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Original OA/ID Number: 2063				
Document ID: 9806959				
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UNCLASSIFIED
NSC/RMO PROFILE

RECORD ID: 9806959
RECEIVED: 10 OCT 98 14

TO: CAMPBELL, TOM

FROM: BERGER

DOC DATE: 15 JAN 99
SOURCE REF:

KEYWORDS: KOSOVO
NATO
CO

MILITARY POSTURE
HUMAN RIGHTS

PERSONS:

SUBJECT: RESPONSE TO LTR ON KOSOVO FM REP CAMPBELL / LIVINGSTON / SKAGGS
ET AL

ACTION: BERGER SGD LTR

DUE DATE: 22 OCT 98 STATUS: C

STAFF OFFICER: BAKER

LOGREF:

FILES: WH

NSCP:

CODES:

DOCUMENT DISTRIBUTION

FOR ACTION

FOR CONCURRENCE

FOR INFO

HURLEY
NSC CHRON

COMMENTS: _____

DISPATCHED BY SP DATE 9/15 BY HAND W/ATTCH

OPENED BY: NSTSM

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DOC 4 OF 4

UNCLASSIFIED

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ACTION DATA SUMMARY REPORT

RECORD ID: 9806959

DOC ACTION OFFICER

CAO ASSIGNED ACTION REQUIRED

001 HURLEY	Z 98101014 PREPARE MEMO FOR BERGER
002 BERGER	Z 98121016 FWD TO PRESIDENT FOR SIGNATURE
002 BAKER	Z 98122116 FOR REDO
003 STEINBERG	Z 99011317 APPROPRIATE ACTION
003 BAKER	Z 99011317 FOR REDO
003 STEINBERG	Z 99011416 APPROPRIATE ACTION
004	X 99011509 BERGER SGD LTR

DISPATCH DATA SUMMARY REPORT

DOC DATE DISPATCH FOR ACTION

DISPATCH FOR INFO

004 990115 CAMPBELL, TOM

UNCLASSIFIED

National Security Council
The White House

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PROOFED BY: _____

LOG # 6959

URGENT NOT PROOFED: _____

SYSTEM PRS NSC INT ARS

BYPASSED WW DESK: _____

DOCLOG _____ A/O _____

	SEQUENCE TO	INITIAL/DATE	DISPOSITION
Cosgriff	_____	_____	_____
Rice	_____	_____	_____
Davies	_____	_____	_____
Kerrick	_____	_____	_____
Steinberg	<u>6</u>	<u>[Signature]</u>	_____
Berger	<u>7</u>	_____	_____
Situation Room	_____	_____	_____
West Wing Desk	<u>8</u>	<u>4/15 DMK</u>	<u>D</u>
Records Mgt.	<u>9</u>	_____	<u>D</u>
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A = Action I = Information D = Dispatch R = Retain N = No Further Action

CC:

COMMENTS:

Exec Sec Office has diskette yes

National Security Council
The White House

1/12/1040

READ

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LOG # 6959

URGENT NOT PROOFED: _____

SYSTEM PRS NSC INT ARS

BYPASSED WW DESK: _____

DOCLOG B A/O _____

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	SEQUENCE TO	INITIAL/DATE	DISPOSITION
Cosgriff	<u>1</u>	<u>KAC 1/11</u>	
Rice			
Davies			
Kerrick	<u>(copy) ✓</u>		
Steinberg	<u>2</u>		
Berger	<u>3</u>		
Situation Room			
West Wing Desk	<u>4</u>	<u>TS 1/13</u>	<u>STAFF</u>
Records Mgt.			
<u>BAKER</u>	<u>5</u>		<u>FRD</u>

A = Action I = Information D = Dispatch R = Retain N = No Further Action

cc:

COMMENTS: SRB - reply to members of Congress re Kosovo.

1998 JAN 13 PM 6:03

Exec Sec Office has diskette yes

National Security Council
The White House

12/10
1105
New

PROOFED BY: _____ LOG # 6957
URGENT NOT PROOFED: _____ SYSTEM PRS NSC INT ARS
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	SEQUENCE TO	INITIAL/DATE	DISPOSITION
R Cosgriff			
Rice	1	<u>Q 12/9</u>	<u>edit done</u>
Davies			
Kerrick	2	<u>Q 12/9</u>	
Steinberg	3		
Berger	4		
Situation Room			
West Wing Desk	<u>5</u>		
Records Mgt.			
<u>Baker</u>	6		

A = Action

I = No Further Action

cc:

See

TO BAKER

COMMENTS

Re

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Exec Sec Offi

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Shouldn't we include the
- Low D angle?

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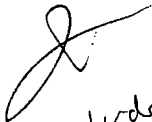
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TO BAKER

Janie -

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Shouldn't we include the
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National Security Council
The White House

12/10
11/05
12/20

PROOFED BY: _____ LOG # 6959
URGENT NOT PROOFED: _____ SYSTEM PRS NSC INT ARS
BYPASSED WW DESK: _____ DOCLOG DMK A/O _____

	SEQUENCE TO	INITIAL/DATE	DISPOSITION
<u>R</u> Cosgriff	_____	_____	_____
Rice	<u>1</u>	<u>R 12/9</u>	<u>CDN (done)</u>
Davies	_____	_____	_____
Kerrick	<u>2</u>	<u>D 12/9</u>	_____
Steinberg	<u>3</u>	_____	_____
Berger	<u>4</u>	_____	_____
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<u>Baker</u>	<u>6</u>	_____	_____

A = Action I = Information D = Dispatch R = Retain N = No Further Action

cc: See explanation for delay in responding. (e)

COMMENTS: Response to letter on Kosovo to
Reps: Campbell, Livingston, Skaggs, etc.

* Addl letters will be prepared for SRB sig.

Exec Sec Office has diskette yes once language of
_____ Campbell^{HR} is approved. *

THE WHITE HOUSE

WASHINGTON

January 15, 1999

Dear Representative Campbell:

During recent briefings to Members of Congress and their staffs on the Administration's Kosovo policy, we committed to provide additional information on the President's authority to use force. Although the policy we have implemented in Kosovo has not required the use of force, I want to address your concerns regarding the scope of the President's constitutional authority to authorize such action, if necessary.

This Administration, like previous administrations, takes the view that the President has broad authority, as Commander-in-Chief and under his authority to conduct foreign relations, to authorize the use of force in the national interest. There is ample constitutional precedent for the type of action contemplated in October, including air operations in Bosnia in 1995 that involved over 2,300 U.S. sorties, and the deployment of ground forces to Somalia to prevent a humanitarian catastrophe. Previous administrations have taken the position that military actions of greater scope could be conducted without congressional authorization.

Nor were the actions contemplated on October 13, "offensive" in nature. From the outset, we have had three overriding objectives in Kosovo. First, to end the violence that threatens the fragile stability of the Balkans. Second, to prevent a humanitarian crisis from becoming a catastrophe and third, to help the Kosovar people achieve a high degree of self-government.

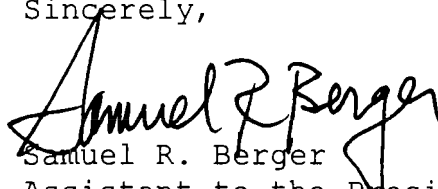
We have made progress on each of these objectives. NATO determination backed up by the credible threat of force reiterated in the NATO Activation Order of October 13 has led to a cease-fire, followed by a substantial reduction of Serb security forces. Now that aggressive operations have stopped, tens of thousands of people have returned to their villages.

We have also been successful in giving renewed impetus to a political settlement that will help address the root causes of the conflict. The current draft agreement offers the Kosovars a high-degree of autonomy, an indigenous police force, and complete control over education, health and other institutions that most affect their daily lives.

In order to verify Belgrade's compliance, NATO has implemented an intrusive air surveillance regime. Under the leadership of Bill Walker, an experienced American diplomat, a 2,000-person verification mission is being constituted, with personnel and funds contributed by OSCE nations. In support of this mission, NATO is establishing a force in Macedonia that will be close at hand to extract verifiers should that become necessary.

We do not underestimate the difficulties that lie ahead, but we believe we are headed in the right direction. Again, thank you for writing and sharing your concerns.

Sincerely,

A handwritten signature in black ink, appearing to read "Samuel R. Berger". The signature is fluid and cursive, with the first name "Samuel" being more prominent and the last name "Berger" following in a similar style. The signature is written over the printed name.

Samuel R. Berger
Assistant to the President for
National Security Affairs

The Honorable Tom Campbell
House of Representatives
Washington, D.C. 20515

NATIONAL SECURITY COUNCIL
WASHINGTON, D.C. 20504

6959
REDO

December 7, 1998

ACTION

MEMORANDUM FOR SAMUEL R. BERGER

THROUGH: GREG SCHULTE *W*

FROM: MICHAEL HURLEY *mk*

SUBJECT: Response to Letter on Kosovo from Representatives
Campbell, Livingston, Skaggs, et al.

A letter to the President from Representative Tom Campbell and 42 other House colleagues, including Speaker-designate Bob Livingston, argues that a decision to use U.S. military forces in Yugoslavia must be made by Congress.

We initially held off replying to the letter because the principal issue it raised -- that the President did not have the authority to commit forces to an intervention in Kosovo -- was moot when the letter arrived, as the Holbrooke-Milosevic agreement was reached without requiring use of force. Also, Representatives Campbell, Skaggs and other signers of the letter attended Administration briefings in mid-October and House staffs attended additional briefings on three occasions from mid-October through early November and were kept current on our Kosovo policy.

At the Members briefings, Administration officials committed to supplying a written response on the legal authority issue for those Members who had raised it. For that reason, Legislative Affairs strongly feels that the reply should be sent to respond to the specific legal issue the Representatives raised. The draft reply points out that the President has broad authority as Commander-in-Chief to authorize military action in the national interest. It also summarizes recent developments in our Kosovo strategy.

The draft has been reviewed by Legal Affairs and White House Legal. Legal Affairs recommends that you, and not the President, sign the letter, to avoid putting the President in the position of defining the scope of his authority to act,

especially as any future context may be different from the one at issue.

Concurrences by: Mara Rudman,^{cmtd} Jamie Baker^{cmtd}

RECOMMENDATION

That you sign the letter to Representative Campbell at Tab I.

Attachments

Tab I Letter to Representative Campbell, et al.
Tab II Incoming Correspondence

Congress of the United States

Washington, DC 20515

October 2, 1998

Honorable William Jefferson Clinton
President of the United States
The White House
Washington, D.C.

Dear Mr. President:

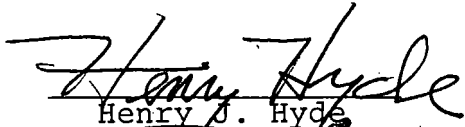
We are appalled by the atrocities against Kosovar civilians by Serbian police and security forces. We understand that NATO, acting with U.S. leadership, may be on the brink of taking military action. However, the decision to use United States military forces to intervene in Yugoslavia is a decision that must be taken by Congress, not by you alone.

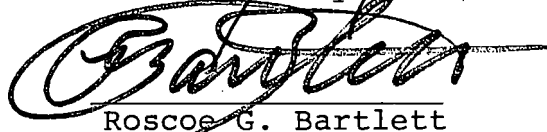
U.S. air strikes within the borders of Yugoslavia in order to stop attacks by Serbian forces against civilians in an area the United States recognizes as sovereign Yugoslav territory simply could not be construed as "defensive" actions within your inherent authority as Commander-in-Chief. Rather, they would be offensive in nature, involving the invasion of the air space of a nation which has not attacked the United States. This is the sort of action which falls within the exclusive powers and responsibilities of Congress under Article I, Section 8, of the Constitution -- the so-called war powers clause. No provision of the United Nations Charter or the North Atlantic Treaty can override the requirement of United States domestic law as set forth in the Constitution. In fact, Congress conditioned U.S. participation in both the U.N. and NATO on the requirement that Congress retain its constitutional prerogatives.

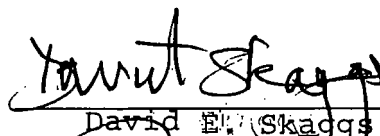
The Constitution requires you to have authority from Congress before taking military action against Yugoslavia. Consulting with a few Members or Senators does not satisfy constitutional requirements.

Sincerely yours,

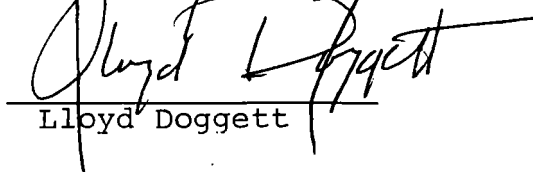

Tom Campbell

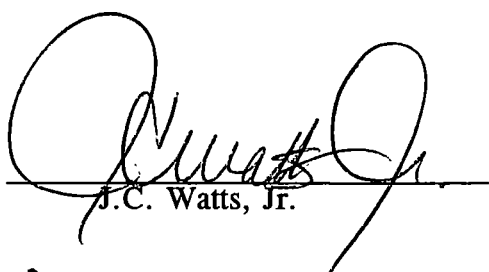

Henry J. Hyde

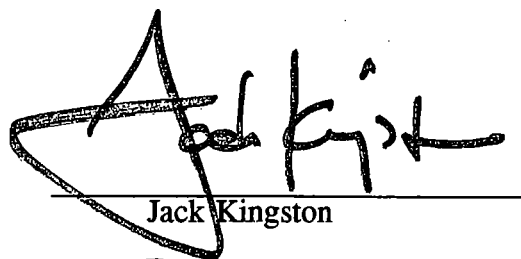

Roscoe G. Bartlett


David E. Bonior


C.W. Bill Young

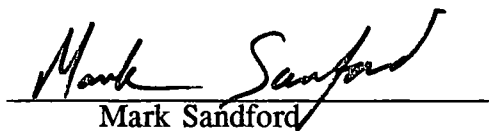

Lloyd Doggett


J.C. Watts, Jr.

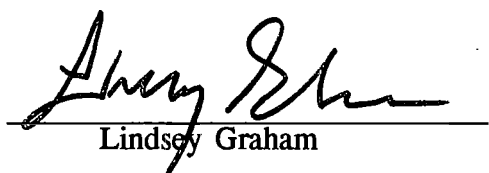

Jack Kingston

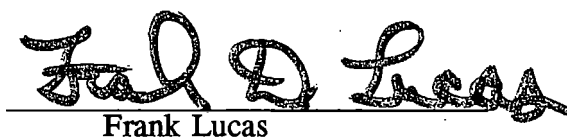

Doug Bereuter


Ron Lewis


Mark Sanford


Frank LoBiondo

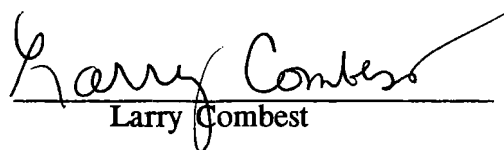

Lindsey Graham


Frank Lucas


Vince Snowbarger


Jim Bunning


George Nethercutt


Larry Combest


Sue Myrick


John Cooksey

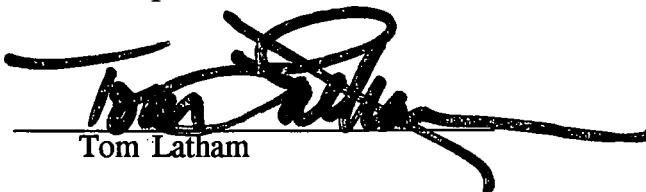

Bill Barrett


Roy Blunt

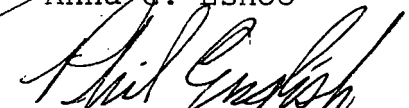

Gil Gutknecht

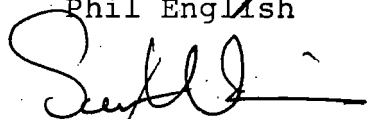

Philip Crane

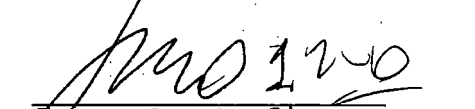

Ron Packard

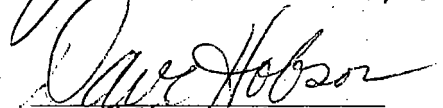

Tom Latham

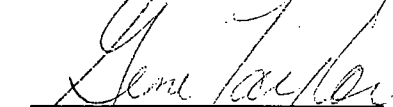

Anna G. Eshoo

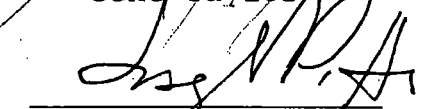

Phil English

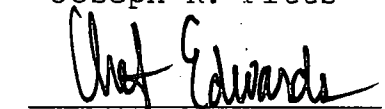

Scott McInnis


James A. Traficant, Jr.

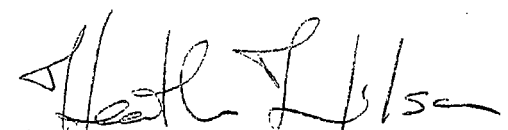

David L. Hobson

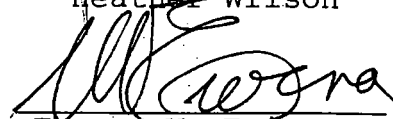

Gene Taylor

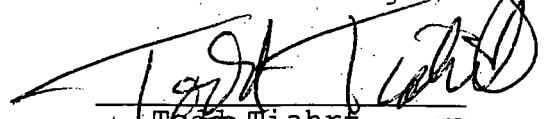

Joseph R. Pitts

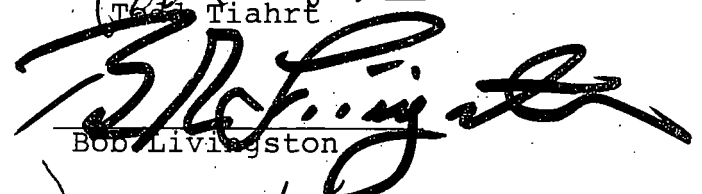

Chet Edwards

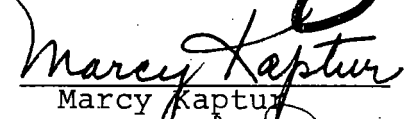

John N. Hostettler

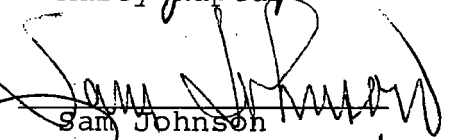

Heather Wilson

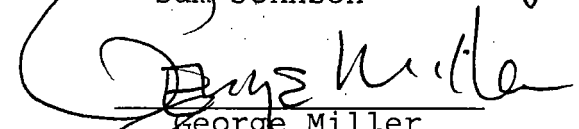

Thomas W. Ewing


Ted Tiahrt


Bob Livingston


Marcy Kaptur


Sam Johnson


George Miller


Earl Blumenauer

CONGRESS OF THE UNITED STATES
HOUSE OF REPRESENTATIVES
WASHINGTON, DC 20515

OFFICIAL BUSINESS

WHITE HOUSE
REGISTRATION & SECURITY
1998 OCT -8 AM 9 53

TwidE. Stagg
M.C.

Honorable William Jefferson Clinton
President of the United States
The White House
Washington, D.C. 20500

THE WHITE HOUSE

WASHINGTON

October 9, 1998

MEMORANDUM FOR GLYN DAVIES

NSC Executive Secretariat

FROM: JANET MURGUIA
Legislative Affairs

SUBJECT: PRESIDENTIAL CORRESPONDENCE

Attached are copies of letters sent to the President by various Members of Congress. Since these letters address national security issues, we would appreciate your assistance in drafting the responses.

Thank you very much for your assistance. If you have any questions, please call Eli Joseph at x67500.

The following is a brief description of the letters:

- 1) Sen. Max Cleland (D-GA), expressing concern over Kosovo;
- 2) Sen. Orrin Hatch (R-UT), regarding Mr. John Kamm and the Prisoner Information Project with China;
- 3) Sen. Jesse Helms (R-NC), concerning the U.S. forest products industry;
- 4) Sen. Trent Lott (R-MS) and several other Senators, expressing concern over Kosovo;
- 5) Sen. Trent Lott (R-MS) and several other Senators, concerning a Presidential letter regarding the status of the 1972 Anti-Ballistic Missile Treaty;
- 6) Sen. John McCain (R-AZ), expressing concern over Kosovo;
- 7) Sen. Paul D. Wellstone (D-MN) and Sen. Spencer Abraham (R-MI), expressing concern over the economic sanctions against Iraq;

98 OCT 14 12:46

- 8) Rep. Tom Campbell (R-CA) and thirty-three Members of Congress, expressing concern over Kosovo;
- 9) Rep. John D. Dingell (D-MI), concerning the U.S.-Japan trading agreement on flat glass;
- 10) Rep. George Radanovich (R-CA), expressing concern over the treatment of ethnic Chinese in Indonesia;
- 11) Rep. Curt Weldon (R-PA) and twenty-six other Members of Congress concerning U.S. and Iraqi relations; and,
- 12) Rep. Heather Wilson (R-NM), expressing concern over Kosovo.

ENCLOSURES

UNCLASSIFIED
NSC/RMO PROFILE

RECORD ID: 9806959
RECEIVED: 10 OCT 98 14

TO: PRESIDENT

FROM: CAMPBELL, TOM
SKAGGS, DAVID E
HYDE, HENRY J

DOC DATE: 02 OCT 98
SOURCE REF:

KEYWORDS: KOSOVO
NATO
CO

MILITARY POSTURE
HUMAN RIGHTS

PERSONS:

SUBJECT: LTR FM REP CAMPBELL & 42 OTHERS RE MILITARY STRIKES & CONGRESSIONAL
ASSENT

ACTION: PREPARE MEMO FOR BERGER

DUE DATE: 22 OCT 98 STATUS: S

STAFF OFFICER: HURLEY

LOGREF:

FILES: WH

NSCP:

CODES:

D O C U M E N T D I S T R I B U T I O N

FOR ACTION
HURLEY

FOR CONCURRENCE
MCELDFOWNEY
NAPLAN
RUDMAN
VON LIPSEY
WITKOWSKY

FOR INFO
BAKER
BANDLER
BELL
BROWN, K
SCHULTE
SCHWARTZ

COMMENTS: IF FINAL REPLY CANNOT BE PREPARED BY DUE DATE, AN INTERIM RESPONSE
MUST BE PREPARED FOR MARA RUDMAN'S SIGNATURE.

DISPATCHED BY _____ DATE _____ BY HAND W/ATTCH

OPENED BY: NSTSM

CLOSED BY:

DOC 1 OF 1

UNCLASSIFIED

NATIONAL SECURITY COUNCIL
WASHINGTON, D.C. 20504

January 11, 1999

NOTE FOR JAMES STEINBERG

FROM: JAMES E. BAKER ^{JB}

SUBJECT: Response to your Note Re Campbell Letter

In response to a letter from Representative Campbell, et al., challenging the President's domestic legal authority to authorize air strikes in Kosovo, you asked: "Shouldn't we include the NATO Actord angle?"

While a reference to the NATO Actord is useful for context, and to illustrate that the President's contemplated actions were not unilateral, NATO approval of air strikes did not provide additional domestic legal authority for the President's actions. Unless such authority is derived from the NATO Treaty, NAC approval cannot alter or enhance the President's constitutional authority to act.

The USG, including OLC, has on a number of occasions considered whether the NATO Treaty would provide domestic legal authority for the President to order deployment of U.S. forces. In the context of possible deployments to extract UNPROFOR, OLC offered a preliminary view that the NATO treaty would not provide such authority. This view is based on three factors.

1. Article 11 of the NATO Treaty provides that "[t]his Treaty shall be ratified and its provisions carried out by the Parties in accordance with their respective constitutional processes." The ratification history of the Treaty indicates that this language was understood to mean that the President would be required to seek Congressional authorization to deploy armed forces into hostilities if NATO allies were attacked (unless he had an independent constitutional basis for acting.)

2. Justice has expressed doubt that the President and the Senate acting together under the Treaty clause could supplant the House from its constitutional role regarding

commitment of the United States to war (however, that role is ultimately defined.)

3. Section 8(a)(2) of the WPR states that authority to introduce troops into hostilities "shall not be inferred" from "any treaty heretofore or hereafter ratified unless such treaty is implemented by legislation specifically authorizing the introduction of United States Armed Forces into hostilities. . . ."

Justice has had a number of chances to reconsider this view, including in relation to the contemplated air strikes in October.

I would suspect Campbell and Skaggs are aware of this NATO treaty history and would relish an opportunity to debate this point. Therefore, I think it prudent not to emphasize the NATO angle, but rather simply to add a passing reference to NATO Actord, without more, for context. It seems particularly appropriate to do so in response to the suggestion that the contemplated actions were "offensive." Thus, we have added the following clause: "Nor were the actions contemplated, **and authorized by consensus in a NATO Activation Order on October 13,**" "offensive" in nature. Were this a debate about international law, NATO Actord would (and does) figure more prominently.

Interpretation of the President's authorities, and both political branches understanding of those authorities, has evolved and it may be that one branch or the other may come to place domestic legal significance on NATO authorization as a matter of practice. However, this would be a most controversial argument now and not one I believe we should advance.

Mara agrees with the approach taken above. She also notes that while Representative Skaggs has retired, it is still important to answer this letter on authorization, which was signed by other Members.

JB /s/

Concurrence: Mara Rudman; Mike Hurley

THE WHITE HOUSE

WASHINGTON

Dear Representative Campbell:

Thank you for your letter to the President on the crisis in Kosovo. Although the policy we have implemented in Kosovo has not required use of force, we believe it important to address the concerns in your letter; as we differ with you on the scope of the President's constitutional authority to authorize use of force.

This Administration, like previous administrations, takes the view that the President has broad authority, as Commander-in-Chief and under his authority to conduct foreign relations, to authorize the use of force in the national interest. There is ample constitutional precedent for the type of action contemplated in October, including air operations in Bosnia in 1995 that involved over 2,300 U.S. sorties, and the deployment of ground forces to Somalia to prevent a humanitarian catastrophe. Previous administrations have taken the position that military actions of greater scope could be conducted without congressional authorization.

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We have made substantial progress on each of these objectives. *a meeting reflected in the NATO activation order of October 13*
NATO determination backed up by the credible threat of force has led to a cease-fire, followed by a substantial reduction of Serb security forces. Now that aggressive operations have stopped, tens of thousands of people have returned to their villages.

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We do not underestimate the difficulties that lie ahead, but we believe we are headed in the right direction. Again, thank you for writing and sharing your concerns.

Sincerely,

Samuel R. Berger
Assistant to the President for
National Security Affairs

The Honorable Tom Campbell
House of Representatives
Washington, D.C. 20515

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THE WHITE HOUSE
WASHINGTON

Dear Representative Campbell:

During recent briefings to Members of Congress and their staffs on the Administration's Kosovo policy, we committed to provide additional information on the President's authority to use force. Although the policy we have implemented in Kosovo has not required the use of force, I want to address your concerns regarding the scope of the President's constitutional authority to authorize such action, if necessary.

This Administration, like previous administrations, takes the view that the President has broad authority, as Commander-in-Chief and under his authority to conduct foreign relations, to authorize the use of force in the national interest. There is ample constitutional precedent for the type of action contemplated in October, including air operations in Bosnia in 1995 that involved over 2,300 U.S. sorties, and the deployment of ground forces to Somalia to prevent a humanitarian catastrophe. Previous administrations have taken the position that military actions of greater scope could be conducted without congressional authorization.

Nor were the actions contemplated on October 13, "offensive" in nature. From the outset, we have had three overriding objectives in Kosovo. First, to end the violence that threatens the fragile stability of the Balkans. Second, to prevent a humanitarian crisis from becoming a catastrophe and third, to help the Kosovar people achieve a high degree of self-government.

We have made ~~substantial~~ progress on each of these objectives. NATO determination backed up by the credible threat of force reiterated in the NATO Activation Order of October 13 has led to a cease-fire, followed by a substantial reduction of Serb security forces. Now that aggressive operations have stopped, tens of thousands of people have returned to their villages.

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We have also been successful in giving renewed impetus to a political settlement that will help address the root causes of the conflict. The current draft agreement offers the Kosovars a high-degree of autonomy, an indigenous police force, and complete control over education, health and other institutions that most affect their daily lives.

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PRESIDENTIAL/NSA CORRESPONDENCE

IMMEDIATE ACTION REQUIRED

ACTION OFFICER: HURLEY

LOG NUMBER: 6959

DUE DATE: 22 OCT

DATE STAFFED: 10 OCT

CORRESPONDENCE ADDRESSED TO:



PRESIDENT



NATIONAL SECURITY ADVISOR

FROM: REP. CAMPBELL ET AL

PREPARE A RESPONSE FOR THE PRESIDENT'S OR NATIONAL SECURITY ADVISOR'S SIGNATURE WITHIN 10 DAYS. IF A LETTER DOES NOT REQUIRE A RESPONSE, PLEASE RETURN IT TO RECORDS MANAGEMENT (RM 379) WITH THIS FORM, ANNOTATED ACCORDINGLY.

THE WHITE HOUSE
WASHINGTON

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WH

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Thank you for your letter to the President on the crisis in Kosovo. ~~He has asked me to answer on his behalf.~~ Although the policy we have implemented in Kosovo has not required use of force, we believe it important to address the concerns in your letter, as we differ with you on the scope of the President's constitutional authority to authorize use of force.

This Administration, like previous administrations, takes the view that the President has broad authority, as Commander-in-Chief and under his authority to conduct foreign relations, to authorize the use of force in the national interest. There is ample constitutional precedent for the type of action contemplated in October, including air operations in Bosnia in 1995 that involved over 2,300 U.S. sorties, and the deployment of ground forces to Somalia to prevent a humanitarian catastrophe. Previous administrations have taken the position that military actions of greater scope could be conducted without congressional authorization.

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We have made substantial progress ^{on} ~~toward~~ each of these objectives. NATO determination backed up by the credible threat of force has led to a cease-fire, ~~that has held since early October~~ followed by a substantial reduction of Serb security forces. Now that aggressive operations have stopped, tens of thousands of people have returned to their villages.

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U.S. HOUSE OF REPRESENTATIVES

WASHINGTON, DC 20515-0519

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M.C.

The Honorable William J. Clinton
President of the United States
The White House
Washington, DC 20500

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