUSAREUR (AEACC) to USCINCEUR, no DTG (ca 10 Apr 85), subj: Approach to Soviets on Killing of Major Nicholson. OADR. (2) Msg, w/FONECON amend, USCINCEUR (ECDC) to USAREUR (AEACC), 101045 Apr 85, subj: SAB. OADR.

21. (1) Intvw, Mr. Stacy w/Mr. B.H. Siemon, USAREUR Chief Historian, 8 May 87. (2) MG Fiala Intvw, 4 Jun 86. Both & OADR.

22. (1) USMLM Unit Hist, 1962, pp. 70-72. (2) Rept on "United States Liaison Mission Incident of 20 March 1962," n.d. [ca. Apr 62]. AEAGB. (info used). (3) William E. Ellis & Thomas J. Cunningham, Jr., Clarke of St. Vith: The Sergeants' General, (Cleveland: Dillon/Liederbach, 1974), pp. 271-80. UNCLAS. (4) MG Fiala Intvw, 4 Jun 86. CONF. OADR. (5) USMLM Unit Hist, 1985, p. 107. OADR.

23. Draft ca. 10 Apr 85 CINCUSAREUR Msg. OADR.

24. (1) Msg, CINCUSAREUR (AEAGX) to DCINCEUR, 121548 Apr 85, subj: CINC to CINC Meeting on Nicholson Incident. OADR. (2) Msg, USCINCEUR to SECDEF, 122000 Apr 85, subj: SAB. UNCLAS.

25. Memo, w/incls, COL Parnell to GEN Otis, 12 Apr 85, subj: Guidance on Nicholson Affair. OADR.

26. (1) GEN Otis Intvw, 7 Aug 86. (2) MG Fiala Intvw, 4 Jun 86. (3) MFR, LTC Johnson to DCSI, 16 Apr 85, subj: Chronology of Events Prior to CINC-to-CINC Meeting. AEAGB-C(HO). All & OADR.

27. (1) Msg, CINCUSAREUR (AEAGX) to DCINCEUR (ECDC), 121352 Apr 85, subj: CINC to CINC Meeting on Nicholson Incident. (info used . OADR. (2) Msg, CUSMLM to ODCSI (AEAGB-C[HO]), 121400 Apr 85, subj: GSFG Response to CINCUSAREUR Ltr of 11 Apr. (3) Memo, LTC Johnson to ADCSI, ca. 12 Apr 85, subj: CINC-to-CINC Meeting -- 12 Apr 85. No

file. (4) Msg, CUSMLM to CINCUSAREUR (AEAGB-C[HO]), 130330 Apr 85, subj: CINC-[to]-CINC Visit Concerning Nicholson Shooting. (5) USMLM Unit Hist, 1985, pp. 107-08. (2) - (5) All & OADR.

28. (1) Stenographer's Transcript of CINC-to-CINC Meeting, CW3 Paul K. Wood, USAREUR OSGS, 12 Apr 85. (2) Transcript of taped report made by GEN Otis, subj: Meeting With General Zaytsev - 12 Apr 85. (3) Personal Notes of GEN Otis on the CINC-to-CINC Meeting, 12 Apr 85. (4) Msg, CINCUSAREUR (AEACC) to JCS (CJCS), 130236 Apr 85, subj: Summary of CINC-to-CINC Meeting on Nicholson Incident. (5) Msg, CINCUSAREUR (AEAGX) to USEUCOM (ECCS), 251310 Apr 85, subj: MAJ Nicholson Incident. (1) - (5) & OADR. (6) Msg, CUSMLM to CINCUSAREUR (AEAGB-C[HO]), 140330 Apr 85, subj: CINC-[to]-CINC Visit Concerning Nicholson Shooting. OADR.

29. 130236 Apr 85 CINCUSAREUR Msg. OADR.

30. Transcript of taped report made by GEN Otis, subj: Meeting With Gen Zaytsev - 12 Apr 85. OADR.

31. GEN Otis Intvw, 7 Aug 86. OADR.

32. (1) Msg, CINCUSAREUR (AEAGX) to JCS (CJCS), 130232 Apr 85, subj: CINC to CINC Meeting on Nicholson Incident. (info used UNCLAS). (2) Msg, SECSTATE to AMEMBASSY Bonn, et al., 130716 Apr 85, subj: Press Guidance on Otis-Zaytsev Meeting. UNCLAS.

33. Telex copy of UPI story on meeting, 15 Apr 85, no subj. UNCLAS.

34. Msg, SECSTATE to All Eur Dipl Posts, 170114 Apr 85, subj: Eur Daily Press Guidance 4/16/85. UNCLAS.

35. Ibid. UNCLAS.

36. (1) Msg, AMEMBASSY Bonn to USCINCEUR, et al., 171136 Apr 85, subj: New York Times Article on Otis/Zaytsev Meeting. (2) The Stars & Stripes (Eur ed), 17 Apr 85, p. 28; 18 Apr 85, pp. 1 & 24. All UNCLAS.

37. International Herald Tribune, 18 Apr 85, p. 2. UNCLAS.

38. Memo, LTC Johnson to DCSI, 16 Apr 85, subj: Confidence Building Measures. AEAGB-C(HO). OADR.

39. Memo, w/notes by GEN Otis [24 Apr 85] & MG Fiala [25 Apr], BG R.M. Holdaway, USAREUR JA, to CINC, 16 Apr 85, subj: Huebner-Malinin Agreement. AEAJA. UNCLAS.

40. (1) Memos, BG Holdaway to CINC, 2 Apr 85, subj: Huebner-Malinin Agreement; & 3 Apr 85, subj: Use of Force by Soviet and US Guards. AEAJA-IA. (2) Memo, MAJ H.W. Elliott, C/Intl Law Div, to JA, 5 Apr 85, subj: Nicholson Incident. AEAJA-IL. All UNCLAS.

41. Intvw, Mr. Stacy w/LTC H. Wayne Elliott, USAREUR OJA C/Intl Law Div, 5 May 86. (info used UNCLAS).

42. MG Fiala Intvw, 4 Jun 86. (info used UNCLAS).

43. Memo, MAJ Elliott to JA, 4 Apr 85, subj: International Legal Issues re Major Nicholson. AEAJA-IL. UNCLAS.

44. Memo, MAJ Elliott to JA, 16 Apr 85, subj: Huebner-Malinin Agreement: Subsequent Practice. AEAJA-IL. UNCLAS.

45. Memo, MAJ Elliott to JA, 17 Apr 85, subj: Soviet Unilateral Termination of Huebner-Malinin. AEAJA-IL. UNCLAS.

46. (1) Fact Sheet, w/incl, Mr. R.L. Gambolati, ODCSI CI, ca 18 Apr 85, subj: Future CINC to CINC Meetings. AEAGX [AEAGB-CI(SO)]. (2) Note cards used by CofS when briefing CJCS, 18 Apr 85. Both & OADR.

47. MFR, w/incls, COL McFadden, 19 Apr 85, subj: Meeting, Stuttgart Airfield, 18 Apr 85. AEACC. (info used). OADR.

48. (1) The Stars & Stripes (Eur ed), 24 Apr 85, pp. 1 & 28. (2) International Herald Tribune, 24 Apr 85, pp. 1-2. (3) Msg, SECSTATE to All Eur Dipl Posts, 230140 Apr 85, subj: Eur Press Guidance 4/22/85, Statement on Nicholson Shooting. (4) Msg, SECSTATE to All Eur Dipl Posts, 240149 Apr 85, subj: Eur Daily Press Guidance. (1) - (4) UNCLAS. (5) Msg, JCS (DJS) to USCINCEUR, 281740 Apr 85, subj: Soviet Killing of MAJ Nicholson. (info used UNCLAS).

49. The Stars & Stripes (Eur ed), 25 Apr 85, pp. 1 & 24. UNCLAS.

50. (1) Memo, Mr. Gambolati to COL Beinhacker, C/ODCSI CI, 29 Mar 84, subj: FMLM Fatal Accident, 22 Mar 84. AEAGB-CI(SO). (2) DF, DCSI to CofS, 4 Apr 84, subj: 22 March 1984 Ramming Incident Against the French Military Liaison Mission. AEAGB.

(3) Msg, CINCUSAREUR (AEAGX) to USCINCEUR (ECJ2-P) & AMEMBASSY Bonn (POL-MIL/Berlin Unit), 051129 Apr 84, subj: SAB. All & OADR.

51. International Herald Tribune, 23 Apr 84, p. 2. UNCLAS.

52. (1) HQ AE Form 1089 (Routing Slip), with incls, "Bill" (Col Parnell) to CofS, 25 Apr 85, no subj. No file. (2) MAJ Smith Intvw, 29 Apr 86. Both & OADR.

53. Msg, CUSMLM to ODCSI (AEAGB-C[HO]), 251500 Apr 85, subj: NYT Article RE: Nicholson Tank Exploitation. OADR.

54. (1) Msg, w/notes, Berlin to USAREUR, 231247 Apr 85, subj: Meeting With Chairman, JCS, 18 April 1985. (2) Draft Msg, USAREUR to Berlin, ca 25 Apr 85, subj: SAB. Both & OADR.

55. Memo, Mr. R.M. Kimmitt, NSC Ex Sec, to Mr. N. Platt, State Ex Sec, & COL R.J. Affourtit, DoD Ex Sec, 26 Apr 85, subj: Response to the Nicholson Shooting ( ). OADR.

56. (1) Msg, SECSTATE to AMEMBASSY Moscow, et al., 272018 Apr 85, subj: April 26 Burt-Sokolov Meeting on Nicholson Shooting. (info used UNCLAS). (2) Msg, SECSTATE to All Eur Dipl Posts, 271855 Apr 85, subj: Press Statement on Nicholson Shooting. UNCLAS. (3) The Stars & Stripes (Eur ed), 28 Apr 85, pp. 1 & 28. UNCLAS.

57. (1) Msg, SECSTATE to All Eur Dipl Posts, et al., 270051 Apr 85, subj: Eur Daily Press Guidance 4/26/85. (2) The Stars and Stripes (Eur ed), 27 Apr 85, pp. 1 & 28. (3) Msg, AMEMBASSY Bonn to USCINCEUR, 291309 Apr 85, subj: MLM Shooting Incident. All UNCLAS.

58. Msg, USMISSION USBerlin to SECSTATE, 271040 Apr 85, subj: Berlin: April 25 Meeting Between US and Soviet Ambassadors. . OADR.

59. (1) Msg, CINCUSAREUR (AEACC) to USCINCEUR (ECDC), 280940 Apr 85, subj: Follow-up Action re Nicholson Murder. (2) Msg, USCINCEUR (ECDC) to JCS (CJCS), 281305 Apr 85, subj: SAB. Both & OADR.

60. Msg, JCS (CJCS) to USCINCEUR, 292055 Apr 85, subj: Soviet Killing of MAJ Nicholson. OADR.

61. Msg, CINCUSAREUR (AEACC) to USCINCEUR (ECCS), 301115 Apr 85, subj: MAJ Nicholson Killing. OADR.

62. Msg, USCINCEUR (ECDC) to JCS (CJCS), 301340 Apr 85, subj: MAJ Nicholson Killing. OADR.

63. (1) Msg, JCS (CJCS) to USCINCEUR, 302130 Apr 85, subj: Soviet Killing of MAJ Nicholson. (2) Msg, USCINCEUR (ECDC) to USAREUR (AEACC), 011300 May 85, subj: SAB. Both [illegible] OADR.

64. Msg, CUSMLM (LTC Kelley) to ODCSI (AEAGB-C[HO]), 011100 May 85, subj: Meeting With Deputy Chief of SERB, 30 April 85. OADR.

65. USMLM SOP, 2 Jul 85, Atch G, subj: USMLM Touring Guidance, 30 Apr 85, p. II-G-1. OADR.

66. Msg, SECSTATE to AMEMBASSY Bonn, 020408 May 85, subj: Kelly-Sokolov Meeting April 30: Diplomatic Note on Nicholson Family Compensation. OADR.

67. Ibid. OADR.

68. Msg, CUSMLM to ODCSI (AEAGB-C[HO]), 261530 Apr 85, subj: GSFG Non-use of Force Pledge. OADR.

69. Msg, USCINCEUR (ECDC) to JCS (CJCS), 011301 May 85, subj: Soviet Statements on Nicholson Shooting. OADR.

70. GEN Otis Intvw, 7 Aug 86. OADR.

71. Msg, CUSMLM to CINCUSAREUR (AEAGB-C[HO]), 021900 May 85, subj: Delivery of CINCUSAREUR Letter Dated 1 May 85. OADR.

72. MFR, MAJ Wyckoff, C/ACS, 2 May 85, subj: Passing of CINC Letter. AEAGX-ACS. OADR.

73. Memo, MG G.R. Stotser, USAREUR DCSOPS, to CINCUSAREUR, 2 May 85, subj: Killing of MAJ Nicholson. AEAGC. OADR.

74. (1) Msg, AMEMBASSY Moscow to SECSTATE, 021205 May 85, subj: TASS Item on Nicholson Incident. OADR. (2) AP & UPI Wire Stories on TASS Statement, 1 May 85. UNCLAS. (3) Msg, CUSMLM to ODCSI (AEAGB-C[HO]), 081503 May 85, subj: TASS Dispatch of 1 May. OADR.

75. Msg, CUSMLM to ODCSI (AEAGB-C[HO]), 081510 May 85, subj: Follow-on Comments to MSG DTG 081503 May 85. OADR.

76. Ltr, GEN Zaytsev to GEN N. Bagnall, CINC BAOR, 5 May 85, no subj. No. 231. UNCLAS.

77. Ltr, GEN Zaytsev to GEN Otis, 13 May 85, no subj. No. 233. UNCLAS.

78. Msg, CINCUSAREUR (AEAGX) to USCINCEUR (ECCS/ECJ2), 141212 May 85, subj: Nicholson Incident -- CINCGSFG Letter. OADR.

79. Msg, USCINCEUR (ECDC) to JCS (CJCS), 141610 May 85, subj: SAB. . OADR.

80. Msg, JCS (CJCS) to USCINCEUR, 151223 May 85, subj: SAB. OADR.

81. MFR, MAJ Wyckoff, 16 May 85, subj: CINC Oral Message. AEAGX-ACS.

82. Ltr, GEN Otis to GEN Zaytsev, 16 May 85, no subj. UNCLAS.

83. Memo, BG D.J. Gordon, DCSI, to CINCUSAREUR, 17 May 85, subj: Delivery of CINC Letter to CINCGSFG. AEAGB-C(HO). OADR.

84. Memo, COL P.H. Gillespie, Jr., Acting DCSI, to CofS, 20 May 85, subj: GSFG Response to CINCUSAREUR Letter of 16 May 85. AEAGB-C(HO). OADR.

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CHAPTER FIVE

PRIOR USAREUR-GSFG NEGOTIATIONS

(U) The negotiations over the Nicholson incident were not the first between the US Army and Soviet Army headquarters organizations stationed in the two Germanys. Although USAREUR had negotiated with GSFG on other issues, this summary of past negotiations will concentrate primarily on issues related to the military liaison missions or illustrative of overall Soviet negotiating strategies.

( ) In conformity with Article 2 of the "Agreement on Control Mechanism in Germany," signed on 14 November 1944, the two commanders in chief were to exchange military liaison missions once they set up their zones of occupation in Germany. The purpose of these two missions would be to conduct normal liaison between the two armies as they governed their respective zones of occupation. Initial attempts to set up liaison missions at the conclusion of the war in Europe were unsuccessful, probably because pressing postwar problems caused the establishment of liaison missions to be given a low priority.

( ) After several exchanges of views during 1946, the "Agreement on Military Liaison Missions Accredited to the Soviet and United States Commanders in Chief of the Zones of Occupation in Germany" was signed on 5 April 1947 by Lieutenant General C.R. Huebner, Deputy Commander in Chief, European Command, and Colonel-General Malinin, Deputy Commander in Chief, Group of Soviet Occupation Forces in Germany (see APPENDIX C). From this point on, a unique quasi-diplomatic role was assumed by the two field commanders in that they negotiated directly on issues of concern between the two headquarters, first as occupiers of the two zones of occupation and subsequently as guarantors of the two Germanys. Almost immediately, however, the emphasis had been narrowly focused on relations between the two armies, with broader diplomatic issues being handled in State Department channels.[1]

(U) What should have been a coordinated effort by victorious allies to first control and then convert a rogue nation, turned into an East-West contest of wills over what the geopolitical map of Europe would look like in the postwar years. By the fall of 1947 the focal point of the East-West conflict was in Germany, with particular emphasis on the struggle for the control of Berlin. With the closing of Czechoslovakia by the Communist coup in February 1948, the "Iron Curtain" was dropping slowly into place.[2]

(U) Although there was a slight decrease in East-West tensions following the lifting of the Berlin blockade in 1949, relations with the Soviet Union and its satellite nations continued to deteriorate in 1950. These tensions were reflected in how the Soviet Army headquarters in the Soviet Zone treated the USMLM. In response to increased restrictions on travel by Soviet mission family members stationed in Frankfurt, the Soviets withdrew the passes of USMLM members on 12 May 1950 and substituted a pass permitting travel only between the official mission at Potsdam House and their residences in Berlin. This overreaction by the Soviets to a minor bureaucratic change by the US headquarters led to a reciprocal action on 19 May, when European Command (EUCOM) -- USAREUR's predecessor organization -- revoked Soviet mission members' passes and restricted their movements to trips between their residences and mission in Frankfurt. Passage to Berlin or the Soviet Zone would require special authorization for each trip. When the Soviets protested this action, EUCOM replied that the stringent restrictions had been precipitated by their own action and that it was ready to rescind the restrictions when the Soviets complied with the original agreement to grant free transit throughout the Zone to mission members.

( ) This was the first instance, by the way, where the US side used as a sanction the restriction of Soviet mission personnel in Frankfurt to their mission and residences. This was particularly effective due to a geographical advantage of USMLM in that its mission house at Potsdam was a short drive from West Berlin, which allowed its members to live in a US-controlled area and thus have a freer life style. A US restriction similar to the Soviets' of only allowing mission personnel transit from home to office and back was much more burdensome on Soviet mission personnel because they lived in Frankfurt and could not escape the effects of the restriction on their private lives. However, the restriction's effect on the intelligence gathering missions of the two liaison missions was equal and effectively precluded either from accomplishing this part of their missions.

(U) The Soviets responded to this reciprocal approach by returning permanent passes to USMLM members on 14 July, which once again allowed them free movement throughout the Soviet Zone. EUCOM reciprocated on the same day by returning permanent passes to Soviet mission members in Frankfurt. In August 1950 EUCOM issued a new directive for regulating the passage of other Soviet citizens in the US Zone -- to include Soviet mission family members -- that seemed to placate the Soviets, and the issue was defused. A decided warming of relations between the personnel of the two headquarters was

noted in the aftermath of this controversy. Thus it was established early on that the Soviets did want to continue the missions and would respond positively to effective countermeasures.[3]

( ) As the 1950s continued, the US command still encountered difficulties with the Soviets over border incidents along the Inner-German and Czechoslovak borders, in Berlin, and with the liaison missions. These difficulties were constant reminders that the Soviets were determined to make the Western Allies as uncomfortable as possible, both in Germany and elsewhere in Europe. From its inception in 1947, members of USMLM had been subjected to harassing actions, first by Soviet Army personnel and subsequently by East German Army and police personnel. Active measures were taken to restrict their movements and prevent them from carrying out their intelligence gathering mission, and included such actions as trailing and surveillance of mission personnel and vehicles, detentions of mission personnel, withdrawal or delay in the issuance of mission papers, and difficulties created by the documentation issued to mission personnel. Passive measures included the creation of an excessive number of restricted military areas; the erection of unnecessarily high fences around Soviet installations; the erection of an excessive number of road barriers, road blocks, and checkpoints throughout the entire Soviet Zone; and the scarcity of usable gasoline stations. Perhaps the most important of these harassing activities was the trailing and surveillance of mission personnel, which served to curtail their intelligence gathering and was a flagrant violation of the Huebner-Malinin Agreement. The Soviets refused to admit they trailed our vehicles and intimated they had no control over the East Germans.

( ) At an Allied tripartite meeting held on 28 April 1952, it was determined that countermeasures would have to be taken in the three Western Zones in order to counteract Soviet restrictions placed on the three Western missions. The Western Allies agreed the countermeasures would be more impressive if they were applied tripartitely rather than unilaterally, as had been done in the past. It was also decided that the countermeasures could not be any stronger collectively than those already applied against the Allied missions in the Soviet Zone. Effective 27 June, all military police highway patrol detachments began to trail overtly all Soviet mission vehicles traveling through their areas of jurisdiction. The Soviets protested this activity shortly thereafter. EUCOM informed the Soviets that it was at a loss to understand their protest in view of their having ignored repeated protests of past trailings of USMLM vehicles in the Soviet Zone.

( ) The first Soviet attempt to resolve this situation was an offer to the British to discontinue trailing British mission vehicles if they would reciprocate in their zone. USAREUR* believed the Soviets were using the British as a sounding board to determine Allied reaction to a proposal to return to the spirit and letter of the Huebner-Malinin Agreement. USAREUR concurred with the British decision to accept the Soviet proposal in August 1952.

( ) Subsequently, the Soviets initiated discussions with USMLM in September 1952 that they hoped would lead to the termination of surveillance of Soviet mission vehicles in the US Zone. USAREUR responded in October that it wanted the Soviets to implement the following actions:

- Cease surveillance of US mission personnel and vehicles.

- Permit mission personnel free egress from Berlin.

- Notify the United States in writing and furnish marked maps of the restricted areas.

USAREUR stated that if the Soviets would implement the three actions, it would direct that there be no interference by US personnel with the freedom of travel by Soviet mission personnel in the unrestricted areas of the US Zone, and that it would provide marked maps of restricted areas.

( ) USAREUR was somewhat surprised at the Soviet willingness to negotiate on the issues. Apparently, the overt trailings had curtailed the normal activities of the Soviet mission personnel and were hindering accomplishment of its intelligence missions. On 19 November 1952 USAREUR and GSFG agreed to the following terms:

- Terminate all trailing in the US and Soviet Zones.

- Notify respective Soviet and US authorities in writing accompanied by marked maps of the restricted areas in each zone.

- Eliminate incidents involving mission personnel in the respective zones.

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* (U) EUCOM had been renamed in a theater-wide reorganization.

The USAREUR proposal for free egress from Berlin for USMLM personnel was deferred for discussion at a later date. Effective on the date of the agreement, all military personnel in the US Zone were to stop trailing Soviet mission personnel.

( ) The results of this agreement were somewhat mixed. Although all trailing of Soviet mission vehicles was terminated in the US Zone, the Soviets only terminated the overt trailing of USMLM vehicles by Soviet and East German police, with covert trailing by civilian vehicles being continued. During the latter months of 1952, the Soviets obtained a fleet of new American-make vehicles for trailing activities. Since American-make vehicles were a rarity in the Soviet Zone, these trailing vehicles were easily spotted, and the USMLM vehicles were able to elude them on numerous occasions. One of the major results of the agreement was the first exchange of marked maps of the restricted areas, a procedure that clarified the issue but became a negotiating issue itself in subsequent years -- primarily over the percentages of the zones included in these restricted areas. Once again, the process reinforced the conclusions that the Soviets wished to continue operating their missions in West Germany and were responsive to reciprocal countermeasures.[4]

( ) Another noteworthy result of the 1952 negotiations with the Soviets was the establishment of the USAREUR Soviet Relations Advisory Committee (SRAC) on 7 October 1952. Its purpose was to facilitate sound and expeditious handling of situations involving USMLM and the Soviet mission in Frankfurt. It operated on the principle that both the US and Soviet sides valued the continuance of the two missions, and that all policies, plans, actions, and countermeasures should be based on this assumption. It was agreed that, in general, action on the part of the committee would be reciprocal in nature. Subsequently, the committee's responsibilities were broadened to include advising on all relations and actions with the Soviet Forces stationed in East Germany.[5] (For more information on the committee, see USAREUR Soviet Military Advisory Committee, Chapter 10.)

( ) Tensions continued on into 1953-54, with mission personnel being trailed whenever they left the compound, mission privileges being curtailed, and members on routine travel being detained for no apparent reason. A very disturbing detention had occurred on 31 December 1952, when the acting chief of the USMLM and another mission member were stopped on a main road by a Soviet sergeant, with submachine gun in hand. Taken to a nearby guardhouse, they were held for

over 11 hours without food or conveniences, and were subsequently charged with having violated a restricted area. After they asked to be shown the sign designating a restricted area, the Soviets took them to see a 7-foot sign that obviously had been freshly installed.

( ) Soviet harassment increased until March 1953, when relations began to improve. On 26 March the overt trailing of mission vehicles abruptly stopped. Although there were still detentions, they were usually of a short duration, and an improved atmosphere was detected during this period. In contrast to the improved relations with the Soviets, however, mission personnel began to have problems with detentions by the East German police. The Chief of USMLM and CINCUSAREUR repeatedly emphasized to the Soviet authorities that USMLM was accredited to the Commander in Chief of GSFG and that the East German police had no jurisdiction over mission activities. The matter was not satisfactorily resolved, and the East Germans continued to harass USMLM personnel.

( ) In contrast to the low profile stance of USMLM personnel during this period, SMLM-F personnel took a very aggressive approach to their "freedom-of-movement" rights and engaged in overt spying on US military activities. They continually violated restricted areas, spied on US maneuvers, and drove at excessive speeds on the highways. USAREUR considered requesting the withdrawal of SMLM-F, but decided not to because information on Soviet activities in East Germany obtained from USMLM tours justified accepting the continued problems with SMLM-F tours.[6]

( ) By 1954 there was a significant drop in protests by the Soviets: from 275 in 1952 to 140 in 1953, with only 40 being received in 1954. Also by the end of 1954, the Soviets had just about eliminated their overt trailings of USMLM vehicles, and the number of detentions had been greatly reduced. The Soviets did, however, continue covert surveillance of USMLM vehicles, and many areas in East Germany were still restricted to USMLM personnel. A significant change occurred in July 1954, when the Soviets informed USAREUR that on matters of interest other than Berlin, which would be handled through the US Commander Berlin, USMLM should communicate through GSFG's Soviet External Relations Branch (SERB). All of these events seemed to signal a stabilization of relations between the two army headquarters.[7]

( ) Although relations between the two army headquarters may have been more stable, international relations took a turn for the worse in 1956 with the brutal suppression of the

Hungarian uprising by the Soviet Army. As always, repercussions were felt in the two Germanys, especially in Berlin. This was particularly unfortunate, as the two sides had been working toward a more stable relationship after the stress resulting from the Federal Republic's achieving sovereignty in 1955. Things had been going so well that in June 1956 the Soviet side proposed an informal agreement that would have allowed mission personnel to watch military exercises. A Soviet general had declared that an army could not be studied seriously from behind bushes, and since the Soviet Armed Forces were practicing to fight those of the United States, it would be interesting for USAREUR's representatives to observe Soviet training. No change to the Huebner-Malinin Agreement was being sought; instead, the Soviet general was willing to accept a verbal agreement on the military liaison mission level. Although USAREUR headquarters was favorably inclined, this proposal, along with others, was lost in the turmoil that followed in the wake of official protests over the Hungarian uprising.

( ) Despite these differences -- and they included the usual boycotting of official social functions such as the October Revolution Anniversary Reception -- a generally friendly atmosphere prevailed during military liaison meetings. However, the East German police increased its operations against USMLM vehicles in April 1957, constantly trailing vehicles with two or three radio-equipped vehicles, presumably to monitor the mission's car radio communications. On several occasions mission tour personnel were threatened or attacked by agents, who also damaged mission equipment. USMLM protested to SERB, pointing out that SMLM-F personnel were not being harassed by West German police. Still another irritant was the increased use of restriction signs along public roads at a considerable distance from military installations and the designation of large areas as being temporarily off limits due to military maneuvers. The increase in restricted areas inevitably led to more detentions of USMLM personnel.[8]

( ) A valuable negotiating lesson was relearned in December 1956. In the latter half of the year, there had been a growing controversy with the Soviets over Berlin access, particularly in regard to duty trains and the required travel documents. The Soviets essentially were trying to restrict who entered and left Berlin on the duty trains. On the night of 8-9 December the Soviets delayed the US Ambassador's special diesel train and retained his travel documents because his passport lacked the "Certificate of Status" stamp. On 13 December General Henry I. Hodes, CINCUSAREUR, called in the Acting Chief of SMLM-F and in blunt language informed him that

he strongly objected to interference with military trains and convoys into and out of Berlin, and that the determination of who among US military personnel should have access to Berlin was the concern of CINCUSAREUR and no one else. Following this meeting there was a temporary cessation of harassment on the part of the Soviets.[9]

( ) Unfortunately, the lesson learned in December was not easy to apply in the shadowy USMLM world. For example, a Soviet Relations Advisory Committee meeting was held on 12 March 1957 to determine what action to take with regard to eight incidents in which Soviet military personnel had discharged firearms while detaining USMLM tours during the period January 1955 through March 1957. According to information provided to the committee, the firings had resulted from "...normal military security measures of Soviet installations coupled with USMLM tours fleeing to avoid detention."[10]

( ) In view of its relevancy to the Nicholson incident, the conclusions of the committee are worth quoting:[11]

> ...Instructions have been issued by ACofS, G-2, for USMLM members to cease running to avoid apprehension. This should preclude Soviet firing with any pretext of justification. Inasmuch as the Soviets' security measures do not appear to be other than we would expect of an alert interior guard system, to protest would not appear warranted even though our own actions might not be to fire under similar circumstances.

( ) The SRAC reasoned that there was no assurance an official protest would result in any curtailment of this type of incident. It said that unless an effective countermeasure against SMLM-F could be proposed, it would do little good to protest. A further complication was that USAREUR may have denied in the past that some of the incidents had actually happened on Soviet installations and might be embarrassed if a close scrutiny were to be made as an aftermath of the protest. In any event, the Chief of SERB already had assured the Chief of USMLM that there would be no further Soviet firing incidents, and the committee decided to let matters stand as they were since that was the best that might be gained from an official protest.[12]

( ) The remainder of the 1950s saw USAREUR-GSFG negotiations centering around the Berlin access question, with some attention being given to other incidents as they occurred.

Of interest to this study was the notation in one account that the Soviets often did not interpret an agreement or understanding in the same manner as the US side, and that some understandings had a very short life span.

( ) One incident was reflective of the problem of dealing with the Soviets in the military liaison mission area. In October 1957 the East German police once again began to trail overtly USMLM vehicles as they toured in East Germany. This time USAREUR decided to take retaliatory action and issued orders that SMLM-F vehicles be trailed overtly from 2 through 6 December. Two days after USAREUR began trailing SMLM-F vehicles, the East German police abruptly ceased trailing USMLM vehicles. USAREUR immediately stopped trailing SMLM-F vehicles, with the result that one day later the East German police resumed trailing USMLM vehicles. USAREUR once again began trailing SMLM-F vehicles but ceased doing so after the 6th, as was planned originally. The Chief of USMLM felt the point had been made to the Soviets. The only other MLM-related negotiation issue of this period was the ongoing discussion about how much of the respective Germanys should be restricted areas. The Soviets made several proposals to reduce the areas covered, but failed to negotiate conclusively.[13]

( ) The highest-level negotiations between USAREUR and GSFG prior to the Nicholson Incident resulted from another shooting incident involving a USMLM tour vehicle. On 20 March 1962 the East German police, while attempting to detain a USMLM vehicle, shot out two of its tires and had one round strike the trunk and ricochet through the rear window. Following a lengthy and nasty detention, CINCUSAREUR responded by pulling all USMLM personnel into Berlin except for a duty officer and a minimum number of enlisted personnel at Potsdam House, informed the Commander in Chief of GSFG that SMLM-F personnel could not travel in the US Zone without a US escort, and suggested that they meet and try to resolve the problem. After a series of moves and countermoves on the part of each headquarters, the two CINCs met on 5 April in Potsdam. They agreed that guards would be removed from the two missions and that both missions would resume normal operations on 6 April. It should be noted, however, that all that was accomplished was the resumption of the status quo. Once again, the Soviets demonstrated their strong desire to continue operating their missions in West Germany.[14] (For more information on the 1962 meeting, see Chapter 4, "Final Preparations for the Meeting.")

( ) After the 1962 CINC-to-CINC meeting, relations between the two headquarters regarding the missions generally were on an even keel until the Nicholson incident. Incidents

and detentions occurred on both sides, and both sides saw that it was to their interest to continue tolerating the other's mission in order to conduct operations in the other's backyard. With SMLM-F having freer access to US installations in the West due to the very nature of democratic societies, USMLM's tours remained only a very small window into a closed society. Paradoxically, the freedom of the democratic societies gave USAREUR its most potent weapon for retaliation during an incident. If the Soviets tightened down restrictions on USMLM, it was often difficult to tell the difference since the tours were already operating under very stringent restrictions. If USAREUR increased restrictions on SMLM-F, however, there was an immediate impact on the operational capability of its tours. Still, it remained in USAREUR's interest to continue the missions as long as there was some opportunity for USMLM to conduct intelligence gathering in East Germany. The endless minuet of protest and counterprotest was danced by the two headquarters until that fateful day when Major Nicholson was murdered by a young Soviet soldier who did not quite understand the rules.[15]

CHAPTER FIVE FOOTNOTES

1. (1) EUCOM Anl Nar Rept, 1950, p. 9. UNCLAS. (2) The Origins of the Military Liaison Missions in Germany, T.S. Lough, US Arms Control and Disarmament Agency Rept 65-1, Apr 65, pp. ii-iv. XGDS.

2. International Aspects of the Occupation, 1 Jul 47 - 31 Dec 48, pp. 7-9. UNCLAS. (Part of the EUCOM "Occupation Forces in Europe Series, 1947-48.")

3. EUCOM Anl Nar Rept, 1950, pp. 5, 9-11. UNCLAS.

4. EUCOM/USAREUR Comd Rept, 1952, pp. 394, 412-16.

5. Ibid., pp. 417-19.

6. USAREUR Anl Hist Rept, Jan 53 - Jun 54, pp. 480-83.

7. USAREUR Anl Hist Rept, Jul 54 - Jun 55, pp. 334-36.

8. USAREUR Anl Hist Rept, Jul 56 - Jun 57, pp. 300-02.

9. Ibid., pp. 302-04. (info used).

10. DF, CAD to CofS, 14 Mar 57, subj: Soviet Relations Advisory Committee Meeting, 12 March 1957. AEACA.

11. Ibid.

12. Ibid.

13. USAREUR Anl Hist Rept, Jul 57 - Jun 58, pp. 294-308.

14. USMLM Unit Hist, 1962, pp. 70-72.

15. The Military Liaison Missions in Germany, T.S. Lough, US Arms Control and Disarmament Agency Rept 64-1, Mar 64, pp. 117-19.

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