

UNITED STATES OF AMERICA
and
**UNITED KINGDOM OF GREAT BRITAIN AND
NORTHERN IRELAND**

Exchange of Notes (with annex) constituting an agreement relating to claims for damages resulting from acts of armed forces personnel. London, 29 February and 28 March 1944.

English official text communicated by the Acting Representative of the United States of America at the seat of the United Nations. The filing and recording took place on 21 June 1948.

ETATS-UNIS D'AMERIQUE
et
**ROYAUME-UNI DE GRANDE-BRETAGNE ET
D'IRLANDE DU NORD**

Echange de notes (avec annexe) constituant un accord relatif aux demandes d'indemnités pour dommages résultant d'actes du personnel des forces armées. Londres, 29 février et 28 mars 1944.

Texte officiel anglais communiqué par le représentant par intérim des Etats-Unis d'Amérique au siège de l'Organisation des Nations Unies. L'enregistrement et l'inscription au répertoire ont eu lieu le 21 juin 1948.

No. 104. EXCHANGE OF NOTES¹ CONSTITUTING AN AGREEMENT BETWEEN THE UNITED STATES OF AMERICA AND THE UNITED KINGDOM RELATING TO CLAIMS FOR DAMAGES RESULTING FROM ACTS OF ARMED FORCES PERSONNEL. LONDON, 29 FEBRUARY AND 28 MARCH 1944

I

The British Secretary of State for Foreign Affairs to the American Ambassador

FOREIGN OFFICE, S.W.1

29th February, 1944

No. W 3151/150/64.

Your Excellency,

I have the honour to refer to Your Excellency's note No. 3295 of the 19th January concerning the question of civil claims arising in tort against members of the United States forces in the United Kingdom.

2. As you are aware, His Majesty's Government have been reluctant to accept responsibility for these claims since to do so would involve payment by the British public of compensation for damage or injury sustained by the British public through the tortious acts of United Service personnel and might therefore seem undesirable on political grounds. They had therefore hoped that the arrangement previously made with His Majesty's Treasury Solicitor for the settlement of this matter could be maintained. They are, however, glad to note that the United States Government recognise that certain of the claims in question raise political issues and that the proposals now put forward are subject to the reserve that His Majesty's Government are not to be required to assume responsibility for claims which they regard as politically objectionable. In the light of this and recognising that the United States Government regard claims against the personnel of the armed forces of the United States in the line of duty to be part of the normal expenses of the United States forces, His Majesty's Government are prepared to undertake certain responsibilities for the settlement of these

¹ Came into force on 28 March 1944, by the exchange of the said notes.

claims on behalf of the United States Government as a reciprocal aid service. They assume that the United States Government for their part will be willing to make similar arrangements for the settlement of civil claims of like nature arising against members of His Majesty's Forces in the United States in the course of their duties. His Majesty's Government are, in the circumstances, able to assume these responsibilities only within certain limitations and conditions which are summarised in an Annex attached to this Note. An explanation of the more important of these will be given hereunder.

3. In the first place, His Majesty's Government find it necessary for administrative reasons to distinguish between claims which are now outstanding and claims which may arise in future. Your Excellency will appreciate that the British Claims Commission is already occupied with the settlement and payment of claims brought against members of His Majesty's Forces and that to take over a large accumulation of similar claims against members of the United States Forces would not only seriously interfere with the present work of the Commission but would also delay still further the settlement of claims against members of the United States Forces. Although, therefore, His Majesty's Government desire to render the fullest possible assistance to the United States authorities in this matter they have reluctantly decided that they can assume responsibility for the settlement on behalf of the United States Government of certain classes of claims against personnel of the United States armed forces only if such claims arise out of incidents occurring on or after the 20th March, 1944. These claims will be additional to claims arising from training manoeuvres of the United States Forces and from certain damage resulting from the operation of United States aircraft for which His Majesty's Government have already undertaken such a responsibility. His Majesty's Government are prepared to undertake the payment but not, for the reasons given above, the examination and settlement of certain claims which are now outstanding. Their proposals for the rapid settlement of the outstanding claims are set out in paragraph 12 of this Note.

4. It will be convenient if I first make certain observations about claims arising out of incidents occurring on or after the 20th March 1944. As I have indicated, His Majesty's Government would wish to reserve the right to refuse

consideration of any claim where there are in their opinion good political reasons for doing so. Furthermore, His Majesty's Government feel it to be essential that they should have complete discretion and liberty of action in the means adopted for dealing with any claim to which the proposed arrangements would apply. The departments of His Majesty's Government, who would be charged with the settlement of such claims, are now responsible for the settlement of claims brought against members of His Majesty's Forces and it will clearly be necessary for them to settle claims against members of both forces as far as possible upon the same principles, within the same limitations, and by the same methods. His Majesty's Government can for this reason only assume responsibility for the settlement of such claims against members of the United States Forces in the course of their military duties in the United Kingdom and Northern Ireland if these claims arise from

- (a) traffic accidents;
- (b) accidental shootings;
- (c) accidental explosions;
- (d) loss of, or damage to, chattels in requisitioned premises occupied by United States Forces under arrangements made by His Majesty's Government Departments;
- (e) certain other incidents (e.g. practice gunfire, fires in billets, etc.) where they would in certain circumstances accept claims had members of His Majesty's Forces been involved.

5. His Majesty's Government propose that the claims to which these arrangements will apply should normally be restricted to those brought by members of the public, although they might wish to include claims brought by members of His Majesty's Forces, including Dominion Forces and, in special circumstances, by members of the Allied Forces now in this country. Claims by United States nationals and members of the United States Forces would however be excluded for political reasons.

6. As I have stated, His Majesty's Government will wish to secure complete liberty of action in dealing with such claims. It is particularly necessary that this should be the case in determining

- (a) whether any claim falls within one or other of the above categories, and

- (b) whether or not, for the purposes of these arrangements (but for no other purpose), members of the United States Forces were acting in the course of their military duties at the time of any occurrence which might give rise to a claim.

Unless liberty of action is reserved on these matters, it will not be possible to secure equality as between claimants against members of His Majesty's Forces and claimants against members of the United States Forces under the proposed arrangements. In deciding this and other material questions His Majesty's Government will avail themselves of the procedure adopted for deciding similar questions in claims brought against members of His Majesty's Forces. The expenses incurred by His Majesty's Government in settling such claims, together with any sums payable by way of compensation, will be treated by them as a reciprocal aid service. Having regard to the statement in Your Excellency's note that the disposition of claims by the British authorities will be final, I assume that the United States Government will agree to the above stipulations and will accept without question any settlement however reached.

7. You should further be aware that it may be necessary for His Majesty's Government to reopen those claims which have not been admitted by the United States Claims Commission and in which no payment has been made.

8. I have noted with satisfaction your statement that the United States authorities would co-operate by assisting in the production of evidence and, so long as available in the United Kingdom, of parties and witnesses wherever military duties are not paramount. It will clearly be an essential condition of the proposed arrangements that the United States Army and Navy commands in this country should render to His Majesty's Government all facilities and assistance in their power to enable the appropriate agencies of His Majesty's Government to carry out the onerous task which would thereby fall upon them. I shall therefore be glad to receive from Your Excellency an assurance that these facilities and assistance will be forthcoming and that the necessary instructions will be given to all United States units to do all in their power to assist those officers of His Majesty's Government whose duty it will be to deal with the large number of claims against the personnel of the United States Forces under the proposed arrangements.

9. I note with satisfaction that the United States Government are willing to transfer to the British authorities all property damage claims against third parties, and they agree for their part that any sums recovered in this manner should be credited as offset receipts against reciprocal aid. The views of His Majesty's Government on this matter are elaborated in paragraph 7 of the Annex to this Note.

10. I am in agreement with your proposal that property losses of the respective Governments arising out of acts in which only personnel and equipment of the two Governments are involved should be borne where they fall, and I suggest that this Mutual Forbearance Agreement should be extended so as to cover claims of the respective Governments arising out of the death of or injury to their personnel and should be retroactive so as to cover any outstanding cases. It is also suggested that in connexion with traffic accident claims arising out of accidents in which both a British and United States vehicle are concerned, an equal proportion of the total cost of settlement of third party claims should be attributed to each Government, irrespective of the question of responsibility as between those Governments. Similar agreements for sharing claims in such circumstances have been made by His Majesty's Government with other Governments with the result that the difficulty of adjudicating upon the degree of responsibility of the respective drivers in individual cases is avoided.

11. Finally, in view of the strong political feeling to which this question may give rise, particularly among those who are involved in these incidents, I trust that the United States authorities will continue to take all possible steps, such as previous instruction as well as firm disciplinary action, to minimise the number of cases to which the procedure now proposed will apply.

12. I now turn to claims arising from incidents occurring before the 20th March, 1944. For the reasons stated in paragraph 2 of this note, His Majesty's Government consider that these claims must continue to be dealt with by the United States Claims Commission. In order to assist the rapid disposal of such claims, His Majesty's Government are prepared to agree that any sums paid on or after the 20th March arising out of incidents occurring before that date in settlement of any claims unpaid on that date shall be treated as a matter of reciprocal aid. They assume that this proposal will be satisfactory to the United States Government and trust that the United States Government will agree that the objections which the latter felt to the continuation of the Collision and other Agreements, which were negotiated on their behalf and the operation

of which was suspended at their request in the summer of 1943, no longer apply. In this event these Collision and other Agreements can so far as possible forthwith be reinstated and this step would immediately and substantially reduce the number of outstanding claims. Claimants, with whom no settlement by other means is possible, shall have recourse in the Courts of the United Kingdom in the ordinary way against the tortfeasor, unless military duties render this impossible. His Majesty's Government will however except from these arrangements all claims exceeding the local financial powers of the United States Claims Commissions, and they themselves will take over at once the examination and final settlement of all such claims. The conditions which His Majesty's Government wish to attach to the proposals made in this paragraph are set out in paragraphs 13 to 15 of the Annex to this Note.

13. His Majesty's Government are of the opinion that it is essential for the good working of the arrangements proposed in this Note and Annex that particular care should be taken by the British and United States authorities to ensure the prompt settlement of claims arising out of incidents occurring before the 20th March, 1944, and they trust that in this matter as in the other matters previously mentioned they can count on the fullest possible co-operation of the United States authorities.

14. As Your Excellency is aware, I am most anxious to reach a conclusion of this matter with the least possible delay, and I shall be grateful if I may be informed at the earliest opportunity whether the assumptions and conditions upon which His Majesty's Government are prepared to agree to the request made by you are acceptable to the United States Government.

I have the honour to be, with the highest consideration, Your Excellency's obedient Servant,

Anthony EDEN

His Excellency
The Honourable John Gilbert Winant
etc., etc., etc.,
1, Grosvenor Square, W.1.

ANNEX

THE CONDITIONS UPON WHICH HIS MAJESTY'S GOVERNMENT WILL TAKE OVER UNDER RECIPROCAL AID CERTAIN CLASSES OF CLAIMS AGAINST MEMBERS OF THE UNITED STATES FORCES ARISING OUT OF THEIR MILITARY DUTIES IN THE UNITED KINGDOM AND NORTHERN IRELAND

1. The claims shall be limited to claims in respect of:—

- (a) Traffic accidents
- (b) Accidental shootings
- (c) Accidental explosions
- (d) Loss of or damage to chattels in requisitioned premises occupied by United States forces under arrangements made with His Majesty's Government Departments
- (e) Other claims arising from e.g. practice gunfire, fires in billets, etc., which His Majesty's Government would in certain circumstances accept if members of His Majesty's Forces were involved.

2. These claims will be accepted by His Majesty's Government only if brought by members of the public and in certain circumstances by members of His Majesty's Forces, including Dominion Forces and of the Allied Forces in this country. Claims brought by United States citizens or members of the United States Forces will not be accepted.

A. *Claims in the classes set out in paragraph 1 above and arising out of incidents occurring on or after 20th March, 1944.*

3. The British Claims Commission will decide in each case whether, having regard to the liability which His Majesty's Government accept in the case of members of His Majesty's Forces, the claim is one which can be accepted under this arrangement.

4. All other claims, together with any claims in the above classes which His Majesty's Government find it impossible to take over for reasons of policy, shall be dealt with by the United States Claims Commission.

5. All claims accepted by His Majesty's Government for reciprocal aid shall be dealt with by the British Claims Commission, who shall have complete discretion and liberty of action to dispose of them on behalf of the United States Government by way of payment, compromise, settlement, legal proceedings or otherwise as they think fit. The United States Government will accept as final the result reached by the British Claims Commission and any sum payable as a result of action taken by the British Claims Commission shall be treated as reciprocal aid.

6. If the British Claims Commission decide that any claims shall be contested, the United States authorities will provide full facilities to the British Claims Commission to enable the matter to be disposed of by appropriate legal proceedings, and will supply the names of the United States personnel involved together with a retainer to the Treasury Solicitor to act on their behalf in the proceedings and to conduct, compromise or settle the proceedings in accordance with the complete discretion of the Treasury Solicitor.

7. The United States authorities will give to the British Claims Commission at the earliest possible time full particulars and estimates of damages to United States military vehicles and property so that claims in respect thereof may be made by the British Claims Commission either by way of affirmative claim or counterclaim or for the purposes of any collision agreements. The United States authorities will give to the Treasury Solicitor any authorisation necessary for this purpose.

8. The United States authorities will retain complete control over disciplinary action, and United States liaison officers will be appointed in order to facilitate the smooth working of the arrangements and to provide a channel of communication for British Claims Officers with United States units. The functions of the United States liaison officers will be

(a) to ensure prompt reference of cases, together with the material information, reports and statements of witnesses to the British Claims Commission;

(b) to ensure that all information as to the cost of repairs and damage sustained by United States vehicles is provided in due time;

(c) to secure the attendance of witnesses at the offices of the Treasury Solicitor or his agents and at Court where such attendance is practicable;

(d) generally to give any assistance which the British Claims Commission may require in order to enable them to deal with any particular claim.

9. The British Claims Commission will use their best endeavours to avoid any interference with the military duties of any witness or defendant in the United States Armed Forces, but the United States authorities will use their best endeavours to provide these witnesses and any other essential parties in this country where this is practicable, having regard to military exigencies. The United States authorities will make available to the British Claims Commission and the Treasury Solicitor all relevant documents, for example, copies of proceedings of United States Courts of Enquiry and Courts Martial.

10. The United States will give instructions to all their Service authorities not to enter into any correspondence with claimants or their solicitors apart from the formal acknowledgments of letters. Any correspondence should be immediately passed on through the liaison officer, to the appropriate British Claims Officer.

11¹.(i) Neither Government shall make any claim against the other in respect of any property loss or damage, or in respect of any expenses or charges incurred as a result of the death of or injury to their personnel arising out of an accident in which only personnel and equipment of the respective Governments are concerned. This arrangement shall be retroactive in respect of any claims now outstanding.

(ii) The cost of settling claims made by a third party as a result of an accident involving both His Majesty's Government and a United States Government vehicle shall, irrespective of the question of responsibility, be borne in equal shares provided—

(a) that so far as the driver of His Majesty's Government's vehicle is concerned the claim is one for which His Majesty's Government would assume responsibility in the circumstances, and,

(b) that so far as the driver of the United States Government vehicle is concerned the claim falls within one of the categories covered by the arrangement referred to above. Where third party claims fall to be shared equally between the two Governments under the arrangement half of the cost of settling such claims would be treated as Reciprocal Aid.

12. The United States Service authorities in the United Kingdom will cooperate to the fullest extent to carry out the above-stated conditions and arrangements and appropriate instructions will be given to the various United States Service authorities concerned.

¹The provisions in paragraph 11 have been superseded by the provisions of an agreement effected by an exchange of notes, dated Washington, 23 October 1946 and 23 January 1947. See page 281 of this volume.

B. *Similar Claims arising out of incidents occurring before 20th March, 1944.*

13. Such of these claims as are unpaid on the 19th March, 1944 will be examined and assessed by the United States Claims Commission. The necessary payments will be made by His Majesty's Government as a matter of reciprocal aid.

14. For the purposes of paragraph 13 above,

(a) the Collision or other Agreements negotiated on behalf of the United States authorities by the Treasury Solicitor, which are now suspended shall so far as possible be forthwith and retroactively reinstated,

(b) claimants with whom no reasonable settlement by other means is possible, shall have recourse in the Courts of the United Kingdom in the ordinary way against the tortfeasor. In that event the United States authorities will immediately transfer all papers material to the claim in question to His Majesty's Treasury Solicitor through the channel of the British Claims Commission and will render all other possible assistance to His Majesty's Treasury Solicitor by way of the production of witnesses, etc. A similar procedure will so far as necessary be applied to all such cases when the claimant has obtained a judgment in a United Kingdom Court which has remained unsatisfied.

15. In any case where it seems to the United States Claims Commission that the amount claimed is more than \$5,000, the claim shall be transferred as soon as possible to the British Claims Commission for examination and assessment as well as for payment.

C. *General.*

16. In order to facilitate the smooth transfer of the United States Claims work to the British Claims Commission, United States Claims Service will release immediately for employment by the British Claims Commission such of their civilian clerical and typing staff as are employed upon claims work at British rates of pay and whose services are required by the British Claims Commission for the purposes of settlement of the claims falling within the above categories.

II

The American Ambassador to the British Secretary of State for Foreign Affairs

EMBASSY OF THE UNITED STATES OF AMERICA

London, March 28, 1944

No. 3493.

Sir:

I have the honor to refer to your note of February 29, 1944 (No. W 3151/-150/64) and to the annex thereto, concerning the question of civil claims arising in tort against personnel of the United States armed forces in the United Kingdom, and, under instructions from my Government, to reply as follows:

The Government of the United States accepts the conditions and limitations set forth in your note under reference and in the annex thereto as applicable to claims arising out of acts of personnel of the armed forces of the United States in the line of duty which the British Government has agreed to accept for settlement and payment, such payment to be credited to reciprocal aid. The United States Government, for its part, agrees to settle and pay under Lend-Lease on a reciprocal basis claims arising out of acts of members of the armed forces of Great Britain in the United States in the line of duty.

The War Department has agreed with reluctance to paragraph 7 of your note, concerning the reopening of claims in which payment has been denied by the United States Claims Commission. I therefore venture to express the hope that the number of such claims which the British authorities desire to reopen will be small and that every effort will be made not to extend the number of such cases.

The United States Government notes that paragraph 6 of the annex suggests that the United States authorities will supply "a retainer to the Treasury Solicitor" and assumes that "retainer" is here used in the sense of a power of attorney. I have the honor to suggest this clarification since "retainer" is commonly used in the United States to describe the fee paid to an attorney for retaining his services.

The United States Government understands paragraph 11 of the annex as a waiver by it only of claims in its own behalf and not as a waiver of claims of its nationals in their own right on account of personal injury, death or property losses.

The United States Government agrees to paragraph 16 of the annex in principle, but decisions as to the carrying out of the undertaking will have to be made by United States army and navy authorities in London.

Accept, Sir, the renewed assurances of my highest consideration,

John G. WINANT

The Right Honorable Anthony Eden, M.C., M.P.
Secretary of State for Foreign Affairs
Foreign Office
London, S.W.1

III

The British Secretary of State for Foreign Affairs to the American Ambassador

FOREIGN OFFICE, S.W.1.

1st May, 1944

No. W 5776/150/64

Your Excellency,

I have the honour to refer to Your Excellency's note No. 3493 of the 28th March, concerning the question of civil claims arising in tort against members of the United States Forces in the United Kingdom.

2. I was most gratified to learn that the United States Government are able to accept the conditions and limitations which I attached, in my note No. W 3151/150/64 of the 29th February and in the annex thereto, to the acceptance by His Majesty's Government of responsibility for a settlement as a matter of reciprocal aid of a number of classes of such claims. I am further most grateful for your assurance that the United States Government for their part will make similar arrangements for the settlement under Lend-Lease of such claims arising out of the acts of His Majesty's Forces in the United States in the course of their military duties.

3. I am able to confirm the interpretation placed by the United States Government upon paragraphs 6 and 11 of the annex to my note of the 29th February. In stipulating in the former paragraph that the United States authorities should supply a retainer to the Treasury Solicitor I have used the word "retainer"

in the sense of an authority to act on behalf of the defendant. The intention of the latter paragraph is, as the United States Government assumes, that claims should not be brought by one Government against the other. It is not suggested that the claims of United States nationals in their own right on account of personal injury, death, or property losses should be waived.

4. Your Excellency is no doubt aware that on receiving your note under reference, I announced in Parliament on the 30th March that a satisfactory solution to this problem had been reached. At the same time I circulated a written statement of the details of this solution in the official report of Parliamentary debates, and I enclose ten copies of this statement for your information.

5. I shall be grateful if you will inform the United States Government of the pleasure with which I have received their acceptance of the proposals made to them and of my satisfaction that it has been possible to reach a settlement of this matter.

I have the honour to be, with the highest consideration, Your Excellency's obedient Servant,

(For the Secretary of State)
E. E. CROWE

His Excellency
The Honourable John G. Winant
etc., etc., etc.
1, Grosvenor Square, W.1