

The following is a legal opinion from AMC Office of Command Counsel (Louis Rothberg), dated 19 June 2000, that applies to all future staffing matters for International Agreements.

1. Section 27 of the Arms Export Control Act [22 USC 2767] and other DoD policy allow the US Army and a foreign partner to make both financial and non-financial contributions to an international project under an International Agreement (IA) such as a PA or MOU. There is both a mandatory legal and policy requirement that, overall, the US and foreign partner's financial and non-financial contributions must be "equitable". The only mutually binding legal document by which the US and the foreign partner commit to these financial and non-financial contributions is the MOU or PA - not the SSOI, not the DDL, not anything other than the IA.

2. The question as to whether an IA is "equitable" is not within the exclusive domain of the proponent scientific community to decide. The legal and comptroller staff elements also review this matter from their respective disciplines. When preparing an SSOI and MOU/PA that will come to me for legal review to determine a proposed IA's compliance with the statutory and regulatory "equitability" requirements, I need to see the following:

In the SSOI:

- a. The financial contributions of the Parties:
- b. Some discussion of the proponent's valuation of the US Army's non-financial contribution or contributions to the foreign partner for use in the Project, which includes, but is not limited to, US Background Information [BI], use of a test range, project equipment, etc.,
- c. Some discussion of the proponent's valuation of the foreign partner's expected non-financial contribution or contributions to the US Army for use in the Project, which includes, but is not limited to, the foreign partner's BI, use of a test range, project equipment, etc.
- d. The proponent's reasons of how and why the overall contributions of the Parties are "equitable" to the USA in light of the Parties' total financial and non-financial contributions.

3. If, after negotiations, the foreign partner refuses to provide Background Information, or any other non-financial contribution which the US Army expected, the Project's "equitability" will need to be re-evaluated before the IA.

4. In addition to the SSOI containing a full discussion of these matters, the PA text or the MOU text must completely and clearly capture the appropriate obligations to provide the financial and non-financial obligations, described in the SSOI.

5. Accordingly, the text of the IA must clearly state all of the following:

a. The precise description of all the BI that the US is providing to the foreign partner(s) and its value. This should appear in the IA as the first US task, e.g., "The US will provide the following US BI to the [foreign partner]:_____, _____." The IA should also state the schedule of dates for the US to provide the BI. The BI description must be clear enough and detailed enough that we can know when or whether the US has fully and legally complied with the obligation. A vague, generic description will not be acceptable for legal sufficiency. The description should also be congruent to the SSOI claim that the US BI is worth US \$_____. The comptroller will likely want to factually verify that your method of computing the BI's value comports with the description of the BI in the IA.

b. Where the SSOI claims that the foreign partner is providing the US non-financial contributions, such as, BI, access to and/or use of their unique facilities, project equipment, unique professional expertise, etc. -- this obligation must appear in the IA. Otherwise, there will be no US right or legal claim to have access to or use thereof. Thus, the foreign party's tasks in the IA must state, for example: "The [foreign partner] will provide access to or use of [specific location and facility] by the US Army so as to carry out the task of _____ at all times [unless other specific times stated herein] during this [MOU/PA]." Where the foreign party is providing BI, this should appear in the IA as the first foreign task, e.g., "The [foreign party] will provide the following BI to the US Army: _____, _____." The IA should also state the schedule of dates for the foreign party to provide the BI. The BI description must be clear enough and detailed enough that we can know when or whether the foreign party has fully and legally complied with the obligation. A vague, generic description will not be acceptable for legal

sufficiency. The description should also be congruent to the SSOI claim that the foreign BI is worth US \$_____. The comptroller will likely want to factually verify that your method of computing the BI's value comports with the description of the BI in the IA.

c. The financial section of the IA must specify the dollar value of each contribution. Thus, the IA must say that the US financial contribution is US\$_____ and the US non-financial contribution is US\$_____ for a total overall contribution of US\$ _____.

d. Also, the IA must say that the [foreign partner] financial contribution is _____, and the [foreign partner] non-financial contribution is _____, for an overall [foreign partner] contribution of _____.

6. The US law and policy, and in many cases master MOUs, require this degree of specificity in the IA text (for Master TRDP MOUs, this is usually found in the Article/Section on Sharing of Tasks and Financial Arrangements).

7. Please remember that, when considering what BI the US Army will provide to the foreign partner under the IA, one should consult with his local legal office to verify that the US Army does, in fact, have the legal right to transfer that Information to that Partner for the proposed purposes described in the IA. This may require a legal review, for example, of contracts under which the US Army BI was generated in the first place