

# 米軍地位協定の比較研究に関する基礎資料 [A] Basic Data for Comparative Study of Status of Forces Agreements Concluded by the US [A]

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[序] 本稿は、拙著『パックスアメリカーナのアキレス腱 グローバルな視点から見た米軍地位協定の比較研究』（御茶ノ水書房、2019 年）における論考の基礎として、同書において検討した 12 か国の米軍地位協定条文を比較考察するために資料を整理したものである。従って、本資料は第一義的には同書の補遺としてまとめられたものである。しかしながら、本稿は米国が米軍駐留の受入国と締結してきた「地位協定」（いわゆる地位協定本体の他、関連する諸合意を含む）の内容を整理し、協定が受入国にとってどれだけ有利になっているかを比較検討し、順位付けしたものであり、その内容は拙著の読者に限らず、地位協定に関心をもつ多くの方々にとっての参考となりうるものと考え、ここに資料として掲載するものである。多数ある米軍地位協定のうち、基本的には多数の米軍人が駐留していることを基準 12 か国を選んで研究対象としたが、選定の詳しい理由については、拙著をご参照いただきたい。

各国地位協定の英語正文をテキストとしたため全文英文で記述されており、その点日本の読者にはご不便をおかけする。本資料は [A]、[B] の二部から構成されており、[B] はこのファイルとは別のファイルとして掲載されていることをあらかじめお断りしておかねばならない。[A]、[B] 二部のうち基礎資料となるのは [B] であり、そこでは分析した 12 か国の地位協定条文を構成する主要なカテゴリーを 26 項目にまとめたうえで、その中で数値化が可能な 24 項目を選び、各項目順に編集・整理し直すことを試みた。こうすることで、各国の「地位協定」の内容を比較検討することが容易になるはずである。地位協定の内容を相互に比較されたい方はこの [B] をご参照いただきたい。[A] においては、[B] を基礎として、それら各項目について各国間の協定内容の差異を検討することで、米軍受入国から見た有利度の評価を試みている。即ち、A-1 においては対象となった 24 比較項目の概念と背景解説がなされており、「何が比較され、何故にその条項が地位協定にとって重要なのか」が理解できるはずである。A-2 は、比較検討内容とその結果を示す諸表から成り、評価を下した根拠となる理由も簡潔に記されている。比較された 24 項目は相互に独立し、また質的に異なる指標であり、これらの 24 項目を総合的に評価して、全体としての「受入国にとっての有利度」を図るのは必ずしも容易ではない。本資料及び拙著では、各項目ごとについての有利度を「順位数値」として何段階かにランキングしたうえで、そうした数値を足し合わせることによって全体の有利度を算出する、という手法をとっている。各項目を評価、順位付けした数値を、各国について加算することでその国にとっての地位協定の全体的有利度を算出する、という手法には、本来加算になじまない「順位数値」を「量的数値」として取り扱うことにもなう危険性がある。A-3 ではこの危険性を考慮に入れたうえで、順位数値間の相関係数を測定することで、このデータに対して加算の手法を適用することが適切か否かを検証した結果の数値が示されており、問題がないことが確かめられた。本稿は、多様な米軍地位協定を形成した諸要因探求のための基礎資料として編集されたものであるが、地位協定条文の比較資料として完結しており、論考としても独立したものである。各国地位協定の詳細な内容や特徴に興味を持たれた研究者への一助となれば幸いである。

**Introduction:** The materials contained in this paper were originally prepared for appendices to my Ph.D. dissertation submitted to Sophia University in March 2017, entitled “Achilles’ heel of Pax Americana: A Comparative Study of SOFAs (Status of Forces Agreement) concluded by the US” (<http://digital-archives.sophia.ac.jp/repository/view/repository/20169600145>), in which I conducted a comparative study of US SOFAs with twelve countries. In the form published here, the materials are designed to serve as a supplement to my Japanese-language book, “*Pakkusu amerikāna no akiresu-ken: Gurōbaru na shiten kara mita beigun chii kyōtei no hikaku kenkyū*” (Tokyo: Ochanomizu shobō, 2019). Although the primary purpose of this paper is to serve as supplementary materials to my book, I am publishing it here in the interest of those researchers, students, and practitioners who may be interested in comparing status of forces agreements signed by the United States. Although the US has signed SOFAs with a large number of states, here I have selected twelve countries, based largely on the number of troops the US has stationed in the country. For a more detailed explanation of the reasons, please see my dissertation, pp. 35-39.

This paper consists of two parts, A and B. Please note that part B is uploaded as a separate pdf file. Of the two parts, B contains the basic data. There, I compiled and rearranged original articles of twelve SOFAs in such a way as to make them easily comparable. Specifically, I analyzed the content of the twelve SOFAs, and identified 26 major issues dealt with in them. Readers wishing to compare the concrete provisions of the SOFAs are asked to consult the tables in Part B. In 24 of the 26 issues discussed in the twelve SOFAs, it is possible to rank order the degree to which the provisions are “favorable” to the receiving state. In Part A, the twelve SOFAs are compared on the basis of these 24 points, and their overall degree of favorability for the receiving state is assessed and ranked. Part A is divided into three subsections. A-1 provides the background knowledge on each item, explains what is involved in it, and clarifies what criteria were used to compare the degree of favorability. A-2 contains the tables comparing ten TYPE III (concurrent jurisdiction) SOFAs, in which each item is compared and evaluated from the view point of how and to what extent it is favorable to the receiving states. It also includes the comparison summary charts with brief comments. The 24 items on which the “favorability” of SOFAs was assessed are independent of each other, and they are qualitatively different from each other. Thus, it is not easy to combine these 24 items into an overall measure of favorability. In my dissertation and in this paper, I first rank order the favorability of the SOFA on each item, and then calculate the index of overall favorability by simply adding up the favorability on the 24 items. This is a dubious procedure in the sense that I am treating “ordinal data” as “interval data.” In A-3, *Rank Correlation Coefficient tests between ‘mean of total’ and grading point of each item* is conducted in order to verify if using ranked valuables as numerical valuables is permissive from statistical view point. The tests confirm that the rank order on each of the 24 items is strongly correlated with the overall scale, suggesting that the combined favorability scale is meaningful.

Although this Appendix is compiled as basic data for the above mentioned publication, it can be read and used as a completed independent comparative study for researchers who are interested in further study of the US SOFAs.

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（これにより「順位数値」を「量的数値」として取り扱うことの問題点を検証したが、総合比較表に示された数値は統計学的な矛盾がないことが証明された）

### B. 24 比較項目順に整理しなおした各国地位協定条文 [別ファイル]

（2015 年現在効力を有するもので、全文ではない）

#### **Content of present SOFAs in force (edited in the order of 24 comparative items)**

[separate pdf file]

|                                   |         |
|-----------------------------------|---------|
| 1. オーストラリア地位協定 Australia SOFA     | 1～25    |
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## 略称一覧 **Abbreviation of SOFA terms**

### 国名の略称 Name of states

AU: Commonwealth of Australia (or Australia)  
FRG: Federal Republic of Germany (or Germany)  
HR: Hellenic Republic (or Greece)  
IT: Italian Republic (or Italy)  
JPN: Japan  
ROD: Republic of Djibouti (or Djibouti)  
ROI: Republic of Iraq (or Iraq)  
ROK: Republic of Korea (or South Korea)  
ROT: Republic of Turkey (or Turkey)  
RP: Republic of the Philippines (or the Philippines)  
SP: Kingdom of Spain (or Spain)  
UK: United Kingdom of Great Britain and Northern Ireland (or Britain)

### 一般的用語の略称 General terms

Base: A military base consists of land, buildings, facilities, furnishings, equipment, and fixtures that are necessary to perform military missions of the sending state. It is offered by the receiving state and used exclusively by the sending state (the US) or jointly by both the sending and receiving states. To represent a military base, the term „facilities and areas“ is mainly used in the SOFAs of Northeast Asia, and the terms „installations“ and „infrastructure“ in the SOFAs of NATO members. But in this dissertation, the commonly used terms „base“ and „the US base“ are used as representing the abovementioned concept.

### 政府機関及び公的機関名の略称 Institutions and Government bodies

DOD: US Department of Defense  
EC: European Community  
EEC: European Economic Community  
EU: European Union  
JSDF: Japanese Self-Defense Force  
NAC: NATO Council  
NATO: North Atlantic Treaty Organization  
SACEUR: Supreme Allied Commander Europe  
SCAP: Supreme Commander for the Allied Powers  
SHAPE: Supreme Headquarters Allied Powers Europe  
UN: United Nations  
UNC: United Nations Command  
UNSC: United Nations Security Council

USAF: The United States Armed Forces (as for The United States Air Force, I will not use the abbreviated form.)

USF: The United States Forces

USFJ: The United States Forces, Japan

USG: The United States Government

WEU: Western European Union

#### 条約や国際合意の略称 Abbreviation of major treaties and agreements

NAT: North Atlantic Treaty

NATO SOFA: Agreement between the Parties to the North Atlantic Treaty regarding the Status of their Forces (signed 19 June, 1951)

PfP: Partnership for Peace

PfP SOFA: Agreement Among the States Parties to the North Atlantic Treaty and the Other States Participating in the Partnership for Peace Regarding the Status of their Forces (signed 19 June, 1995)

TIAS: Treaties and Other International Acts Series, issued singly in pamphlets by the Department of State.

UNSCR: United Nations Security Council Resolution

UNTS: United Nations Treaty Series

UST: United States Treaties and Other International Agreements (volumes published on a calendar-year basis as of January 1, 1950)

#### 地位協定条文に関する略称 Abbreviation of SOFA-related terms

Naming of each SOFA agreed with the US. It should be abbreviated as [the US]-[name of a counterpart state] SOFA. However, since this dissertation is the study of the SOFAs agreed between the United States of America and its allies or base-renting states, it is otherwise shortened to „*Name of a counterpart state*’ before the term „SOFA.“ For example, the US-Japan SOFA is shortened to the Japan SOFA.

ACC: Authority of the US Civilian Component

AF: Authority of the US Force, or Military Authority of the US Armed Forces

AR: Authority of the Receiving State

Art.: Article

AS: Authority of the Sending State (the US)

CC: Civilian Component of US Armed Forces

DP: A Dependent of a MF and a MCC

MCC: A Member of the US Civilian Component

MF: A Member of the US Armed Forces

Para.: Paragraph

SA: Supplementary Agreement

Sec.: Section

## 各国地位協定と主要国際合意の入手先 A list of websites containing original texts of SOFAs

アメリカ政府が締結した国際条約条文、国際合意条文の編集、公開状況（**2015** 年現在）  
アメリカ議会付属法律図書館（The US Law Library of Congress）は、アメリカが過去に締結した国際条約、国際合意条文の編集作業を継続しており、完了したものから一般に公開している。その進行状況は同図書館の HP から確認できる。

1795 年～1949 年に締結されたものについては、Charles I. Bevans によって編集作業が完了し、アメリカ国務省のサイトで閲覧が可能。[U.S.](#)

### [Department of State. 1795-1949](#)

1950 年～1984 年に締結されたものについては現在編集中。

1996 年～2014 年に締結されたものについてはアメリカ国務省のサイトで閲覧が可能、[U.S. Department of State. 1996-2014](#)

北大西洋条約 The North Atlantic Treaty

NATO HP: [http://www.nato.int/cps/en/natohq/official\\_texts\\_17120.htm](http://www.nato.int/cps/en/natohq/official_texts_17120.htm)

NATO 地位協定 NATO SOFA

NATO HP: [http://www.nato.int/cps/en/natohq/official\\_texts\\_17265.htm](http://www.nato.int/cps/en/natohq/official_texts_17265.htm)

オーストラリア Australia

### ANZUS

Australian Government Department of Foreign Affairs and Trade Australian

Treaty Series 1952 No 2:

<http://www.austlii.edu.au/au/other/dfat/treaties/1952/2.html>

Agreement between the Government of the Commonwealth of Australia and the

Government of the USA concerning the Status of United States Forces in Australia, and Protocol

Australian Government Department of Foreign Affairs and Trade Australian

Treaty Series 1962 No 10:

<http://www.austlii.edu.au/au/other/dfat/treaties/1963/10.html>

Agreement between the Government of Australia and the Government of the United States of America concerning Defense Logistic Support

Australian Government Department of Foreign Affairs and Trade Australian Treaty Series 1989 No 28: <http://www.austlii.edu.au/cgi-bin/sinodisp/au/other/dfat/treaties/ATS/1989/28.html?stem=0&synonyms=0&query=Agreement%20between%20the%20Government%20of%20Australia%20and%20the%20Government%20of%20the%20United%20States%20of%20America%20concerning%20Defense%20Logistic%20Support>

Chapeau Defence Agreement (Official title: Exchange of Notes constituting an Agreement between the Government of Australia and the Government of the United States of America concerning certain Mutual Defence Commitments)

Australian Government Department of Foreign Affairs and Trade Australian Treaty Series 1995 No 35: <http://www.austlii.edu.au/cgi-bin/sinodisp/au/other/dfat/treaties/ATS/1995/35.html?stem=0&synonyms=0&query=Chapeau%20Defence%20Agreement>

Agreement relating to operation of US military flights through RAAF Base Darwin

(Official Title: Exchange of Notes constituting an Agreement between the Government of Australia and the Government of the United States of America for the Staging of United States Air Force B-52 Aircraft and Associated KC-135 Tanker Aircraft through Royal Australian Air Force Base Darwin)

Australian Government Department of Foreign Affairs and Trade Australian Treaty Series 1981 No 9: <http://www.austlii.edu.au/cgi-bin/sinodisp/au/other/dfat/treaties/ATS/1981/9.html?stem=0&synonyms=0&query=AUSTRALIAN%20TREATY%20SERIES%201981%20No.%209>

Related document (Diplomatic letter):

<https://pmtranscripts.dpmc.gov.au/sites/default/files/original/00005534.pdf>

Agreement Between the Government of the United States of America and the Government of Australia Relating to the Operation and Access to an Australian Naval Communication Station at North West Cape in Western Australia (2008)

Australian Government Department of Foreign Affairs and Trade Australian Treaty Series 2011 (ATS 36): <http://www.austlii.edu.au/cgi->

[bin/sinodisp/au/other/dfat/treaties/ATS/2011/36.html?stem=0&synonyms=0&query=AUSTRALIAN%20TREATY%20SERIES%202011](http://bin/sinodisp/au/other/dfat/treaties/ATS/2011/36.html?stem=0&synonyms=0&query=AUSTRALIAN%20TREATY%20SERIES%202011)

The U.S. Department of State:

<http://www.state.gov/documents/organization/180820.pdf>

ジブチ Djibouti

Agreement between the U.S. and Djibouti on Access to and Use of Facilities in Djibouti (2003)

US D. of State: <http://2001-2009.state.gov/documents/organization/97620.pdf>

ドイツ Germany

NATO SOFA Supplementary Agreement (Official title: Agreement of 3 August 1959, as Amended by the Agreements of 21 October 1971, 18 May 1981, and 18 March 1993, to Supplement the Agreement between the Parties to the North Atlantic Treaty regarding the Status of their Forces with respect to foreign Forces stationed in the Federal Republic of Germany (Revised Supplementary Agreement) (effective 29 March 1998)

1959 Original SA: Federal Law Gazette 1961 II p.1218

1993 Amended SA: Federal Law Gazette 1994 II p.2594

UK Government source:

[http://webarchive.nationalarchives.gov.uk/20121026065214/www.mod.uk/NR/rdonlyres/A921BCF9-97C5-4716-8262-44F96196061E/0/nato\\_sofa\\_supplementary\\_agreement.pdf](http://webarchive.nationalarchives.gov.uk/20121026065214/www.mod.uk/NR/rdonlyres/A921BCF9-97C5-4716-8262-44F96196061E/0/nato_sofa_supplementary_agreement.pdf)

ギリシャ Greece

US Use of Defense Facilities: Agreement Between the US and the Kingdom of Greece (Replaced)

Yale Law School Lillian Goldman Law Library:

[http://avalon.law.yale.edu/20th\\_century/gree001.asp](http://avalon.law.yale.edu/20th_century/gree001.asp)

Mutual Defense Cooperation Agreement, with Annex, Between the United States and Greece (1990)

“Consolidated Treaties & International Agreements” Current Document Service: United States Containing Department of State Documents 90-284 Through 91-38, Issued between November 21, 1990 and February 14, 1991 (CITA Document Numbers: 1220-1278) Published by Oceana Publications, Inc. pp. 239-255



Agreement regarding the status of the US forces in Greece (1956)

“Encyclopedia of the United Nations and International Agreements, Third Edition,  
Vol. 2: G-M Routledge NY, NY 2003 © 2003 Taylor & Francis Books, Inc

イラク Iraq

Agreement between the US and Iraq on the Withdrawal of US Forces from Iraq and the  
Organization of Their Activities during their Temporary Presence in Iraq

US D. of State: <http://www.state.gov/documents/organization/122074.pdf>

イタリア Italy

Memorandum of Understanding Concerning the Use of Installations/Infrastructure (1995)

US D. of State: <http://photos.state.gov/libraries/italy/217417/pdf/shell.pdf>

The government of Italy: Farnesia (Ministero degli Affari Esteri e della  
Cooperazione Internazionale) ATRIO (Archivio Trattati internazionali Online)

[http://itra.esteri.it/Ricerca\\_Documenti/wfrmRicerca\\_Documenti.aspx](http://itra.esteri.it/Ricerca_Documenti/wfrmRicerca_Documenti.aspx)

Technical Arrangement (メモランダム of Annex A と重複)

<http://www.state.gov/documents/organization/107275.pdf>

日本 Japan

外務省 HP→外務省について→国会提出条約・法律→条約データ検索  
Japanese version of Mutual Security Treaty 日米 安保 (60 年) の日本  
文

<http://www.mofa.go.jp/mofaj/area/usa/hosho/jyoyaku.html>

English version of Mutual Security Treaty 日米安 保の英文

<http://www.mofa.go.jp/region/n-america/us/q&a/ref/1.html>

1960 SOFA 1960 日米 地位協定正文 (Bilingual, 二か国語併記)

<http://www.mofa.go.jp/mofaj/area/usa/sfa/pdfs/fulltext.pdf>

1952 Security Treaty and Administrative Agreement 1952 旧安保並びに 1952 行政協  
定 “The World and Japan” Database Project: Institute for Advanced Studies on  
Asia,

University of Tokyo, Akihiko Tanaka 田中明彦研究室

<http://www.ioc.u-tokyo.ac.jp/~worldjpn/index.html>

韓国 South Korea or ROK

The most comprehensive security related agreements were compiled by USFK. 最も総合  
的な情報サイトは在韓米軍 HP ほとんどすべて収録

<http://www.usfk.mil/About/SOFA/>

Mutual Defense Treaty 米韓安保

Yale Law School Lillian Goldman Law Library:

[http://avalon.law.yale.edu/20th\\_century/phil001.asp](http://avalon.law.yale.edu/20th_century/phil001.asp)

1950Taejon Agreement

HeinOnline: <http://heinonline.org>.

1966 SOFA

US Forces Korea HP:

[http://www.usfk.mil/Portals/105/Documents/SOFA/A01\\_SOFA.Art.I-XXXI.pdf](http://www.usfk.mil/Portals/105/Documents/SOFA/A01_SOFA.Art.I-XXXI.pdf)

Other Source:

<https://c.ymcdn.com/sites/www.outserve-sldn.org/resource/resmgr/US-ROKStatusofForcesAgreemen.pdf>

2001 Amendment

US D. of State (English and Korean):

<http://www.state.gov/documents/organization/129549.pdf>

フィリッピン The Philippines

Military Base Agreement (1947)

The Library of Congress>Law Library>Research & Reports>Digitalized

Materials>United States Treaties and International Agreements

<https://www.loc.gov/law/help/us-treaties/bevans/b-ph-ust000011-0055.pdf>

Mutual Defense Treaty (1949)

Yale Law School Lillian Goldman Law Library:

[http://avalon.law.yale.edu/20th\\_century/phil001.asp](http://avalon.law.yale.edu/20th_century/phil001.asp)

Visiting Forces Agreement (VFA 1998)

The Government of the Philippines official site (GOVPH Official Gazette)

<http://www.gov.ph/1998/02/10/agreement-between-the-government-of-the-republic-of-the-philippines-and-the-government-of-the-united-states-of-america-regarding-the-treatment-of-united-states-armed-forces-visiting-the-philippines-f/>

Enhanced Defense Cooperation Agreement (EDCA 2014)

The Government of the Philippines official site (GOVPH Official Gazette)

<http://www.gov.ph/2014/04/29/document-enhanced-defense-cooperation-agreement/>

Mutual Logistics Support Agreement (MLSA 2007)

The U.S. Department of State:

<http://www.state.gov/documents/organization/132080.pdf>

Agreement to Establish a Security Engagement Board (SEB 2006)

The U.S. Department of State:

<https://www.state.gov/documents/organization/244799.pdf>

スペイン Spain

Agreement on friendship, defense and cooperation, with complementary agreements and exchanges of notes (1982)

US D. of State:

[https://photos.state.gov/libraries/164311/tratados\\_bilaterales/Defense%20TIAS%2010589.pdf](https://photos.state.gov/libraries/164311/tratados_bilaterales/Defense%20TIAS%2010589.pdf)

Agreement on defense cooperation, with annexes and related letters (1988) as amended in 2002

US Embassy in Madrid: <https://madrid.usembassy.gov/about-us/odc/agreement.html>

トルコ Turkey

Agreement regarding the status of the U.S. Forces (1954)

US D. of State: <http://photos.state.gov/libraries/turkey/461177/pdf/5t1465.pdf>

DECA (1980)

US D. of State: <http://photos.state.gov/libraries/turkey/461177/pdf/32t3323.pdf>

イギリス U.K.

Visiting Forces Act, 1952

Legislation.gov.uk: <http://www.legislation.gov.uk/ukpga/Geo6and1Eliz2/15-16/67/introduction>

## Appendix A-1

### **Conceptual Foundation and commentary on twenty-four items to be compared in Comparative Chart of Type III SOFAs (Twenty four items out of twenty six are chosen leaving two items as NA to quantification)**

#### **[Items to be compared]**

1. Existence of security alliance (NA or Not Applicable to quantification)
2. Structure of alliance (NA or Not Applicable to quantification)
3. Respect for the law of the receiving state

This item is one of the most essential parts of SOFA because it lays the foundation for reciprocal relations between the sending and the receiving state. Grading of this item is not based on the aggregated grading point of related items but on the difference in the related text per se. It may be a conventional wisdom in international treaties to arrange provisions in the order of customary rule based on importance, priority or logical development. In the NATO SOFA this item is given a top priority (Art.II next to the Art I: Definitions of terms) while in the Japan and South Korea SOFAs it is given lower priority. In the case of Japan it is given the place in Art. XVI. Furthermore, the second sentence in the NATO SOFA „*It is also the duty of the sending state to take necessary measures to that end*“ is missing.

4. Entry and departure of foreign military personnel (the degree of relaxation in customary immigration procedures)

This item consists of five sub-items. The common criterion for these sub-items is the degree of expediency given by the receiving state for the sending state, including procedural matters. My assumption is that the stricter the regulations, the less favorable for the sending state and vice versa. For example, NATO member states necessitate the possession of a passport for MCCs and DPs while in Japan and South Korea, „appropriate documentation“ suffices the immigration requirement for entering into and departing from those states.

- (a) Identification
- (b) Frontier crossings
- (c) registration and Alien's Control
- (d) Residence and settlement
- (e) Expulsion and Removal

## 5. Vehicles and Driving License or Permit

This item consists of three sub-items.

### (a) Driving Permit (DRP)

It can be ranked according to the degree of difficulty in obtaining a driving license from the receiving state. [Pass of both driving and paper test] ☐ [Pass of Paper test regarding traffic regulations] ☐ [Automatic acceptance of the license issued by the sending state]

### (b) Registration and licensing of vehicles, vessels, and aircrafts

A criterion for this item is the degree of supervisory administration exercised by the receiving state over both private and official vehicles, vessels, and aircrafts of the sending state including the right to check the registration documents of such vehicles. Though trivial, it is a good indicator of the ARs' regulative power over stationing forces.

### (c) Third party liability insurance of private motor vehicles, trailers, and aircrafts

In receiving states domestic law necessitates the insurance of private vehicles. Almost all SOFAs are similar in this regard. (No fundamental difference)  
However, only Australia necessitates compulsory third party insurance for the official vehicles against third party claims.

## 6. Carrying Arms (and Uniform)

A criterion is the extent of the ARs to exercise its laws to regulate carrying arms by the personnel of stationing forces. This item can be divided into three groups: [Order of the sending state + Agreement by the AR or conformity to the law of the receiving state] ☐ [Order of the sending state + sympathetic consideration of the AR] ☐ [No related provisions] „No related provisions“ connotes more discretionary room for the sending state to carry arms outside of the bases.

## 7. Police power (Military Police of the sending state and Police of the receiving state) and securing bases and information

This item is about the power balance and the division of labor between military police (MP) of the sending state and police or similar duties of the receiving state. The receiving state usually strives for more police power over the foreign bases while the sending state seeks more immunity from the constabulary powers of the receiving state. Conflicting interests are not limited within the bases. The areas that are subjects to contestations are extended to the vicinity around the bases and even outside of such broader basing areas. For example, the US had controlled substantially large vicinity areas around its bases in

the Philippines. Even after the Philippines SOFA became Type III in 1965, the US MP retained the off-base authority to arrest any person inside the vicinity of the bases who was committing or attempting to commit offenses against the security of those bases.<sup>1</sup> (Qtd. in Berry 108) Accordingly, the extent of MP's role and rights in such broader areas and how to protect the broader basing area become a nuanced issue in SOFA negotiations.

This item consists of three sub-items.

(a) Within the bases

A criterion is the degree of constabulary rights exercised by the ARs regarding access to the facilities and areas used as bases.

(b) Outside the bases

A criterion is the degree of constraining power by the ARs over the activities of military police of the sending state around the vicinity of the bases and outside such area. In a strict sense, it could be solely the police power of the receiving state that should be exercised in such areas. However, in many SOFAs, cooperative measures between MP and police of the receiving state are designated.

(c) Protection of the bases and information

This is related to a division of labor in the duties to secure the bases. If the sending state bears all responsibility to guard its bases, it connotes that it may enjoy more immunity from the exercise of constabulary power of the receiving state even though it must bear guarding cost. I included the protection of commonly-shared security information in this sub item because the Australia SOFA is so concerned about it (because the base is a jointly-operated intelligence-gathering station) that it should be treated as a property to be commonly protected.

8. Jurisdiction (1) Definition of persons covered by SOFA.

– Who is to be protected under SOFA? –

A criterion is categorical scope of persons (MFs, MCCs, DPs, members of organizations other than forces or civilian components, and employees of contractors or logistic services) who are to be covered by SOFA. The wider the scope of the categories is, the greater the prerogatives of the sending state. Since categorical scope differs depending on specific cases, this item 8 and next item 9 may be somewhat redundant. However, in this item, comparison will be focused mainly on the definitive terms which are stipulated in the articles of each SOFA.

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<sup>1</sup> The Agreed Implementing Arrangements of the 1965 amendment. TIAS 5851 (1965), p. 5.

Here is, however, a caveat. Because of humanitarian consideration and prolonged peacetime situations in metropolitan areas of major receiving states, the definition of DPs has been broadened as time passes. I recognized this trend in some SOFAs which are concluded recently. If this trend is caused by universal humanitarian consideration, it may be misleading to grade SOFAs by taking an above mentioned criterion. But, it is too early to conclude that universal humanitarian consideration is prevailing over negotiations of security related agreements. Rather, the demand by the sending state is still a fundamental causal factor. For this reason, I disregarded this time-related factor.

9. Jurisdiction (2) Jurisdictional decision (With regard to the scope persons who are subject to SOFA protection, it related to item 8 above in some parts)

Crimes and accidents may happen at any time and space. SOFA designates the general principle to decide which side (sending or receiving state) has the exclusive or primary right to exercise its jurisdiction. Exclusive jurisdiction is exercised by the AS or the AR when the offense is punishable only by the law of either side. The AS or the AR also has the right to exercise exclusive jurisdiction over the offenses relating to its own security. During war time, some SOFA designate that all offenses become under exclusive jurisdiction of the AS. Primary jurisdictional right is exercised by either side under concurrent jurisdictional situation. In General, the AS has the primary right over offenses during the performance of official duty, solely against the property, security, and persons (MF, MCC, and DP) of the sending state. AR has the primary right over other offenses.

Since all TYPE III SOFAs are codified after Art. VII of the NATO SOFA, articles regarding this issue are similar. However, differences are identified in three sub-items below.

(a) Exclusive jurisdiction

Because exclusive jurisdiction by the AS during wartime is deliberated in item 20 “Applicability of SOFA to wartime condition,” comparison here is focused on the scope of persons who are protected by exclusive jurisdiction by the AS during peacetime. More precisely, a criterion is narrowly defined as the scope of persons who are „*subject to the military law of the US*“ because the same term is interpreted quite differently. The wider the scope of persons is, the greater the predominance of the sending state over the receiving state.

Paul J. Conderman, by citing many judicial precedents, asserts that “For the U.S., the Supreme Court decisions...effectively eliminated military jurisdiction of the U.S. over American dependents and civilians in peacetime. Thus, if U.S. civilians or dependents commit a crime which violates host-nation law, the receiving state, in effect, has exclusive jurisdiction to try them under para. 2 (b) of Art. VII. (of the NATO SOFA).” (Conderman 109) Thus, the scope of persons subject to the

military law of the US is limited to MFs. However, in the case of Japan, the Joint Committee agreed that The US Uniform Code of Military Justice (May 31, 1951) shall apply to the scope of persons subject to the military law of the US. [802. Art. 2: Persons subject to this Chapter] stipulates that it includes not only MFs but also MCCs (persons serving with, employed by, or accompanying the armed forces outside the United States), members of the National Oceanic and Atmospheric Administration, Public Health Service, and other organizations, and (subject to any treaty or agreement which the US is or may be a party to any accepted rule of international law) persons within an area leased by or otherwise reserved or acquired for use of the US which is under the control of the Secretary concerned and which is outside the US.<sup>2</sup> Thus, interpretation of the same term definitely differs between NATO members and Japan. In other non-NATO member states, a much wider scope of persons is defined.

(b) Concurrent jurisdiction

I set two criteria. One is the scope of persons who are subject to the primary jurisdiction of the ASs. The wider the scope of persons is, the greater the predominance of the sending state over the receiving state. The other is the extent of the right to examine an official duty certificate by the ARs and the existence of procedural details regarding this issue. Since an official duty certificate issued by the AFs is a determining tool which bestows full immunity on military personnel from the jurisdiction of the ARs, legitimacy and the extent of efficacy of such a certificate sometimes becomes the issue of contention.

c) Waiver of jurisdiction

Under concurrent jurisdictional situation, the US always asks greater waiver rate of primary jurisdictional right which would be exercised by the ARs. This item is, therefore, the best indicator of the degree of concession by the receiving state. I set two criteria. One is the scope of persons protected by waiver schemes agreed by both parties. The wider the scope of persons is, the greater the predominance of the sending state over the receiving state. The other is procedural measures to waive the ARs' jurisdictional right. For example, in the case of Germany it retains the right to „recall“ the general waiver in each case. Statistical data of waiver rate which differs from state to state may be used in other sections, but it is discarded as an indicator of this sub-item because a task here is to identify differences in SOFA texts rather than searching for actual performance on the ground. In

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<sup>2</sup> Cited from [www.ucmj.us](http://www.ucmj.us) and see also home page of Ministry of Foreign Affairs of Japan



addition, it is extremely difficult to obtain relevant data corresponding to the same period with the same standard.

With regard to procedural measures, general convention of the international law scholars is to divide them into three typical types.

[So-called German formula] The ARs generally agree to waive their primary right to exercise jurisdiction, but with regard to a selected list of offenses, they may recall its waiver.

[So-called NATO-Netherlands formula] The ASs must request a waiver of the ARs' primary right to exercise jurisdiction in every case. The ARs agree, however, that they will normally waive their jurisdiction except in those offences of particular importance to them.

[So-called Pakistan formula] It is the same as the Netherlands formula except that the authorities of the sending states (ASs) do not have to ask for waiver in every case. Waiver is taken for granted except in cases where the ARs determine that exercise of jurisdiction is of particular importance. No right of recall by the ARs.

The so-called Pakistan formula may be the most favorable for the sending state, while the other two are difficult to discern differences backed by statistic data or historical evidences. I assigned a lower grade in the case to which the so-called Pakistan formula may apply. However, because the waiver procedure is codified in other agreement other than SOFA articles and is confidential in some cases, it is not crystal clear whether all selected SOFAs have neatly fallen into these three types.

#### 10. Jurisdiction (3) Differences in the right of the accused: arrest, custody and related issues

This item becomes the most controversial issue when a US soldier commits a provocative crime. The ARs generally seek early transfer of the arrested and completion of all legal procedures under the relevant laws and measures which are identical to its citizens. The AFs, on the other hand, seek longer custody of the arrested within their facilities and resort to all possible measures to provide the accused the same standard as their citizens at home throughout the legal procedures. The contentious area is extended to how to serve the sentence. This item consists of four sub-items.

##### (a) arrest, custody, and investigation

[Arrest and custody] A criterion is the codified timing when the accused in the custody of the AFs may be transferrable to the ARs in the case where the primary jurisdiction resides with the receiving state. Apparently, earlier transfer to the

ARs is more favorable to the receiving state. In the NATO SOFA it is the time of indictment (or being charged). In other bilateral agreements, including some NATO members, it is the time of completion of trial proceedings. In the Japan SOFA (Administrative Agreement of 1995) “AFs give sympathetic consideration to the transfer of custody prior to the indictment in specific cases...”

From a genuine legal point of view, it has nothing to do with the independent conduct of trial proceedings by the ARs whether the custody is in the hands of the AFs or the ARs. However, in reality, it is self-evident that longer immunity from custody circumstances of the receiving state bestows greater benefits on the alleged persons including freedom from forced confession and familiar living circumstances. Firm and consistent stance of the US forces to this matter is, therefore, to retain the custody of the accused until the completion of all trial proceedings.<sup>3</sup> (Conderman 121) This US policy may surely collide with naïve sentiment of the receiving state and its citizens that all trial proceedings should be carried out in accordance with the law of the receiving state, in other words, be treated in the same manner as the citizens of the receiving state. Accordingly transference timing of the accused to the hand of the ARs is still a matter of importance to gauge the balance between the two states.

[Investigation and interrogation] The NATO SOFA set the following standard with regard to the rights of the accused and all other Type III SOFAs followed after this standard. A criterion here is if there is no difference among them at all.

- (i) to a prompt and speedy trial; (ii) to be informed, in advance of trial, of the specific charge or charges made against him; (iii) to be confronted with the witnesses against him; (iv) to have compulsory process for obtaining witnesses in his favor, if they are within the jurisdiction of the receiving state; (v) to have legal representation of his own choice for his defense or to have free or assisted legal representation under the conditions prevailing for the time being in the receiving state; (vi) if he considers it necessary, to have the services of a competent interpreter; and (vii) to communicate with a representative of the government of the sending state and, when the rules of the court permit, to have such a representative present at his trial.
- *These provisions are included in the section (d) Trial in Appendix B*

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<sup>3</sup> “Efforts will be made in all cases, unless the circumstances of a particular case dictate otherwise, to secure the release of an accused to the custody of US authorities pending completion of all foreign judicial proceedings, including appeals.” Army Regulation 27-50 / Secretary of the Navy Instruction 5820.4G / Air Force Joint Instruction 51-706, Status of Forces Policies, Procedures, and Information, 15 December 1989, para.1-7, p.1-2.

*(The content of present SOFAs) and in Appendix A-2 (Comparative Chart of Type III SOFAs).*

Conderman, by citing Serge Lazareff,<sup>4</sup> simply puts that “many NATO host nations will not interrogate U.S. suspects without a U.S. representative being present” and concludes that there is no substantial difference among SOFAs. (Conderman 122) However, I must point out a difference with regard to when the representative of the ASs is guaranteed to present in the investigation and interrogation process. In the NATO SOFA it is after the prosecution and in the South Korea SOFA it is from the moment of arrest or detention.

(b) Death penalty

If the receiving state abolished the death penalty, a criterion is the extent of judicial restrictive power exercised by the ARs over the ASs. The NATO SOFA states that “A death sentence shall not be carried out in the receiving state by the ASs if the legislation of the receiving state does not provide for such punishment in a similar case.” Where both contracting parties uphold the death penalty in relevant cases, there will be no problem in implementing this provision. In SOFAs where there is no related provision, it may be construed that the US law shall apply without restriction.

However, the issue is not so simple because some NATO member states abolished the death penalty while the US military law still preserves the death penalty. What if a US soldier brutally killed a colleague soldier within the territory of the receiving state which abolished the death penalty? The US military court tries him/her in the receiving state and may sentence him/her to death. The execution of such sentence may be carried out in the sending state to avoid the NATO SOFA regulation. Can the ARs stop such a military court trial within its territory? Some states, believing that they could, fought against even the initiation of such a trial by the ASs. (Conderman 125-29) If the receiving state can eliminate such trials which may lead to the death penalty, it can be appreciated as gaining more jurisdictional power over the sending state. German Supplementary Agreement (SA) clearly states that “the ASs shall not carry out a death penalty ... nor carry through with a prosecution which may lead to the imposition of such a sentence in the Federal Republic.” It is beyond the horizon of the NATO SOFA.

(c) Serving a sentence

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<sup>4</sup> Lazareff, Serge “Status of Military Forces under Current International Law” Leyden 1971

Criteria are: the extent of prerogatives of the sending state with regard to the place to be served (whether in the receiving state or in the sending state); and the right to claim for living standard of the confinement facility in the receiving state.

Conderman argues that the state within which a sentence is served, whether it is the receiving state or the sending state, is of little importance because The Convention on the Transfer of Sentenced Persons<sup>5</sup> founded a legal basis for facilitating the transfer of foreign prisoners to their home countries if the prisoners prefer to serve their sentence in their home country. It is true from the perspective of human rights. However, I would argue that it is not true from the perspective of “SOFA reality” where the rights and interests of the sending state and the receiving state fiercely collide. People in the receiving state may presume that crimes perpetrated in the receiving state should be dealt with by the same manner as its citizens until the completion of serving a sentence. Only such consistency is supposed to be equal among people. Even though the sending state may execute a sentence strictly with impartial manner in homeland, perception of “encroached sovereignty” cannot be completely erased from the receiving state. In addition, I have never encountered, so far, the agreement in SOFA system which designates a procedure to scrutinize if the execution of a sentence is observed properly in the sending state by the ARs. The issue is still a contentious field.

Regarding the quality of living standard of confinement facilities, the US has been extremely sensitive to this issue because the general living standard of the US, especially during two or three decades after WWII, might have been substantially superior to that of the receiving states. The case of South Korea may be an extreme example, where the right to inspect confinement facilities as to whether it meets the standard of the U.S is guaranteed. In addition, in case of hostility South Korea shall give sympathetic consideration to the requests for the release of these persons (the accused or the sentenced) into the custody of responsible AFs. Such Sung and Hirose Takako reproach that the confinement facilities for the US prisoners are like a „superior class hotel“ equipped with TV, video adaptor, refrigerator, kitchen and utensils, drying machines, and even sports facilities. They are also served with far better meals than Korean prisoners without any compulsory labor duty. (徐勝、広瀬貴子 134-36) Thus, the notion of equality for the US (equality with other US prisoners serving in the US) may collide with the notion of equality for the receiving states (equality with Korean prisoners serving in South Korea).

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<sup>5</sup> Entered into force on 1<sup>st</sup> July 1985, TIAS 10824

#### (d) Trial

A criterion is the level of reciprocity in the proceedings of a trial viewed from each other.

There are differences in the right of the sending state with regard to how to protect the indicted during a trial conducted by the court of the receiving state. Even though seven rights (listed above in sub-item 10-a.) are commonly guaranteed among all sampled SOFAs, I should point out a subtle but important difference in sub-clause (vii) which reads as “to communicate with a representative of the government of the sending state and, when the rules of the court permit, to have such a representative present at his trial.” In Japan and South Korea, terms “when the rules of the court permit” is missing. This connotes that the ASs has the right to present its representatives at trials regardless of situation. In the cases of South Korea and the Philippines, numerous conditional reservations that further fortify the rights of the sending state can be identified including time limit for the conclusion of trials.

From the view point of the receiving state, I also detect differences in the right of the receiving state when the trials under the jurisdiction of the ASs are held within or outside the territory of the receiving state. The issue here is the rights of the receiving state to attend the trial proceedings conducted by the ASs if the case is of specific interest to the receiving state. NATO SOFA itself refers little to this issue. However, German SA clearly defines the right to attend such trials exercised in Germany by the ARs while other bilateral agreements lack such reciprocal provisions. It also refers to the place of trial, that the trial shall be held in that territory (*of FRG*) if the alleged offences committed in Germany are against its interest. No other bilateral agreements include this kind of provision which codified the reciprocal right to attend the trial under the jurisdiction of the ASs.

### 11. Administrative jurisdiction

This item consists of six sub-items. Though administrative jurisdiction is of less concern than criminal jurisdiction, this item shows us a better picture of both a transformative aspect of SOFA and nuanced power balance between the sending and the receiving states. For example, the issue of environmental problems emerged as a new agenda to be solved today because it had attracted little attention of the contracting parties during the 1950s and 1960s. Labor conditions in the US bases are always one of the most contentious area in which the rights and interests of the sending state and receiving state collide including cost sharing problem and a difference in employment practice and laws.

#### (a) Environmental protection

The causes of environmental deterioration may be twofold. One is caused by the use of facilities and areas as military bases. Various activities in bases could become a pollutant. The other is caused by the military activities outside of such areas including jet noise problems caused by aircraft training. In this sub-item, I will focus on the former because the latter may be assessed in item 16: [Maneuvering and Training].

The activities in military bases discharge by-products such as hazardous materials used in the building structures, toxic materials used in weapons including chemical and atomic weapons, and outflow of harmful materials and polluted water produced by maintenance activities. A criterion here is the degree of ARs' regulative power to regulate, inspect, and settle compensation claims with regard to detrimental effects caused by the stationing forces. It has two aspects. One is day-to-day supervising right of the ARs over activities of stationing forces, and the other is a general rule to deal with hazardous materials left in the soil or facilities of bases when they are returned to the receiving state. The former is related to the right of ARs to inspect the bases in question, the evaluation standard to assess the damages to surrounding communities, and forcible preventive measures by the ARs. It also a matter of how the receiving states have reacted to environmental problems in succeeding amendments, bilateral agreements, or supplementary agreements after the surge of concerns for environment.

Relating to the latter, there are two discrete groups. One is the group in which the bases are returned after the examination of residual value. The other is the group in which the bases are returned as they are (no obligation for the stationed forces to restore the site to the original condition). When the NATO SOFA and other SOFAs codified after it were concluded, provisions with regard to returning bases had nothing to do with environmental protection. It was solely the issue of practicality and accounting, which I will review in the sub-item (b) Residual Value in item 15: [Return or release of the facilities and areas]. However, since the surge of environmental protection movements around the world, the issue became an important area to be resolved jointly, both in terms of environmental protection and cost sharing to remove hazardous materials. If the sending state is relieved to remove hazardous materials (returning the facilities and areas *as they are*) it can be deemed as disadvantageous for the receiving state because it may incur considerable amount of cleanup cost.

The former group, consisting mainly of NATO members, may be evaluated as having adequately coped with this issue. SOFAs of this group stipulate the right to assess the condition (including environmental issues) of facilities and areas used as military bases as a component which constitutes residual values. If the soil of

the area, for example, is contaminated by hazardous substances, the cost for removing such substances may be subtracted from the total value.

In the latter group including Japan and South Korea, the receiving states are still unable to amend the related provisions even though considerable endeavors have been made through administrative level agreements. The facilities and areas used by the stationed forces will be returned without the examination of residual value or they are returned *as they are* regardless of any environmental problems.

#### (b) Health and Sanitation

A criterion is the scope of regulative power in taking preventive measures by the ARs over stationing forces in order to contain detrimental causes for health and sanitation of its citizens.

The NATO SOFA confirms the right of the sending state in which MFs, MCCs, and DPs can receive the same level of medical care with comparable personnel of the receiving state. However, there is no mention about the right of the receiving state to protect its citizens from, for example, contagious diseases which may spread from foreign forces. In this sub-item, the focus will be given to the evidence whether there is any regulation of this kind in a bilateral agreement. In case of „no related provisions“ relating to this issue, international laws, regulations issued by the World Health Organization, and corresponding domestic laws may generally apply in emergency. However, I graded the SOFAs with „no related provisions“ in lower rank because the lack of basic common rules and/or pre-set initial preventive measures to deal with emergency in public health may result in slow reaction and poor accomplishment to protect citizens.

For example, all-inclusive disinfection by the ARs of the base which is usually composed of military secret zone would be unacceptable for the commander if no common rules were established in SOFA. „No regulation“ in this case means a more prolonged negotiation process than the case where a mutual agreement has already been reached well in advance.

#### (c) Employment and labor law

A criterion is jurisdictional power of the receiving state to enforce its labor law on stationing forces and local employees working for them. It has to be assessed from two aspects; (i) who is the employer? (direct hiring system by foreign forces or indirect hiring system by the receiving state); and (ii) to what extent domestic labor laws may apply in the case of a direct hiring system.

This sub-item is of great importance in assessing the relationship of the contracting parties because it not only reflects specific features of a bilateral relation but also constitutes a part of overall cost sharing. The NATO SOFA simply states that the stationing forces may hire local labor under the condition of the receiving state's labor laws. In this vein, Germany SA codifies detailed regulations based on German labor laws in which any dispute shall be subject to German jurisdiction. I may classify German SOFA as „direct hiring system under greater sovereignty of the receiving state.“

On the other hand, the Japan SOFA occupies a diametrically opposite pole. Though its original provisions are similar to the direct hiring system under Japanese labor legislation, the system has changed to the indirect hiring system. Today, all Japanese workers working for the US forces are, in principle, officially employed by the affiliated organization of the Ministry of Defense.<sup>6</sup> Almost all labor costs are borne by Japan, except for special cases. Since they are employees of a government-affiliated organization their status is „quasi-public employee“ and Japanese labor laws apply. I may classify Japanese case as „indirect hiring system under greater sovereignty of the receiving state.“

In the Philippines SOFA, the US may contract any contractor, supplier, or person, and such contracts shall be solicited, awarded and administered in accordance with the law, and regulations of the US. The South Korea SOFA may sit in line with this vein because South Korean labor legislation which may be applied to base workers shall conform to the employment conditions established by the US forces, and the Joint Committee has the final and binding decision in labor disputes instead of the South Korean court. Although the Joint Committee is the institution in which both states have an equal right in decision making, it is far from applying labor law of the receiving state straight forwardly. I may classify these two SOFAs a „direct hiring system under weaker sovereignty of the receiving state.“

The issue here is how to differentiate or grade Japanese practice and Philippines-South Korean practice. From the perspective of overall cost sharing, (which I will analyze below in item 17), Japanese practice is the least favorable. However, from the perspective of jurisdictional sovereignty, Philippines-South Korean practice may occupy a lower place. Since this item is about the administrative jurisdiction, I graded SOFAs based on the strength of jurisdictional power exercised by the receiving state.

#### (d) Traffic (or Movement)

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<sup>6</sup> LMO/IAA or The Labor Management Organization for USFJ Employees, Incorporated Administrative Agency or 独立行政法人駐留軍等労働者労務管理機構 (通称エルモ)



A criterion is the degree of traffic control (over stationing forces) by the law and regulation of the receiving state.

There is no specific provision in the NATO SOFA relating to this sub-item. If there is no related provision, general understanding of international law scholars may be that the law of the receiving state shall apply. Accordingly, it may be a matter of course that official vehicles of the sending state should observe traffic regulations of the receiving state when moving around the roads within the territory of the receiving state.

Viewed from stationing forces, however, the issue is not so quite simple because military activities inevitably involve movement of large units, transportation of hazardous materials, the use of civilian ports or airports and ceaseless trainings and maneuvers. In addition, especially in case of emergency, top priority of the stationing forces may be unrestricted freedom of movement. Accordingly, general tendency of the sending state is to ask more room for discretionary movement of forces with less restrictive regulations, and the receiving state may concede for the sake of its security. During peacetime, however, these military priorities sometimes collide with strict enforcement of related laws by the ARs. Thus, the problem of „who controls the traffic of forces“ in the territory of the receiving state becomes a contentious issue. For example, German SA stipulates that movement of a force, CC, MF, MCC, and DP is subject to the approval of the Federal government, while the Japan and the South Korea SOFAs lack related provisions. It may not be unreasonable to conclude that „no related provision“ in bilateral agreement connotes lesser regulative power of the receiving state than the case where there is a clear-cut provision addressing to this issue.

(e) ost

A criterion is the existence and scope of the right, to be exercised by the ARs, to inspect the military post of the sending state.

Basically, the issue of the post is less contentious field because the service is based on international reciprocity. Usually, official diplomatic couriers and military couriers are immune from the inspection of the receiving state. The issue here is how and to what degree the ARs can inspect non-official military courier mail and parcels when they think it necessary. SOFAs accompanied by a detailed procedural agreement are graded higher than those without such an agreement.

(f) Telecommunications

A criterion is how the law and regulation of the receiving state are respected by the stationing forces which tend to seek greater prerogative in the use of telecommunication systems.

When the NATO SOFA was negotiated, the field of telecommunications was a matter of such little importance that no specific provision was codified. However, succeeding development of telecommunications technology, including sophisticated radar systems and microwave data telecommunication, prioritized the allocation of bandwidth of radio waves and communication types as one of the top agendas to the sending state. The key issue is whether the allocation of bandwidth and communication types was agreed bilaterally or assigned by the ARs to the stationing forces. The latter case may endow the ARs with more effective enforcement power over the stationing forces.

A problem of this sub-item analysis is that four NATO members lack related provisions in bilateral agreements to fulfill the vacancy of the NATO SOFA. Since no high-tech-age military activities are guaranteed without using highly advanced telecommunication devices, there must be domestic laws or administrative level technical agreements to support military activities of the sending state. Because of inability to exhaust all such documents, I deemed these SOFAs of „no related provision“ as the same as Australia SOFA, which is based on mutual agreement between the two governments.

## 12. Claims

This item is one of the most important fields of SOFA and consists of six sub-items. Reflecting abundant precedents and lessons since WW I, the NATO SOFA elaborated precise and comprehensive rules regarding this item. Almost all succeeding SOFAs followed the NATO SOFA by borrowing fundamental concepts and text. Claims are classified into three categories, based on an offender who caused damage and a sufferer who suffered damages. The first category is intergovernmental claims. The second category is the claims by a third party against damages arising from official duty activities of stationing forces. The third category is the claims by a third party against damages arising from of non-official duty activities of military personnel. Even though the provisions of the NATO SOFA are distinct regarding these three types, an ambiguous zone still remains. Firstly, as is the case in criminal jurisdiction, the final judgment of „official duty“ may be contentious in some cases. Secondly, since claims by a third party are closely related to domestic civil law(s), to what extent the court of the receiving state may be involved is also a matter of contention. In other words, the question is if law(s) of the receiving state can finally settle the disputes, including appealed cases.

(a) aiver and settlement of claims

A criterion is the level of reciprocity and the extent of domestic law application.

This sub-item is concerned with the intergovernmental claims and its settlement mechanism i.e. (i) military-to-military claims; and (ii) military-to-non-military claims, including public services and assets. The NATO SOFA, referring to case (i), stipulates that if such damages are caused by MFs and MCCs in the execution of their duties each party waives all its claims. Regarding case (ii), it defines detailed procedures including the settlement by a sole arbitrator. All SOFAs are generally in line with the NATO SOFA model, except the Philippines SOFA in which case (ii) shall be settled by the US law regarding foreign claims. (It may also be applied to damages to third parties.)

(b) Damages to third parties

A criterion is the level of reciprocity and the extent of domestic law application.

This sub-item is concerned with how the damages to third parties caused by MFs and MCCs during their official duties are compensated. The NATO SOFA designates the basic rules and procedures. That is, claims shall be filed, considered and settled (including temporary payment by the ARs) in accordance with the laws and regulations of the receiving state, and the final adjustment of the balance by the sending state shall be made in accordance with agreed procedures. All SOFAs are generally in line with the NATO model except one outlier, the Philippines, where all meritorious claims belonging to this category are settled in accordance with the US law.

(c) Immunity of personnel on duty

A criterion is the extent of domestic law application.

All sampled SOFAs, except the Philippines, have identical provisions stating that MFs and MCCs shall not be subject to any proceedings regarding the enforcement of any judgment made against him in the matters arising out of the performance of his official duties. (This means that MFs and MCCs are not immune from the law of the receiving state in the case of non-official duties.) In the Philippines SOFA, the US law shall apply to damage compensation claims against the US, whether or not it is caused during the execution of their official duties. This means that MFs and MCCs are one hundred per cent immune from Philippine law.

(d) Damages caused by off-duty personnel

A criterion is the extent of domestic law application.

This sub-item is concerned with how the damages to third parties caused by the MFs and MCCs, arising out of non-official-duty activities, are compensated. The NATO SOFA designates the *de facto* standard rules and procedures. In addition to the right of the ARs including initial consideration and assessment of compensation to the claimant, the most important part of such rules and procedures is the jurisdictional right of the receiving state in the case of unsettled claims. The NATO SOFA states that “nothing in this paragraph shall affect the jurisdiction of the courts of the receiving State to entertain an action against an MF or an MCC unless and until there has been payment in full satisfaction of the claim.”

All sampled SOFAs, except the Philippines, follow the NATO SOFA model in general. In the Philippines SOFA, however, the phrase „claims against the US“ is used instead of „claims against MFs and MCCs“, which is used in the NATO SOFA. Interpretation is that if the US admits a sort of responsibility it will compensate in accordance with the US law. However, there is no mention about the court rule of the receiving state if the US refuses to admit the legitimate responsibility of the US to settle the claim. Considering that the basic assumption of the Philippines SOFA is constructed upon the „temporary visit of US forces,“ and even the criminal trial should be completed within one year, it is quite ambiguous as to whether Philippine authorities have the same level of forcible power as codified in the NATO SOFA.

#### (e) Judgment of official duty

A criterion is the degree of difference from the NATO SOFA.

All sampled SOFAs, except the Philippines, have identical provisions for how a dispute regarding the legitimacy of „official duty“ certificate may be settled through an arbitrator. In the case of the Philippines SOFA, it lacks a provision regarding dispute settlement mechanism addressing to this issue.

#### (f) civil jurisdiction by the ARs

A criterion is the extent of domestic law application.

This sub-item is related to the extent to which civil jurisdictional right of the ARs may be extended. It overlaps partially with sub-item (d). The NATO SOFA states that the sending state shall not claim immunity from the jurisdiction of the courts of the receiving state except in the case arising from the performance of his official duty and must co-operate each other during the course of civil jurisdictional execution by the ARs. In the Australia SOFA, ARs, with the assistance of the ASs, can take possession of any private movable property on the

US military facilities which is subject to compulsory execution. In the South Korea SOFA, the ASs shall render all assistance within their power to see that such property is turned over to the ARs. In the Philippines SOFA, there is no related provision regarding the legal procedures in accordance with Philippine civil laws. Thus, the discrepancy among these states is obvious.

### 13. Logistic support

This item consists of six sub-items. However, (a) Private consumption; (d) Travelling facilities and fares; and (e) Payment (for goods and services) are excluded from subject to be graded because these items are referred only in the NATO SOFA (except the Australia SOFA regarding „Payment“). Though they might have been the issues of importance immediately after WWII, these issues became less important today.

#### (a) Private consumption ☐ not applicable

The NATO SOFA confirms that MFs, MCCs, and DPs may purchase local goods. Confirming the principle of non-discriminatory measures for private consumption for foreign military personnel might have been important immediately after WWII. However, it is self evident today that they can purchase goods just like citizens of the receiving state, and there is no difference in all sampled SOFAs.

#### (b) Military consumption and utility service

(i) Military consumption: A criterion is the degree of unrestricted decision making by the sending state with regard to choosing suppliers, contractors, and persons.

When the NATO SOFA was negotiated, few negotiators foresaw the longevity of large-scale deployment of the US forces throughout the world. Accordingly, the NATO SOFA merely states that military procurement shall normally be made through the ARs which purchase goods for their forces, and restricted articles having adverse effects on a receiving state's economy shall be indicated by the ARs. In short, the fundamental principle is that the logistics shall be made through the ARs so that local economy would be protected appropriately.

However, the succeeding security circumstances have urged the US to construct new durable military facilities abroad and to develop large-scale furnishing networks for logistic and maintenance services to sustain them. The development of highly sophisticated military technology has also fostered the US further to establish a complex global supply chain of high-tech parts. In sum, logistic support for the US global base network became far beyond the capability of ARs, which was originally predicted in the NATO SOFA.

Viewed from the interest of the receiving states, being involved in maintenance service for high-tech equipment is an attractive opportunity to obtain the most advanced technology of the US forces. As a result, the issue of logistics support became some sort of contentious economic bargaining field because the US seeks its unrestricted decision in choosing contractors, service providers, and persons while the receiving state seeks to be involved more deeply in such supply chain networks as much as possible for its economic and military interest. In such a situation, the greater is the room for the receiving state in the decision-making mechanism, the greater the economic benefits for the receiving state and vice versa. As a result, there are many administrative and technical level agreements between the US and the receiving states. In this analysis, however, attention is focused on provisions of SOFA because of infeasibility to explore all related agreements including domestic laws corresponding to them.

(ii) Utility service: A criterion is the extent of prerogatives given to stationing forces in rate and usage.

With regard to utility services, the same level of prerogatives enjoyed by the forces of the receiving state is guaranteed for the stationing forces in all sampled SOFAs, except South Korea. In the South Korea SOFA, a much stronger position of stationing forces is asserted as “the use of utilities and services as provided herein shall not prejudice the right of the U.S. to operate military transportation, communication power and such other utilities and services deemed necessary for the operations of the U.S. forces.”

(c) Free services

A criterion is the scope of free services available for stationing forces.

As a matter of course, MFs, MCCs, and their DPs may freely use public roads, bridges, and facilities, and watch commercial broadcasting programs in their homes. However, when stationing forces use the ports, airports, toll roads or certain bandwidth of radio waves, the issue becomes a matter of negotiation. In the Philippines SOFA the USAF can use certain bandwidth of radio spectrum without the relating fees.

(d) Travelling facilities and fares ☐ not applicable

The NATO SOFA states that the receiving state shall give the most favorable consideration to requests for the grant to MFs and MCCs of travelling facilities and concessions with regard to fares based on special arrangements of contracting parties. There are no related provisions in all SAs of NATO members or bilaterally agreed SOFAs. The issue may be handled with ad hoc agreements.

(e) payment (for goods and services) ☐ not applicable

The NATO SOFA states that “subject to any general or particular financial arrangements between the Contracting Parties, payment in local currency for goods, accommodation and services...shall be made promptly by the AFs.” There are no related provisions in all SAs of NATO members or bilaterally agreed SOFAs except the Australia SOFA where “payment of such logistics support shall be calculated upon such terms as are most favorable to the recipient under the national laws of the providing Party.” In any event, the same principle and practice may be taken in all sampled states like the most-favored-nation status in the area of international trade.

(f) Tax exemption for logistics

A criterion is the scope of tax exemption in terms of items of goods and services, and varieties of taxes.

The NATO SOFA confirms the taxation by the receiving state on purchases and services of the sending state which is chargeable under the fiscal regulations of the receiving state. Accordingly each state establishes a variety of taxes and official charges which are similar to tax. On the other hand, because of security reasons including needs for smooth and low-cost military logistic, all receiving states also guarantee special tax exemption for many items of goods and services for logistic. Thus, items of taxes to be levied on or exempted from logistics services vary from state to state.

The difference is the scope of tax-free goods and services and the extent of beneficiaries who enjoy such taxation prerogatives. Some states, including the Philippines and Greece, guarantee the exemption from any duty, tax, or other similar charges while other states specify the items of tax and duty applicable to logistics services. In Greece, equipment, materials and supplies (imported by the US) in connection with the construction, development operation or maintenance (for the bases) and the official support of the US forces, CCs, and their DPs shall be exempt from all duties, taxes, customs restrictions and inspections. In the case of Spain, even contractors may enjoy the same level of tax exemption prerogative with stationing forces.

#### 14. Facilities and areas for the forces of a sending state

This item consists of five sub-items.

„Facilities and areas“ offered by the receiving state for the use of the sending state, as their military bases are named in different ways, i.e. „accommodation“ in the Germany;

„installation“ in Italy, Spain, and Turkey; „land and facilities“ in Australia; simply „bases“ in the UK because the UK rents its bases to the US. The term „facilities and area“ is used in the Philippines, Japan, and South Korea. In this study, the term „facilities and areas“ or simply the term „base“ is used to represent the same concept consisting of land, buildings, facilities, furnishings, equipment, and fixtures which are necessary to perform military missions of the sending state. It is offered by the receiving state and used exclusively by the sending state (the US), or jointly.

This item attracts less attention from the scholars specialized in international laws than the issue of criminal jurisdiction because it is related mainly to the realm of security and military rather than laws. Theoretically, the use of bases by the sending state in the territory of the allied states is reciprocal in its nature because it is founded on mutually-agreed security necessity. It may surely represent an equal *quid pro quo* relation.

However, reality on the ground is far from this hypothetical assumption because of (i) power asymmetry and fixed role sharing, and (ii) difference in threat perception. A force sending state is always the US which has asymmetric hard power and a unilaterally planned global security strategy. It always seeks unrestricted and discretionary activities of its forces abroad to realize its goal. The receiving states, on the other hand, have their own security priority which is not completely the same as the US. They tend to prioritize its own security interest even though it is under the aegis of US military might.

From a view point of international relations, therefore, this item should occupy the center place of SOFA study because it most honestly indicates a sensitive balance between military interests of the US and the countering sovereign power exercised by the receiving state to constrain unrestricted movement of the US forces.

#### (a) The use of facilities and areas

A criterion is the degree of sovereign power exercised by the receiving state over the use of facilities and areas by the sending state. This item consists of two factors. One is how the legitimate right to use facilities and areas as a military base is granted by the receiving state and how the location and the scale of such facilities and areas are determined. The other is how these facilities and areas are used in terms of a military action. A comparison is made by focusing mainly on the former factor because the latter factor is all about the core part of security alliance which is beyond the comparison of SOFA provisions even though some SOFAs stipulate restrictions by the ARs.

The NATO SOFA asserts that the laws of the receiving State shall determine the rights and obligations of the sending state arising out of the occupation or use of the buildings, grounds, facilities or services though the arrangement of them is the responsibility of the receiving state. However, the degree that the law of the



receiving state exercised over the stationing forces is different from state to state even among NATO members.

In the UK, regarding granting basing right, Churchill-Truman Communiqué states that “Under arrangements made for the common defence the US has the use of certain bases in the UK. We reaffirm understanding that the use of these bases in an emergency would be a matter for joint decision... in light of the circumstances prevailing at the time.”<sup>7</sup>(Qtd. in Duke 300) In Spain, the maximum force level and type is limited within mutually agreed size. In Japan, the US is granted the use of the facilities and areas under the Treaty of Mutual Cooperation and Security of 1960 and “Agreements as to specific facilities and areas shall be concluded by the two Governments through the Joint Committee...” Japan even needs the consent of the US with regard to the interim use of facilities and areas which are not used temporarily by the US forces. In South Korea, though the text is almost identical to the Japan SOFA, the US has the residual right of re-entry even after returning its bases by preserving records of facilities and areas.

Thus, the difference is conspicuous and great.

(b) The right to control facilities and areas

Criteria are (i) whether the command of the bases is joint or exclusive; and (ii) the scope of the ARs’ right to inspect the bases.

In Italy, Spain, and Turkey, the bases are under joint command and the commander of the receiving state has the upper hand in controlling bases. Although the area exclusively used by the US is under the control of the US commander - and in some cases the meaning of „joint“ should be interpreted as merely nominal - the fact that the commander of the receiving state has the legal right to control bases has strong implications. For example, the Italian commander has free access with no restrictions, except mutually-agreed classified areas, to all areas of the installation. Though the scope of „mutually agreed classified areas“ is vague, ordinal barracks and mess halls may not be included as classified areas and this may give greater power to the host state commander in the case of inspection. With regard to training, the German SA states that the use of major training areas shall be subject to prior agreement by ARs, and air control over bases shall be in coordination with the ARs.

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<sup>7</sup> Original source: Public Record Office: FO 371/97592, Document AU 1051712, from Washington to the Foreign Office, Sir Oliver Franks, Telegram No. 77, 9 Jan. 1952.

On the contrary, in the Philippines the US forces are authorized to exercise all rights and authority within the agreed locations. In Japan and South Korea, the US may take all the measures necessary for their establishment, operation, safeguarding and control within its bases. Although USAF operations using the facilities and areas shall be carried out with due regard for public safety, regulative power of the receiving state is extremely weak in these states.

(c) special permit and licenses in connection with the use of facilities and areas

A criterion is to what extent the laws of the receiving state are applied over ordinary activities of the bases.

If we view the activities of bases from the perspective of citizens' lives, where thousands of people live as a community, the same level of regulation as an ordinary city of the same size must be in place to maintain public order and safety. If the commander of a base wants to build an incinerator to cope with increasing garbage, can he import it from his home state and use it without consulting the responsible ARs? What if the emissions standard of his home state differs from that of the receiving state? Though each item may be trivial and may not be directly related to military activities, the number of items and the range of issues to be consulted between two states may be substantial. This sub-item may be indicative of to what extent the laws of the receiving state are effective and restrictive over stationing forces and people living there.

The German SA clearly states that where German law applies in connection with the use of accommodation, ARs shall undertake the relevant administrative and legal procedures for the force....AFs shall act in conformity with the terms and requirements of a legally effective decision. On the contrary, there are no related provisions in the Japan and the South Korea SOFAs. In these cases, domestic law may be applied to settle problems. However, a wide range of ambiguous zone, in which no relevant procedure and commonly accepted rule is established, may remain once a controversial incident occurs. Considering it will take a quite long negotiation time, I concluded that „no related provision“ reflect lesser regulative sovereign power of the receiving state than those states with detailed provisions.

(d) Construction

A criterion is the scope of regulative power of the receiving state over new construction of facilities and buildings by the sending state.

This sub-item may be a branch of sub-item (c) above. But I separated it as an independent sub-item because the matter of constructing new buildings and facilities is so important in terms of economic effects and transformation of

military capability. In Italy, Spain, and Turkey, construction of new buildings and facilities are subject to the prior approval of the ARs. In Germany, the SA designates the detailed procedures in accordance with German law. In Greece, the Philippines, Japan, and South Korea, the receiving state authorizes the sending state to construct new buildings and facilities in agreed locations without prior approval. For example, Agreed Minutes between the US and Japan authorize the US that all sorts of construction, removal and improvement of buildings or structures in agreed facilities and areas including the vicinity of such area are permissible without any prior consent of Japanese government.

(e) Transfer of fixtures

A criterion is if there is any examining mechanism which may regulate discretionary transfer of fixtures by the sending state.

This sub-item may also be a branch of sub-item (c). But I separated it as an independent sub-item because transferring of fixtures, including equipment, has critical impact not only on military capability of the bases concerned but also on the defense capability of the receiving state. The implication of „transfer“ in this case is two folds. One is transfer of fixtures to other locations, and the other is transfer of fixtures to a third party including the government of the receiving state. In the former case it means transformation of military capability or reorganization of forces if no substitution measures are taken. In the latter case, fixtures composed of equipments with advanced technology may interest the receiving state if it can purchase them at reasonable price. In either case, the receiving state cannot be indifferent to this issue.

In Spain, if such removal are to significantly affect the capability of the IDA (Operational and Support Installation), consultations shall be established for the reclassification of the IDA or for its possible turnover to Spanish government. In Australia, the US needs the consent of the Australian government if such property is to be disposed of in Australia. In Germany, the SA designates detailed rules and procedures when transferring fixtures, fittings, and furnishings from one accommodation to another.

Contrary to these states which maintain a certain level of examining mechanism, the Japan SOFA (in Agreed Minutes) authorizes the US to remove buildings or structures, make alterations, attach fixtures, or erect additions thereto and to construct any additional buildings or structures together with auxiliary facilities without prior consent. Thus, although this sub-item is a minor issue, it is a good barometer to gauge the balance between the security concern of the receiving state and the US security strategy which is usually planned unilaterally.

## 15. Return (or release) of the facilities and areas (or accommodation and land)

This item consists of two sub-items.

### (a) Return of facilities and areas

A criterion is the existence of effective and periodical joint evaluation procedure with regard to the status of necessity and utilization of the facilities and areas used as a foreign military base.

Security strategy of states undergoes revolutionary change affected not only by security circumstances from time to time but also by rapid development of military technologies. The financial condition of contracting parties may also affect how they sustain existing military bases. The closing of the US bases has multidimensional causes and effects. It may arouse the fear of being abandoned by the US if the receiving state heavily relies on the US Forces to secure it. In reverse cases, the existence of the US bases, which had been established originally on the basis of „mutual security interest“, becomes a field of contention, arising out of diverging interests and security priority.

However, in this item I disregard these factors related to security concerns and compare simply the differences in provisions which authorize the ARs to evaluate the status of necessity and utilization of the facilities and areas used as a military base. From the view point of receiving states, withdrawal or reduction of military bases used by foreign forces may be a matter of welcome because they can regain the normalcy of sovereign state to a certain extent and it may be beneficial for their economy because returned area can be re-used for industrial or commercial purposes. Therefore, it is important whether there is an effective and periodical joint evaluation procedure to assess the necessity and utilization level of the facilities and areas used as military bases.

In the case of Germany, the SA stipulates that the AFs and ACCs shall, at the request of the ARs, examine their requirements in specific individual cases in addition to continuous examination. . . . When they (the bases) are no longer needed (even partially) the accommodation shall be released without delay. In the Japanese case, it is stated nominally that the US agrees to keep their needs under continual observation, with a view toward such return. In South Korea, as I mentioned in item 14-(a), The US reserves the right of re-entry and “Records of facilities and areas of which the USAF have the use or the right of re-entry shall be maintained through the Joint Committee after this Agreement comes into force.”

### (b) Residual Value

A criterion is different conditions with regard to residual value reimbursement.

Since there are no specific provisions in the NATO SOFA regarding this item, the issue is defined in either supplementary agreements (in case of NATO members) or bilaterally agreed SOFAs. In Germany, the SA states that the sending state shall be reimbursed for such agreed residual value and the AFs are responsible for taking restorative measures to avoid detrimental effects on the environment. Other NATO members follow the same standard. (Let us call it as German formula) In Japan and South Korea, on the contrary, it simply states that the US is not obliged to restore them and the receiving state is not obliged to make any reimbursement to the US for their residual value. (Let us call it as Japanese formula) Difference is quite clear. However, it may be a subject of dispute which type is more favorable to the receiving state.

From hindsight of today's growing concern over environmental problems, it is apparent that German formula is more favorable than Japanese formula. Viewed from points of accounting rule and a practical business procedure in real estate transactions, it is not so difficult to reach the same conclusion.

First, if we remember the fundamental principle in the accounting and a real estate rental contract, applying the appropriate depreciation and returning of rented real estate to their original conditions is an internationally agreed practice and principle, even though the ratio and the extent of restoration could be a matter of negotiation. Japanese formula digresses from this principle to extremely in favor of a lessee.

Second, viewed from a practical point of view, Japanese formula seems to be less advantageous as well. In German formula, the sending state must bear the cost for removing toxic or hazardous materials from the soil and water reservoir of the areas where the military facilities have occupied. Furthermore, hazardous materials used in building structures, such as asbestos, must be calculated as negative on residual values, or removed at the expense of the sending state. In Japanese formula, on the contrary, the sending state is completely free from the responsibility for restoring facilities and areas to their original condition. It can return them as they are. It is the responsibility of the receiving state to take any restorative measures to satisfy the requirements for re-use in other purposes including dismantling cost for old facilities in which no residual value may have been left because it may be a remote possibility that the most advanced equipments and brand new improvements to facilities would be handed over intact to the receiving state.

I may convincingly claim, therefore, that German formula is more favorable to the receiving state than Japanese formula.

## 16. Maneuvering and Training

A criterion is the extent of regulative measures exercised by the receiving state over the maneuvering and training by the forces of sending state.

During peacetime, the most contentious issues between the citizens of the receiving state and stationing forces stem from the maneuvering and training of such forces. Since one hundred per cent accident-free flights of military aircraft are unimaginable, safety net from such an accident is a major concern of surrounding communities. Jet noise is also a big problem for citizens around the bases. The essence of this issue can be reduced to necessity for maintaining military capability vs. quality of citizen's life in peacetime. It is not a direct clash of national interest between two states.

However, since the receiving state must be much more reflective of citizens' claims, the dispute very often bears a touch of a state-to-state clash of interest because (i) receiving states tend to seek a more benign training plan, and (ii) it relates to the sovereignty of receiving states to control territorial air and land. For example, on May 22, 2014, Yokohama District Court of Japan ruled that night flight training (between 10:00 pm to 6:00 am) of the Japanese Self Defense Force (JSDF) should be suspended while the same training by the United States Air Force (USAF) is out of Japanese jurisdiction.<sup>8</sup> Apart from this court decision, the JSDF has been so sensitive in conducting night flight training that it has refrained from such training around this area for quite a long time. But the USAF has been much more persistent than JSDF in continuing its night flight training, including touch-and-go training by carrier-borne aircrafts. In such contradicting cases, the extent of regulative power exercised by the ARs is crucial to seek some compromising ground.

Regulative power to control discretionary training plan of the US forces are extremely weak among the Philippines, Japan, and South Korea, while NATO members (except Greece, where there is no related provision) are relatively strong in exercising their regulative power over the US's training plan.

## 17. Overall cost sharing

A criterion is the ratio and the range of items regarding cost bearing by the receiving state to arrange and maintain facilities and areas for the forces of the sending state.

The NATO SOFA simply states that the ARs shall assume sole responsibility for making suitable arrangements to make available to a force or a civilian component the buildings

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<sup>8</sup> Japan Times May 23, 2014

and grounds which it requires, as well as facilities and services connected therewith. Judging from a provision referring to logistics (Art. IX), it is a matter of course that the cost for maintaining such forces should be imposed on the sending state. The Italy SOFA clearly states that the operation and maintenance costs for structures composing the installation are charged to the USAF or Italian Armed Forces according to their ownership and use. The Japan SOFA also stipulates that the US will bear, without cost to Japan, all expenditures incidental to the maintenance of the USAF, and Japan will furnish without cost to the US, and provide compensation where appropriate to the owners and suppliers there, of all facilities and areas and rights of way.

Thus, the text of provisions is generally identical among all sampled SOFAs. However, there exists an extreme discrepancy in succeeding administrative level agreements since the conclusion of original SOFAs. It has been caused by persistent claims by the US for “equal burden sharing” based on “equal security partnership” around the world and it believes that its military contribution is far greater than the contributions offered by the receiving states. On the contrary, all receiving states believe that their contribution to stationing US forces is well balanced. Accordingly different reaction may occur among receiving states.

In Japan, the concept of „furnishing facilities and areas“ is broadened to the extent of including new construction to substitute old facilities, construction of additional buildings, and even labor costs to undergo necessary maintenance of facilities and equipments. Furthermore, Japan is going to bear even the relocating costs of the US Marines from Okinawa to Guam (including construction of new facilities in the US territory), which is initially estimated at around \$2.8 billion.<sup>9</sup> To lesser extent, the situation in South Korea is identical to Japan. The South Korean government is to bear substantial part of US Forces Korea (USFK) relocation cost, including the Yongsan Relocation Plan and the Land Partnership Plan.<sup>10</sup> Among NATO members, a fundamental scheme of cost sharing codified in original SOFAs is observed even though Germany has been under severe pressure for decades from the US to bear more financial burden. I may conclude that the overall situation in Japan and South Korea is far less favorable to the receiving state than other sampled states.

## 18. Tax and customs exemption

This item consists of two sub-items.

### (a) Tax

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<sup>9</sup> Home page of Japan Ministry of Defense <http://www.mod.go.jp/e/>

<sup>10</sup> Committee Reports 112<sup>th</sup> Congress 2011-2012 Senate Report 112-026, The Library of Congress, Thomas.loc.gov

A criterion is the range of tax exemption prerogatives bestowed on MFs, MCCs, and DPs.

The NATO SOFA designates basic rules of taxation levied on Forces, CCs, MFs, MCCs, and DPs. Forces, deemed as inherently governmental and sovereign, are exempted from taxation from the receiving state. Salary, emolument, and tangible movable property of MFs and MCCs are also exempted from taxation of a receiving state since they are deemed as non-resident or non-domiciliary of the receiving state. Other taxes on purchases, services and earnings from any profitable enterprise other than his employment as a MF or a MCC are under the fiscal regulations of the receiving state (not exempted from taxation). Because all succeeding SOFAs emulated the NATO SOFA basic rule, there is no substantial differences among SOFAs except minor differences with regard to other direct taxes and indirect taxes including VAT and sales tax levied on MFs, MCCs, and DPs. The grading is based on such minor differences in taxation prerogatives bestowed on them.

#### (b) Customs

Criteria are (i) the extent of the right exercised by the ARs to inspect luggage and vehicles of MFs, MCCs, and DPs; and (ii) the range of items exempted from the customs regulations of the receiving state.

Since the NATO SOFA is originally a multilateral agreement among major Atlantic states, where customs regulations and systems had been highly developed and sophisticated even before WWII, provisions relating to customs are precise and comprehensive. Mark D. Welton comments that the NATO SOFA provisions on customs duties are relatively complete, especially when they are complemented by provisions of supplementary agreements. (Welton 234) Accordingly, since all succeeding SOFAs followed the principle of the NATO SOFA, provisions are almost identical among other SOFAs, except for the most fundamental issue relating to the right of inspection by the ARs.

The NATO SOFA Art. XI, para. (1) asserts the principle of customs regulation as “Save as provided expressly to the contrary in this Agreement, MFs and MCCs as well as their DPs shall be subject to the laws and regulations administered by the customs authorities of the receiving State. In particular the customs authorities of the receiving State shall have the right, under the general conditions laid down by the laws and regulations of the receiving State, to search MFs or MCCs and their DPs and to examine their luggage and vehicles, and to seize articles pursuant to such laws and regulations.” However, the extent of right exercised by the ARs to examine luggage and vehicles and to seize articles, which may offend the rule of



the receiving state, varies from state to state. While the German SA, in line with the NATO SOFA, confirms the right and procedures to inspect goods in doubtful cases including the goods through the post of a force, Japan and South Korea SOFA are extremely weak in this regard. For example, ARs have no right to examine units of USAFs under orders for entering or leaving the receiving state, official documents under official seal, official mail in US military postal channels, and military cargo shipped on a US Government bill of lading.

Regarding the range of items exempted from the customs regulation of the receiving state (a criterion-ii), discrepancy is obvious in the case of the Philippines, where all USAFs' materials, supplies and equipment imported or exported (including purchase in the RP) by the USAFs (for designated use) are free from customs duty, tax, or other similar charges, and the US forces (except for non-entitled persons) can remove and dispose of them at anytime without any restriction.

## 19. Foreign exchange controls

This item consists of two sub-items.

### (a) Foreign exchange controls

A criterion is the level of reciprocity based on foreign exchange rules of each state.

Art. XIV para. (1) of the NATO SOFA states that a force, a CC and the members thereof, as well as their DPs, shall remain subject to the foreign exchange regulations of the sending State and shall also be subject to the regulations of the receiving State. All SOFAs follow the principle of the NATO SOFA and there is no difference in general. However, in South Korea, the balance is slightly in favor of the sending state, though difference is petty. That is, when the payment by the USAF is made by Korean won, „highest rate in terms of the number of Korean won per US dollar is applied.“ In the Japan SOFA it is stated as „basic rate of exchange is applied.“

### (b) Military payment certificates (MPC)

A criterion is whether rules regulating military payment certificates (MPCs) is applied on an equal basis.

As is the case for foreign exchange controls, regulations on MPCs may be codified based on the same reciprocal principle and procedure since MPCs are one of the financial instruments representing the currency of the sending state. However, in the case of South Korea, ASs will apprehend and punish MFs, MCCs, and DPs, to the extent authorized by the US law, who tender MPCs to

unauthorized persons and no obligation will be due to such unauthorized persons or to the Government of the ROK... This is almost the same as confirming that US law shall apply (not the law of South Korea) in punishing such persons who tender MPCs to unauthorized persons and the issue of compensation or recovery for such damages is completely disregarded.

## 20. The applicability of SOFA to wartime condition

Criteria are (i) the existence of related provision(s); and (ii) the scope of immunity (both in terms of military activities and jurisdiction) bestowed on the forces of the sending state.

In this item, the term „wartime condition“ is defined as hostilities to which the provisions of a security treaty or other similar security agreement may apply. Dieter Fleck claims that the applicability of treaty provisions in periods of crisis or war is a complex issue, which cannot be solved by reference to the treaty text itself: “hardly any international instrument covers this issue fully and, if so, any provision negotiated and adopted in peacetime remains subject to the *rebus sic stantibus* principle.” (Fleck 255) However, from the perspective of comparative study of SOFAs, existence of related provisions *per se* is important because it pre-defines basic procedural rules between the contracting parties during initial stage of hostility and I can identify a stark difference among sampled SOFAs.

In order to cope with unforeseeable contingencies in the future, the NATO SOFA, though it shall remain in force (except some provisions relating to claims for damages caused by military activities), sets out the basic rule that the provisions relating to Entry and departure and Jurisdiction shall immediately be reviewed by the members and each member has the right to suspend the agreement by giving 60 days' notice. In short, the provisions do not pre-define all rules during wartime condition, but they set out basic procedures to cope with contingencies while preserving basic rules depending on the existing SOFA. „No related provisions,“ on the other hand, connotes a certain length of „anarchic“ period where there is no restriction over the military activities of foreign forces. Our empirical knowledge suggests that the more powerful may prevail over the less powerful because prompt military action of stationing forces becomes top priority for the receiving state.

The second issue is to what extent the stationing forces can conduct military maneuvers within the territory of the receiving state. Theoretically, a mutually agreed SOFA should be cooperative and reciprocal in its nature even during wartime conditions because the victory over an enemy is a common goal. However, asymmetrical military power balance and fixed role sharing very often causes conflicts between the law of the receiving state and military priority of stationing foreign forces, because they usually seeks unrestricted military action in tandem with jurisdictional immunity for its personnel in order to carry

out its military mission smoothly. In other words, stationing forces pursue maximum military efficiency at the expense of citizens' rights of the receiving state especially in wartime conditions. For the receiving state, as a legitimate government to secure its citizens, it may be forced to find some compromising ground in order to satisfy both. Thus, the scope of unilateral military activities and jurisdictional immunity of military personnel from the law of the receiving state becomes the central issue in gauging the real relationship between the parties. As far as this item is concerned, the South Korea SOFA can be classified as almost Type I, or the least favorable condition for the receiving state, in which, in addition to the lack of overall provisions which define basic procedural rules, Art. XXII states that agreements pertaining to criminal jurisdiction shall be immediately suspended and the AFs shall have the right to exercise exclusive jurisdiction over MFs, MCCs, and DPs.

## 21. Settlement of disputes and features of administrative bodies for SOFA implementation

A criterion is the difference in a bilateral dispute resolution body and the availability of a third party conciliator.

### (i) Settlement of disputes

Since the legitimacy of SOFA arises from a mutually-agreed security arrangement, tacit understanding shared by the parties in the dispute settlement mechanism is „to solve the problem within the parties.“ The reasons why is two-fold. One is that disputes arising from bilateral agreements should be settled by a bilateral negotiation. The other is a risk that the disclosure of inner disputes may indicate the weakness of security alliance or solidarity.

Accordingly, almost all SOFAs make it a fundamental rule that disputes shall not be referred to any national or international court, tribunal, or other similar body, or to any third party. The multilevel dispute resolution mechanism composed of an intergovernmental body is set up bilaterally from the lowest local-level negotiation to higher diplomatic channels. In the NATO SOFA this principle is applied in which disputes shall be settled by negotiation between the members concerned, and discrepancies which cannot be settled by direct negotiation shall be referred to the North Atlantic Council (NAC). But, a remaining problem is what if even the NAC failed to settle a dispute? It is still a matter of contention among international law scholars whether a NATO member state can resort to outside international institutions, including the International Court of Justice (ICJ), in such a case. There are competing views among international law scholars. (Vidts 238-40)

However, presetting of outside international institutions as an opinion source in a bilateral agreement is apparently a one step-advancement in dispute settlement. It is also a good indicator that suggests a certain degree of equality in bilateral relations because

the more powerful usually seek a within-parties dispute-solution mechanism. For this reason I graded the German SA higher because it guarantees that the Consultative Commission can seek the opinion of outside conciliators, NATO, the WEU, or the Organization for Economic Cooperation and Development (OECD).

(ii) Jointly-established administrative body

The majority of SOFAs establish a „Joint Committee“, or a similar kind, as a permanent bilateral institution, not only to resolve disputes but also to cope with new problems such as environmental protection. In addition, it usually acts as an administrative body to implement provisions of SOFA in day-to-day situations. Though I appreciate its utility and the expertise possessed by constituting members, I must warn that it could easily become a convenient tool to confine any disputes in a secret box. In the cases of Japan and South Korea, “A Joint Committee shall be established as a means for consultation.... on all matters requiring mutual consultations regarding the implementation of this agreement” though higher appropriate channels are reserved for further consideration of unresolved disputes. Notably here, is that all matters include determining the facilities and areas which are required for the use of the US forces. This is, no doubt, the most fundamental part of SOFA. Because all these consultations and agreements are made at the administrative or working level, it usually does not require any Diet or Parliamentary approval. As a result, incumbent governments of both states can easily keep some of the agreements secret, and some agendas debated there can escape from public scrutiny or criticism. In addition, this kind of secret-room negotiation, consisting of a small number of specialists, may confer greater negotiation power on the side of a stronger state.

For these reasons I downgraded the Japanese and South Korean cases. On the other hand, the Spain SOFA, in order to avoid this kind of deficiency, pre-establishes the Bilateral High Level Defense Committee over the (administrative level) Permanent Committee, and stipulates the right of the receiving state to terminate the agreement if no solution is made within a period of 12 months.

## 22. Revision of agreement

A criterion is the procedural clarity to proceed to the negotiation to revise agreement.

The NATO SOFA states that any member may at any time request a revision through NAC. The related provision of the Japan and the South Korea SOFAs is identical to the NATO SOFA. The Turkey SOFA sets out the procedure very assertively that either party may propose amendment or revision and consultation begin immediately. If no result is reached within three months, either Party may terminate the Agreement. In the case of Australia, there is no provision directly referring to amendment, but Protocol declares an imagined hope that at a future date both governments enter into negotiation of reciprocal agreement which would govern the status of the forces of each Government in the

territory of the other. In the Philippines SOFA, it is stated that it may be amended by written agreement of the parties. However, it is not crystal clear whether „written agreement“ means the initiation of amendment negotiation by written agreement (in other words, negotiation for amendment cannot be started without the written agreement of both parties), or, amendment of provision(s) may be completed by a written agreement by the both parties. In either interpretation, it may be disadvantageous for the Philippines because; if the former interpretation applies, the US may have considerable degree of veto power to refuse amendment request by the Philippines and if the latter interpretation applies it lacks procedural details which may secure the right of the receiving state to amend the SOFA. Considering this ambiguity and the fact that an amendment request is always initiated by the receiving state, I graded the Philippines SOFA lower.

### 23. Ratification and Accession

A criterion is a reciprocal domestic procedure to finalize the agreements.

Because all international agreements are completed by diplomatic exchange of instruments following domestic constitutional requirement of each state, there must be no substantial difference to be graded. However, the case of South Korea is so anomalous from the perspective of this diplomatic convention that I set up this issue as an independent item to be compared. Art XXIX para.1 of the South Korea SOFA designates only a one-sided accession procedure (no mention about the procedure which the US must follow) stating that “This Agreement shall enter into force three months after the date of a written notification from the Government of the ROK to the Government of the U.S. that it has approved the Agreement in accordance with its legal procedures.” In addition, necessary budgetary and legislative action is mentioned only in the part of the ROK government. (No reciprocal expression) This can be read that the US can decide discretionarily with regard to its domestic procedure.

### 24. Termination or denunciation of SOFA

A criterion is independence of SOFA from a security treaty or a similar security arrangement which bind contracting parties.

Our conventional knowledge sometimes mistakenly perceives that a security alliance and a SOFA are an integrated security arrangement. However, if we remember that there were many security alliances in our history that did not involve stationing of allied forces in the territory of other allies, SOFA may be terminated while preserving security alliance. Hosting foreign forces is one thing and forming a security alliance is quite another. France after 1967 is the best example of such a case. The Philippines government also refused to accept the US forces in 1992 while preserving the Mutual Defense Treaty.

I graded such SOFAs in which the receiving state has a legitimate background to terminate SOFA as an independent international agreement higher than those SOFAs in which SOFA is an integral and inseparable part of a security treaty. SOFAs of Greece, Japan, and South Korea fall in the latter case where the US has the right of basing as far as the security treaty continues. Termination of SOFA per se does not automatically mean complete erasing of a residual basing right if the security treaty remains in force.

For example Article VI of the US-Japan security treaty stipulates that “For the purpose of contributing to the security of Japan and the maintenance of international peace and security in the Far East, the United States of America is granted the use by its land, air and naval forces of facilities and areas in Japan. The use of these facilities and areas as well as the status of United States armed forces in Japan shall be governed by a separate agreement ...” Accordingly the title of the Japan SOFA starts with “Agreement under Article VI of the treaty...” Apparently it not only narrows the options of security arrangement for the receiving states but also load the receiving states heavy burden of diplomatic endeavor to amend structural part of SOFA.

## 25. Territorial applicability (including colonial territories)

All SOFAs are clear as to the territory to which a SOFA may apply. Even in the cases of the Philippines or South Korea, where no related provisions are found in the SOFA text, it is a matter of course that SOFA is applicable within the territory of the receiving state. However, here is an extreme outlier, Japan. It is exceptional in this regard because of a double standard in Okinawa and mainland Japan. After Okinawa returned to Japanese sovereignty in 1972, the Japan SOFA and other security related agreements must be applied to Okinawa in a unified way. However, many evidences suggest that the different standard may have, and still is, applied there.<sup>11</sup> Though this is not the appropriate place to analyze the issue precisely, I downgraded the Japanese SOFA because of its secrecy or ambiguity with regard to territorial applicability.

## 26. Authentic language

It is a diplomatic convention that the authentic language in a bilateral treaty or agreement should be both the languages of signatory states. SOFA is not an exception. However, the South Korea SOFA is indeed exceptional with regard to its authentic language issue. It states that both texts shall have equal authenticity, but in the case of divergence the English text shall prevail.

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<sup>11</sup> Yoshida Toshihiro points out that there were secret agreements in which Japan admitted to the deployment of nuclear weapons in Okinawa during the time of hostility and bearing the whole cost for restorative measures when some bases in Okinawa were returned. (吉田敏浩 6)

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## Appendix A-2

### Comparative Chart of Type III SOFAs

#### With Brief Reasoning Comments for Evaluation

#### Explanatory notes

[Grade 1] Point 4: Evaluated as "equal" in general but interpreted as apportioning greater right for a receiving state than a sending state.

[Grade 2] Point 3: Evaluated as "equal" in general based on impartial reciprocity.

[Grade 3] Point 2: Evaluated as "equal" in general but interpreted as apportioning lesser right for a receiving state than a sending state or as lacking detailed procedural regulations which bind both parties.

[Grade 4] Point 1: Evaluated as "greater rights for a sending state than for a receiving state."

1. Graded and calculated point of each item is indicated in grey colored cells at the top of item section.

2. Calculation rule for the items composed of sub-items:

Aggregated point of sub-items divided by number of sub-items.

3. The same calculation rule is applied to the point of sub-item composed of sub-sub-items.

4. n/a: Not applicable item as quantification

#### How to interpret 'No provisions' with regard to a certain item in question?

General understanding among international lawyers is that 'no provision' means the application of

a domestic law of a receiving state or a corresponding international law. However, 'no provision'

sometimes resulted in the secret agreement which gives greater discretionary power to a sending

state. Accordingly, lower grade is given to 'no provision' status if the application of a domestic

law is not proved satisfactorily by an obvious fact.

#### Abbreviation of states

AU: Commonwealth of Australia

FRG: Federal Republic of Germany

HR: Hellenic Republic (or Greece)

IT: Italian Republic

JPN: Japan

ROK: Republic of Korea (or South Korea)

ROT: Republic of Turkey

RP: Republic of the Philippines

SP: Kingdom of Spain

UK: United Kingdom of Great Britain and Northern Ireland

| Items to be compared |                                | Reasons for differentiation or point grading |     |
|----------------------|--------------------------------|--|-----|
| 1                    | Existence of security alliance |  |     |
|                      |                                | FRG: Yes                                     | n/a |
|                      |                                | IT: Yes                                      | n/a |
|                      |                                | UK: Yes                                      | n/a |
|                      |                                | SP: Yes                                      | n/a |
|                      |                                | HR: Yes                                      | n/a |



|  |  |     |
|--|--|-----|
|  | ROT: Yes   | n/a |
|  | AU: Yes  | n/a |
|  | RP: Yes  | n/a |
|  | JPN: Yes   | n/a |
|  | ROK: Yes   | n/a |
| <b>2 Structure of alliance (Involving the U.S. commitment)</b>   |  |     |
|  | FRG: Multilateral (NATO)   | n/a |
|  | IT: Multilateral (NATO)  | n/a |
|  | UK: Multilateral (NATO) and bilateral mutual defence assistance agreement  | n/a |
|  | SP: Multilateral (NATO) and bilateral cooperation  | n/a |
|  | HR: Multilateral (NATO) and bilateral defense cooperation agreement  | n/a |
|  | ROT: Multilateral (NATO) and bilateral cooperation agreement on defense and economy  | n/a |
|  | AU: Multilateral (ANZUS) and bilateral agreements  | n/a |
|  | RP: Bilateral  | n/a |
|  | JPN: Bilateral (Threat to either party within the territories under JPN's administration is deemed as common threat → one sided)   | n/a |
|  | ROK: Bilateral (Threat to either party is deemed as common threat → collective)  | n/a |
| <b>3 Respect for the law of the receiving state</b>  |  |     |
| (Rating of this item is not based on aggregated over all evaluation of related items, but based on the difference of text per se.) |  |     |
|  | FRG: NATO SOFA: The fundamental principle is stipulated in the second Art. immediately after the definition of terms (Art. I). Second sentence further confirms the duty of the sending state to take <u>necessary</u> measures to that end. No further agreement in SA.   | 3.0 |
|  | IT: NATO SOFA  | 3.0 |
|  | UK: NATO SOFA  | 3.0 |
|  | SP: NATO SOFA. Preamble of ADC: (Both parties) affirm that their defense cooperation is based on full respect for the equal sovereignty of each country....  | 3.0 |
|  | HR: NATO SOFA  | 3.0 |
|  | ROT: NATO SOFA   | 3.0 |
|  | AU: The USG and U.S. personnel shall conform to the Provisions of relevant Commonwealth and State laws and regulations, and the USG shall take appropriate measures to prevent any abuses of privileges.   | 3.0 |
|  | RP: Identical to NATO SOFA   | 3.0 |
|  | JPN: Given lower priority because it is covered in Art. 16 after the detailed provisions with regard to the facilities and areas (Art. 2) which is given top priority. Though the first sentence of Art. 16 is identical to NATO SOFA, it lacks second sentence which refers to the duty of the sending state to take <u>necessary measures</u> to that end. | 2.0 |
|  | ROK: Identical to JPN.   | 2.0 |
| <b>4 Entry and departure of foreign military personnel with relaxation of the customary immigration procedures</b>                 |  |     |
|  | FRG:   | 3.4 |
|  | IT:  | 3.0 |
|  | UK:  | 3.0 |

|                                     |   |     |
|-------------------------------------|---|-----|
|                                     | SP:   | 3.0 |
|                                     | HR:   | 3.0 |
|                                     | ROT:  | 3.0 |
|                                     | AU:   | 3.0 |
|                                     | RP:   | 2.8 |
|                                     | JPN:  | 2.8 |
|                                     | ROK:  | 2.8 |
| (a) Identification                  | FRG: NATO SOFA (MCCs and DPs >> Passport)   | 3.0 |
|                                     | IT: NATO SOFA (MCCs and DPs >> Passport)  | 3.0 |
|                                     | UK: VFA: MCCs and DPs >> a document purporting to be a passport issued by or on behalf of a sending state   | 3.0 |
|                                     | SP: ADC: MFs, MCCs, and DPs >> ID card is valid within Spain but not valid for border crossing. For border crossing: MFs >> ID, Movement order, or passport. MCCs and DPs >> Passport | 3.0 |
|                                     | HR: Special ID card issued by the ARs. Almost identical to visa.  | 3.0 |
|                                     | ROT: NATO SOFA (MCCs and DPs >> Passport)   | 3.0 |
|                                     | AU: Almost identical to NATO SOFA and extreme concern about health and quarantine regulations.  | 3.0 |
|                                     | RP: MCC (Civilian personnel) >> Passport  | 3.0 |
|                                     | JPN: MCCs and DPs >> Appropriate documentation  | 2.0 |
|                                     | ROK: MCCs and DPs >> Appropriate documentation  | 2.0 |
| (b) Frontier crossings              | FRG: Detailed procedure ranging from German language documents to the rights of ARs over visiting forces.   | 4.0 |
|                                     | IT: NATO SOFA. No provisions in MOU.  | 3.0 |
|                                     | UK: NATO SOFA. No provisions in VFA.  | 3.0 |
|                                     | SP: NATO SOFA. ADC seeks smoother frontier crossing in accordance with NATO SOFA.   | 3.0 |
|                                     | HR: NATO SOFA. No provisions in MDCA and SFA.   | 3.0 |
|                                     | ROT: NATO SOFA. No provisions in MOU and DECA   | 3.0 |
|                                     | AU: No provisions in AU SOFA, but 'the procedures to entry' may be applied.   | 3.0 |
|                                     | RP: Identical to NATO SOFA. Though the commander's responsibility of the sending state for health and quarantine is stipulated, no mention about the right of inspection by the ARs.  | 3.0 |
|                                     | JPN: No specific provisions with regard to the frontier crossings of forces in unit. General rules of identification requirement for the entry and departure may be applied.          | 3.0 |
|                                     | ROK: No specific provisions with regard to the frontier crossings of forces in unit. General rules of identification requirement for the entry and departure may be applied.          | 3.0 |
| (c) Registration and Aliens Control | FRG: SA: More specific regulations regarding hotel registration and AFs' obligation to report necessary information to the ARs.   | 4.0 |
|                                     | IT: NATO SOFA. No provisions in MOU.  | 3.0 |
|                                     | UK: NATO SOFA. No provisions in VFA.  | 3.0 |
|                                     | SP: NATO SOFA. The provision of ADC is identical to NATO SOFA.  | 3.0 |
|                                     | HR: NATO SOFA. No provisions in MDCA and SFA.   | 3.0 |
|                                     | ROT: NATO SOFA. No provisions in MOU and DECA.  | 3.0 |
|                                     | AU: Identical to NATO SOFA  | 3.0 |

|                              |  |     |
|------------------------------|--|-----|
| (d) Residence and Settlement | RP: No provisions in both VFA and EDCA. But document requirement when entering RP connotes MFs and MCCs are exempt from registration and aliens control regulations.   | 3.0 |
|                              | JPN: Identical to NATO SOFA  | 3.0 |
|                              | ROK: Identical to NATO SOFA  | 3.0 |
|                              | FRG: NATO SOFA   | 3.0 |
|                              | IT: NATO SOFA  | 3.0 |
|                              | UK: VFA confirms the principle of NATO SOFA.   | 3.0 |
|                              | SP: NATO SOFA  | 3.0 |
|                              | HR: NATO SOFA  | 3.0 |
|                              | ROT: NATO SOFA   | 3.0 |
|                              | AU: Identical to NATO SOFA   | 3.0 |
| (e) Expulsions and Removal   | RP: No provisions in both VFA and EDCA because of the basic presumption that the duration of "visit" by MFs and MCCs is temporal. But it may be self evident that domestic law shall apply when the duration of stay by any U.S. personnel exceeds 'temporal.' | 3.0 |
|                              | JPN: Identical NATO SOFA   | 3.0 |
|                              | ROK: Identical to NATO SOFA  | 3.0 |
|                              | FRG: NOTO SOFA. SA designates more detailed procedures.  | 3.0 |
|                              | IT: NATO SOFA  | 3.0 |
|                              | UK: NATO SOFA  | 3.0 |
|                              | SP: NATO SOFA  | 3.0 |
|                              | HR: NATO SOFA  | 3.0 |
|                              | ROT: NATO SOFA   | 3.0 |
|                              | AU: Almost identical to NATO SOFA.   | 3.0 |
|                              | RP: The ARs may request to remove any U.S. personnel, but no obligation of the ASs is stipulated with regard to the notification of termination of employment or service of such personnel.  | 2.0 |
|                              | JPN: Identical to NATO SOFA.   | 3.0 |
|                              | ROK: Identical to NATO SOFA.   | 3.0 |
|                              | <b>5 Vehicles and Driving License or Permit</b>  |     |
| (a) Driving Permit (DRP)     | FRG  | 4.0 |
|                              | IT   | 2.7 |
|                              | UK   | 3.0 |
|                              | SP:  | 2.3 |
|                              | HR:  | 2.3 |
|                              | ROT:   | 2.3 |
|                              | AU:  | 2.7 |
|                              | RP   | 2.3 |
|                              | JPN  | 2.7 |
|                              | ROK  | 2.3 |
|                              | FRG: SA: Detailed regulations for MFs, MCCs, and DPs who apply for German DRP, and withdrawal of licenses. The regulations covers the licenses of aircraft and vessels.  | 4.0 |
|                              | IT: MOU: DRP may be issued "after having ascertained their driving capability and their knowledge of the Italian traffic rules."   | 3.0 |

(b) Registration and licensing of vehicles, vessels, and aircrafts

|  |     |
|--|-----|
| UK: No provisions in VFA, but domestic law requires the pass of DRP exam.  | 3.0 |
| SP: ADC: MFs, MCCs, and DPs who hold valid DRP issued by ASs shall receive Spanish DRP without fee and test.   | 2.0 |
| HR: NATO SOFA (Automatic acceptance of DRP issued by the sending state). No related provisions in MDCA and SFA.  | 2.0 |
| ROT: NATO SOFA. (Automatic acceptance of DRP issued by the sending state). No related provisions in MOU and DECA.  | 2.0 |
| AU: Automatic acceptance of military DRP issued in the sending state. Issuance of AU DRP for private use after proving the knowledge of basic local traffic rules.   | 2.0 |
| RP: Identical to NATO SOFA, (Automatic acceptance of DRP issued by the sending state). But it applies only to the <u>operation of military or official vehicles</u> and no provision about the driving of private vehicles.  | 2.0 |
| JPN: Identical to NATO SOFA (Automatic acceptance of DRP issued by the sending state). The provisions are limited to DRP of automobiles for military and private use.  | 2.0 |
| ROK: Identical to JPN.   | 2.0 |
| FRG: SA: AFs may register and license motor vehicles but in individual cases, the competent ARs may in addition authorize German license plates for specific vehicles. The ARs may require registration records. Vehicles are subject to regular technical inspection in accordance with FRG law.  | 4.0 |
| IT: MOU: AFs are authorized to register private vehicles and issue license plates. No notification obligation (like FRG) is stipulated.  | 2.0 |
| UK: No provisions in VFA with regard to official vehicle registration but domestic law requires the registration of private cars in accordance with UK law and regulations.  | 3.0 |
| SP: ADC: All privately owned cars shall be registered without any fee or tax except for a nominal fee to defray administrative costs. The US section of PC is responsible for administrative control of registration numbers issued.   | 2.0 |
| HR: No provisions in MDCA and SFA.   | 2.0 |
| ROT: No provisions in MOU and DECA.  | 2.0 |
| AU: No provisions with regard to official vehicles registration except carrying 'distinctive numbered plates.' (identical to NATO SOFA) Privately owned vehicles shall carry AU number plates subject to the applicable AU laws and regulations.   | 3.0 |
| RP: No need to be registered except bearing appropriate markings.  | 2.0 |
| JPN: No provisions with regard to official vehicles registration except carrying 'distinctive numbered plates.' (identical to NATO SOFA) Privately owned vehicles shall carry Japanese number plates under the same conditions as those applicable to Japanese nationals.  | 3.0 |
| ROK: No provisions with regard to official vehicles registration except carrying 'distinctive numbered plates.' (identical to NATO SOFA). Except for the actual cost of the issuances of license plates, MFs, MCCs, and DPs shall be exempt from the payment of all fees and charges relating to the licensing, registration, or operation of vehicles and, from all taxes relating thereto. | 2.0 |

|  |   |     |
|--|---|-----|
| (c)Third party liability insurance of private motor vehicles, trailers and aircrafts   | FRG: <u>All vehicles (including official vehicles)</u> shall be covered by third-party liability insurance in accordance with German law.   | 4.0 |
|  | IT: MOU: AFs will ascertain that private vehicles have liability insurance, as provided by Italian law.   | 3.0 |
|  | UK: No provisions in NATO SOFA and VFA, but domestic law necessitates the insurance for any automobiles.  | 3.0 |
|  | SP: No provisions in NATO SOFA and ADC, but domestic law necessitates the insurance for any automobiles.  | 3.0 |
|  | HR: No provisions in NATO SOFA, MDCA and SFA, but the third party insurance is obligatory in domestic law.  | 3.0 |
|  | ROT: No provisions in NATO SOFA, MOU, and DECA, but all cars must be covered by Compulsory Traffic Insurance.   | 3.0 |
|  | AU: Art. 12: In accordance with the requirements of Australian law, the USG shall <u>insure official vehicles</u> of the USF against third party risks. (Compulsory third party insurance for all cars is a mandatory in domestic law.) | 4.0 |
|  | RP: No provisions both in VFA and EDCA, but domestic law necessitates local third party car insurance with a RP insurance agency.   | 3.0 |
|  | JPN: Registration of Japanese number plate for private cars includes JCI (Japanese Compulsory Automobile Insurance) and periodical technical inspection.  | 3.0 |
|  | ROK: No provisions, but insurance policy is compulsory in domestic law.   | 3.0 |
| <b>6 Carrying Arms (and Uniform)</b>   |   |     |
|  | FRG: AFs' regulation with regard to the bearing of arms by MFs and MCCs shall conform to German law. >> detailed provisions.  | 3.0 |
|  | IT: No provisions in MOU to supplement NATO SOFA.   | 2.0 |
|  | UK: No provisions in VFA to supplement NATO SOFA.   | 2.0 |
|  | SP: ADC: The US Commander may authorize appropriate personnel to carry arms subject to Spanish authorization under the terms to be established in the mutually agreed rules and procedures for the base.                                | 3.0 |
|  | HR: No provisions in MDCA and SFA to supplement NATO SOFA.  | 2.0 |
|  | ROT: No provisions in MOU and DECA to supplement NATO SOFA.   | 2.0 |
|  | AU: MFs may possess and carry arms on condition that they are authorized to do so by their orders and agreed between ASs and ARs.   | 3.0 |
|  | RP: No provisions in both VFA and EDCA.   | 1.0 |
|  | JPN: No provisions.   | 1.0 |
|  | ROK: No provisions.   | 1.0 |
| <b>7 Police power (Military Police of the sending state and the Police of the receiving state) and the protection of the bases and information</b> |   |     |
|  | FRG:  | 3.0 |
|  | IT:   | 3.3 |
|  | UK:   | 3.0 |
|  | SP:   | 3.3 |
|  | HR:   | 2.7 |

|                          |   |     |
|--------------------------|---|-----|
|                          | ROT:  | 3.3 |
|                          | AU:   | 2.7 |
|                          | RP:   | 2.7 |
|                          | JPN:  | 2.3 |
|                          | ROK:  | 1.7 |
| (a) Within the bases     | FRG: German police may exercise their authority in the bases in cases when the public order and the safety of Germany is jeopardized.   | 3.0 |
|                          | IT: Though the U.S. commander bears independent responsibility for the safety and security of his own personnel and equipment, the Italian commander is responsible for not only security of the installation and discharges military police tasks towards the Italian military/civilian personnel but also issuing directives for the security of the <u>entire</u> installation. Italian commander has <u>access to all areas and facilities</u> except mutually agreed classified areas. All measures necessary to assure and maintain order must be <u>consistent with applicable Italian law without prejudice to national sovereignty</u> . | 4.0 |
|                          | UK: 'MOA for Base Policing, 2008' stipulates that "Security Operational Control ( <i>by the base commander</i> ) does not include command of MDP (Ministry Defence Police) officers in <u>exercising their constabulary powers</u> ( <i>within the bases</i> ), nor is it intended to limit MDP powers and responsibilities established under UK law."  | 3.0 |
|                          | SP: ADC: AFs may, in coordination with the Commander of the base ( <i>Always Spanish</i> ), establish military police or shore patrol units on the bases... under the regulations which will be furnished to the PC for coordination and review.  | 4.0 |
|                          | HR: No provisions in MDCA and SFA to supplement NATO SOFA.  | 2.0 |
|                          | ROT: No specific clauses to police the inside of the bases by the ARs, but DECA SA stipulates that the Turkish Installation Commander shall be responsible for order and security of the installation as a whole...   | 4.0 |
|                          | AU: Identical to NATO SOFA, but no mention about the right of AU police or AU authority within the bases.   | 2.0 |
|                          | RP: EDCA Art.III: The ARs "shall have access to the entire area of the Agreed Locations" But the procedures and purpose of such access is not codified.   | 3.0 |
|                          | JPN: Identical to NATO SOFA but ARs may make arrest when AFs give consent.  | 2.0 |
|                          | ROK: Identical to NATO SOFA but ARs may make arrest when AFs give consent.  | 2.0 |
| (b) Outside of the bases | FRG: SA: Detailed provisions which supplement NATO SOFA.  | 3.0 |
|                          | IT: Military police activities by the U.S. Forces outside the installation are subordinated to agreements with and in liaison with the ARs...   | 3.0 |
|                          | UK: 'MOA for Base Policing, 2008': "Operations outside the bases are subject to arrangements with UK authorities" based on the common premise that security measures involve security aspects both inside and outside of bases.   | 3.0 |
|                          | SP: ADC is in line with NATO SOFA. AFs may also authorize the use of such units in communities near military bases, in cooperation with local police officials, under regulations agreed to by the Spanish and U.S. authorities.  | 3.0 |

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| (c) Protection of the bases and information  | HR: No specific provisions in MDCA and SFA to supplement NATO SOFA.  | 3.0 |
|  | ROT: No specific provisions in MOU and DECA to supplement NATO SOFA.   | 3.0 |
|  | AU: Identical to NATO SOFA though two basic conditions to accept U.S. military patrol outside the bases are stipulated.  | 3.0 |
|  | RP: No provisions both in VFA and EDCA.  | 2.0 |
|  | JPN: Identical text to NATO SOFA. However, "The AFs may arrest .... in the vicinity of a facility or area any person in the commission or attempted commission of an offense against the security of that facility or area."   | 2.0 |
|  | ROK: In addition to identical text to NATO SOFA, the clause which states 'military police may exercise its power to <u>ensure MFs' security</u> ' is inserted. Like JPN SOFA "The AFs may arrest .... in the vicinity of a facility or area any person in the commission or attempted commission of an offense against the security of that facility or area." | 1.0 |
|  | FRG: No related provisions in SA to supplement NATO SOFA.  | 3.0 |
|  | IT: Responsibility for external security of the installation is assigned exclusively to the ARs. (Confirms NATO SOFA principle)  | 3.0 |
|  | UK: No related provisions in VFA to supplement NATO SOFA.  | 3.0 |
|  | SP: The provisions of ADC are in line with NATO SOFA.  | 3.0 |
|  | HR: MDCA supplements NATO SOFA by stipulating overall duties of the Greek Representative including administrative issues.  | 3.0 |
|  | ROT: DECA SA: The Turkish Installation Commander shall be responsible for relations with the local Turkish authorities, order and security of the installation as a whole, including perimeter security.... Access to installations shall be under the control of the Installation Commander.  | 3.0 |
|  | AU: Precise provisions in CDA to protect information.  | 3.0 |
|  | RP: EDCA is within the principle of NATO SOFA.   | 3.0 |
|  | JPN: Identical to NATO SOFA.   | 3.0 |
|  | ROK: Almost identical to NATO SOFA, but the persons to be protected is enlarged to the invited contractors and their DPs.  | 2.0 |
| <b>8 Jurisdiction (1) The definition of persons covered by SOFA -Who is to be protected under SOFA?-</b> |  |     |
|  | FRG: NATO SOFA and SA. The definition of DPs is limited to a spouse and a child.   | 3.0 |
|  | IT: NATO SOFA and MOU. The definition of DPs is limited to a spouse and a child.   | 3.0 |
|  | UK: NATO SOFA and VFA. The definition of DPs is limited to a spouse and a child.   | 3.0 |
|  | SP: ADC: CC is expanded to the employees of non-commercial organization contributing to the welfare, morale, or education of the force. DP is also expanded to parents. Other family members may also be included if the PC approves under special circumstances.  | 2.0 |
|  | HR: MDCA: The definition of MCC is enlarged to the extent that it includes not only the employees of non-commercial organizations but also the employees of  | 2.0 |

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|                            | contractors directly serving USAFs and their DPs.  |     |
|                            | ROT: 'Agreement' enlarges the limit of MCC and DP further than NATO SOFA.  | 1.0 |
|                            | AU: The limit of CC is enlarged to other organizations accompanying USF and DP is also enlarged to relatives who depends on support.   | 2.0 |
|                            | RP: Since the visit by U.S. forces is temporal, it is limited to MFs and MCCs.   | 3.0 |
|                            | JPN: Identical to NATO SOFA but the definition of DPs is enlarged to parents, and children over 21 if they are dependent for over half their support. Designated military contractors may enjoy identical privileges to MFs, MCCs, and DPs though they are subject to Japanese law and regulation in general.  | 2.0 |
|                            | ROK: Range of persons covered by SOFA is enlarged. i.e. DPs include 'others relatives dependent for over half their support.' Invited Contractors include DPs of such contractors and they may enjoy the same level of benefits accorded to the DPs of MFs and MCCs including the exemption from customs duties and the use of utilities and services.   | 1.0 |
|                            | <b>9 Jurisdiction (2) Jurisdictional Decision</b>  |     |
| (a) Exclusive jurisdiction | FRG:   | 3.0 |
|                            | IT:  | 2.7 |
|                            | UK:  | 2.7 |
|                            | SP:  | 2.3 |
|                            | HR:  | 2.3 |
|                            | ROT:   | 3.3 |
|                            | AU:  | 2.7 |
|                            | RP:  | 2.0 |
|                            | JPN  | 1.3 |
|                            | ROK:   | 1.0 |
|                            | FRG: NATO SOFA: Sending State shall have the right to exercise all criminal and disciplinary jurisdiction over all persons " <u>subject to the military law of that State.</u> " ( <i>The U.S. Supreme Court ruled that persons subject to the military law is MFs and effectively eliminated military jurisdiction over MCCs and DPs. - Cited from the Handbook of the law of visiting forces p. 109 -</i> ) SA: The right of the ARs and procedures to determine whether an act is punishable by the law of a sending state is clearly stipulated. | 3.0 |
|                            | IT: NATO SOFA. No related provisions in MOU. The scope of <u>subject to the military law of that State</u> seems to follow US Supreme Court rule because no provision is found in any minutes and agreements.  | 3.0 |
|                            | UK: NATO SOFA. VFA confirms the principle of NATO SOFA. The scope of <u>subject to the military law of that State</u> seems to follow US Supreme Court rule because no provision is found in any minutes and agreements.   | 3.0 |
|                            | SP: NATO SOFA. No related provisions in ADC. The scope of <u>subject to the military law of that State</u> seems to follow US Supreme Court rule because no provision is found in any minutes and agreements.  | 3.0 |



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| (b) Concurrent jurisdiction | HR: No provisions in MDCA and SFA to supplement NATO SOFA. The scope of <u>subject to the military law of that State</u> seems to follow US Supreme Court rule because no provision is found in any minutes and agreements.  | 3.0 |
|                             | ROT: No provisions in MOU and DECA to supplement NATO SOFA. The scope of <u>subject to the military law of that State</u> seems to follow US Supreme Court rule because no provision is found in any minutes and agreements.   | 3.0 |
|                             | AU: Identical to NATO SOFA. The scope of <u>subject to the military law of the U.S.</u> seems to follow US Supreme Court rule because no provision is found in any minutes and agreements.   | 3.0 |
|                             | RP: VFA stipulates both MFs and MCCs are subject to exclusive U.S. jurisdiction.   | 2.0 |
|                             | JPN: Identical text to NATO SOFA. However, Joint Committee agreed that the scope of <u>subject to the military law of the U.S.</u> includes MCCs, DPs, and all persons staying in the U.S. bases. No provisions with regard to the ARs' right and the procedure to determine whether an act is punishable by the law of a sending state.   | 1.0 |
|                             | ROK: The scope of persons covered by SOFA are stipulated as MFs, MCCs, and DPs. (No words of "subject to the military law" is used.) In case of martial law the AFs shall have the right to exercise exclusive jurisdiction over MFs, or MCCs and DPs. Agreed Minutes indicate that the ROK waive its right to exercise jurisdiction at the request of AFs in appropriate cases of the administrative and disciplinary sanctions imposed by the ASs. | 1.0 |
|                             | FRG: NATO SOFA: The persons under the primary jurisdiction of a sending state are MFs and MCCs. SA: The ARs reserve the right to review the 'on duty' certificate in exceptional cases and the dispute may be settled by the German government and the diplomatic mission of the sending state.  | 3.0 |
|                             | IT: No related provisions in MOU to supplement NATO SOFA. (no provisions with regard to the ARs' right to review 'on duty' certificate)  | 2.0 |
|                             | UK: VFA confirms the principle of NATO SOFA, but no provisions with regard to the ARs' right to review 'on duty' certificate which is "sufficient evidence of the fact unless the contrary is proved." (Detailed provisions with regard to the visiting force which is a part of home force.)  | 2.0 |
|                             | SP: ADC: In the event the appropriate ARs have doubt concerning the certificate ( <i>of official duty</i> ) it will be reviewed by the PC, which shall submit a recommendation to those authorities within thirty days.  | 2.0 |
|                             | HR: No provisions in MDCA and SFA to supplement NATO SOFA. (no provisions with regard to the ARs' right to review 'on duty' certificate)   | 2.0 |
|                             | ROT: Agreement concerning duty certificate stipulates detailed procedure and the right of investigation by the ARs.  | 4.0 |
|                             | AU: Almost identical to NATO SOFA except that the scope over which primary jurisdiction is exercised is changed from <u>MFs and MCCs</u> to <u>persons subject to the military law of the U.S.</u> No provisions with regard to the ARs' right to review 'on duty' certificate.  | 2.0 |

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| (c) Waiver of jurisdiction  | RP: Almost identical to NATO SOFA, but if the circumstances of 'official duty' require a review, both sides "shall consult immediately." (No definition of 'consulting')   | 2.0 |
|   | JPN: Identical to NATO SOFA. However, issuance of an official duty certificate is made "only in the uncommon case in which the question of official duty becomes an issue." The question of official duty certificate is reviewed by the Joint Committee.  | 2.0 |
|   | ROK: The persons under the primary jurisdiction of a sending state are <u>extended to DPs</u> . (not limited within MFs and MCCs like NATO members) Though Agreed Minutes states that substantial departure from the acts of performing official duty is deemed non-official, clear demarcation is ambiguous. Like JPN, there is no concrete procedure to settle the dispute regarding official duty except consulting each other. | 1.0 |
|   | FRG: SA: Though FRG "shall waive in favor of that state the primary jurisdiction right" it retain the right to "recall" the general waiver in each case. Detailed procedures in case of disagreement regarding to which side the primary jurisdiction exists.  | 3.0 |
|   | IT: No related provisions in MOU to supplement NATO SOFA.  | 3.0 |
|   | UK: No related provisions in VFA to supplement NATO SOFA.  | 3.0 |
|   | SP: ADC: Spain shall assist the USF in the expeditious processing of a request for a waiver of criminal jurisdiction through PC recognizing the particular importance of disciplinary control by the AFs over the MFs.   | 2.0 |
|   | HR: SFA: The ARs ( <i>recognizing the responsibility of the ASs to maintain good order and discipline</i> ) waive their primary right to exercise jurisdiction ( <i>under NATO SOFA</i> ), except when they determine that it is of particular importance that jurisdiction be exercised by the ARs. MDCA confirms the same principle by designating waiver procedures based on the request formula.                               | 2.0 |
|   | ROT: No related provisions in MOU and DECA to supplement NATO SOFA.  | 3.0 |
|   | AU: Identical to NATO SOFA. MOI: AU will be prepared to discuss NATO/Netherlands formula for waiver by AU primary jurisdiction right requested by the U.S. at later stage...   | 3.0 |
|   | RP: VFA: In order to maintain good order and discipline among US forces, RP, upon U.S.'s request, waive its primary jurisdiction right except in cases of particular importance.   | 2.0 |
|   | JPN: Identical text to NATO SOFA. Joint Committee agreement designates detailed procedure for waiver of jurisdiction including time schedule. However, the scope of persons to be waived includes MCCs and DPs.  | 1.0 |
|   | ROK: Identical text to NATO SOFA. 'Understandings' designates detailed procedure for waiver of jurisdiction including time schedule. However, the scope of persons to be waived includes MCCs and DPs.   | 1.0 |
| <b>10 Jurisdiction (3) Differences in the right of the accused: arrest, custody, and related issues</b> |  |     |
|   | FRG:   | 3.0 |
|   | IT:  | 2.8 |
|   | UK:  | 2.8 |

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| (a) Arrest, custody, and investigation | SP:   | 2.5 |
|  | HR:   | 2.5 |
|  | ROT:  | 2.8 |
|  | AU:   | 2.8 |
|  | RP:   | 1.3 |
|  | JPN   | 3.0 |
|  | ROK:  | 1.5 |
|  | FRG: SA: It (custody of the accused by ASs) shall remain with these authorities until release or acquittal by the ARs or until commencement of the sentence.  | 2.0 |
|  | IT: No related provisions in MOU to supplement NATO SOFA.   | 3.0 |
|  | UK: VFA is within the framework of NATO SOFA despite of the detailed regulations for the inquest.   | 3.0 |
|  | SP: ADC: The custody of a MF over whom Spanish jurisdiction is being exercised shall be entrusted to the AFs, who will assume the corresponding responsibility, at their request and within their own powers <u>until the conclusion of judicial proceedings.</u>   | 2.0 |
|  | HR: SFA: In such cases where ( <i>HR</i> ) may exercise criminal jurisdiction.... the ASs shall take custody of the accused <u>pending completion of trial proceeding.</u> MDCA confirms the principle of SFA and adds that "AFs shall maintain custody over the accused until the conclusion of all appellate proceedings.   | 2.0 |
|  | ROT: No provisions in MOU and DECA to supplement NATO SOFA.   | 3.0 |
|  | AU: Almost identical to NATO SOFA.  | 3.0 |
|  | RP: VFA: "The custody of any U.S. personnel over whom the RP is to exercise jurisdiction shall immediately reside with the U.S.... from the commission of the offense until completion of all judicial proceedings."  | 1.0 |
|  | JPN: 1995 Joint Committee amendment >> AFs gives sympathetic consideration to the transfer of custody <u>prior to the indictment</u> in specific cases of murder or rape. (More favorable for a receiving state than NATO SOFA)   | 4.0 |
|  | ROK: 2001 Amendment: "The custody of an accused MF or MCC, or DP over whom the ROK is to exercise jurisdiction shall remain with the AFs until he is indicted by the ROK." This is identical to NATO SOFA, but the cases in which transfer of custody to the ARs is eligible is limited within 12 serious offenses. Greater and much favorable rights are given to the accused from the time of arrest to the serving of sentence than NATO and JPN SOFA. | 1.0 |
| (b) Death penalty                      | FRG: SA: ASs shall not carry out death penalty nor follow prosecution procedure which may lead to a death penalty in Germany.   | 4.0 |
|  | IT: No related provisions in MOU to supplement NATO SOFA.   | 3.0 |
|  | UK: VFA confirms the principle of NATO SOFA.  | 3.0 |
|  | SP: No related provisions in ADC to supplement NATO SOFA.   | 3.0 |
|  | HR: No related provisions in MDCA and SFA to supplement NATO SOFA.  | 3.0 |
|  | ROT: No provisions in MOU and DECA to supplement NATO SOFA.   | 3.0 |
|  | AU: A death sentence shall not be carried out in Australia  | 3.0 |

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|                        | by the AFs.   |     |
|                        | RP: No provision in both VFA and EDCA.  | 2.0 |
|                        | JPN: Identical to NATO SOFA.  | 3.0 |
|                        | ROK: Identical to NATO SOFA   | 3.0 |
| (c) Serving a sentence | FRG: No specific provisions both in NATO SOFA and SA, but it is understood as a matter of course that a sentence is served in the territory of a receiving state under the same condition of its nationals.   | 3.0 |
|                        | IT: No specific provisions both in NATO SOFA and MOU, but it is understood as a matter of course that a sentence is served in the territory of a receiving state under the same condition of its nationals.   | 3.0 |
|                        | UK: No specific provisions both in NATO SOFA and VFA, but it is understood as a matter of course that a sentence is served in the territory of a receiving state under the same condition of its nationals.   | 3.0 |
|                        | SP: ADC: Confinement shall be served in Spanish penal institutions agreed upon for that purpose by the PC except in the case in which European Convention on the Transfer of Sentenced Persons is applied.  | 3.0 |
|                        | HR: No provisions in NATO SOFA, MDCA and SFA, but SFA Art. 3 ( <i>Custody of the accused will be maintained in Greece</i> ) connotes that sentence is served within Greece.   | 3.0 |
|                        | ROT: No provisions in MOU and DECA to supplement NATO SOFA, but it is understood as a matter of course that a sentence is served in the territory of a receiving state under the same condition of its nationals.   | 3.0 |
|                        | AU: The sentence will be served in AU, but "the ARs shall give sympathetic consideration to a request from the AFs for assistance in carrying out a sentence..." (Almost identical to NATO SOFA)  | 3.0 |
|                        | RP: VFA: The confinement facilities must be agreed by both parties and the U.S. has the right to visit there and supply material assistance.  | 1.0 |
|                        | JPN: The sentence will be served in Japan, but "the ARs shall give sympathetic consideration to a request from the AFs for assistance in carrying out a sentence..." (Almost identical to NATO SOFA)  | 3.0 |
|                        | ROK: The sentence will be served in ROK, but the ARs shall give sympathetic consideration to the request (by the AFs) not only for assistance in carrying out but also for the custody in the ROK. "If such custody is released to the AFs, the U.S. shall be obligated to continue the confinement of the individual in an appropriate confinement facility of the U.S....." The AFs have the right to inspect confinement facilities whether it clears the standard of the U.S. In case of hostility "ROK shall give sympathetic consideration to requests for release of these persons to the custody of responsible AFs." | 1.0 |
| (d) Trial              | FRG: SA: Both the ARs and AFs have the right to attend the trial, interrogations, and pretrial investigation. Both sides shall notify time and place of the trial. (No mention regarding such ARs' right in NATO SOFA)  | 3.0 |
|                        | IT: No related provisions in MOU to supplement NATO SOFA.   | 2.0 |
|                        | UK: VFA merely confirms the principle of avoiding double jeopardy stipulated in NATO SOFA.  | 2.0 |
|                        | SP: No related provisions in ADC to supplement NATO SOFA.   | 2.0 |

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|  | HR: No provisions in MDCA and SFA to supplement NATO SOFA.   | 2.0 |
|  | ROT: No provisions in MOU and DECA to supplement NATO SOFA.  | 2.0 |
|  | AU: Identical to NATO SOFA.  | 2.0 |
|  | RP: VFA merely confirms the principle of double jeopardy which is identical to NATO SOFA. Though the U.S. has the right to present its authorities at all judicial proceedings, there is no reciprocal right for the RP. The U.S shall relieve any obligations if the judicial proceedings are not completed <u>within one year</u> .  | 1.0 |
|  | JPN: Identical to NATO SOFA. No provisions with regard to the ARs' right to attend the trial, interrogations, and pretrial investigation. Less reciprocal than FRG.  | 2.0 |
|  | ROK: The text of provisions is identical to NATO SOFA. However, numerous reservations by the U.S. is stipulated in Agreed Minutes including the rights of the accused in all legal process, ban on unlawful investigation, and the right to appeal.<br>The trial (under the U.S. jurisdiction) can be held outside of the ROK when (i) the law of the U.S. requires otherwise, or (ii) military exigency or the interests of justice exists. | 1.0 |

## 11 Administrative jurisdiction

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|                            | FRG:   | 3.5 |
|                            | IT:  | 2.8 |
|                            | UK:  | 2.8 |
|                            | SP:  | 3.0 |
|                            | HR:  | 2.7 |
|                            | ROT:   | 2.5 |
|                            | AU:  | 3.0 |
|                            | RP:  | 1.7 |
|                            | JPN:   | 1.8 |
|                            | ROK:   | 2.0 |
| (a) Environment protection | FRG: No provisions in NATO SOFA. SA stipulates that ASs recognize and acknowledge the importance of environmental protection and examine the environmental compatibility of all projects. Strict regulations with regard to fuels, lubricants, and additives.  | 3.0 |
|                            | IT: Italian commander has free access, with no restrictions (except in the event of hostilities) to all areas of the installation and will intervene U.S. activities which clearly endanger life or public health. The Italian Ministry of Defense will provide for disposal on the outside perimeter of the installation of all waste products. The U.S. commander is responsible to insure that disposal (including toxic/harmful waste) is done consistent with applicable Italian standards and international agreement. | 4.0 |
|                            | UK: 'MOU for Environment 2012' stipulates that international conventions and relevant domestic laws apply to all military premises including occupied premises by visiting forces. However, <u>Annex 3</u> of the MOU which designates the details of environmental issues in US bases seems to be classified.   | 3.0 |
|                            | SP: ADC: It confirms mutual commitment for environmental protection. When the U.S. apply new installations it must specify impacts on the health and   | 3.0 |

(b) Health and Sanitation

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| environment, if any, as well as corrective measures, and contingency measures for accidents.   |     |
| HR: No provisions in NATO SOFA, MDCA and SFA.  | 2.0 |
| ROT: No provisions in NATO SOFA, MOU and DECA.   | 2.0 |
| AU: No specific agreement, but "the USG shall conform to the provisions of relevant Commonwealth and State laws and regulations" connotes the application of relevant domestic law.  | 3.0 |
| RP: Though mutual cooperation and consultation "to ensure that the RP standards are accurately reflected" is stated, there is no mention about the right of the RP to inspect the area and facilities used by the U.S. and strict application of domestic law to U.S. forces' activities.  | 2.0 |
| JPN: No provisions in original JPN SOFA. Remediation cost for jet noise is borne by JPN Government and the U.S. has no responsibility to modify the facilities and areas to the original condition when it returns to Japan. However, since 1995, Joint Committee is engaging in establishing appropriate measures to protect environment based on Japanese and the U.S. laws. | 2.0 |
| ROK: The U.S. has no responsibility to modify the facilities and areas to the original condition when it returns to ROK. 2001 Amendment: The U.S. "confirms its policy to respect relevant ROK Government environmental laws, regulations, and standards." Memorandum contains detailed procedures and regulations.  | 3.0 |
| FRG: NATO SOFA refers only to the equality in medical and dental care (Art. IX, para. 5). SA stipulates detailed and wide range of regulations and procedures based on German law.   | 3.0 |
| IT: No provisions in MOU to supplement NATO SOFA.  | 2.0 |
| UK: 'MOA for Health and Safety 2008' and 'GA for Health and Safety, 2008' stipulate the observance of HSWA of UK and the right to conduct investigation of US bases when death, serious injuries of employed civilians or significant health and safety implications for the general public outside of the bases occurred.   | 3.0 |
| SP: The Commander of the base ( <i>Spanish</i> ) and the Commander of the USF may conclude agreements for the prevention and extinction of fires, maintenance of suitable health and sanitation conditions on the base, and cooperation in time of public disaster.  | 3.0 |
| HR: No provisions in MDCA and SFA to supplement NATO SOFA.   | 2.0 |
| ROT: No provision in MOU and DECA to supplement NATO SOFA.   | 2.0 |
| AU: The USG shall conform to the provisions of relevant Commonwealth and State laws and regulations, including quarantine laws...  | 3.0 |
| RP: VFA refers to the U.S. commanders' responsibility to present a declaration of health and quarantine inspection when entering the RP. But no referring about the rights and regulation which may be implemented by the RP.  | 2.0 |
| JPN: No provisions except for the concern related to public safety from the military trainings.  | 2.0 |
| ROK: Health and sanitation measures shall be taken by the two government through Joint Committee. 2001 Amendment: AFs will present to the ROK, on a quarterly basis, certification that no quarantinable diseases have   | 3.0 |

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|                              | been detected at any ports of entry.   |     |
| (c) Employment and labor law | FRG: NOTO SOFA states that the employment conditions shall be those laid down by a receiving state. In SA (Art. 56) wide range of detailed regulations and procedures with regard to employment conditions including safety measures are stated. AFs shall reimburse administrative cost of the ARs. Disputes arising out of employment or social insurance shall be subject to German jurisdiction. (Direct employment by the AFs)                    | 4.0 |
|                              | IT: MOU Annex designates the obligation of the U.S. command to withhold social security benefits to supplement NATO SOFA.  | 3.0 |
|                              | UK: Strict application of HSWA (to protect employees of USAF) to supplement NATO SOFA.   | 3.0 |
|                              | SP: ADC: Requirements for local labor personnel on IDAs in Spain will be met by the SMD and Spanish regulations will govern the terms and conditions of employment. (Similar to JPN) However, US Government, USF, and all affiliated organizations are immune from Spanish court actions with regard to claims arising from employment of local labor personnel.   | 2.0 |
|                              | HR: MDCA confirms the principle of NATO SOFA and necessitates two schedules (for the US personnel and for the Greek employees) to secure the employment of Greeks.   | 3.0 |
|                              | ROT: No provisions in MOU and DECA to supplement NATO SOFA.  | 3.0 |
|                              | AU: Within the framework of NATO SOFA. Local civil labor requirements of the USF shall be satisfied in the same way as the comparable requirements of the Australian Armed Forces...   | 3.0 |
|                              | RP: The U.S. may contract any contractor, supplier, or person and such contracts shall be solicited, awarded, and administered in accordance with the law and regulations of the U.S..   | 1.0 |
|                              | JPN: Employment conditions shall be those laid down by the legislation of Japan (Identical to NATO SOFA). Typical indirect employment system (through the affiliated organization with MOD). In case of disagreement between AFs and ARs with regard to the termination of employment, AFs' final decision shall prevail though the mutually acceptable solution process and compensation measure is designated.                                       | 2.0 |
|                              | ROK: Direct employment system. Employment conditions established by the USAFs "shall conform with provisions of labor legislation of the ROK." Joint Committee has the final and binding decision in case of labor disputes which cannot be settled down by the Office of Labor Affairs. (Not the ROK court) There are many restrictive regulations to limit the collective action of workers.   | 1.0 |
| (d) Traffic (or Movement)    | FRG: No specific provisions in NATO SOFA. [SA Art. 57] Movement of a force, CC, MF, MCC, and DP is <u>subject to the approval of the Federal government</u> . Independent operation right of German railway authority. Obligation to obey German traffic rules and hazardous material transportation rules. Designation and use of a road network for military traffic shall be agreed by ARs and AFs. The use of civilian airfield is allowed only in | 4.0 |

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|          | case of emergency.  |     |
|          | IT: MOU: The Italian commander will be advised in advance of convoy movements and of any aircraft deployment though properly registered vehicles belonging to the U.S. Force can freely circulate on Italian territory. Movements and transfers of hazardous material shall be coordinated with the Italian commander in order to verify its conformity to Italian legislation.   | 3.0 |
|          | UK: No related agreement or memorandum, but joint air traffic control of USAF may suggest the appropriate implementation of domestic law.   | 3.0 |
|          | SP: ADC: All movements of US aircrafts shall be conducted in accordance with duly cleared flight plans and shall be governed by the rules and procedures of the Spanish regulations and the military control towers will be under the command of a Spanish flight officer. Loading and unloading of ammunition and explosives shall be authorized by the ARs.   | 4.0 |
|          | HR: No related provisions in MDCA and SFA. However, the size, mission, activities, major items of equipment, arms, and ammunition in each base is subject to the approval of the HR. >> A certain degree of constraining factor over unrestricted movement of the USAF.   | 3.0 |
|          | ROT: DECA Appendix: Overall air traffic control in Turkey is the responsibility of the Government of ROT.   | 3.0 |
|          | AU: Aircraft owned or operated by or on behalf of the USAF shall observe local Air Traffic Control Regulations while in Australia.  | 3.0 |
|          | RP: The U.S. can use ports and airports without any fees and the RP shall assist in facilitating transit or temporary access by U.S. forces to public land and facilities. (similar to JPN)   | 1.0 |
|          | JPN: Only the prerogatives of the USAFs are stipulated, but no mention about the right of ARs to regulate the movement of USAFs. Unrestricted free movement of USAF between ports, airports, and bases without any toll and charges. With regard to traffic control, Art.6 stipulates that "All civil and military air traffic control and communication systems shall be developed in close coordination for the fulfillment of collective security interest. Lights and other navigation aids established in bases and adjacent waters shall conform to the system in use in Japan. | 1.0 |
|          | ROK: Identical to JPN. With regard to traffic control, "The U.S. is authorized to establish, construct and maintain aids to navigation for vessels and aircraft, both visual and electronic as required, throughout the ROK and in the territorial waters thereof" which "conform generally to the system in use in the ROK.  | 1.0 |
| (e) Post | FRG: No specific provisions in NATO SOFA except for the rules of courier (Art. XI). SA designates the detailed rules for military post including inspection right by the ARs.   | 4.0 |
|          | IT: No provisions referring to military post.   | 3.0 |
|          | UK: No provisions in VFA referring to military post.  | 3.0 |
|          | SP: ADC designates the rules for military post.   | 3.0 |
|          | HR: No provisions in MDCA and SFA to supplement   | 3.0 |



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| (f) Telecommunications | NATO SOFA.   |     |
|                        | ROT: No provisions in MOU and DECA to supplement NATO SOFA.  | 3.0 |
|                        | AU: Detailed rules for military post. Non-official mails shall be subject to the inspection by ARs and duty (above \$50)   | 4.0 |
|                        | RP: No provisions. (Maybe because the visit of USAF is temporary)  | 3.0 |
|                        | JPN: Rules for military post.  | 3.0 |
|                        | ROK: Rules for military post.  | 3.0 |
|                        | FRG: No provisions in NATO SOFA. SA stipulates that the a force, MFs, MCCs and DPs shall use the public telecommunication system of Germany governed by its regulations and mutual special agreement shall be made in accordance with International Telecommunication Convention based on that "A force shall use only frequencies assigned to it by the ARs." | 3.0 |
|                        | IT: No provisions in MOU.  | 2.0 |
|                        | UK: No provisions in VFA or other agreements.  | 2.0 |
|                        | SP: ADC Annex 4 designates detailed rules for telecommunications and electric systems. It is similar to German SA.   | 3.0 |
|                        | HR: MDCA: The Souda Air Base will utilize those frequencies assigned by the GOG in conformity with standard international communications procedures. Any change of frequencies will be subject to the prior concurrence of the GOG.  | 3.0 |
|                        | ROT: No provisions in NATO SOFA, MOU and DECA.   | 2.0 |
|                        | AU: The radio frequencies, powers, bandwidths and other technical details will be agreed upon by the co-operating agencies of the two governments. International Radio Regulations, Geneva, 1959, shall be applicable in the case of harmful interference.   | 2.0 |
|                        | RP: The RP authorize the U.S. to operate its own telecommunication systems based on International Convention. However, the use of the radio spectrum shall be free of charge.  | 1.0 |
|                        | JPN: Frequencies, power and like matters used by USAF designed to emit electric radiation shall be settled by arrangement between the ASs and ARs. Japan shall take all reasonable measures to avoid interference with telecommunications electronics required by the USAFs.   | 1.0 |
|                        | ROK: Identical to JPN.   | 1.0 |
| <b>12 Claims</b>       |  |     |
|                        | FRG:   | 3.3 |
|                        | IT:  | 3.0 |
|                        | UK:  | 3.0 |
|                        | SP:  | 3.0 |
|                        | HR:  | 3.0 |
|                        | ROT:   | 2.8 |
|                        | AU:  | 3.3 |
|                        | RP:  | 1.0 |
|                        | JPN:   | 3.0 |
|                        | ROK:   | 2.8 |

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| (a) Waiver and settlement of claims | FRG: SA: (1) Waivering limit of NATO SOFA shall not apply to Railway, Post, and public road; (2) 'On duty' waiver shall not apply to damage caused willfully or by gross negligence; (3) A force may repair damages to public roads and German property caused by training exercise; (4) Assurance of further public claim if a person is not satisfied fully with the reparation. | 4.0 |
|                                     | IT: No related provisions in MOU to supplement NATO SOFA.  | 3.0 |
|                                     | UK: No related provisions in VFA to supplement NATO SOFA.  | 3.0 |
|                                     | SP: No related provisions in ADC to supplement NATO SOFA.  | 3.0 |
|                                     | HR: SFA: Greek courts will exercise jurisdiction as provided in Art. VIII (Claims) of the NATO SOFA.   | 3.0 |
|                                     | ROT: No related provisions in MOU and DECA to supplement NATO SOFA.  | 3.0 |
|                                     | AU: Identical to NATO SOFA.  | 3.0 |
|                                     | RP: With regard to military-to-military damages, VFA is almost identical to NATO SOFA. However, to all other types of damages the U.S. law regarding foreign claims applies.   | 1.0 |
|                                     | JPN: Identical to NATO SOFA, but no detailed regulations like FRG SA.  | 3.0 |
|                                     | ROK: Identical to NATO SOFA, but no detailed regulations like FRG SA.  | 3.0 |
| (b) Damages to third parties        | FRG: (1) A third party and a sending state can set off against the claims of its counterpart; (2) Administration fee for claim asserting process shall be reimbursed by the sending state.   | 4.0 |
|                                     | IT: No related provisions in MOU to supplement NATO SOFA.  | 3.0 |
|                                     | UK: VFA confirms the principle of NATO SOFA.   | 3.0 |
|                                     | SP: No related provisions in ADC to supplement NATO SOFA.  | 3.0 |
|                                     | HR: No related provisions in MDCA and SFA to supplement NATO SOFA.   | 3.0 |
|                                     | ROT: Despite the enlarged definition of MCCs ( <i>who are covered by SOFA</i> ) in other items, [MOU Re. para.(7) of Agreement] narrows the limit of MCCs. i.e. "the U.S. only accept the claims arising from the acts of employees paid from appropriated funds of the DOD." (Though the definition may be identical to NATO SOFA, double standard is obvious)                    | 2.0 |
|                                     | AU: Unlimited public risk insurance is compulsory to the U.S. contractors and sub-contractors. Detailed rules for claims from third party in cases where SOFA is not applicable such as cooperative research activities.   | 4.0 |
|                                     | RP: All meritorious claims, except for military-to-military claims and contractual arrangements, are settled in accordance with U.S. law regarding foreign claims."  | 1.0 |
|                                     | JPN: Identical to NATO SOFA, but no detailed regulations like FRG SA.  | 3.0 |
|                                     | ROK: Identical to NATO SOFA, but no detailed regulations like FRG SA.  | 3.0 |
| (c) Immunity of personnel on duty   | FRG: NATO SOFA: MFs and MCCs shall not be subject to any proceedings for the enforcement of any judgment given against him in the matter arising from the performance of his official duties. No related provisions in SA to supplement NATO SOFA.   | 3.0 |

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| (d) Damages caused by out-of-duty personnel | IT: No related provisions in MOU to supplement NATO SOFA.   | 3.0 |
|   | UK: No related provisions in VFA to supplement NATO SOFA.   | 3.0 |
|   | SP: ADC: MCC includes local labor personnel acting in the performance of official duty assigned by the USF.   | 3.0 |
|   | HR: No related provisions in MDCA and SFA to supplement NATO SOFA.  | 3.0 |
|   | ROT: No related provisions in MOU and DECA to supplement NATO SOFA.   | 3.0 |
|   | AU: Identical to NATO SOFA.   | 3.0 |
|   | RP: Contrary to NATO SOFA, the U.S. law shall apply to damage compensation whether it is caused by MFs and MCCs during the execution of their official duties or not. This means 100% immunity from RP law.   | 1.0 |
|   | JPN: Identical to NATO SOFA.  | 3.0 |
|   | ROK: Identical to NATO SOFA.  | 3.0 |
|   | FRG: NATO SOFA: In addition to the right to assess compensation to the claimant, it guarantees the jurisdiction of the ARs to entertain an action against a MF or a MCC unless and until there has been payment in full satisfaction of the claim. No related provisions in SA to supplement NATO SOFA. | 3.0 |
|   | IT: No related provisions in MOU to supplement NATO SOFA.   | 3.0 |
|   | UK: No related provisions in VFA to supplement NATO SOFA.   | 3.0 |
|   | SP: ADC: No related provisions to supplement NATO SOFA.   | 3.0 |
|   | HR: No related provisions in MDCA and SFA to supplement NATO SOFA.  | 3.0 |
|   | ROT: No related provisions in MOU and DECA to supplement NATO SOFA.   | 3.0 |
|   | AU: Identical to NATO SOFA.   | 3.0 |
| (e) Judgment of official duty               | RP: (Contrary to NATO SOFA) The U.S. law shall apply to damage claim against the U.S. whether it was caused by MFs and MCCs during the execution of their official duties or not. However, there is no rule if the U.S. refused to admit its responsibility for claim compensation.                     | 1.0 |
|   | JPN: Identical to NATO SOFA.  | 3.0 |
|   | ROK: Identical to NATO SOFA.  | 3.0 |
|   | FRG: Detailed provisions in SA, but they are within the framework of NATO SOFA.   | 3.0 |
|   | IT: No related provisions in MOU to supplement NATO SOFA.   | 3.0 |
|   | UK: No related provisions in VFA to supplement NATO SOFA.   | 3.0 |
|   | SP: ADC: No related provisions to supplement NATO SOFA except for the expeditious review of official duty certificate by the PC.  | 3.0 |
|   | HR: No related provisions in MDCA and SFA to supplement NATO SOFA.  | 3.0 |
|   | ROT: No related provisions in MOU and DECA to supplement NATO SOFA.   | 3.0 |
|   | AU: Identical to NATO SOFA.   | 3.0 |
|   | RP: The phrase 'activities to which this agreement applies' is used in stead of the term 'official duty' in military-to-military compensation case. No settlement mechanism to judge whether a tortious act or omission of  | 1.0 |

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| a MF and MCC was done in the performance of activities defined above. |  |     |
| (f) Civil jurisdiction by the AR                                      | JPN: Identical to NATO SOFA.   | 3.0 |
|   | ROK: Identical to NATO SOFA.   | 3.0 |
|   | FRG: No related provisions in SA to supplement NATO SOFA.  | 3.0 |
|   | IT: No related provisions in MOU to supplement NATO SOFA.  | 3.0 |
|   | UK: No related provisions in VFA to supplement NATO SOFA.  | 3.0 |
|   | SP: ADC: Claims caused by the performance of official duty may be presented to the Spanish military administration and processed according to the provisions contained in Article VIII of NATO SOFA.   | 3.0 |
|   | HR: No provisions in MDCA and SFA to supplement NATO SOFA.   | 3.0 |
|   | ROT: No related provisions in MOU and DECA to supplement NATO SOFA.  | 3.0 |
|   | AU: In addition to identical provisions to NATO SOFA, ARs, with the assist of the ASs, can take possession of any private movable property in the U.S. bases which is subject to compulsory execution.   | 4.0 |
|   | RP: All meritorious claims, except for military-to-military claims and contractual arrangements, are settled in accordance with U.S. law regarding foreign claims." No mention about the legal procedures in accordance with RP civil laws.  | 1.0 |
|   | JPN: Almost identical to NATO SOFA with regard to the immunity (from civil jurisdiction of Japan) during the performance of official duty. In the case where any private movable property ( <i>under compulsory execution of Japanese law</i> ), excluding that in use by the USAFs, is within the U.S. bases, the ASs shall <u>possess and turn over such property to the ARs.</u>  | 3.0 |
|   | ROK: The immunity of MFs and employees of the USAFs is guaranteed in case of official duty or in case where compensation for a claim is accomplished in full satisfaction. In the case where any private movable property ( <i>under compulsory execution of ROK law</i> ), excluding that in use by the USAFs, is within the U.S. bases, the ASs shall <u>render all assistance within their power to see that such property is turned over to the ARs.</u> Any claims before the entry into force of ROK SOFA shall be processed and settled by the ASs. | 2.0 |
| (g) Other general issues  |  |     |
| 13 Logistic support   |  |     |
|   | FRG  | 3.0 |
|   | IT:  | 2.7 |
|   | UK:  | 2.7 |
|   | SP:  | 2.3 |
|   | HR:  | 2.7 |
|   | ROT:   | 2.7 |
|   | AU:  | 2.7 |
|   | RP:  | 1.3 |
|   | JPN  | 2.3 |
|   | ROK:   | 2.0 |

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| (a) Private consumption                       | FRG: NATO SOFA confirms that MFs, MCCs, and DPs may purchase locally goods. No related provisions in SA to supplement NATO SOFA.   | n/a |
|   | IT: No related provisions in MOU to supplement NATO SOFA.  | n/a |
|   | UK: No related provisions in VFA or other agreements to supplement NATO SOFA.  | n/a |
|   | SP: No related provisions in ADC to supplement NATO SOFA.  | n/a |
|   | HR: No provisions in MDCA and SFA to supplement NATO SOFA.   | n/a |
|   | ROT: No provisions in MOU and DECA to supplement NATO SOFA.  | n/a |
|   | AU: No provisions, but it is self-evident that MFs, MCCs, and DPs may purchase locally goods in AU.  | n/a |
|   | RP: No provisions, but it is self-evident that MFs, MCCs, and DPs may purchase locally goods in the RP.  | n/a |
|   | JPN: No provisions, but it is self-evident that MFs, MCCs, and DPs may purchase locally goods in Japan.  | n/a |
|   | ROK: No provisions, but it is self-evident that MFs, MCCs, and DPs may purchase locally goods in ROK.  | n/a |
| (b) Military consumption and utility services | FRG: NATO SOFA: (1) Military procurement shall normally be made through the ARs which purchase goods for its forces; (2) Restricted articles having adverse effects on a receiving state's economy shall be indicated by the ARs. SA: The proceedings shall be instituted by the ARs. Regarding providing utility services SA simply states that the ARs is responsible for naming the enterprises with whom contracts could be concluded.   | 3.0 |
|   | IT: MOU: Sec. XI covers supply of goods and services. >> The U.S. and Italian commanders will cooperate to avoid that the provision of goods and services create disturbances on the local market, by examining the possibility that, when U.S. purchases are made by direct contracts, procedures similar to those used by the IAFs are adopted..... Sec. X covers utility services >> "When availability is scarce, priority will be given to satisfy operational and logistical support requirements." "charges for utilities will be based on the actual use... which is no less favorable than those for the IAFs." | 3.0 |
|   | UK: Within the framework of NATO SOFA. Mutual Defence Assistance Agreement, 1950 confirms furnishing of equipment, materials, services, and other military assistance to other Parties.  | 3.0 |
|   | SP: ADC: Equality in fuel movement >> "Both shall have preference with respect to the movement of commercial products.... The costs arising from the services set forth in para. 1 shall be subject to reimbursement." Many restrictions to bind the USAF with regard to choosing contractors and service providers >> "It is the responsibility of the SMD... to contract for the work... (with prior) mutual written agreement..."   | 3.0 |
|   | HR: MDCA: Both government will seek opportunities to cooperate in the research, development, production and procurement of appropriate defense material as well as in the related logistic support. (Strong intention of GOG to be involved in logistic industry)  | 3.0 |
|   | ROT: Within the framework of NATO SOFA. However, DECA states that the importation into and permanent transfer within Turkey of major items of equipment, arms and ammunition shall be subject to the prior approval of   | 3.0 |

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|                                     | ARs.  |     |
|                                     | AU: CDA: Each party shall provide logistic support ( <i>follows a list of materials and services</i> ) upon request and the payment shall be calculated upon such terms as are most favorable to the recipient under the national laws of the providing Party.  | 3.0 |
|                                     | RP: EDCA: The U.S. may choose contractor, supplier, or person <u>without restriction</u> and "such contracts shall be solicited, awarded, and administered <u>in accordance with the laws and regulations of the U.S.</u> " "U.S. forces shall strive to use Philippine suppliers of goods, products, and services to the greatest extent practical in accordance with the <u>laws and regulations of the U.S.</u> "  | 1.0 |
|                                     | JPN: (1) <u>Without restriction</u> USAFs may choose a supplier, person or Japanese government to fulfill its needs; (2) Articles having adverse effects on a receiving state's economy shall be procured 'in coordination with' or 'with the assistance' of ARs. ( <i>weaker expression than NATO SOFA</i> ) With regard to the use of public utilities "the USAFs shall enjoy priorities in the use of all public utilities and services, under conditions no less favorable than those of Japanese ministries and agencies." | 2.0 |
|                                     | ROK: Almost identical to JPN. However, with regard to utility service, the priority of the USAFs' operation is stipulated as "the use of utilities and services as provided herein shall not prejudice the right of the U.S. to operate military transportation, communication power and such other utilities and services deemed necessary for the operations of the USAFs." (much stronger position of the U.S.)  | 1.0 |
| (c) Free services                   | FRG: SA: The forces, CCs, MFs, MCCs, DPs shall use public services and facilities, but there are detailed regulations for the forces or CCs with regard to the use of property and installations owned by FRG, Land, or other persons. (see 13. The use of facilities and areas)  | 3.0 |
|                                     | IT: No related provisions in both MOU and NATO SOFA.  | 2.0 |
|                                     | UK: No related provisions in both VFA and NATO SOFA.  | 2.0 |
|                                     | SP: No related provisions in ADC and NATO SOFA.   | 2.0 |
|                                     | HR: No related provisions in MDCA, SFA, and NATO SOFA.  | 2.0 |
|                                     | ROT: No related provisions in MOU, DECA and NATO SOFA.  | 2.0 |
|                                     | AU: Free use of airport and port. However, the USG shall make such contribution to the maintenance and operating costs of any airport. (the amount shall be mutually agreed)  | 3.0 |
|                                     | RP: In addition to free use of ports and airports the use of radio spectrum by USAF is free of charge.  | 1.0 |
|                                     | JPN: No provisions except for free use of meteorological services, ports, and airports.   | 2.0 |
|                                     | ROK: No provisions except for free use of meteorological services, ports and airports.  | 2.0 |
| (d) Travelling facilities and fares | FRG: SA: No related provisions to supplement NATO SOFA.   | n/a |
|                                     | IT: No related provisions in MOU to supplement NATO SOFA.   | n/a |
|                                     | UK: No related provisions in VFA to supplement NATO   | n/a |

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|--------------------------------------|---|-----|
|                                      | SOFA.   |     |
|                                      | SP: No related provisions in ADC to supplement NATO SOFA.   | n/a |
|                                      | HR: No related provisions in MDCA and SFA to supplement NATO SOFA.  | n/a |
|                                      | ROT: No related provisions in MOU and DECA to supplement NATO SOFA.   | n/a |
|                                      | AU: No provisions, but it is deemed to be the same as NATO SOFA in practice.  | n/a |
|                                      | RP: No provisions, but it is deemed to be the same as NATO SOFA in practice.  | n/a |
|                                      | JPN: No provisions, but is deemed to be the same as NATO SOFA in practice.  | n/a |
|                                      | ROK: No provisions, but it is deemed to be the same as NATO SOFA in practice.   | n/a |
| (e) Payment (for goods and services) | FRG: No related provisions in SA to supplement NATO SOFA.   | n/a |
|                                      | IT: No related provisions in MOU to supplement NATO SOFA.   | n/a |
|                                      | UK: No related provisions in VFA to supplement NATO SOFA.   | n/a |
|                                      | SP: No related provisions in ADC to supplement NATO SOFA.   | n/a |
|                                      | HR: No related provisions in MDCA and SFA to supplement NATO SOFA.  | n/a |
|                                      | ROT: No related provisions in MOU and DECA to supplement NATO SOFA.   | n/a |
|                                      | AU: Payment of such logistics support shall be calculated upon such terms as are most favorable to the recipient under the national laws of the providing Party.  | n/a |
|                                      | RP: No provisions, but it is deemed to be the same as NATO SOFA in practice.  | n/a |
|                                      | JPN: No provisions, but it is deemed to be the same as NATO SOFA in practice.   | n/a |
|                                      | ROK: No provisions, but it is deemed to be the same as NATO SOFA in practice.   | n/a |
| (f) Tax exemption for logistics      | FRG: Agreement Concerning Tax Relief (1954) confirms the tax exemption to the U.S. expenditures in the interest of the common defense. SA: Deliveries and services to a force or a civilian component shall be exempt from turnover tax. Goods delivered to a force or a civilian component from the free inland trade shall be granted tax relief...         | 3.0 |
|                                      | IT: BIA Annex A: U.S. exemption from taxes and customs duties shall be regulated as provided in the NATO SOFA and the BIA, as applicable, relevant legislation, and other tax relief agreements on tax exemption between the governments.   | 3.0 |
|                                      | UK: Mutual Defence Assistance Agreement 1950 grants tax and customs exemption on articles owned by the US Government (both importing and exporting).  | 3.0 |
|                                      | SP: ADC: The supply, including acquisition, of such goods in Spain and the rendering of services to the USF ( <i>for the official purpose and above 600 euro</i> ) shall enjoy the fiscal benefits granted to exports and shall be exempt from all Spanish taxes, duties and charges direct.... This principle <u>applies to the contractors for the USF.</u> | 2.0 |
|                                      | HR: No related provisions in MDCA and SFA to supplement NATO SOFA (Art. XI. Customs)  | 3.0 |
|                                      | ROT: No provisions in MOU and DECA to supplement NATO SOFA.   | 3.0 |

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|  | AU: Equipment, materials, supplies and other property imported into or acquired in Australia for the official use of the USF and not for resale shall be free of all Australian duties and taxes and removed from AU at anytime, free from export duties and related charges and restrictions.   | 2.0 |
|  | RP: U.S. equipment, materials, supplies, and other property shall all be free of all Philippine duties, taxes and other similar charges. "The exemptions... shall also extend to any duty, tax, or other similar charges which would otherwise be assessed upon such property after importation into, or acquisition within, the Philippines."               | 2.0 |
|  | JPN: Logistics for official purposes of the USAFs by the USAFs or by authorized agencies are exempted from commodity tax, travelling tax, gasoline tax, and electricity and gas tax. Logistics procured for ultimate use by the USAFs (through other persons) shall be exempt from commodity and gasoline taxes.   | 3.0 |
|  | ROK: Logistics for official purposes of the USAFs by the USAFs or by authorized agencies are exempted from commodity tax, travelling tax, gasoline tax, electricity and gas tax. and <u>business tax</u> . Logistics procured for ultimate use by the USAFs (through other persons) shall also enjoy the same tax exemption as USAFs or authorized agencies. | 3.0 |

#### 14 Facilities and areas for the forces of a sending state

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|-------------------------------------|--|-----|
|                                     | FRG  | 3.0 |
|                                     | IT:  | 3.4 |
|                                     | UK:  | 2.2 |
|                                     | SP:  | 3.6 |
|                                     | HR:  | 3.2 |
|                                     | ROT:   | 3.8 |
|                                     | AU:  | 3.4 |
|                                     | RP:  | 2.2 |
|                                     | JPN  | 1.8 |
|                                     | ROK:   | 1.6 |
| (a) The use of facilities and areas | FRG: SA: Accommodation shall be agreed by ARs and AFs or ACCs based on the prior periodic program or urgent notification by a sending state. Compensation fee and repairs and maintenance are not fully borne by FRG.  | 3.0 |
|                                     | IT: MOU: The installation at ( <i>name of location</i> ) is one of the <u>peace-time military installations</u> , as agreed, in accordance with the BIA. The Italian commander, with the assistance of the U.S. commander, will maintain a map detailing the location of the various facilities on the installation. The precise number of personnel will be provided semiannually to the Italian commander. The areas and all the infrastructure therein, marked in different colors as indicated by the legend, are shown in detail in the attached map. | 4.0 |
|                                     | UK: Churchill-Truman Communiqué: "Under arrangements made for the common defence, the US has the use of certain bases in the UK. We reaffirm understanding that the use of these bases in an emergency would be a matter for joint decision by HM Government and the US Government in light of the circumstances prevailing at the time." A base agreement is negotiated on each base when new base is requested by the US.  | 3.0 |
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| (b) The right to control facilities and areas (or the rights respecting installations) | SP: ADC: The sites of IDAs are specified, and the maximum force level and type is limited within the mutually agreed size. ASs must inform the actual size of the units and personnel in Spain and any use of IDAs beyond agreed purposes require the prior authorization of the Spanish Government.  | 4.0 |
|  | HR: MDCA: GOG authorizes the USG to maintain and operate military and supporting facilities... and to undertake from such facilities, missions and activities... These facilities, missions and activities shall be those identified and described in the Annex (precisely defined)   | 4.0 |
|  | ROT: DECA: (1) The GROT authorizes the USG to participate in joint defense measures at specified Turkish Armed Forces installations. (2) The activities and technical operations of the installations shall be conducted in accordance with mutually agreed purposes and programs. DECA SA: All non-removable property constructed by the U.S. become the property of the GROT from the date of its construction.   | 4.0 |
|  | AU: NCSA: The AUG shall grant to the USG all necessary rights of access to and use of the station, its facilities, and services... (the station is the property of Australia)   | 4.0 |
|  | RP: Access to and use of facilities and area in 'Agreed Location' will be at the invitation of the RP and with <u>full respect for the RP Constitution and Law</u> . Access to Agreed Locations in the territory of the RP by U.S. forces on a <u>rotational basis</u> is authorized as mutually determined by the Parties.   | 3.0 |
|  | JPN: The U.S. is granted the use of facilities and areas in Japan. Specific facilities and areas shall be concluded through Joint Committee. Automatic expansion of the use of facilities and areas designated in 1952 Administrative Agreement. Japan needs the consent of the U.S. through Joint Committee with regard to the interim use of facilities and areas which are temporarily not being used by the USAFs.  | 2.0 |
|  | ROK: Almost identical to JPN except <u>the U.S.'s reserved right of re-entry</u> . (The bases shall be returned with the re-entry right of the U.S.), "when these facilities and areas have been re-entered by the USAFs, (they) shall be considered as the facilities and areas agreed upon between the two Governments..." and "the Records of facilities and areas of which the USAFs have the use or the right of re-entry shall be maintained through the Joint Committee..."<br>2001 Amendment: The USAFs shall give sympathetic consideration to the ROK's request to waive the reserved right of re-entry.  | 1.0 |
|  | FRG: NATO SOFA stipulates that in the absence of a specific contract to the contrary, the rights and obligations of the sending state arising out of the occupation or use of the buildings, grounds, facilities or services shall be determined by the law of the receiving state. SA: (1) German law shall apply to the use of such accommodation as regards the organization, internal functioning and management; (2) Measures taken in the air space above the accommodation which might interfere with air traffic are taken only in coordination with the ARs; (3) The use of major training areas shall be subject to prior notification to the competent ARs for approval; | 3.0 |

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| (4) The force or the CC shall ensure that the ARs are enabled to take, within the accommodation, such measures as are necessary to safeguard German interests including access to accommodation after prior notification so that they can fulfill their official duties.  |     |
| IT: MOU: (1) The installation is placed under Italian command. The functions of such command, which will be exercised by an Italian officer, will vary according to the type of installation (used jointly or exclusively). (2) The U.S. commander will notify in advance the Italian commander of all significant U.S. activities. (including operational and training activity, the movements of materiel, weapons and civilian/military personnel, and any events.) (3) Permanent increases of the operational component and relative support shall be authorized by the Italian National Authorities. (4) The Italian commander has free access, with no restrictions, except mutually agreed classified areas, to all areas of the installation. (5) The Italian commander is the formal representative of the installation and serves as the liaison with national authorities and the contact with local authorities and local external military and civil entities. | 4.0 |
| UK: No specific provisions to supplement NATO SOFA Art IX-para.(3). Logically the UK rents its bases to the US where the UK sovereignty prevails. For example all US air bases are named as 'Royal Air Force' base. However, in reality, it is ambiguous whether the UK sovereignty prevails over all such U.S. bases because almost all individual base agreements in metropolitan UK areas seem to be confidential.   | 2.0 |
| SP: The bases shall be under Spanish command. Only the Spanish flag and command insignia shall be flown over these bases. The internal administration of each base will be determined by rules and procedures mutually agreed by the Spanish Commander and the Commander of the USF.  | 4.0 |
| HR: MDCA: The Commander of USAFs and the Greek Representative at each facility shall cooperate closely. Both national flags may be flown. In accordance with Greek sovereign rights, the Greek Representative shall have access to all areas of the facilities, with the exception of specifically identified areas....   | 3.0 |
| ROT: DECA SA: The Turkish Installation Commander and the USF commander shall exercise command and control over their respective forces, including equipment and material and the premises exclusively used by them... Access to installations shall be under the control of the ( <i>Turkish</i> ) Installation Commander.  | 4.0 |
| AU: The station is Australian. NCSA: The two Governments will consult at the request of either Government on any matters connected with the station and its use. Except with the express consent of the AUG, the station will not be used for purposes other than purposes of defence communication.  | 4.0 |
| RP: The RP retains ownership of and title to Agreed Locations. But, "The U.S. forces are authorized to exercise all rights and authorities within Agreed Locations that are necessary for their operational control   | 2.0 |

(c) Special permit and licenses in connection with use of facilities and areas (or installations)

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| or defense, including taking appropriate measures to protect U.S. forces and U.S. contractors." Though ARs shall have access to the entire area of the Agreed Locations, it must be consistent with operational safety and security requirement....   |     |
| JPN: The U.S. may take all the measures necessary for their establishment, operation, safeguarding and control. In order to provide access for the USAFs to the facilities and areas Japan shall take necessary measures over land, territorial waters and airspace adjacent to, or in the vicinities of the facilities and areas. Japan shall, within the scope of applicable laws and regulations, take all reasonable measures to avoid interference with telecommunications electronics required by the USAFs.                    | 1.0 |
| ROK: Almost identical to JPN. 2001 Amendment merely refers to timely consultation between the two governments with regard to modification, demolition, new construction, or alteration of the bases.  | 1.0 |
| FRG: SA: Where German law applies in connection with the use of accommodation, ARs shall undertake the relevant administrative and legal procedures for the force and AFs shall act in conformity with the terms and requirements of a legally effective decision.  | 3.0 |
| IT: MOU: The Italian commander, after taking into account the zoning regulations and obtaining the necessary inputs from the U.S. commander shall develop a base Development Multi-year Plan, which shall be approved by the national Authorities.  | 3.0 |
| UK: No related provisions in NATO SOFA, VFA or other agreements. Each base agreement seems to be confidential.  | 2.0 |
| SP: ADC: The functioning and maintenance of general services and installations of the base, and the management of provisioning for these services and installations shall be the responsibility of the Commander of the base ( <i>Spanish</i> ). Authorization for any substantial increase or the nature of ammunition normally stored in an IDA shall be processed through the PC. The installation, storage or introduction of nuclear or non-conventional weapons.... will be subject to the agreement of the Spanish Government. | 3.0 |
| HR: Identical to ROT.   | 4.0 |
| ROT: DECA SA: The purpose, mission, location, installation plan, authorized quantities of arms and ammunition, authorized major items of equipment and authorized personnel strengths of the USF and CC shall be detailed by mutual agreement. ( <i>and quarterly report is necessitated</i> )  | 4.0 |
| AU: No related provisions in NCSA. However, the fact that U.S. is granted to use Australian communication station connotes stronger position of the AUG.  | 3.0 |
| RP: USAFs are authorized to conduct: training; transit; support and related activities; refueling of aircraft; bunkering of vessels; temporary maintenance of vehicles, vessels, and aircrafts; temporary accommodation of personnel; communications; propositioning of equipment supplies and materiel; deploying forces and materiel; and such other activities as the Parties may agree.   | 2.0 |
| JPN: No related provisions.   | 2.0 |
| ROK: No related provisions.   | 2.0 |

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| (d) Construction         | FRG: SA designates the detailed procedures relating to construction necessary to cover the requirement of a force in accordance with German law.  | 3.0 |
|                          | IT: MOU: All construction projects, including new infrastructure and improvements to infrastructure are subject to prior approval by the Italian Defense General Staff (IDGS). All changes of use of buildings and infrastructure also will be authorized by the IDGS.  | 4.0 |
|                          | UK: Construction of new facilities and cost sharing seems to be a matter of negotiation based on each base. No general agreement in VFA and other agreements.   | 2.0 |
|                          | SP: ADC: Construction by the USF that alters the useful volume or external form of an IDA shall require prior authorization solicited through the Commander of the base. If the work in question is considered of great importance by the ARs the decision they make shall be communicated to the ASs through the PC.   | 4.0 |
|                          | HR: MDCA: The USFs may award contracts to commercial enterprises for services or construction projects. In accordance with <u>its laws and regulations</u> , the USFs may procure directly from any source...   | 2.0 |
|                          | ROT: DECA SA: Construction of new buildings and other property.... and demolition, removal, alteration and modernization which change the basic structure of existing buildings shall be subject to prior approval by the ARs.  | 4.0 |
|                          | AU: NCSA: No direct reference. But the clause 'the AUG shall maintain and operate a naval communication station' connotes Australian initiative in construction work though the U.S. side may choose its own contractors.   | 3.0 |
|                          | RP: The RP grants to the U.S. of the authority to undertake construction activities in Agreed Locations. The technical requirements and construction standards of any such projects should be consistent with the requirements and standards of both Parties.   | 2.0 |
|                          | JPN: Art. III Within the facilities and areas, the U.S. may take <u>all the measures</u> necessary for their establishment, operation, safeguarding and control. Agreed Minutes grants the U.S. to construct almost all categories of military facilities within and adjacent area of the bases without prior agreement.  | 2.0 |
|                          | ROK: Identical to JPN, but no detailed lists of construction works.   | 2.0 |
| (e) Transfer of fixtures | FRG: SA designates the detailed procedures when transferring fixtures, fittings and furnishings (of FRG) from one accommodation to another.   | 3.0 |
|                          | IT: No related provisions both in NATO SOFA and MOU.  | 2.0 |
|                          | UK: No related provisions in NATO SOFA and VFA.   | 2.0 |
|                          | SP: ADC: The USF may remove demountable structures, equipment, and other removable property from the IDAs at my time leaving the grounds in serviceable condition. If such removal were to significantly affect the capability of the IDA, consultations shall be established for the reclassification of the IDA or for its possible turnover to e Spanish government. | 3.0 |
|                          | HR: MDCA: Any expansion, change, modernization or replacement of major items of equipment, arms and ammunition, or of the facilities, which will alter the configuration (footprint) or mission capabilities of such facilities shall be subject to the prior approval of the   | 3.0 |

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|   | GOG.  |     |
|   | ROT: DECA SA: Transfer of major items of equipment needs prior approval by GROT.  | 3.0 |
|   | AU: NCSA: Equipment, materials, supplies and other property imported into or acquired in Australia (by the U.S. with free tax) shall not be disposed of within Australia except under conditions to be agreed by the two Governments.   | 3.0 |
|   | RP: EDCA: "The Parties may consult regarding the possible transfer or purchase of equipment determined to be excess, as may be allowed by U.S. laws and regulations."   | 2.0 |
|   | JPN: Agreed Minute: Authorized measures to be taken by the U.S. include remove buildings or structures, make alterations, attach fixtures, or erect additions thereto and to construct any additional buildings or structures together with auxiliary facilities.   | 2.0 |
|   | ROK: Understandings states that the U.S. shall <u>notify and consult</u> with the ROK on a timely basis about planned (1) modification or demolition (removal) of indigenous buildings and (2) new construction or alteration that may affect the ability of local Korean providers or communities to provide relevant utilities and services or may affect health and public safety in local communities....   | 2.0 |
| <b>15 Return (or release) of the facilities and areas (or accommodation and land)</b> |   |     |
|   | FRG   | 3.0 |
|   | IT:   | 2.5 |
|   | UK:   | 2.0 |
|   | SP:   | 2.0 |
|   | HR:   | 2.5 |
|   | ROT:  | 2.0 |
|   | AU:   | 3.0 |
|   | RP:   | 2.0 |
|   | JPN   | 2.0 |
|   | ROK:  | 2.0 |
| (a) Return of facilities and areas  | FRG: No provisions in NATO SOFA. SA: (Instead of 'return', the term 'release' is used in SA) The AFs and ACCs shall, at the request of the AR, examine their requirements in specific individual cases in addition to the continuous examination of their requirements which are limited to the minimum level. When they no longer need (even partially) the accommodations they shall be released without delay. The ASs give sympathetic consideration to the essential German civilian interests for the release or exchange of accommodation. | 3.0 |
|   | IT: MOU: With a minimum twelve-month notice the U S Embassy informs Italy of its intention to relinquish a specific installation and/or infrastructure, by means of a Diplomatic Note to the Ministry of Foreign Affairs. These items (which belong to the U.S.) will not be disposed of in Italy except in accord with conditions, limitations, and exclusions which will be agreed upon with the Italian Government.  | 2.0 |

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| (b) Residual Value | UK: Negotiation with regard to returning a base is made case by case based on the ad hoc military necessity. No concrete procedure for the termination of U.S. bases is designated in VFA or other general agreements.   | 2.0 |
|                    | SP: ADC: Upon expiration of the Agreement or when the U.S. terminates the use of an IDA, it shall be turned over to the Spanish Government through the PC. >> No periodical check by the ARs to examine the utility level of each IDA like FRG.  | 2.0 |
|                    | HR: No related provisions in NATO SOFA, MDCA, and SFA.   | 2.0 |
|                    | ROT: No periodical reassessment regarding the necessity of the U.S. bases from non-military and economic perspective. Return of the bases may be decided based on mutually agreed military necessity of each base.   | 2.0 |
|                    | AU: The U.S. Naval Communication Station at North West Cape has become Australian Naval Communication Station. <i>(It has been returned to the AUG)</i>  | 3.0 |
|                    | RP: The U.S. shall return any Agreed Locations once no longer required by the U.S. forces for agreed activities. Both sides shall consult terms of return including possible compensation for improvements or construction.  | 2.0 |
|                    | JPN: They shall be returned to Japan whenever they are no longer needed for purposes of this Agreement, and the U.S. agrees to keep the needs for them under continual observation with a view toward such return.   | 2.0 |
|                    | ROK: The same text as JPN, but the clause "under such conditions as may be agreed through the Joint Committee" is added. 2001 Understandings states that both governments shall review, on at least an annual basis, all facilities and areas.... with a view to returning the facilities and areas no longer needed....   | 2.0 |
|                    | FRG: Agreement shall be reached between the AFs or the ACCs and the ARs concerning the residual value in improvements which were financed by the sending State. The sending State shall be reimbursed for such agreed residual value. (But claims for damages are not totally waived for the sending state in such cases designated in SA Art. 41. The AFs is also responsible for taking restorative measures to avoid detrimental effects on environment.) | 3.0 |
|                    | IT: Once Italy has determined its interest in a specific installation and/or infrastructure, residual value will be determined by mutual agreement. Installations and/or infrastructure in which Italy has no interest and which have been determined to have nominal value are utilized or sold by the Italian Government. Compensation to the U.S. will be made based on the agreed residual value.  | 3.0 |
|                    | UK: No provisions in VFA or other general agreements. There may be a related provision in an individual base agreement. (classified)   | 2.0 |
|                    | SP: ADC: <i>(Though designated working group is responsible for monitoring all returning process)</i> No provisions with regard to evaluation of the residual value. The USF may remove demountable structures, equipment, and the removable property. Permanent constructions or buildings shall be returned in serviceable condition.  | 2.0 |
|                    | HR: DFA: Residual value will be compensated by the GOG in accordance with agreement between ARs and ASs. (Though DFA was replaced by MDCA, returning of  | 3.0 |

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|  | some of the US bases might have been carried out according to this principle)  |     |
|  | ROT: DECA SA: GROT will compensates the USG for the residual value, if any of the property....   | 3.0 |
|  | AU: The U.S. shall be compensated by the AUG for the residual value, if any, of the buildings and equipment constructed at the expense of the U.S. since 1963.   | 3.0 |
|  | RP: Though all non-relocatable structures become the property of the RP, the procedures and terms in evaluating residual value is subject to the future negotiation.   | 2.0 |
|  | JPN: The U.S. is not obliged to restore them in original condition or to compensate Japan in lieu of such restoration. Japan is not obliged to make any compensation to the U.S. for any improvements in facilities and areas, buildings and structures made by the U.S. left thereon. | 2.0 |
|  | ROK: Identical to JPN.   | 2.0 |

## 16 Maneuvering and Training

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|  | FRG: No provisions in NATO SOFA. SA: Conducting military maneuvers and training exercises outside of accommodations needs the approval of Federal Minister of Defense. The same rules apply to air maneuvers.  | 3.0 |
|  | IT: MOU: Both Italian and the U.S. commander notify in advance of all significant activities. Planning and execution of all training and operational activities will be in accordance with respect of civil and military regulations of the host nation... The Italian Commander will advise the US. Commander if he believes U.S. activities are not respecting applicable Italian law and will immediately seek advice from higher ARs. Air traffic control is the direct responsibility of Italy in compliance with the applicable laws.... | 3.0 |
|  | UK: UK Low Flying System of 1979 designates the low flying training area and necessary measures may be taken through carefully monitoring the training.  | 3.0 |
|  | SP: Training areas are the same as those allocated to Spanish air force except the case in which ARs authorized special request by USF. Training flights shall be conducted in conformity with the regulations and procedures established by the Spanish regulations on General Air Traffic and Operational Air Traffic.   | 3.0 |
|  | HR: MDCA: Specific regulations in each US base. (ex.) In Souda Air Base use as a carrier aircraft divert airfield is limited to 15 days per month.   | 3.0 |
|  | ROT: DECA SA: Deployment, operations, training, and procedure to use the installations shall be carried out in accordance with implementing agreement.   | 3.0 |
|  | AU: MFA: The B-52 staging operations shall be for sea surveillance in the Indian Ocean area and for navigation training purposes. The agreement of the AUG shall be obtained before the facilities are used in support of any other category of operations.  | 3.0 |
|  | RP: Although the authorized range of U.S. forces' activities is specified, no restrictive measures by the RP regulations is stipulated.  | 1.0 |
|  | JPN: No provisions. 1999 Joint Committee agreement merely states that appropriate attention shall be paid for the safety of citizens and Japanese installations in accordance with Japanese law.   | 1.0 |

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|                                     | ROK: No provisions.  | 1.0 |
| <b>17 Overall cost sharing</b>      |  |     |
|                                     | FRG: NATO SOFA: The ARs shall assume sole responsibility for making suitable arrangements to make available to a force or a civilian component the buildings and grounds which it requires, as well as facilities and services connected therewith. SA: No related provisions.   | 3.0 |
|                                     | IT: MOU: The operation and maintenance costs for structures composing the installation are charged to the U.S. or Italian Armed Forces according to their ownership and use. The user Nation is responsible for repair and maintenance of "exclusive use" buildings and infrastructure. (MOU designates detailed procedures in 'Financial Matters')  | 3.0 |
|                                     | UK: No comprehensive agreement. Negotiations are made on ad hoc and case by case basis and they have been always contentious. However, basic principle is based upon NATO SOFA Art. IX, para. (3).   | 3.0 |
|                                     | SP: All costs are equally shared by both parties on a proportional basis in accordance with service provided to each party.  | 3.0 |
|                                     | HR: No further specification to supplement Art. IX para. (3) of NATO SOFA in MDCA and SFA except detailed content of the U.S. assistance in modernizing Greek forces.  | 3.0 |
|                                     | ROT: DECA SA: The cost of operations and maintenance... shall be met by the USG. Each party shall pay its own personnel cost....   | 3.0 |
|                                     | AU: Costs of operation, maintenance, modernisation, alteration and repair of the station shall be shared by the two Governments.....   | 3.0 |
|                                     | RP: The RP shall make Agreed Locations available to U.S. forces without rental or similar costs. U.S. forces shall cover their necessary operational expenses with respect to their activities at the Agreed Locations.  | 3.0 |
|                                     | JPN: The U.S. will bear without cost to Japan all expenditures incident to the maintenance of the USAFs in Japan and Japan will <u>furnish</u> without cost to the U.S. and make compensation where appropriate to the owners and suppliers thereof all facilities and areas and rights of way.... Though the text is similar to those of NATO members, 'sympathetic budget' by Japan, by expanding the concept of 'furnish,' covers substantial part of restoration and maintenance cost (including labor cost) of the U.S. forces. | 1.0 |
|                                     | ROK: Almost identical text to JPN, but the sentence which assures <u>immunity of the U.S. from any third party</u> claims is added. Overall cost sharing to date is deemed to be less burdensome than JPN.   | 1.0 |
| <b>18 Tax and customs exemption</b> |  |     |
|                                     | FRG  | 3.0 |
|                                     | IT:  | 3.0 |
|                                     | UK:  | 3.0 |
|                                     | SP:  | 2.5 |
|                                     | HR:  | 2.5 |
|                                     | ROT:   | 3.0 |
|                                     | AU:  | 2.5 |
|                                     | RP:  | 1.5 |



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| (b) Customs | JPN   | 2.5 |
|             | ROK:  | 2.5 |
|             | FRG: NATO SOFA basic rule: Tax exemption of a force from taxation. Salary, emolument, and tangible movable property of MFs and MCCs are also exempted from taxation of a receiving state. Other taxes to purchases and services are chargeable under the fiscal regulations of the receiving State. SA designate detailed taxation rules, procedures, and the list of taxation. Subsidies for German consumers cannot be claimed by a force or a civilian component.  | 3.0 |
|             | IT: Within the framework of NATO SOFA basic rule.   | 3.0 |
|             | UK: No related provisions to supplement NATO SOFA.  | 3.0 |
|             | SP: ADC: Though MFs, MCCs, and DPs are subject to the Spanish Taxation, they are exempted from taxes on ownership, possession, use, transfer amongst themselves, or transfer by death of their movable property.  | 2.0 |
|             | HR: MDCA: MFs and MCCs shall not be liable to pay any tax or similar charges in Greece on the ownership, possession, use, transfer amongst themselves, transfer by death of their tangible movable property....   | 2.0 |
|             | ROT: Agreement is within the framework of NATO SOFA.  | 3.0 |
|             | AU: Special tax exemption benefits for the purchase of AU made cars. Other principles are identical to NATO SOFA.   | 3.0 |
|             | RP: Since the VFA and EDCA is based upon the presumption of 'temporal visit' of the U.S. forces, there is no general provisions regarding taxation on MFs and MCCs except for the exemption of taxes, customs, and other charges for imported personal belongings. The exportation of such property and of property acquired in the Philippines by U.S. personnel shall be free of all Philippine duties, taxes, and other similar charges.   | 2.0 |
|             | JPN: Identical to NATO SOFA. JPN taxation is applicable to the property for the investment, business, intangible property, and road usage tax.  | 3.0 |
|             | ROK: Identical to NATO SOFA, but no stipulated clause with regard to road usage tax.  | 3.0 |
|             | FRG: NATO SOFA confirms the right of the receiving state to examine their (MFs, MCCs and DPs) luggage and vehicles and to seize articles pursuant to laws and regulations of the receiving state (except legitimate official documents). It also specifies the items of duty free for the use of a force as the equipment, reasonable quantities of provisions, supplies and other goods. SA stipulates the right and procedures to inspect goods in doubtful cases. The customs control of goods through the post of a force belongs to the ARs. | 3.0 |
|             | IT: MOU: When the installation is the point of entry into the national territory, transient or residing military/civilian personnel not covered by NATO SOFA, will fall under the normal customs regulations applying to foreigners. If the transit/arrival installation is the first stop in the national territory, the U.S. commander will provide the list of these personnel to the local customs Authorities...   | 3.0 |
|             | UK: No provisions to supplement NATO SOFA.  | 3.0 |
|             | SP: Special Value-Added-Tax exemption for EC manufactured cars. The importation of articles (below  | 3.0 |

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|  | 100 USD) through military post office are exempted from Spanish duties.  |     |
|  | HR: No provisions in MDCA and SFA to supplement NATO SOFA.   | 3.0 |
|  | ROT: Agreement is within the framework of NATO SOFA.   | 3.0 |
|  | AU: Greater allowance for importation of cars than NATO SOFA (two cars are permissible with free of import duties including sales tax). The regulations for visitors apply to cigarettes, cigars, tobacco and spirituous liquors. No detailed procedures for the customs inspection.   | 2.0 |
|  | RP: All USAFs' materials, supplies and equipment imported or exported ( <i>including the purchase in the RP</i> ) by the USAFs ( <i>for designated use</i> ) are free from customs duty, tax, or other similar charges. No provisions referring to any certificate attachment for or inspection by the ARs. In addition, USAFs can remove and dispose ( <i>except for non-entitled persons</i> ) at anytime without any restriction. | 1.0 |
|  | JPN: Based on appropriate certification, all materials, supplies and equipment imported by the USAFs ( <i>for designated use</i> ) are customs duty free. The ARs have no right to examine units of USAFs under orders entering or leaving Japan, official documents under official seal and official mail in U.S. military postal channels, and military cargo shipped on a U.S. Government bill of lading.                         | 2.0 |
|  | ROK: Almost identical to JPN.  | 2.0 |

## 19 Foreign exchange controls

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|-------------------------------|--|-----|
|                               | FRG  | 3.0 |
|                               | IT:  | 3.0 |
|                               | UK:  | 3.0 |
|                               | SP:  | 3.0 |
|                               | HR:  | 3.0 |
|                               | ROT:   | 3.0 |
|                               | AU:  | 3.0 |
|                               | RP:  | 3.0 |
|                               | JPN  | 3.0 |
|                               | ROK:   | 2.0 |
| (a) Foreign exchange controls | FRG: Detailed regulations and procedures in SA, but within the realm of NATO SOFA.   | 3.0 |
|                               | IT: No related provisions in MOU to supplement NATO SOFA.  | 3.0 |
|                               | UK: No related provisions in VFA to supplement NATO SOFA.  | 3.0 |
|                               | SP: No related provisions in ADC to supplement NATO SOFA.  | 3.0 |
|                               | HR: No related provisions in MDCA and SFA to supplement NATO SOFA.   | 3.0 |
|                               | ROT: No related provisions in MOU and DECA to supplement NATO SOFA.  | 3.0 |
|                               | AU: MFs, MCCs, and DPs shall remain subject to the... regulations of the U.S. and shall also be subject to the AU regulations. | 3.0 |
|                               | RP: No provisions both in VFA and EDCA. Since the visiting of the USAFs is temporal, the RP's domestic law                     | 3.0 |

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| (b) Military payment certificate | may apply.  |     |
|                                  | JPN: Almost identical to NATO SOFA. If payment by the USAFs or affiliated organizations to persons other than MFs, MCCs, and DPs is made by JPN yen, <u>basic rate of exchange</u> is applied.  | 3.0 |
|                                  | ROK: Almost identical to NATO SOFA. If payment by the USAFs or affiliated organizations to persons other than MFs, MCCs, and DPs is made by ROK won, <u>highest rate</u> in terms of the number of Korean won per U.S. dollar is applied. | 2.0 |
|                                  | FRG: SA: Treated as the same category with currency and other financial instruments.  | 3.0 |
|                                  | IT: No related provisions in both NATO SOFA and MOU.  | 3.0 |
|                                  | UK: No related provisions in both NATO SOFA and VFA.  | 3.0 |
|                                  | SP: No related provisions in both NATO SOFA and ADC.  | 3.0 |
|                                  | HR: No related provisions in NATO SOFA, MDCA, and SFA.  | 3.0 |
|                                  | ROT: No related provisions in NATO SOFA, MOU and DECA.  | 3.0 |
|                                  | AU: Should a request be made by the U.S. for agreement for the use of military payment scrip, AU would sympathetically consider the request.  | 3.0 |
|                                  | RP: No related provisions both in VFA and EDCA. Since the visiting of the USAFs is temporal, the RP's domestic law may apply.   | 3.0 |
|                                  | JPN: More detailed regulations and procedures than FRG. ASs will apprehend and punish MFs, MCCs, and DPs who tender military payment certificates to unauthorized persons but no obligation will be due to ASs.                           | 3.0 |
|                                  | ROK: Almost identical to JPN except that ASs will apprehend and punish MFs, MCCs, and DPs who tender military payment certificates to unauthorized persons <u>to the extent authorized by U.S. law.</u>                                   | 2.0 |

## 20 The applicability of SOFA to wartime condition

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|  | FRG: NATO SOFA shall remain in force (except some claims provisions for damages caused by military activities). But the provisions, in particular of Articles III (Entry and departure) and VII (Jurisdiction), shall immediately be reviewed by the members. Each member has the right to suspend the agreement by giving 60 days' notice. SA: The same principle and procedure shall apply to SA. | 3.0 |
|  | IT: No related provisions in MOU to supplement NATO SOFA.   | 3.0 |
|  | UK: No related provisions in VFA or other agreements to supplement NATO SOFA.   | 3.0 |
|  | SP: The time and manner of use of the IDAs (US Bases) shall be the subject of urgent consultations between the two Governments and shall be determined by mutual agreement without prejudice to either Party's inherent right to direct and immediate self-defense. Nothing in ADC shall derogate Spain's inherent right of self defense in emergency situation.                                    | 4.0 |
|  | HR: MDCA: In the event that, in the view of the GOG, such an emergency exists, the appropriate US and Greek authorities shall immediately enter into communication concerning such measures without derogation of the   | 4.0 |

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|  | inherent right of the GOG to take all appropriate restrictive measures required to safeguard its vital national security interests.  |     |
|  | ROT: No related provisions to supplement NATO SOFA, but DECA SA states that nothing in this agreement shall be in derogation of the inherent right of the GROT... to take all appropriate restrictive measures required to safeguard its national existence in case of emergency situations.   | 3.0 |
|  | AU: No related provisions in agreements.   | 2.0 |
|  | RP: No related provisions both in VFA and EDCA.  | 2.0 |
|  | JPN: No overall provisions which refers to the continuity of overall SOFA except with regard to jurisdiction (Art. XVII. Para. 11) which states that each government has the right to suspend the agreement (Art. XVII) by giving 60 days' notice, and both governments "shall immediately consult with a view to agreeing on suitable provisions..." (Limited to jurisdiction issues) | 2.0 |
|  | ROK: No overall provisions which refers to the continuity of overall SOFA except with regard to jurisdiction. Art. XXII states that Agreement pertaining to criminal jurisdiction shall be immediately suspended and the <u>AFs shall have the right to exercise exclusive jurisdiction over MFs, MCCs, and DPs.</u>   | 1.0 |

## 21 Settlement of disputes and features of administrative body for SOFA implementation

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|  | FRG: NATO SOFA: Disputes shall be settled by negotiation between the members and the differences which cannot be settled by direct negotiation shall be referred to North Atlantic Council. SA: It stipulates the resolution process according to the level of difference from (1) lowest appropriate level >> (2) higher military or civilian authorities >> (3) consultative Commission >> (4) diplomatic channel. Consultative Commission can seek the opinions of outside conciliators, NATO, Western European Union, or OECD. | 4.0 |
|  | IT: MOU: A standing Joint Military Commission shall be established to deal with and serve to resolve questions or differences which may arise concerning the interpretation and implementation of this MOU and of relevant bilateral Technical Agreements. The local Joint Committee is also established to resolve local problems.  | 3.0 |
|  | UK: No specific provisions in VFA or other agreements to supplement NATO SOFA.   | 3.0 |
|  | SP: ADC designates Bilateral High Level Defense Committee and Permanent Committee as a body to ensure the necessary coordination and dispute resolving between the Parties. Should the matter not be resolved within a period of 12 months, either Party may terminate ADC effective six months from the date of written notice of such termination.   | 4.0 |
|  | HR: MDCA: A standing Joint Commission shall deal with and strive to resolve questions or differences concerning the interpretation and implementation of MDCA and any issue not resolved within 60 days shall be dealt with by the two Governments through established diplomatic channels. In addition, High-Level Consultative Committee shall conduct a comprehensive review of their defense relationship.   | 3.0 |

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|                                     | ROT: DECA: Should disagreement arise from the interpretation or implementation of this Agreement or of the SA the Parties shall begin consultations immediately in order to resolve the matter.... If no result is reached in three months, either Party may terminate the Agreement or the SA in question upon notice in writing of 30 days.   | 3.0 |
|                                     | AU: Any dispute regarding the interpretation or application of this Agreement shall be resolved by consultation between the Parties and shall not be referred to a national or international tribunal or third party for resolution or settlement.  | 3.0 |
|                                     | RP: The Parties agree to resolve any dispute arising under this Agreement exclusively through consultation between the Parties and it shall not be referred to any national or international court, tribunal, or other similar body, or to any third party.   | 3.0 |
|                                     | JPN: A Joint Committee resolves <u>all matters requiring</u> mutual consultations. If it is unable to resolve disputes, it shall refer that matter to the respective Governments for further consideration through appropriate channels. (The nature of Joint Committee is completely different from the consultative Commission in NATO SOFA which admits the presence of third party expertise.) Lesser concern for local issues. | 2.0 |
|                                     | ROK: Identical to JPN.  | 2.0 |
| <b>22 Revision of the agreement</b> |   |     |
|                                     | FRG: NATO SOFA: Any member may at any time request the revision through North Atlantic Council. SA designates the cases for revision and their procedures.  | 3.0 |
|                                     | IT: MOU and Technical Agreement will not supersede nor alter BIA and other agreements. MOU may be amended by mutual agreement of the Parties.   | 3.0 |
|                                     | UK: No related provisions in VFA or other agreement to supplement NATO SOFA.  | 3.0 |
|                                     | SP: ADC confirms the principle of NATO SOFA.  | 3.0 |
|                                     | HR: MDCA: Either party may call for formal consultation if a disagreement has arisen and it shall begin immediately. Should the Parties be unable to resolve their differences after a period of 12 months, either Party may terminate MDCA.  | 4.0 |
|                                     | ROT: DECA: Either party may propose amendment or revision and consultation begin immediately. If no result is reached in three months, either Party may terminate the Agreement or the SA in question....   | 4.0 |
|                                     | AU: Though no provision directly referring to the amendment is found, protocol of SOFA states that at a future date both governments will enter into negotiations for the conclusion of a reciprocal agreement which would govern the status of the forces of <u>each Government in the</u> territory of the other.   | 3.0 |
|                                     | RP: EDCA may be amended by written agreement of the Parties. However, it is not clear whether 'written agreement' means the initiation process to request amendment or amendment is completed by written agreement of the both parties.   | 2.0 |
|                                     | JPN: Identical to NATO SOFA. (Either Government may at any time request the revision...)  | 3.0 |
|                                     | ROK: Identical to NATO SOFA. (Either Government may at any time request the revision...)  | 3.0 |

| <b>23 Ratification and Accession</b>  |  |     |
|---------------------------------------|--|-----|
|                                       | FRG: NATO SOFA shall be ratified. SA shall be ratified or approved.  | 3.0 |
|                                       | IT: No related provisions in MOU to supplement NATO SOFA.  | 3.0 |
|                                       | UK: No related provisions in VFA or other agreement to supplement NATO SOFA  | 3.0 |
|                                       | SP: ADC shall enter into force upon written communication between the Parties that they have satisfied their respective constitutional requirements.   | 3.0 |
|                                       | HR: MDCA: This Agreement shall enter into force on the date the Parties complete an exchange of notes confirming that their respective constitutional requirements have been satisfied, and will remain in force for a term of eight years.  | 3.0 |
|                                       | ROT: DECA: This Agreement and the SA shall come into effect on the date of exchange of notes in accordance with respective legal procedures.   | 3.0 |
|                                       | AU: NCSA: This Agreement shall enter into force following signature and upon the date on which the AUG notifies the USG that domestic procedures required for its entry into force in Australia have been satisfied. (It is the AU side that needs domestic procedures because it grants to the U.S. the use of its Naval Communication Station)   | 3.0 |
|                                       | RP: EDCA "shall enter into force on the date of the last note exchanged between the Parties, through diplomatic channels, confirming the completion of all necessary internal procedures required for the entry into force thereof. (Text of VFA is identical to EDCA)   | 3.0 |
|                                       | JPN: The agreement shall be approved by both states in accordance with their legal procedures.... And each party undertakes necessary budget and legislative action...   | 3.0 |
|                                       | ROK: Art XXIX para. 1 refers one-sided approval procedure (no mention about the procedure of the U.S.'s side) stating that "This Agreement shall enter into force three months after the date of a written notification from the Government of the ROK to the Government of the U.S. that it has approved the Agreement in accordance with its legal procedures." Necessary budget and legislative action is mentioned only to ROK side. | 2.0 |
| <b>24 Termination or denunciation</b> |  |     |
|                                       | FRG: NATO SOFA: Any member state may withdraw from the Agreement after four years from the date of the enforcement and the denunciation shall take effect one year after the notification. SA: Any stationing Party may withdraw from SA upon two years' written notice.   | 3.0 |
|                                       | IT: MOU: It shall remain in force until it is terminated by written notice of either Party one year in advance, or by written mutual consent.  | 3.0 |
|                                       | UK: No related provisions in VFA or other agreement to supplement NATO SOFA  | 3.0 |
|                                       | SP: The duration of ADC is 8 years (with one year extension in case of no written notification)  | 3.0 |
|                                       | HR: MDCA: No related provisions to supplement NATO SOFA except that the term is eight years and the procedure to extend such term.   | 3.0 |
|                                       | ROT: DECA: Initial period is 5 years and year to year continuation follows. It can be terminated by agreement of parties or by either party upon 3 months notice prior to the end of each subsequent year.   | 3.0 |

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|  | AU: NCSA: This Agreement shall remain in force for an initial period of twenty five years and, absent notification of termination, shall continue in effect for periods of five years. Either Government may terminate this Agreement upon one year's written notice to the other Government.   | 3.0 |
|  | RP: VFA: This agreement shall remain in force until the expiration of 180 days from the date on which either party gives the other party notice in writing that it desires to terminate the agreement. EDCA: It shall have an initial term of ten years, and thereafter, it shall continue in force automatically unless terminated by either Party by giving one year's written notice through diplomatic channels of its intention to terminate this Agreement. | 3.0 |
|  | JPN: The agreement shall remain in force while the Treaty of Mutual Cooperation and Security remains in force.  | 2.0 |
|  | ROK: Identical to JPN.  | 2.0 |
| <b>25 Territorial applicability (including colonial territories)</b> |   |     |
|  | FRG: NATO SOFA: Applicable only to the metropolitan territory of a member state. But the Agreement shall extend to all or any of the territories for whose international relations it is responsible in the North Atlantic Treaty area (through necessary procedures).  | 3.0 |
|  | IT: No related provisions to supplement NATO SOFA.  | 3.0 |
|  | UK: Applicable territory of VFA is expanded to Channel Islands, Isle of Man, all colonies, all protectorates, protected states, and all UK trust territories.   | 3.0 |
|  | SP: No related provisions in ADC to supplement NATO SOFA.   | 3.0 |
|  | HR: No related provisions in MDCA and SFA to supplement NATO SOFA.  | 3.0 |
|  | ROT: No related provisions in MOU and DECA to supplement NATO SOFA, but DECA Art.V stipulates: (4) The extent of the defense cooperation envisaged in this Agreement shall be limited to obligations arising out of the North Atlantic Treaty.  | 3.0 |
|  | AU: The territories under the authority of the Commonwealth of Australia.   | 3.0 |
|  | RP: No related provisions. However, it is assumed within the territory of the RP.   | 3.0 |
|  | JPN: No related provisions. However, it was assumed within the (then) territory of Japan. Okinawa was excluded from the Agreement when it came into force (1960) and some argue that there must be double standard by referring to declassified U.S. official documents.  | 2.0 |
|  | ROK: No provisions. However, it was assumed within the territory of the ROK.  | 3.0 |
| <b>26 Authentic language</b>   |   |     |
|  | FRG: NATO SOFA: English and French; SA: English, French, and German.  | 3.0 |
|  | IT: MOU: English and Italian.   | 3.0 |
|  | UK: VFA: English (it is a domestic law)   | 3.0 |
|  | SP: English and Spanish.  | 3.0 |
|  | HR: English and Greek   | 3.0 |
|  | ROT: English and Turkish  | 3.0 |
|  | AU: English   | 3.0 |
|  | RP: English   | 3.0 |

|                    |  |      |
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| <b>TOTAL POINT</b> | JPN: English and Japanese.   | 3.0  |
|                    | ROK: Both texts shall have equal authenticity, but in case of divergence the English text shall prevail. | 2.0  |
|                    | FRG:   | 75.2 |
|                    | IT:  | 69.9 |
|                    | UK:  | 68.2 |
|                    | SP:  | 69.8 |
|                    | HR:  | 68.4 |
|                    | ROT:   | 67.9 |
|                    | AU:  | 68.8 |
|                    | RP:  | 53.8 |
|                    | JPN:   | 52.5 |
|                    | ROK:   | 45.2 |



### Appendix A-3

#### Rank Correlation Coefficient tests between 'mean of total and grading point of each item

| Variable No.         | 1             | 2      | 3      | 4      | 5      | 6      | 7      | 8      | 9       | 10      | 11      | 12      | 13      | 14      |
|----------------------|---------------|--------|--------|--------|--------|--------|--------|--------|---------|---------|---------|---------|---------|---------|
|                      | Mean of Total | item 3 | item 4 | item 5 | item 6 | item 7 | item 8 | item 9 | item 10 | item 11 | item 12 | item 13 | item 14 | item 15 |
| <b>FRG</b>           | 3.13          | 3.0    | 3.4    | 4.0    | 3.0    | 3.0    | 3.0    | 3.0    | 3.0     | 3.5     | 3.3     | 3.0     | 3.0     | 3.0     |
| <b>IT</b>            | 2.91          | 3.0    | 3.0    | 2.7    | 2.0    | 3.3    | 3.0    | 2.7    | 2.8     | 2.8     | 3.0     | 2.7     | 3.4     | 2.5     |
| <b>SP</b>            | 2.91          | 3.0    | 3.0    | 2.3    | 3.0    | 3.3    | 2.0    | 2.3    | 2.5     | 3.0     | 3.0     | 2.3     | 3.6     | 2.0     |
| <b>AU</b>            | 2.87          | 3.0    | 3.0    | 2.7    | 3.0    | 2.7    | 2.0    | 2.7    | 2.8     | 3.0     | 3.3     | 2.7     | 3.4     | 3.0     |
| <b>HR</b>            | 2.85          | 3.0    | 3.0    | 2.3    | 2.0    | 2.7    | 2.0    | 2.3    | 2.5     | 2.7     | 3.0     | 2.7     | 3.2     | 2.5     |
| <b>UK</b>            | 2.84          | 3.0    | 3.0    | 3.0    | 2.0    | 3.0    | 3.0    | 2.7    | 2.8     | 2.8     | 3.0     | 2.7     | 2.2     | 2.0     |
| <b>ROT</b>           | 2.83          | 3.0    | 3.0    | 2.3    | 2.0    | 2.7    | 1.0    | 3.3    | 2.8     | 2.5     | 2.8     | 2.7     | 3.8     | 2.0     |
| <b>RP</b>            | 2.24          | 3.0    | 2.8    | 2.3    | 1.0    | 2.7    | 3.0    | 2.0    | 1.3     | 1.7     | 1.0     | 1.3     | 2.2     | 2.0     |
| <b>JPN</b>           | 2.19          | 2.0    | 2.8    | 2.7    | 1.0    | 2.3    | 2.0    | 1.3    | 3.0     | 1.8     | 3.0     | 2.3     | 1.8     | 2.0     |
| <b>ROK</b>           | 1.88          | 2.0    | 2.8    | 2.3    | 1.0    | 1.7    | 1.0    | 1.0    | 1.5     | 2.0     | 2.8     | 2.0     | 1.6     | 2.0     |
| <b>Spearman</b>      |               | 0.698  | 0.877  | 0.427  | 0.879  | 0.84   | 0.469  | 0.62   | 0.335   | 0.893   | 0.712   | 0.687   | 0.602   | 0.69    |
| <b>Kendall's tau</b> |               | 0.603  | 0.783  | 0.346  | 0.787  | 0.719  | 0.4    | 0.518  | 0.248   | 0.736   | 0.604   | 0.543   | 0.506   | 0.598   |

| Variable No.         | 1             | 15      | 16      | 17      | 18      | 19      | 20      | 21      | 22      | 23      | 24      | 25      |
|----------------------|---------------|---------|---------|---------|---------|---------|---------|---------|---------|---------|---------|---------|
|                      | Mean of Total | item 16 | item 17 | item 18 | item 19 | item 20 | item 21 | item 22 | item 23 | item 24 | item 25 | item 26 |
| <b>FRG</b>           | 3.13          | 3.0     | 3.0     | 3.0     | 3.0     | 3.0     | 4.0     | 3.0     | 3.0     | 3.0     | 3.0     | 3.0     |
| <b>IT</b>            | 2.91          | 3.0     | 3.0     | 3.0     | 3.0     | 3.0     | 3.0     | 3.0     | 3.0     | 3.0     | 3.0     | 3.0     |
| <b>SP</b>            | 2.91          | 3.0     | 3.0     | 2.5     | 3.0     | 4.0     | 4.0     | 3.0     | 3.0     | 3.0     | 3.0     | 3.0     |
| <b>AU</b>            | 2.87          | 3.0     | 3.0     | 2.5     | 3.0     | 2.0     | 3.0     | 3.0     | 3.0     | 3.0     | 3.0     | 3.0     |
| <b>HR</b>            | 2.85          | 3.0     | 3.0     | 2.5     | 3.0     | 4.0     | 3.0     | 4.0     | 3.0     | 3.0     | 3.0     | 3.0     |
| <b>UK</b>            | 2.84          | 3.0     | 3.0     | 3.0     | 3.0     | 3.0     | 3.0     | 3.0     | 3.0     | 3.0     | 3.0     | 3.0     |
| <b>ROT</b>           | 2.83          | 3.0     | 3.0     | 3.0     | 3.0     | 3.0     | 3.0     | 4.0     | 3.0     | 3.0     | 3.0     | 3.0     |
| <b>RP</b>            | 2.24          | 1.0     | 3.0     | 1.5     | 3.0     | 2.0     | 3.0     | 2.0     | 3.0     | 3.0     | 3.0     | 3.0     |
| <b>JPN</b>           | 2.19          | 1.0     | 1.0     | 2.5     | 3.0     | 2.0     | 2.0     | 3.0     | 3.0     | 2.0     | 2.0     | 3.0     |
| <b>ROK</b>           | 1.88          | 1.0     | 1.0     | 2.5     | 2.0     | 1.0     | 2.0     | 3.0     | 2.0     | 2.0     | 3.0     | 2.0     |
| <b>Spearman</b>      |               | 0.8     | 0.698   | 0.433   | 0.524   | 0.65    | 0.856   | 0.083   | 0.524   | 0.698   | 0.407   | 0.524   |
| <b>Kendall's tau</b> |               | 0.691   | 0.603   | 0.336   | 0.452   | 0.561   | 0.769   | 0.031   | 0.452   | 0.603   | 0.352   | 0.452   |