

PART VI

CONCLUSIONS AND PROPOSALS

1. CONCLUSIONS AND PROPOSALS CONCERNING THE PRINCIPAL ISSUES TO EMERGE FROM THE COMMITTEE'S WORK

Having conducted full and complex investigations and examined the results of its analysis of the various issues dealt with in the present report, the Committee, in conformity with the tasks assigned to it in Article 1 of the resolution of institution, formulated a number of conclusions and proposals.

1.1 The role of the judiciary

Before proceeding with an examination of the issues that emerged, the Committee feels it is only right to acknowledge the conscientious investigative work into the circumstances of the mishap carried out by the judicial authorities, especially the Public Prosecutor's Office of Trento and the Military Court of Padua, which the Committee drew on extensively. However, we must also note that in the years before the Cermis catastrophe the judicial authorities tended to underestimate the seriousness of the phenomenon of low-level flights and failed to make sufficient effort to investigate repeated reports of dangerous, unlawful flights. Further, the Committee detected a certain resignation in the face of the failure of the US military authorities to co-operate fully, and a pervasive belief that the US military would certainly claim a right to reserve jurisdiction.

1.2 The responsibility of the aircrew

That said, there is no doubt that the terrible catastrophe that led to the death of 20 people when the EA-6B aircraft sliced through cables supporting a gondola on Mount Cermis was, as analyzed in Part IV of this report, the result of the aircrew's systematic violation of the flight rules that they were supposed to be following for that training mission. The responsibility of the aircrew was established on different occasions by Italian and American military investigations, including the hearings before the Court of Trento and the court martial at Camp Lejeune. In particular, we must remember that in addition to straying from the flight plan, the aircrew certainly contravened: the regulation, set forth in a US Marine Corps Order (T&R), of 1,000 feet as the minimum altitude allowed for Prowlers; the regulation of a minimum altitude of 2,000 feet for flights over Trentino, as established in the message issued by the 1st ROC Monte Venda on 16 August 1997 and reported in the FCIF of the 31st FW of Aviano on 29 August; the

regulation minimum altitude of 1,000 feet for any flights in winter months (i.e., from 1 November to 30 April), which, as stipulated in USAF MCI 11-F-16, was also the standing minimum at all times for flight over snow-covered areas; the ban on flying over built-up areas (in this case, Cavalese) at an altitude of less than one nautical mile; the maximum speed allowed in Italian air space, which was 450 knots for flights at altitudes of less than 2,000 feet (at the time of the incident the US jet was traveling at roughly 540 knots, equal to 1000 km per hour); and, finally, the obligation to use updated maps such as those regularly distributed by the Aeronautical Cartographic Information Center (CIGA) to the commanders of the 31st FW, which, unlike US charts, showed the Mount Cermis cablecar installation.

There can be no reasonable doubt that these breaches of regulations, especially the violation of altitude restrictions, were the cause of the accident. Had the aircraft maintained the altitude prescribed by the regulations and the flight plan, it would have posed no safety threat to the Mount Cermis cablecar installation.

Although we acknowledge and respect the principle of primary jurisdiction as provided for in the SOFA and recognize the legitimacy of the trials held in the United States, the sentences handed down by the US courts and the principles of American law, this report can hardly avoid making some observations regarding responsibility for the catastrophe.

As regards the aircrew, a detailed examination of whom is to be contained in Part IV of the present report, it has to be said that they behaved in an undisciplined manner, voluntarily maneuvered the plane in an aggressive way and flew far lower and at far greater speed than allowed whenever local geography permitted it. The psychological attitude of the crew members of mission EASY 01 was such that, judging by the standards of Italian law, it is difficult not to attribute both generic and specific negligence to the entire crew and, above all, the pilot Captain Ashby.

That the crew members of the Prowler conducted themselves in a reprehensible manner is further confirmed by the actions they took after the accident. As the Italian commander at the Aviano base, Colonel Durigon, has testified, when they returned to base, the crew members failed to report the collision with the Cermis cableway, and had not raised the alarm earlier so that help might be sent to the site of the accident. Throughout the subsequent inquiries, the members of the crew showed no willingness to cooperate.

With all due respect to decisions of the American court, this Committee must necessarily acknowledge the existence of a mass of evidence against the aircrew, namely: the meeting called two days after the catastrophe by Major General Ryan, commander of the Second Marine Fighter Wing, at which he upbraided the pilots of the Prowlers, spoke of their reputation for flouting the rules and engaging in low level flying, and announced the institution of an internal inquiry; the fact that the flight was unlikely to have been a real training exercise but was, rather, more akin to a « bonus » flight for its pilot, Captain Ashby, who was about to finish his period of service in Italy and move

on to flying a completely different type of aircraft. It seems as if Captain Ashby had been allowed to make one last memorable flight. This hypothesis is also supported by the fact that the route, which passed over some of the most beautiful mountains in the world, was well-known for being particularly spectacular. The discovery of a private video camera and tapes, and the destruction of the on-board video footage of the flight by Ashby and Schweitzer also point towards the same conclusion. The apparent failure of the low-level warning signal on board is also very suspicious given that the device was later found to be functioning perfectly, suggesting that it was deliberately tampered with so that the crew might continue flying below the regulation altitudes for long stretches without being disturbed by its noise. The particularly reckless maneuver carried out by the pilot in the moments immediately preceding the impact and the comment made by Schweitzer, the navigator, a few seconds before the plane passed over Cermis, when he shouted out « target in sight » (Schweitzer admitted this at Ashby's trial), all suggest that the crew was deliberately aiming to make a show of skill that it wished to capture on video to show off to their colleagues afterwards. On the basis of this evidence, the Committee is of the opinion that the conduct of the pilots may be justly defined as reckless and irresponsible.

1.3 The responsibility of the American chain of command

An analysis of responsibility for the catastrophe does not stop with the conduct of the EASY 01 aircrew. Rather, there are many other questions regarding the entire American chain of command.

During its investigations, the Committee gathered considerable evidence to the effect that VMAQ squadrons habitually engaged in undisciplined flying behavior when operating outside a specific combat theatre. Despite being in breach of safety regulations, low-level flights by the Marine Corps do not appear to have been a rarity. Indeed, it seems that route AV047 taken by the EASY 01 mission was often chosen because it afforded spectacular scenery for the pilots.

The commander of the VMAQ-2 squadron was Lt. Colonel Muegge, who, along with the aircrew, was responsible for procuring documents and other elements necessary for the correct and safe performance of very low-level flights. He was also responsible for the accurate dissemination of information connected with the flight, and was supposed to enforce compliance with regulations. At the very least, Lt. Colonel Muegge does not seem to have paid sufficient heed to the state of affairs in the squadron that he commanded, since at no point did he intervene to prevent the continuation of conduct that was in breach of the rules of flight discipline. It may be reasonably assumed that Lt. Colonel Muegge was, in fact, perfectly aware of the misconduct of his pilots during their flights in Italy but, out of a misguided sense of group spirit, allowed them to continue, thereby failing in his duties as a commander. This assessment of Lt. Colonel Muegge is further justified by the results of the administrative inquiry into the conduct of Prowler

squadrons based in Aviano that the Marine Command instituted in the days following the tragedy. The inquiry concentrated on ascertaining whether VMAQ-2 supervisors had been negligent, and whether there was a connection between their negligence and the mishap. The result of this inquiry was a disciplinary reprimand for four squadron officers: the Commander, the Executive Officer, the Operations Duty Officer and the Flight Safety Officer. The inquiry concluded that the Flight Safety Officer, Major Max Caramanian, and the Squadron Commander Lt. Colonel Muegge were guilty of dereliction of duty for their failure to inform VMAQ-2 pilots of flight restrictions. As a consequence of this, Muegge was relieved of his command.

To conclude: the dereliction of duty and the negligence that Lt. Colonel Muegge demonstrated by failing to gather flight information and impart it to his squadron, coupled with his complicity in the undisciplined conduct of his pilots, may be considered as one of the causes that led to the tragedy of 3 February 1998.

While the USAF 31st FW in Aviano does not appear to have been responsible for the contravention of flight regulations, we regret to observe that the unit was negligent in disseminating local flight regulations to deployed units. The 31st FW was responsible for providing assistance to units on temporary posting to Italy, including the VMAQ of the Marines. Its tasks included imparting instructions and updates on local flight regulations. This duty entailed posting information updates in the mailboxes of each unit in the air base, and holding weekly meetings to announce new operational conditions and highlight the most important ones. The commanders of every NATO unit stationed at the airbase were invited to these weekly meetings. The officers in charge of the 31st FW, General Peppe, the Commander, and Colonel Rogers, head of operations, had no powers of command over deployed units, and did not even have the authority to make certain that the information supplied at the weekly meetings was effectively being distributed. In other words, they were not in a position to regulate the conduct of aircrews nor the internal organization of other units. Moreover, the methods used for distributing information were also highly defective. For instance, the VMAQ mailbox was constantly full of uncollected documents, further proof of the prevailing negligence. Regrettably, the commanders of the 31st FW acted with excessive regard for bureaucratic niceties when they would have done better to insist upon fuller participation at the meetings and should, at the very least, have seen to it that the notices they posted were collected. This was certainly within their capacity, and had they exercised their powers as they should, the aircrew would not have been unaware, or been able to claim ignorance, of FCIF 97-16, the notification which included the instruction that flights over Trentino were not be conducted at an altitude below 2,000 feet. According to the testimony of VMAQ-2 pilots, most of them were unaware of this information.

Finally, a certain responsibility for the tragedy must be ascribed to the lack of clarity in the NATO and national chains of command and control over VMAQ-2.

As we have seen in more detail in chapter 5 of Part III, and chapter 2 of Part IV of the present report, the structure of command and control before the accident was complicated and in many respects unclear. In particular, in the NATO (not US) chain of command the VMAQ squadrons based in Aviano were answerable to COMSTRIKE-FORSOUTH (CSFS). Whereas CSFS supervised NATO tasks, the US commander-in-chief in Europe (CINCEUR) « apparently » had responsibility for non-NATO national activities, including training flights. In fact, the relationship between the command of VMAQ-2 and CSFS with respect to national operations still remains obscure. In any case, the relationship between them does not seem to have been sufficient to guarantee proper oversight, as the Command Investigation Board and the Tricarico-Prueher Commission both point out.

In short, the several delegations of authority and the distinction between the US and NATO lines of command may well have had the effect of giving the Marines based in Aviano an unusually broad degree of autonomy. In the absence of effective controls over the activities they carried out, the squadrons appear, unfortunately, to have taken considerable advantage of the situation.

1.4 Responsibility of Italian political, institutional and military authorities

It should also be observed that in the 20 years preceding the accident, the political, institutional and military authorities of Italy failed to give due attention to the repeated reports from local civilians and their representatives regarding flights in breach of safety regulations. No follow-up was made to the reports, possibly also as a result of their unspecific nature. There was also a certain degree of passive acceptance of the actions carried out by the US armed forces based in Italy.

With respect to the Italian chain of command, the Committee concurs with the conclusions reached by the military courts, which found no grounds for imputing criminal responsibility to the Italian officers in charge, namely the base commander in Aviano, Colonel Orfeo Durigon, and the commander of the COA/COM of Martina Franca, Lt. Colonel Celestino Carratù. The former was investigated by the Military Court of Padua, and the latter by the Military Court of Bari. The Committee nonetheless feels that Colonel Durigon regarded his role with respect to the American personnel at the base as merely bureaucratic and formal. While it is true that by the terms of international agreements he did not enjoy extensive powers of control or have the authority to prevent flights, he was nonetheless obliged, by the terms of the very same agreements, to alert his US counterparts to the need to comply with the regulations governing low-level flight in the zone in which the accident occurred and to raise the issue with his superiors in the event that his warnings were going unheeded.

We must also consider the message from the Air Staff of 21 April 1997, which barred units deployed to Italy for Operation Deliberate

Guard from carrying out low-level training flights. This message was a central issue in the hearings conducted in Italy, and gave rise to considerable disagreements about its purpose, especially whether it was intended to be prescriptive or not. We refer the reader to the sections of the present report which examine this matter at length. Nevertheless, the issue suggests that military authorities should be particularly careful when drafting written communications pertaining to sensitive or delicate topics and avoid equivocal phrasing that is open to misinterpretation, especially as this could result in the failure to apply whatever directives the message contained. The Committee also recommends that due attention be given to the task of controlling and verifying the manner in which these communications are received and implemented.

1.5 Flight regulations

The Committee devoted considerable attention to the rules governing military flights in Italy, the procedures for authorizing flights and the controls exercised over them. Our analysis, which is given in chapter 4 of Part V, has revealed that the rules are precise, detailed and substantially valid. While the rules satisfy the requirements for public safety, and did so even before the tragedy, the system of control is defective. The action taken immediately after the disaster, however, further strengthened the safety guarantees.

The regulations in force in Italy are fully suited to the planning, programming, execution and control of flight operations, with special regard for low-level training flights. Italian regulations also meet fundamental and indispensable safety requirements in every respect. Moreover, the various restrictions set by the relevant authorities regarding the categories of aircraft, the zones in which the flights take place and other factors are also adequate. In particular, altitude restrictions are adequate for ensuring the safety and protection of all parties, including aircrews and aircraft, and minimizing the risk to people and property.

The established procedures for authorizing missions and drawing up daily flight schedules, in short the entire process for the approval and authorization of training or operational flights whether under national or NATO command, appear to be straightforward and clear. Similarly, the responsibilities of the various structures and bodies that issue mission requests, forward them, verify their feasibility and ultimately assign and confirm single missions appear to be clear-cut. The procedures for flight control during missions also appeared to be straightforward and extremely simple.

In other words, flight regulations, especially with respect to very low-level flight, are adequate and did not contribute to the catastrophe, which was the result of crew indiscipline.

Although the procedures themselves are certainly valid, the technical capacity to monitor flights continuously and check whether they are complying with regulations is lacking. Either instruments are not up to the task or, in some cases, do not exist.

The limitations of the air defense radar detection system are rendered apparent by very low-flying aircraft. As the system is unable to cover mountainous zones, even aircraft flying at higher altitudes can escape detection. The radar instrumentation on board AWACS aircraft does not easily lend itself to carrying out this type of control unless the aircraft have been specifically deployed to cover an area of particular interest. This type of deployment is not possible, however, because the AWACS aircraft currently in use are part of the NATO fleet and therefore are not available to satisfy the requirements of national air forces whose priorities are completely different from those of a typical NATO mission. Even though the acquisition of a national AWACS capacity is one of the priorities of the Italian Air Force, this is unlikely to come about in the near future owing to a lack of funds, as the Chief of the Defence Staff observed in his testimony before the Committee.

Given that the current situation seems likely to continue, the Committee has developed a possible low-cost solution and submitted it to the Government for consideration. The installation of onboard equipment based on technology similar to that used for the global positioning system (GPS) that provides anti-theft protection for motor vehicles could provide an effective means of monitoring aircraft. Clearly, this is a matter that the relevant authorities must examine and review in detail, bearing in mind the need for secrecy in military operations.

1.6 Measures adopted after the accident and the Tricarico-Prueher report

Even though flight regulations appear to be adequate, they are not enough on their own to prevent the occurrence of tragedies along the lines of the Cermis disaster. Flight regulations must be backed up by intense and effective command leadership to instruct and keep flight crews continuously informed, and encourage an environment of professionalism, responsibility and ethics. Command activities must continuously check that information is being distributed effectively and that flights are being correctly planned and executed.

In this regard, our inquiries found that at the time of the accident, the US chain of command suffered from defects, a lack of clarity and a failure of supervision. As noted earlier, the US chain of command failed to disseminate Italian flight regulations among its staff, and links between Italian and American military commanders at Italian bases were neither clear nor straightforward.

This situation appears to have encouraged the practice of carrying out low-level flights in defiance of regulations. This is the conclusion reached by the Committee after analyzing the documentation submitted to it (which included transcripts of complaints from citizens about very low-level flights), and after conducting hearings, especially those held in Trento. Local authorities voiced the strong unease of local residents in the face of increasingly invasive and aggressive flight

activities. We looked in detail at this phenomenon in chapter 5 of Part V. While quite aware that it is extremely difficult to determine whether a flight is following altitude regulations, especially (as the military authorities pointed out) when the judgment is made by someone who is not an expert in the field, we nonetheless strongly urge vigilance and demand that action be taken to repress irregular and irresponsible conduct.

The measures put into effect after the accident and, especially, the measures proposed by the Tricarico-Prueher Commission sought to remedy the state of affairs described above.

More precisely, the Italian and US governments introduced a series of measures with immediate effect directly after the Cermis accident. Some of these measures referred to operational considerations and others to flight safety. The measures of particular relevance include the imposition of new minimum altitude limits for flights, the requirement that aircraft remain in constant radio contact with Italian air traffic control, the obligation to use Italian maps when planning flights and the institution of information briefings by Italian air traffic control. A more detailed list of these measures is contained in chapter 6 of part V.

In order to ensure that aircrews are fully aware of the altitude restrictions in force, the United States also introduced a number of procedural modifications: the formalization of control procedures to guarantee the full distribution of flight information; compulsory and standardized instructions on low-level flight regulation by means of briefings to all aircrews prior to deployment; the formalization of SOPs for deployment, with the inclusion of more detailed information regarding local rules and procedures so that commanders and aircrews are better informed and aware of any updates. Further, in order to familiarize aircrews with the routes and alert them to potential risks and dangers, it was decided that only units of the 31st FW permanently stationed in Aviano would be authorized to carry out low-level training flights. New criteria for the planning and execution of these flights were also established. The 31st FW was also accorded a broader and more visible role, confirmed the Memorandum of Agreement (MOA) between USAREUR and USAFE signed on 2 December 1998. Specifically, the Memorandum states that the 31st FW shall have the function of liaising between the commander of the Italian base and USAREUR, and that all flight activities must be overseen by the deputy commander of operations of the 31st FW, who will be the only point of contact with the Italian Air Force for operational issues in the Aviano base.

The measures amount to more than mere adjustments to existing rules. Rather, they are completely innovative and effectively serve the purpose for which they were intended, largely making up for the various oversights and defects in the USMC chain of command, especially as regards VMAQ-2.

The recommendations of the Tricarico-Prueher report embraced and integrated the new measures. In particular, new procedures were put in place for low-level training by US aircraft, and an important decision was taken not to allow low-level flights over Italian national

territory by foreign air force units unless they are permanently based in Italy. Exceptions to this rule are possible, but they must be approved by the Italian authorities a case-by-case basis. Meanwhile, even units that are permanently stationed in Italy are now subject to severe restrictions for low-level flights. In addition, units temporarily stationed in Italy that have been authorized to carry out low-level flights may not in any case do so over the Alps. It was agreed to nominate a US commander at each Italian installation as a Designated US Authority responsible for overseeing and monitoring compliance with American and Italian flight safety regulations. US units may conduct flight operations only after receiving certification from this authority. It was agreed to post Italian and US liaison and/or exchange officers with selected US and Italian units to enhance the flow of information and facilitate communications. It was further agreed to appoint US flight safety officers, who must attend information briefings by Italian flight safety officers and meet on a regular basis with a designated representative of the Italian flight Safety Board to discuss regulatory matters and issues relating to flight operations in Italy.

These measures seem sufficient to rectify the shortcomings evident in the manner in which information regarding flight regulations is disseminated, and should improve supervision and control by the American chain of command and enhance communications between Italian and American commands.

The hearings conducted by this Committee and the mission to the United States revealed that the recommendations contained in the Tricarico-Prueher Report have for the most part been implemented by the military authorities. These recommendations are also informing the on-going renegotiation of the agreements and technical arrangements that govern the presence and activities of US military forces in Italy. The Committee very strongly urges their continued implementation.

1.7 American initiatives: the Command Investigation Board and the court martials

The Committee wishes to express its appreciation for the efforts of the American government to shed light on events and for the collaboration in helping the Committee accomplish its task. The Committee particularly thanks the US Ambassador in Rome, Thomas Foglietta, and Embassy staff for their helpfulness at various points of the investigation. The Committee is also grateful to the US Department of Defense for the warm welcome it received during the mission to Washington, and for the valuable and frank exchange of information and views.

Nevertheless, the Committee must draw attention to certain important points.

First, the Committee has misgivings about the choice made immediately after the accident to establish a Command Investigation Board rather than an Aircraft/Missile Safety Accident Investigation Committee or, alternatively, an Aircraft Mishap Board, as provided for

under the terms of STANAG 3531, the NATO convention that regulates the manner in which inquiries into air mishaps involving more than one state in the Alliance are investigated. Indeed, a « privileged » flight safety inquiry would in all likelihood have drawn out fuller and more truthful testimony from at least some of the persons involved. The consequence of the decision to proceed with a Command Investigation Board, which was set the task of determining responsibility, was that the people involved risked self-incrimination by testifying and therefore opted to exercise their right to remain silent or make statements that were incomplete and limited only to areas that defense attorneys considered beneficial. It is a matter of some regret that our proposal to set up an Aircraft/Missile Safety Accident Investigation Committee, in accordance with STANAG 3531, which we made on 20 November 2000 during a meeting at the Pentagon with American political and military authorities, was not accepted. The rejection of our proposal was communicated by Ambassador Foglietta to the chairman of this Committee in a letter dated 14 December 2000.

Our examination of the report of the Command Investigation Board revealed the considerable amount of work and major investigative effort that this body had carried out. The arguments, opinions and outcomes are set forth in a clear and generally exhaustive manner. The inquiry as a whole touched on all matters pertaining to the flight in question, as well as other fundamental and significant factors and their various implications. Certain parts of the report are highly detailed and thorough, partly as a result of the choice of the hearing officers to examine the question from several different angles, and partly as a result of the decision to carry out further verifications. Other parts of the report, however, are superficial and far less thorough and do not offer sufficient or convincing explanations. One example of this superficiality is the CIB's decision to rule out the possibility that there were errors of supervision by the US commands above the squadron in the chain of command, particularly as regards CSFS, or that the US chain of command may have failed in its control of low-level training activities by VMAQ squadrons based in Aviano. Similarly, the report fails to make any analysis of the series of earlier low-level flights carried out by aircrews from the same unit. Although the report states that the crew piloted the aircraft in an aggressive and irresponsible manner that breached restrictions and concludes that the collision was not simply the result of a single error of calculation, it does not clearly state that the type of misconduct, its repetitive nature and gravity can only be ascribed to the undisciplined and utterly reckless behavior of a crew that was fully aware of the correct flight rules (both Italian and Marine Corps regulations) yet acted in premeditated and deliberate contravention of them.

The general impression is that the work of the CIB was intended to focus inquiries on the squadron, making no effort to go beyond this level to discover any further elements of interest, including evidence of responsibility.

For the reasons above, the report issued by the CIB, while deserving of commendation for the effort that went into it, cannot be considered satisfactory.

Likewise, this Committee regrets the refusal of the American authorities to grant the request, presented during the mission to Washington, for copies of the administrative investigation carried out by the Marines in the immediate aftermath of the accident. The American authorities thereby prevented the Committee from acquiring valuable information to help build up a general picture of responsibility for the tragedy.

As regards the legal action taken against the crew, the Committee duly noted that captains Ashby and Schweitzer were dismissed from the Marines after their trial on charges of conspiracy to obstruct justice, and recognizes that the punishment meted out was criminal and not merely administrative. Furthermore, Captain Ashby also suffered a suspension of pay and a prison sentence of six months, of which he served five. The impression of this Committee is that in the face of strong international reaction and condemnation of the acquittal of the accused on charges of negligent homicide and involuntary manslaughter, the American courts penalized the far less serious offences by way of expressing their condemnation of the conduct of pilots who brought so much discredit to the Marines and the United States.

1.8 The inquiry by the Italian Air Force

The Committee is forced to conclude that the inquiry carried out by the Italian Air Force was unsatisfactory. The investigation produced an excessively brief report owing to the narrow scope of inquiry it was forced to examine. It was not able to look into aspects of fundamental importance for the reconstruction of the accident and the EASY 01 mission. Indeed, the investigating board itself admitted that it was not able to gather evidence regarding the conduct of the crew (either on the ground or during flight) nor obtain information on the exact sequence of events because the members of the crew, advised by defense lawyers, exercised their right to silence and refused to respond to the board's requests for clarification.

1.9 Changes to international regulations

In light of the Committee's analysis and the questions that emerged in the aftermath of the Cermis accident, the current process for the revision and updating of international regulations has acquired special importance. This is particularly true of the bilateral negotiations begun in the mid-1990s concerning NATO's use of Italian installations and infrastructures, and the regulation of the operative and training activities of NATO forces. The ongoing review of the technical arrangements relating to the use of individual airbases by Allied forces

in Europe must be carried out with pre-eminent regard to the need to safeguard Italian sovereignty and uphold the rules that every military unit operating in Europe must follow. The renegotiation of the strategic accords with our NATO allies must be carried out from a European perspective. Without calling into question the principles that underpin the agreements, Europe should affirm its growing security and defense identity. To do otherwise would be to risk compromising Europe's capacity to build a system of defense that can simultaneously be distinct from, but also institutionally connected to, the US military apparatus with which it will continue to co-operate.

A number of issues are still open to discussion during the international negotiations. The Committee would like to draw attention to a number of points, which are summarized below.

First, as regards the SOFA, it is necessary to make a fuller and clearer definition of situations in which the sending State is permitted to claim primary jurisdiction for actions that were carried out as part of « official duties ». It is an important distinction for the exercise of both criminal and civil jurisdiction. A clearer definition of which actions fall under the category of « official duty » could have important consequences both as regards the liability of the sending State for any damages awarded and the priority of jurisdiction.

It is also necessary to consider the need to clarify the issue of concurrent jurisdiction between sending States and receiving States in cases where such concurrence regards the safeguarding of clearly disproportionate, or even merely apparent, interests. We refer to cases in which the sending State claims priority in order to prevent the receiving State from applying its jurisdiction, rather than trying and, where necessary, punishing the guilty parties. For example, the sending State may assert that an action that contravenes the laws of the receiving State should fall under the sending State's jurisdiction because it belongs to the category of « all disorders and neglects to the prejudice of good order and discipline in the armed forces », an offence which, pursuant to Article 134 of the Uniform Code of Military Justice, is punishable under US military law. In such cases, where the gravity of the offence in the receiving State outweighs the interest of the sending State, the receiving State should have jurisdiction, even if the offence was committed within the context of an « official duty. » The sending State should nonetheless remain liable for civil damages, according to the terms of the SOFA, if the offence was committed during the performance of « official duty ».

Another necessary step is to ensure that compensation to victims is generous, that the procedures for its payment are straightforward and that the burden of compensation falls entirely on the sending State if the damage was caused by a grave breach of the laws of the receiving State and/or a violation of procedures or rules of conduct to which the two states have agreed. In simple terms, this refers to all agreements of a technical nature, including understandings reached between the respective military commanders of the states. If such agreements are to be respected and if civil society is to monitor their application, they

must be publicized as much as possible. under such a system, Italian base commanders should be given the power to prohibit any activities that violate regulations.

Taking their cue from the recommendations of the Tricarico-Prueher Commission, the parties should revise their agreements to bring greater clarity, precision and simplicity to the manner in which the various functions in the military chains of command are assigned to specific persons. It is particularly necessary to provide the Italian command with adequate and substantive powers of control over the activities of foreign military personnel, and accord Italian commanders sufficient operational and executive powers of interdiction and intervention in the manner proposed by the Tricarico-Prueher report.

Current regulations need to be revised and/or completed in the manner suggested above. Such a review necessary requires a negotiated agreement among all EU states in order to ensure a common security policy on the presence of military forces in Europe, and establish common criteria for the exercise of criminal and civil jurisdiction across a single European area, employing the new provisions envisaged in the Treaty of Amsterdam.

The Committee is therefore in favor of the ongoing re-examination of the technical arrangements for the use of individual airbases by Allied forces in Europe, recommending careful attention to safeguarding national sovereignty and to the rules that every military unit operating in Europe should follow. Likewise, the Committee agrees with the simultaneous renegotiation of the strategic accords with Italy's allies from a European perspective, without calling into question the principles that underpin them, in order to affirm the growing European security and defense identity. To do otherwise would be to risk compromising Europe's ability to build a system of defense that is simultaneously distinct from, but institutionally connected to, the US military apparatus.

1.10 Modifications to Italian criminal and civil law

The institutional duties of this Committee included an evaluation of the adequacy of Italian civil and criminal law. In its consideration of the subject, the Committee paid particular attention to substantive criminal offences and the compensation of civil damages. The analysis was conducted with a view to minimizing the use of criminal law, regarding it as a last resort and preferring other forms of regulatory intervention. Although the Committee developed a number proposed amendments to criminal provisions, it preferred to look for solutions in civil law.

One possible action would be to modify Article 589 of the Criminal Code, which punishes negligent homicide (*omicidio colposo*).

In particular, legal safeguards in cases analogous to the Cermis accident could be enhanced by incorporating a new aggravating circumstance punishing negligent homicide committed in the course of a violation of flight regulations or the operation of an aircraft, similar to provisions already in force for vehicular traffic and workplace safety.

Similarly, Article 590 of the Criminal Code, which covers negligent personal injury (*lesioni personali colpose*), could be improved by the addition of a new aggravating circumstance punishing such offences committed in the course of a violation of flight regulations.

In respect of the issue of liability for damages, a matter that was much debated after the catastrophe and prompted the Italian Parliament to pass a special law so the victims' families might receive adequate compensation, the Committee carefully considered whether a more general solution to the problem might not be possible, concluding that this would be preferable to changing criminal law in the manner outlined above.

The Committee therefore favors the introduction of new civil-law provisions establishing compensation for damage caused as a result of the operation of an aircraft, considered to be an inherently dangerous activity. Essentially, the proposal would be to establish a form of objective civil liability associated with the operation of an aircraft.

This solution would mean that the owner of the aircraft (in the case of military aircraft this would be the state to which it belongs) would be held liable for any damage caused and therefore liable for compensation even for accidents caused by chance events or *force majeure*, without the need for ad hoc political decisions, thus enhancing the protection of the damaged parties.

The Committee submits its considerations and proposals to Parliament confident that it carried out its task with full dedication and rigor, thanks to the contribution of all its members. Albeit inspired by different critical objectives, they succeeded in working together in harmony because they shared a sense of deep respect and consideration for the victims, and a common desire to ensure that tragedies such as Cermis will not happen again. This Committee hopes that its efforts have served not only to highlight political and institutional responsibilities at every level, but have also contributed towards the accomplishment of that goal.