

DSCA 01-02
Application of NATO Status of Forces Agreement (SOFA) to
Combined Exercises with NATO Countries
19 January 2001

In reply refer to:
01/000429-GC

Memorandum For: Deputy Under Secretary of the Army (International Affairs)
Department of the Army

Director, Navy International Programs Office,
Department of the Navy

Deputy Under Secretary of the Air Force (International Affairs)
Department of the Air Force

Deputy Commandant For Plans, Policies and Operations,
Headquarters Marine Corps

Director, Defense Logistics Agency

Director, National Imagery and Mapping Agency

Director, Defense Threat Reduction Agency

Director, Defense Reutilization and Marketing Service

Director, Defense Information Systems Agency

Director, Defense Logistics Information Service

Deputy Director for Security Assistance, 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.

/Signed/
Tome H. Walters, JR.
Lieutenant General, USAF
Director