

UNITED STATES
OF AMERICA



Treaty Series No. 69 (1993)

Exchange of Notes

between the Government of the
United Kingdom of Great Britain and Northern Ireland
and the Government of the United States of America

concerning *Defence Co-operation Arrangements*

Washington, 27 May 1993

(The Agreement entered into force on 27 May 1993)

*Presented to Parliament
by the Secretary of State for Foreign and Commonwealth Affairs
by Command of Her Majesty
November 1993*

LONDON : HMSO

£1.55 net

Cm 2361

**EXCHANGE OF NOTES
BETWEEN THE GOVERNMENT OF THE
UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND
AND THE GOVERNMENT OF THE UNITED STATES OF AMERICA
CONCERNING DEFENCE CO-OPERATION ARRANGEMENTS**

No. 1

The Secretary of State, Washington to Her Majesty's Ambassador at Washington.

*The Department of State
Washington
27 May 1993*

Excellency,

I have the honor to refer to recent discussions which have taken place between representatives of the Government of the United States of America and the Government of the United Kingdom of Great Britain and Northern Ireland concerning defense co-operation arrangements between our two Governments. These discussions reflect the mutual desire of our two Governments, in the exercise of their national and mutual defense responsibilities within the North Atlantic Treaty Organization for the security, *inter alia*, of the United States and the United Kingdom to facilitate the process of co-operation in defense matters by providing a clear and consistent basis for such co-operation, to recognize the good faith with which both our Governments have heretofore carried out their commitments to each other in the defense area, and to ensure that the respective interests of each Government are fairly respected under international law.

I have the further honor to refer to the Agreement Between the Parties to the North Atlantic Treaty Regarding the Status of Their Forces (NATO SOFA) signed at London on 19 June 1951¹, which, *inter alia*, defines the terms "force" and "civilian components" and establishes procedures for resolution of certain claims arising from damage to property and death or injury to persons caused in connection with the operation of the North Atlantic Treaty; and to the NATO Agreement on the Communication of Technical Information for Defence Purposes signed at Brussels on 19 October 1970², which provides, *inter alia*, that recipient States which receive in confidence proprietary technical information for defense purposes are responsible for safeguarding it and that the owners of proprietary technical information which has been communicated for defense purposes who are damaged through the unauthorized disclosure or use of the information by a recipient state or by someone to whom this recipient has disclosed the information must be compensated by the recipient.

As a result of the aforementioned discussions, I have the honor to propose that whenever written arrangements on co-operation are concluded by our respective national defense organizations, within the limits of defense responsibilities and authorities as established by the laws of each country, they shall be subject to the agreement of our two Governments as to the following matters:

1. (a) As regards issues of liability, the NATO SOFA shall apply pursuant to its terms.
- (b) For issues of liability for which the NATO SOFA does not apply, the following shall apply except in the case of loans covered by paragraph 4 of this agreement:
 - (i) Each Government shall waive all claims against the other for injury or death to its personnel, and for damage to its property arising from the performance of official duties.

¹ Treaty Series No. 3 (1955) Cmd. 9363.

² Treaty Series No. 13 (1972) Cmnd. 4869.

- (ii) In the event of any claims from third parties, including claims for injury or death to persons or damage to property arising from the performance of official duties, the Governments shall share, in accordance with the proportions stated in the relevant arrangements, any costs adjudicated administratively or judicially. Such claims shall be adjudicated by the most appropriate Government as agreed.
- (iii) As to (i) and (ii) above, if the Governments agree that damage, injury or death is caused by reckless acts or reckless omissions, willful misconduct or gross negligence, any cost adjudicated administratively or judicially shall be borne entirely by the Government of the culpable person.
- (iv) Claims arising under any contract implementing a written arrangement between national defense organizations shall be resolved in accordance with provisions of the contract, which shall not indemnify contractors for third party claims except for unduly hazardous circumstances when the cost of insurance is excessively high. Such contractors may be authorized use of a patent or other intellectual property rights when necessary to execute a contract, for which they may be indemnified, all as may be permitted by national law.

2. The following provisions shall apply with respect to rights to own and use information provided or developed under a written arrangement for research, development, test, evaluation or production:

- (i) Information generated outside of a written arrangement that is provided by a national defense organization to the other national defense organization shall be used by or for that other organization only for the purposes set out in that written arrangement.
- (ii) Information generated by or for a national defense organization in performance of a written arrangement shall be used by or for the other national defense organization only for the purpose set out in that written arrangement.
- (iii) Information jointly generated by or for the national defense organizations shall be used by or for each organization only for the purposes set out in the written arrangement.
- (iv) Title to information generated by or for the national defense organizations shall be allocated, as necessary, solely or jointly to the Governments and their contractors as set out in written arrangements between the national defense organizations.

3. Neither Government shall sell, transfer title to, disclose, or transfer possession of

- (i) information generated outside of a written arrangement and provided by or for the other Government,
- (ii) information generated in the performance of a written arrangement which is jointly generated or which may be specified in the written arrangement, or
- (iii) equipment provided by or for the other Government, jointly acquired, or which may be specified in a written arrangement, to any third party without the prior written consent of the other Government.

4. As regards the loan of equipment for research, development, test and evaluation, the receiving Government shall use such equipment for the purposes set out in written arrangements between our national defense organizations. The receiving Government shall be responsible for properly maintaining such material and shall return such material (except expendables) to the supplying Government in as good condition as when received, reasonable wear and tear excepted, or pay the cost of any damage (unless there is a requirement to test to partial or complete destruction, in which case the lending Government shall specify the method of disposal of any residue). Possession shall pass from the supplying Government to the receiving Government at the point specified in implementing arrangements. If the receiving Government fails to return such equipment (except expendables and items authorized for testing to destruction), the receiving Government shall pay to the supplying Government an amount equivalent to the value (not to exceed the replacement cost) of such equipment less the amount determined to represent reasonable wear and tear for the period of possession.

5. As regards logistics support, each Government shall provide, upon request and subject to availability, food, water, billeting, transportation, petroleum, oil, lubricants, clothing, communication services, medical services, ammunition, storage services, training services, contracting and related services, repair and maintenance services, spare parts and components, access to and use of facilities, base operations support (including construction incident thereto), airfield and port services, and shall make any payment or accounting therefore. Details shall be set out in written arrangements between our national defense organizations.

In order for this agreement to apply to a written arrangement between our national defense organizations, it must be explicitly invoked by or for that arrangement.

Any difference of view regarding the interpretation or application of this agreement shall be resolved by consultation between our two Governments and shall not be referred to a national or international tribunal or third party for settlement.

I have the honor to propose that, if the above proposal is shared by your Government, the present Note and Your Excellency's reply to that effect shall constitute an Agreement between our two Governments which shall enter into force on the date of Your Excellency's reply and shall remain in force until six months after the date of the receipt of notice of termination by either Government.

Accept, Excellency, the renewed assurances of my highest consideration.

For the Secretary of State:

RALPH R JOHNSON

No. 2

Her Majesty's Ambassador at Washington to the Secretary of State, Washington

*British Embassy
Washington
27 May 1993*

I have the honour to refer to Your Excellency's note dated 27 May 1993 concerning defence co-operation arrangements between our two Governments.

I have the further honour to confirm that the proposals set forth in Your Excellency's note are acceptable to the Government of the United Kingdom of Great Britain and Northern Ireland, and your note and this note in reply shall constitute an agreement between our two Governments which shall enter into force on this date.

I avail myself of the opportunity to renew to Your Excellency the renewed assurances of my highest consideration.

For the British Ambassador
CHRISTOPHER MEYER



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