



DEPARTMENT OF THE AIR FORCE
WASHINGTON, DC 20330-1080

OFFICE OF THE UNDER SECRETARY

02 FEB 2001

MEMORANDUM FOR SEE DISTRIBUTION

FROM: SAF/IAPX
1080 AIR FORCE PENTAGON
WASHINGTON DC 20330-1080

SUBJECT: Application of NATO Status of Forces Agreement (SOFA) to Combined Exercises with NATO Countries (SAF/IAPX 01006) (Defense Security Cooperation Agency (DSCA 01-02, 01/000429-GC, 19 Jan 01, SAB)

The attached DSCA memo provides guidance on liability for claims arising out of combined exercise activities under Article VIII of the NATO SOFA. NATO SOFA claims provisions are recognized as applying to Acquisition and Cross-Servicing Agreements (ASCA) with NATO countries. FMS LOAs do not presently recognize their applicability to claims arising from exercise activities. Therefore, effective immediately the following Note will be added to all existing and future FMS LOAs with NATO countries for sale of defense articles and services for combined exercise support:

NOTE XXX (insert number): Combined Exercise Support to NATO Countries

This LOA provides defense articles and/or defense services to the purchaser to support its participation in (insert name of exercise: e.g., Red Flag, Cope Thunder), a combined exercise. Claims arising out of combined exercise activities shall be dealt with under Article VIII of the NATO SOFA.

The SAF/IAPX point of contact for this matter is Sandy Harding, (703) 588-8974, (DSN) 425-8974, sandy.harding@pentagon.af.mil.

Terry Bates
Chief, Security Assistance Policy Division
Deputy Under Secretary, Int'l Affairs

Attachments:

1. DSCA MEMO, 19 Jan 01
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Mr. Mitchell has seen

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19 JAN 2001

In reply refer to:
01/000429-GC

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DEFENSE FINANCE AND ACCOUNTING SERVICE -
DENVER CENTER

SUBJECT: Application of NATO Status of Forces Agreement (SOFA) to Combined
Exercises with NATO Countries (DSCA 01-02)

In cases where the DoD provides defense articles and services through Foreign
Military Sales (FMS) to NATO countries to support their participation in a combined
exercise with the United States, some NATO countries have requested application of

NATO SOFA claims provisions which have been applied to U.S. exercise activities in their countries. They have objected to the Standard Terms and Conditions of FMS Letters of Offer and Acceptance (LOAs) on the mistaken assumption that, contrary to the NATO SOFA, the terms require the Purchaser to indemnify the USG fully with respect to all claims arising from exercise activities instead of just to claims arising under the LOA.

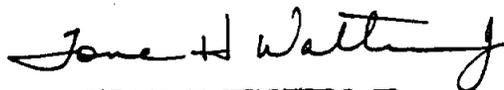
It should be noted that Foreign Military Sales procedures are not the only authority for providing defense articles and services to support foreign country participation in combined exercises. The military services and DoD components also utilize Acquisition and Cross-Servicing Agreements (ACSAs) under 10 U.S.C. §§ 2341-2350 as implemented by DoDD 2010.9, "Mutual Logistic Support Between the United States and Governments of Eligible Countries and NATO Subsidiary Bodies," September 30, 1988, where applicable.

Whether support to a NATO country is provided under FMS or ACSA authority, liability for claims arising out of combined exercise activities shall be dealt with under Article VIII of the NATO SOFA. While NATO SOFA claims provisions are recognized as applying to ACSAs with NATO countries, FMS LOAs do not presently recognize their applicability to claims arising from exercise activities. Therefore, existing and future FMS LOAs with NATO countries for sale of defense articles and services for combined exercise support shall include the following note:

NOTE XXX (insert number): Combined Exercise Support to NATO Countries

This LOA provides defense articles and/or defense services to the purchaser to support its participation in (insert name of exercise: e.g., Red Flag, Cope Thunder), a combined exercise. Claims arising out of combined exercise activities shall be dealt with under Article VIII of the NATO SOFA.

Please ensure widest dissemination within your organization to ensure application of Article VIII of the NATO SOFA to claims arising from combined exercise activities with the United States. The DSCA point of contact for this matter is my General Counsel, D. Kay Cannon. She may be reached at (703) 604-6587.



TOME H. WALTERS, JR.
LIEUTENANT GENERAL, USAF
DIRECTOR

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