

THE STATE SECRETARY

IN THE FEDERAL FOREIGN OFFICE Bonn, March 27, 1998

Mr. Ambassador:

I have the honor to confirm receipt of your Note No. 146 of March 27, 1998 with which you propose on behalf of your Government an Arrangement between the Government of the United States of America and the Government of the Federal Republic of Germany. Your Note reads as follows:

"Mr. State Secretary:

With reference to the discussions between representatives of the Governments of the Federal Republic of Germany and the United States of America, I have the honor to advise you of the following:

In order to provide medical, social and career related services to members of the United States Forces stationed in the Federal Republic of Germany, members of its civilian component and the dependents of both, as defined in the NATO Status of Forces Agreement (NATO SOFA), the Government of the United States of America intends to conclude contracts with a number of enterprises for the provision of such services (hereinafter referred to as Troop Care).

The Government of the United States of America would appreciate if, in order to facilitate their activities, the employees of such enterprises could be accorded the exemptions and benefits specified in Article 72, paragraph (5) of the NATO SOFA Supplementary Agreement (SA). On behalf of the Government of the United States of America I therefore have the honor to propose that an Arrangement be concluded pursuant to Article 72, paragraph (4) of the NATO SOFA SA, which shall lay down the following general conditions relating to the

The Honorable  
John C. Kornblum  
Ambassador of the United States  
of America

Bonn

legal status of such enterprises and their employees, as well as their activities in the Federal Republic of Germany:

1. Enterprises charged with providing Troop Care services shall exclusively serve members of the United States Forces, members of its civilian component and the dependents of both. Article 72, paragraph (3) of the NATO SOFA SA shall not apply. The activities of such enterprises shall be restricted to the provision of Troop Care services which cannot be undertaken by German enterprises without prejudice to the military requirements of the United States Forces. Such services shall comprise the services of physicians, **physician assistants**, [Footnote 1](#) dentists, dental hygienists, medical service coordinators, physical and occupational therapists, clinical child psychologists, early intervention special educators and early intervention project managers, social workers, speech-language therapists and audiologists, psychotherapists, certified nurses, family advocacy counselors, family wellness counselors, family service coordinators, drug abuse counselors, persons engaged in military career and occupational counseling, testing and training. If necessary, both sides can enter into consultations with the intention of changing this list of professions by an additional exchange of notes.

2. a) The Government of the United States of America shall ensure that the enterprises charged with providing Troop Care services employ only suitably qualified members of the professions referred to in number 1 above.

b) The total number of such employees charged with providing Troop Care services to members of the United States Forces stationed in the Federal Republic of Germany, members of its civilian component and the dependents of both shall be reasonable and relevant to the number of such members.

c) It is agreed that neither Article 72 of the NATO SOFA SA nor the present Arrangement entitles individual enterprises to be granted status pursuant to Article 72, paragraph (4) of the NATO SOFA SA. Such status shall be granted only on an individual basis by separate arrangement. The German authorities will give sympathetic and expeditious treatment to applications for such status.

3. Without prejudice to Article 72, paragraph (6) of the NATO SOFA SA enterprises granted status following the conclusion of such arrangements shall enjoy the exemptions and benefits listed in Article 72, of the NATO SOFA SA with the following restrictions:

a) The parties agree that exemption from customs, taxes, import and re-export restrictions and foreign exchange control is not necessary for the performance of the tasks of the enterprises charged with providing Troop Care services. Privileges

pursuant to Article 72, paragraph (1), letter (a) NATO SOFA SA shall therefore not be granted to the enterprises.

b) Moreover, the enterprises charged with providing Troop Care services shall be accorded no exemptions from the provisions of industrial safety law. Within the limits of their discretion, the responsible German authorities shall allow exceptions to the relevant industrial safety regulations (in particular under Section 3 of the Accident Prevention Regulation "General Regulations") for such facilities belonging to enterprises charged with providing Troop Care services as are located in accommodation made available for the exclusive use of the United States Forces.

4. The Government of the United States of America and the Government of the Federal Republic of Germany agree that the needs for accommodation and office space of enterprises charged with providing Troop Care services will not be met by the Federal Republic of Germany. Where such enterprises make use of accommodation made available by the Federal Republic of Germany to the United States Forces, the latter may not profit therefrom economically. The Federal Republic of Germany shall be entitled to any compensation paid by enterprises charged with providing Troop Care services for such use. Enterprises charged with providing Troop Care services shall not be entitled to any special legal status on account of shared use of accommodation made available to the United States Forces. The provisions of Article 53 of the NATO SOFA SA shall not apply to enterprises charged with providing Troop Care services.

5. a) Employees of enterprises charged with providing Troop Care services shall, if they exclusively serve such enterprises, enjoy the same exemptions and benefits as those granted members of the civilian component of the United States Forces, unless the United States of America restrict such exemptions and benefits.

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b) The Government of the United States of America commits itself, pursuant to Article 72, paragraph (5), letter (a), and paragraph (6) of the NATO SOFA SA to fully withdraw from such employees as do not fall within the meaning of number 1 above the exemptions and benefits accorded members of the civilian component under the NATO SOFA SA. Individuals who meet the prerequisites of number 1 and who have already enjoyed exemptions and benefits shall not have the exemptions and benefits and the ensuing financial gains actually granted prior to the date of this Arrangement retroactively withdrawn. As far as these individuals are concerned, the periods during which they were employed until the time when the contractor was granted the privileges in accordance with Article 72, paragraph (4), NATO SOFA SA regarding Troop Care will not be considered when the reason for exclusion in accordance with Article 72, paragraph (5), letter (b) (iv) NATO SOFA SA is being assessed.

c) Exemptions and benefits shall not be accorded to employees falling within the scope of Article 72, paragraph (5), letter (b) of the NATO SOFA SA. Specifically, pursuant to Article 72, paragraph (5), letter (b) (iv) NATO SOFA SA, only such individuals as who on commencing their work are not ordinarily resident in the territory of the Federal Republic of Germany may be granted status.

d) Before an employee who is to be accorded the exemptions and benefits which apply to the civilian component pursuant to the NATO SOFA SA commences his/her work with the enterprise charged with providing Troop Care services, the responsible authorities of the U.S. Forces shall communicate to the authorities of the Land in question the following information:

aa) Personal details:

Name, date of birth, nationality, passport number, social security number, home address and telephone number in Germany, and family status;

bb) Family members:

Spouse's nationality, in the case of Germans, name and birth name, if different, number of children and dependents living in the employee's household;

cc) Professional details:

Name, German civilian company address and telephone number of the enterprise charged with providing Troop Care, place of work, civilian work address and

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telephone number, description of official duties, starting and estimated end date of employment (copy of employment contract or offer and acceptance);

dd) Proof of professional qualifications and a curriculum vitae prepared by the employee;

ee) Declaration as to whether the employee concerned has ever held a German work permit (issuing authority, period of validity and type of work permit);

ff) Declaration by the employee that he/she has no intention of becoming ordinarily resident in the Federal Republic of Germany.

e) The responsible Land authority shall, as soon as possible, normally not later than four weeks, after receiving information concerning individual employees, respond thereto in writing, stating the reasons for any objections, provided the individuals concerned agree. If no response is given within six weeks, it shall be assumed that no objections exist. If objections are raised, the authorities of the Land and the U.S. Forces shall, in principle, within one week discuss whether, with reference to this Exchange of Notes and pursuant to the general conditions agreed therein, the exemptions and benefits under Article 72, paragraph (5) of the NATO SOFA SA are to be granted to the employees concerned. Should no agreement be reached during these discussions, the outcome shall be communicated to the employer and to the individual employee. The Federal Foreign Office, as well as the authorities of the financial, customs, Federal property, employment, and general internal as well as the social security administrations shall be informed.

f) The outcome of these discussions shall not affect the right of the responsible German authorities, including financial authorities, to check specifically the nationality of the, employee in question and his/her actual work, as well as the exclusivity of this work with the enterprise charged with providing Troop Care services. This shall include external checks with the enterprise charged with providing Troop Care services. They shall, however, be bound by the judgment reached by the competent Land authority following discussions unless the facts concerning the information conveyed by the authorities of the U.S. Forces relating to the employee in question or concerning the non-eligibility grounds pursuant to Article 72, paragraph (5), letter (b) of the NATO SOFA SA were misrepresented or incomplete.

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g) The responsible authorities of the U.S. Forces shall inform the authorities of the Land in question if they withdraw all or part of the exemptions and benefits afforded to an employee of an enterprise charged with providing Troop Care services.

6. The Embassy of the United States of America shall notify the Federal Foreign Office of the place of business in the Federal Republic of Germany of enterprises charged with providing Troop Care services, of the number of privileged and non-privileged employees of such enterprises, of their place of work, and of changes that may occur. Such notification shall take place annually in December.

7. The Embassy of the United States of America shall notify the Federal Foreign Office if the authorities of the United States Forces withdraw all or part of the exemptions and benefits accorded to any enterprises charged with providing Troop Care services.

8. The parties to the present Arrangement shall state the agencies nominated as the responsible authorities and their addresses.

9. A consultative commission, co-chaired by the Federal Foreign Office and the Embassy of the United States of America, shall meet periodically to review implementation of this Arrangement and address problems raised by either party. In cases of lack of agreement between representatives of the Länder and of the U.S. Forces over the terms used in this Arrangement or over its application, the consultative commission shall meet at the earliest opportunity following receipt of a written request from either representatives of the Länder or of the U.S. Forces to seek resolution and issue a written report signed by the co-chairmen. If possible, the report should contain a written recommendation.

10. This Arrangement shall be concluded in English and German languages, both texts being equally authentic.

If the Government of the Federal Republic of Germany agrees to the proposals contained in numbers 1 to 10, this Note and the Note in reply thereto expressing your Government's agreement shall constitute an Arrangement between our two Governments under Article 72, paragraph (4) of the NATO SOFA SA, which shall enter into force on the date of your Note in reply.

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Please accept, Mr. State Secretary, the assurance of my highest consideration."

I have the honor to inform you that my Government agrees to the proposals contained in your Note. Your Note and this Note in reply therefore constitute an Arrangement between our two Governments, which enters into force on the date of this Note and the German and English texts of which are equally authentic.

Please accept, Mr. Ambassador, the assurance of my high consideration.

[Signature]