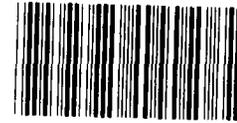


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BY THE COMPTROLLER GENERAL
Report To The Chairman,
Committee On Appropriations
House Of Representatives
OF THE UNITED STATES

**Military Damage Claims In
Germany--A Growing Burden**



113653

Over 200,000 U.S. Army troops in West Germany train and exercise extensively to maintain combat readiness. The result is millions of dollars of damage to German property. Cost sharing agreements provide for Germany to pay a portion of the claims costs; the Department of Defense's portion was about \$38 million in 1979.

The payment of damage claims in West Germany increased from \$5.5 million since 1975 because of accumulated backlogs of claims, lack of funds with which to pay claims each year, the great increase in the number and size of training maneuvers, and the impact of inflation and devaluation of the dollar in Germany.

Because the increasing costs are becoming a major burden, it may be time to seek a new cost sharing agreement.



512331

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COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON, D.C. 20548

B-198641

The Honorable Jamie Whitten *L. R.*
Chairman, Committee on Appropriations
House of Representatives

HSE 00302

Dear Mr. Chairman:

In response to your November 29, 1979, request, and subsequent meetings with Committee staff, we reviewed the amount and types of host nation support and cost sharing provided by our allies to U.S. military forces stationed overseas. This report, the first in a series, addresses the reasons for the large increases in the amount of damage claims paid by U.S. forces overseas, the administration of the claims payment process by the Department of Defense, and the possibilities for reducing U.S. damage claim costs through cost sharing or other methods.

We discussed a draft of this report with executive branch officials and the report reflects their comments.

As arranged with your office, unless you publicly announce its contents earlier, we plan no further distribution of this report until 7 days from the date of the report. At that time we will send copies to interested parties and make copies available to others upon request.

Sincerely yours,

James R. Ataska

Comptroller General
of the United States

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COMPTROLLER GENERAL'S
REPORT TO THE CHAIRMAN,
COMMITTEE ON APPROPRIATIONS
HOUSE OF REPRESENTATIVES

MILITARY DAMAGE CLAIMS IN
GERMANY--A GROWING BURDEN

D I G E S T

From 1975 to 1979, damage claim reimbursements to the Federal Republic of Germany (FRG) increased sevenfold, from \$5.5 million. Moreover, payments doubled in just the last year of the period. Three factors influenced this trend:

- unforeseen fluctuations in both funds required and available;
- extent and nature of military exercises conducted; and
- adverse economic impacts of inflation and the devaluation of the U.S. dollar.

The U.S. Army Claims Service has a very limited capacity to compile and evaluate data onhand to accurately predict funding amounts required to reimburse the FRG in a timely manner. Also, it has no way of knowing just when FRG offices will require payment. Consequently, amounts appropriated for claims in West Germany have been insufficient to fully reimburse the FRG. (See p. 5.)

At the end of fiscal year 1979, the Army reprogrammed \$14.6 million to offset the funding shortfall representing prior year claims. This accounted for most of the large increases in claims payments, from \$19 million in 1978 to \$38.7 million in 1979. Moreover, because of the timing of the payments, the Army incurred excess costs of about \$900,000 because of the adverse exchange rate. (See pp. 6 and 7.)

Overall increases in combat troops, their training, and equipment capabilities have resulted in more maneuvering in areas away from designated training reserves. Current U.S. training areas are clearly inadequate

to handle today's large-scale maneuvers. As more exercises are held in open country and on private land, damage claims increase. (See p. 7.)

Between 1970 and 1973, the dollar depreciated 40.9 percent and between 1976 and 1979, it lost another 38.6 percent against the German mark. This dramatic drop in the purchasing power of the dollar has greatly increased the actual claims cost to the United States in recent years. Similarly, inflation has also adversely affected the cost of settling claims because most repairs to damaged property are performed by locally acquired labor and materials. Together, inflation and devaluation have added millions of dollars to U.S. claims costs. (See p. 10.)

The Army does very little to verify damage claims payments and relies on the FRG to investigate and adjudicate the claims and pay the claimants. The Claims Service, together with Army units, merely establish that U.S. units were present when and where the damage occurred. The almost total lack of U.S. involvement in verifying even very large dollar amount claims is questionable. The United States needs to assume a more direct role in the investigation of high-cost claims, especially those involving road damage. (See p. 14.)

U.S. troops receive extensive training on damage control and exercise schedules are modified when excessive damage is anticipated. Adverse weather conditions (which can add to damages) are often the cause for exercise schedule changes or cancellations. Combat engineers are also used to repair damages when possible.

The Claims Service, even with limited resources, teaches U.S. troops how to avoid damage. This training is supplemented by operational military units.

Limiting maneuver damage can, however, have an adverse impact on U.S. readiness. Concern for both damage control and realism are important priorities that must be balanced. Sustaining and improving current damage limitation efforts with balanced attention toward exercise realism is a worthwhile Department of Defense (DOD) objective. (See p. 19.)

ALTERNATIVE CONSIDERATIONS MAY REDUCE U.S. CLAIMS COSTS

Under the current Status of Forces Agreement formula, the United States and FRG have been bearing about 80 percent or more of the total cost of NATO exercise damage done in Germany. In fiscal year 1978, the United States and FRG together incurred total costs in Germany of about \$62 million. (See p. 24.)

Paragraph 5(f) of Article VIII of the Agreement provides for alternative settlement measures when current practices cause serious hardship to parties involved. With the cost of damage claims rising and just two countries bearing the bulk of these costs, it may be time to consider an alternative funding method. One means would be to establish a central NATO fund to provide for reimbursements while host countries continue to adjudicate and pay the claimants. Another alternative is to seek to have the Germans pay a greater share of these costs. (See p. 25.)

RECOMMENDATIONS

The Secretaries of State and Defense should take appropriate action to:

- obtain FRG cooperation in jointly projecting more accurate annual funding requirements and in establishing a mutually acceptable monthly reimbursement level; and
- develop a strategy for damage claims which considers including claims in bilateral cost sharing negotiations with the FRG and approaching the North Atlantic Council under the provisions of paragraph 5(f) of the NATO

Agreement seeking relief from the increasing damage claims burden.

The Secretary of Defense should:

- expedite ongoing actions to improve the data collection and analysis system for improving budgetary judgments and other overall management needs of the Army Claims Service in Europe; and
- strengthen the Claims Service's capability to verify high-cost damage claims in the FRG through the use, whenever possible, of qualified engineering personnel already stationed in the FRG.

AGENCY COMMENTS

DOD commented that the GAO report was fair and accurate in most respects and provided a very useful overview of the claims issue. DOD pointed out that since GAO's report was drafted, the Army has again fallen behind in reimbursements to the FRG and will not have enough money to pay all claims submitted in fiscal year 1980. In such a case, the FRG could move to limit U.S. military exercises. This puts DOD in a difficult negotiating position with the Germans in carrying out GAO's first two recommendations. DOD especially feels that using claims costs as a cost sharing item in negotiations with the FRG or with NATO would be difficult and have little chance of success. The Department of State was also given a draft of GAO's report. However, GAO did not receive official comments from State.

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ABBREVIATIONS

DCO	Defense Cost Offices
DOD	Department of Defense
FRG	Federal Republic of Germany
HNA	Host Nation Activities
NATO SOFA	North Atlantic Treaty Organization Status of Forces Agreement
USACSEUR	U.S. Army Claims Service, Europe

CHAPTER 1

INTRODUCTION

Since World War II, U.S. armed forces have been stationed in many friendly foreign countries for the purposes of mutual security. Locating large numbers of military personnel in other countries and conducting military activities there inevitably causes damages and injuries to foreign property and citizens. Provisions governing the adjudication and payment of damage claims are a necessary part of international agreements on the status, rights and obligations of U.S. forces assigned overseas.

The North Atlantic Treaty Organization Status of Forces Agreement (NATO SOFA), dated June 19, 1951, is the most widely known such agreement and has served as a model for agreements with other U.S. allies.

CLAIMS COST SHARING AND ADMINISTRATION

The Defense Claims Program is administered by Judge Advocate Generals of the military departments. The claims headquarters for each service is in the Washington, D.C., area. Claims are actually settled and processed in 375 service claims offices worldwide (175 Army, 135 Air Force, 64 Navy, and 1 Marine Corps).

Most claims are paid in the Federal Republic of Germany (FRG). Single service claims responsibility in the FRG is exercised by the U.S. Army. The U.S. Army Claims Service, Europe (USACSEUR), located in Mannheim, West Germany, is the Army office for receiving and processing FRG claims. These claims are governed by Article VIII of the NATO SOFA, the 1963 U.S. FRG Supplementary Agreement, and an implementing Administrative Agreement signed in October 1965. Under these agreements, USACSEUR provides reimbursements to the FRG for the U.S. share of claims settlements. The normal rate of U.S. reimbursement is 75 percent of amounts actually paid to claimants by the FRG. The remaining 25 percent is absorbed by the FRG. These rates are typical of U.S. cost sharing for damage claims worldwide.

INCREASING CLAIMS COSTS

The following table provides a breakout of U.S. claims paid to host nation governments for the past 5 years.

CLAIMS DEFENSE PAYMENTS TO FOREIGN GOVERNMENTS (note a)

<u>Country</u>	<u>Fiscal Year</u>					
	<u>1976</u>	<u>197T</u> (note c)	<u>1977</u>	<u>1978</u>	<u>1979</u>	<u>1980</u> (note b)
	<u>(000 omitted)</u>					
Belgium	\$ 23	\$ --	\$ 6	\$ 26	\$ 182	\$ 210
Canada	--	--	1	33	18	15
France	412	10	5	100	183	232
Federal Republic of Germany	15,021	6,395	18,438	18,989	38,724	36,615
Greece	23	1	1	16	6	8
Iceland	6	36	44	23	24	25
Iran	10	3	3	13	--	--
Italy	81	--	239	21	229	95
Japan	240	66	257	615	811	800
Korea	559	142	794	436	837	914
Netherlands	--	46	18	--	--	5
Norway	5	1	83	79	10	4
Panama	51	3	10	13	11	16
Philippines	38	12	70	40	40	30
Spain	1	1	33	2	4	19
Thailand	38	2	12	--	27	24
Turkey	19	20	13	--	--	3
United Kingdom	17	35	64	68	248	400
All others	<u>38</u>	<u>11</u>	<u>76</u>	<u>41</u>	<u>70</u>	<u>63</u>
Total estimates	<u>\$16,582</u>	<u>\$6,784</u>	<u>\$20,167</u>	<u>\$20,515</u>	<u>\$41,424</u>	<u>\$39,478</u>

a/These figures represent amounts paid during the fiscal year. As explained in chapter 2, these amounts are not always a good indication of damage caused during the year because claims are often not submitted for payment until later years. The Claims Service does not maintain data on damage caused by year.

b/Estimated.

c/Transition quarter, July 1, 1976, to September 30, 1976.

Since 1973, approximately one-third of U.S. claims reimbursements--and over 90 percent of all foreign claims since 1976--have been paid to Germany. These reimbursements to the FRG have been increasing steadily in recent years. In fiscal year 1976, these payments were about \$15 million, in 1977 \$18.4 million, in 1978 \$19.0 million--by 1979 payments more than doubled to about \$38.7 million. The reasons for these increases are discussed in chapter 2.

OBJECTIVES, SCOPE AND METHODOLOGY

In response to a November 1979 request from the Chairman, House Committee on Appropriations, and subsequent meetings with Committee staff, we reviewed the amount and types of host nation support and cost sharing provided by our allies to U.S. military forces stationed overseas. This report, the first in a series, addresses the reasons for the large increases in the amount of damage claims paid by U.S. forces overseas, the administration of the claims payment process by the Department of Defense (DOD), and the possibilities for reducing U.S. damage claim costs through more equitable cost sharing or other methods. Because most of these claims result from damages caused during military training maneuvers, which are highly concentrated in the FRG, we focused our review there.

We received various briefings, researched international agreements and congressional testimony, interviewed DOD and Army officials at headquarters and field levels, and examined various other documents and records. We also observed FRG claims investigation practices and discussed these practices with officials on location in Nuernburg, Germany, at the FRG Defense Cost Office (DCO). We did not review the propriety or accuracy of any specific claims because, under NATO SOFA, these are FRG responsibilities.

Army overseas activities visited include:

- U.S. Army-Europe, Heidelberg, Germany.
- U.S. Army Claims Service-Europe, Mannheim, Germany.
- V Corps, Frankfurt, Germany.
- 8th Mechanized Infantry Division, Bad Kreuznach, Germany.
- 3D Battalion 68th Armor, Mannheim, Germany.

CHAPTER 2

KEY FACTORS INCREASING

TOTAL ANNUAL PAYMENTS

From 1975 to 1979, U.S. damage claim reimbursements to the FRG increased sevenfold, from \$5.5 million to \$38.7 million. In just the last year of that period, moreover, payments doubled. The following table provides a breakout of claims paid to the FRG during the past 5 years. As shown, reimbursements to the FRG are escalating due largely to damages caused during maneuvers or military training exercises.

TYPE OF CLAIM

<u>Fiscal year</u>	<u>Maneuvers</u> (note a)	<u>Torts</u> (note b)	<u>Total</u>
	------(millions)-----		
1975	\$ 3.4	\$ 2.1	\$ 5.5
1976	10.3	4.7	15.0
1977	4.9	1.5	6.4
1977	12.7	5.7	18.4
1978	13.7	5.3	19.0
1979	<u>29.4</u>	<u>9.3</u>	<u>38.7</u>
	<u>\$74.4</u>	<u>\$28.6</u>	<u>\$103.0</u>
	(72%)	(28%)	(100%)

a/Maneuver claims include all damages to real estate, especially roads and fields or farmland.

b/Tort claims are all other claims, usually traffic accidents involving military vehicles.

Why such startling increases from just 5 years ago, and why the huge jump from 1978 to 1979? Three key factors have influenced this trend: (1) the unforeseen fluctuations in both funds required and available; (2) the extent and nature of military exercises conducted; and (3) the adverse economic impacts of inflation and the devaluation of the U.S. dollar toward the German mark.

FUNDS REQUIRED AND AVAILABLE
ARE NOT ACCURATELY FORECASTED

USACSEUR, which has primary responsibility for administering the SOFA claims reimbursements to the FRG, has a very limited capacity to compile and evaluate data onhand and, therefore, to accurately predict the funding required to reimburse the host nation in a timely manner. These limitations result largely from resource constraints in the staffing and automated analysis areas and virtually total dependence on the host nation for the timing and volume of reimbursements.

USACSEUR's German Claims Branch handles all FRG tort and maneuver damage claims. The Branch is headed by an Army officer and the maneuver section includes only one enlisted serviceman and two local national employees. USACSEUR's staff level has not increased though the volume of claims processed has more than doubled over the past 5 years to a level of over 50,000 claims in fiscal year 1979.

The nature and volume of claims activity also dictates a USACSEUR need for an automated system. It is virtually impossible to manually assemble and analyze the basic data available without such a system. This need was supported in a recent Defense Audit Service report.^{1/}

According to the report, the Army operates an automated claims data collection system. However, international agreement and foreign claims are excluded from the system's data base. As a result, USACSEUR is unable to accurately estimate the contingent liability for claims owed to Germany. The report also pointed out there were still unsettled claims relating to exercises dating back to 1969.

USACSEUR officials support the report's position that an automated system is needed to improve their analysis capacity and overall effectiveness. However, the acquisition of such a system has apparently received a low priority by the Army as no firm action has been taken to date.

Another basic variable limiting USACSEUR's ability to predict damage levels is the weather. Unpredictable weather conditions can add substantially to the amounts and types of damage inflicted upon the countryside during military exercises.

^{1/}"Report on the Review of the Claims, Defense Program"
(11-23-79/No. 80-033).

For example, an early thaw, a sudden rainstorm, or an exceptionally dry season can force Army units into choosing whether to cancel or scale down an exercise or to proceed as originally planned, thereby causing extensive road and field damage. While it is extremely difficult to accurately quantify the amount of damages that can be attributed to a change in weather, it is clear that the Army considers it a very serious factor in scheduling maneuvers.

To further complicate budgeting for claims reimbursements, USACSEUR has no way of knowing just when FRG offices will require payment. While some FRG offices submit requests for reimbursement regularly, a request may involve many past due claims so amounts can vary greatly. In most cases, reimbursement requests are received by USACSEUR on a very irregular basis. In an extreme example, one FRG office had a \$6 million claims backlog dating back over 2 years and recently forwarded billings to USACSEUR for payment without prior notice. Coordination between the DCO and USACSEUR officials is needed to project and systematize payment requirements.

Because of the impact of these uncertainties on the budgeting process and the annual definite appropriation under which claims are funded, USACSEUR has been consistently underfunded; that is, the appropriation available to pay claims reimbursements to the FRG has been too small to fund all bills submitted to USACSEUR. The Defense Audit Service report addressed this underfunding, estimating the shortfall at the end of fiscal year 1979 at about \$51 million worldwide. The shortfall in the FRG was estimated at \$16.6 million. DOD has attempted to alleviate this problem in the past by appealing to the Congress for an indefinite appropriation that would allow greater flexibility in paying these claims reimbursements. The Defense Audit Service report endorsed this effort and called for Office of Management and Budget support.

Fiscal 1979 reprogramming eliminates backlog, but at high price

At the end of fiscal year 1979, the Army moved to eliminate the claims shortfall in the FRG by reprogramming \$14.6 million to USACSEUR. While this action paid legitimate obligations to the FRG, it resulted in excess costs of about \$900,000 because the full amount was changed to German marks and paid to the FRG during September 1979, when the dollar was at its lowest point in history up to that time toward the mark.

In the last month of fiscal year 1979, USACSEUR paid over \$19 million dollars in claims reimbursements to the FRG, or almost half the total payments for the year. This \$19 million

was converted to Deutsche marks (DM) at an average rate of DM 1.76 per \$1. During the previous 11 months of the fiscal year, the average exchange rate in USACSEUR payments was DM 1.87. If the reprogrammed funds had been spent during any other month, USACSEUR would have saved considerable money or been able to pay off more claims. Comparing the average exchange rate for the previous 11 months to the rate paid in September, USACSEUR paid an extra \$900,000. Obviously, USACSEUR had no way of knowing September would be a low point for the dollar, and the reprogrammed money had to be spent in that month or it would lapse. However, this points out the advantages of accurately predicting total claims requirements and negotiating systematic payment arrangements with the FRG.

This reprogramming action accounts for most of the large increase in claims payments from 1978 to 1979. Damage was not necessarily greater in 1979. Instead, USACSEUR paid off claims that had been submitted for payment in previous years or had been held by the Germans because they knew USACSEUR was out of money. This "catching up" with damage claims from previous years overstated 1979 reimbursements.

MORE TRAINING AND LARGER EXERCISE AREAS CAUSE INCREASED CLAIMS PAYMENTS

Overall increases in the amount of military training performed in the FRG directly affects the amount of damage claims. Military equipment improvements, such as increased mobility and fire power have had a similar impact because more and larger training areas have become necessary for effective training. This requirement has resulted in increased maneuvering in areas away from designated training reserves exempt from damage claims to locations which are not exempt.

Since 1975, U.S. Army forces stationed in the FRG have increased from about 188,000 to nearly 240,000 in 1979. Under Public Law 93-365 (the Nunn Amendment), the authorized noncombat component U.S. military strength in Europe was reduced by 18,000. However, the law correspondingly authorized increased combat strength by amounts equal to reductions in noncombat personnel. As a result, two U.S. mechanized combat brigades were added to U.S. forces in the FRG as well as two field artillery battalions and an attack helicopter company. A net total of 13,435 combat positions alone were added in fiscal years 1975 and 1976 to the Army in the FRG by deploying new combat units and increasing force levels in existing combat units.

In addition, while most U.S. forces in the FRG are located

units, one of the two additional brigades was stationed at Garlstedt, near Bremerhaven in northern Germany. This northern location is new to U.S. forces and therefore more prone to damage.

Increasing troop levels and commensurate increases in military equipment, especially more damage-producing track vehicles, have increased the need for training exercises. In 1979, for example, 1,455 "maneuver rights" or notices of planned exercises were issued compared to only 700 in 1974. More training requires more and more land which often means more damage. For example, a typical deployed infantry battalion in World War II covered only 1.57 square kilometers compared with 34.8 square kilometers today. This is largely because of the higher degree of mechanization in these units. In one infantry division in 1978, only 15 percent of the troops were foot soldiers. This compares with 30 percent in World War II and 60 percent in World War I. In addition, today's tanks hit targets at greater distances and with greater armor-piercing potential. For example, while the World War II tank could only penetrate 5 inches of armor at 500 meters, a modern tank can penetrate 9.5 inches at 2,000 meters. These advances require extensive battlefield movement and maneuvering over larger areas by combined armed forces. Such forces include tanks, armored personnel carriers, and supporting mobile artillery, mortars, antitank, and air defense weapons. These forces must operate over wide areas in varying terrain. Movements of over 100 miles in short periods of time are not considered excessive.

Additional troops and equipment, along with the impressive range and capabilities of new equipment and the resultant change in traditional battlefield tactics, have forced operational-size military units to outgrow existing training areas and operate increasingly in the German countryside.

Areas presently reserved for U.S. training, which are exempt from damage claims, consist of local training areas which are relatively small locations adjacent to most U.S. unit positions, and major training areas in Grafenwohr, Hohenfels, and Wildflecken. According to Army officials, U.S. training areas are currently being utilized to peak capacity on a full-time basis and still cannot accommodate all training requirements.

Current U.S. training areas are clearly inadequate to handle large-scale maneuvers. This is especially significant in larger exercises such as those involving a corps, which usually includes two divisions. For example, during the exercise "Certain Shield" in 1978, a corps occupied about 100 kilometers (62 miles) of front to a depth of 200 kilometers (124 miles).

COMPARISON OF AREA REQUIRED FOR LARGE-SCALE EXERCISES
TO EXISTING U.S. ARMY TRAINING RESERVES IN GERMANY



Each of its two divisions were responsible for 40 to 50 kilometers of the front to a depth of 50 to 70 kilometers. The maneuver area of these divisions as shown on the map on page 9, required nearly 50 times more land than was available at the adjacent Wildflecken major training area.

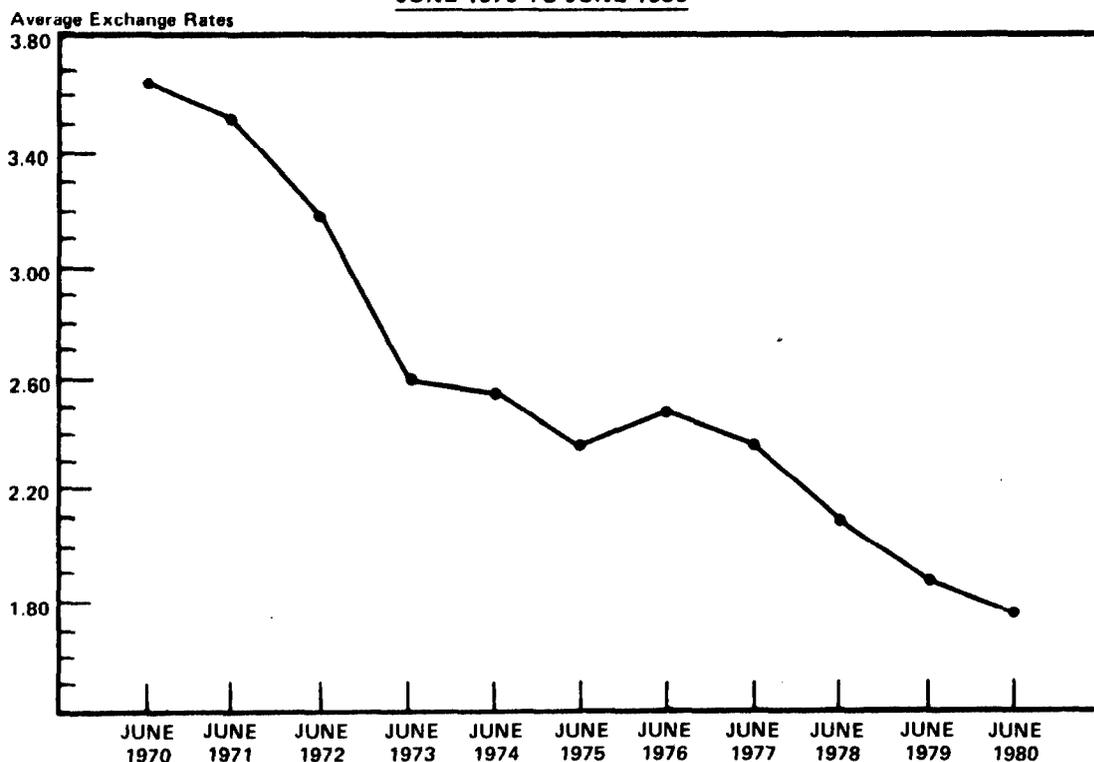
Even scaled-down exercises require larger areas in which to operate than those afforded by current U.S. training locations. For example, a 1978 exercise called Cardinal Point II involved only two brigades, but required nearly 15 times more land than was available at a nearby training area (see map on p. 9). This same training area, which in 1958 was able to accommodate division-size maneuvers, was usable only as a firing range in 1978.

CURRENCY DEVALUATION AND INFLATION
ALSO INCREASE CLAIMS PAYMENTS

Two significant factors contributing to the rapid increase in the cost to the U.S. of claims for damages over the past several years are inflation and devaluation, which have eroded the overseas purchasing power of the dollar.

The graph below illustrates the erosion of the U.S. dollar against the Deutsche Mark over June 1970 to June 1980.

GERMAN MARK PER U.S. DOLLAR EXCHANGE RATES
JUNE 1970 TO JUNE 1980



Source: Federal Reserve Bulletin

Until mid-1971, the dollar/mark exchange rate was fixed at a rate of DM 3.63 per \$1. However, after mid-1971, when the dollar was allowed to float, several adjustments were made to the exchange rate. By June 1973, the dollar had depreciated by 40.9 percent. After 3 years of relative stability, the dollar lost 38.6 percent against the mark from June 1976 to March 1979.

Because the U.S. Army Claims Service must pay all its German claims in local currency, which the Army buys from commercial sources, the dramatic drop in the purchasing power of the dollar has greatly increased the actual claims cost to the United States in recent years.

The effect of the dollar's decline upon the cost of claims can be seen by a comparison of the actual costs to the United States of REFORGER 75 and REFORGER 78. 1/

For REFORGER 75 claims, the average exchange rate which the United States paid for reimbursements was DM 2.45 per \$1. As of January 1980, \$4.6 million in REFORGER 78 claims were paid at an exchange rate of DM 1.78. This less favorable exchange rate for REFORGER 78 claims cost the United States more than \$1.2 million or 26 percent of the claims paid so far.

The domestic FRG inflation rate also has a significant impact upon the cost of settling claims. Because virtually all repairs to damaged property are undertaken by German contractors, using locally acquired labor and materials, the increasing cost of these factors directly affects the request for reimbursement made by the FRG Government to the United States.

1/ REFORGER (Return of Forces to Germany) is the name given the deployment of U.S.-based Army forces to Germany with other European-based U.S. and Allied forces. These exercises are one of a series of NATO multinational maneuvers held each fall under a common scenario. They are conducted on a very large scale and consequently are costly in terms of maneuver damage. For example, REFORGER 78 involved 323,000 American, German, British, Belgian, Dutch, Norwegian, Danish and other Allied ground and air troops with more than 5,000 tanks, 1,500 aircraft, and vast columns of tracked and wheeled vehicles.

Inflation, as reported by the FRG Government, has generally been lower than the U.S. rate. Over the period 1970 to 1979, there has been an official inflation rate of 41.4 percent in the FRG (measured by increases in their consumer price index). From 1975 to 1979, inflation totaled 15.6 percent, just over 3 percent a year. Thus, if we convert 1979 claims costs to 1975 value, they would be about 15-percent less. This would reduce REFORGER 78 costs, for example, by about \$500,000. Thus devaluation and inflation account for about \$1.7 million, or about 37 percent, of the cost of claims from REFORGER 78 compared to REFORGER 75.

CONCLUSIONS AND RECOMMENDATIONS

The increasing cost of damage claims in the FRG has been partly caused by factors such as larger exercises and the dollar devaluation, which are beyond the control of the U.S. Army Claims Service. Claims reimbursements to the FRG in recent years have been somewhat chaotic because of USACSEUR's inability to accurately forecast its requirements. While the Claims Service believes an indefinite appropriation would solve their funding problems, we are not convinced that such a funding mechanism would provide the necessary discipline and control needed. We believe that closer U.S. and FRG coordination in estimating claims liabilities and budgeting reimbursements would help control U.S. claims payment.

[We recommend that the Secretaries of State and Defense take appropriate action to obtain FRG cooperation in jointly projecting more accurate annual funding requirements and in establishing a mutually acceptable monthly reimbursement level. We believe this action will contribute positively toward resolving the annual budgetary and shortfall problems. We also recommend that the Secretary of Defense expedite ongoing actions to modernize the data collection and analysis system for improving budgetary judgments and other overall management needs of USACSEUR.]

AGENCY COMMENTS

In commenting on our draft report DOD pointed out that since the draft was prepared, the Congress denied its request to reprogram \$12.3 million in fiscal year 1980 funds for payment of FRG claims. Consequently, DOD maintained that no funds remain for the last 2 months of the fiscal year to pay maneuver claims and DOD faces substantial backlog of claims reimbursements. Defense officials are seriously concerned that U.S. failure to meet claims reimbursement obligations might prompt the FRG to refuse U.S. military units the right to maneuver. Although no evidence of such German intent could be cited by

DOD officials, such action could adversely affect the combat readiness and tactical capabilities of U.S. forces in Europe. Moreover, Defense officials consider that a failure to pay these claims constitutes a unilateral breach of a U.S. international obligation which could weaken our negotiating position in seeking more cost sharing.

Concerning our recommendation that a mutually acceptable monthly reimbursement level for claims be coordinated with the FRG, DOD believes this approach has merit but would be difficult to implement unless all existing damage claims obligations are paid.

DOD disagreed with our conclusion that an annual indefinite appropriation would not provide the necessary discipline and control to minimize damage claims costs, citing a Defense Audit Service report which recommended such an approach. DOD stated,

"Remaining on a current basis for the payment of treaty obligations is more important than the questionable practice of using the annual budget to attempt to control claims costs."

It appears to us, however, that the annual budget and appropriation process is the best way the Congress has to attempt to control the rising cost of damage claims. We believe the measures we recommend in this report, especially computerizing claims data and analysis and consulting with the German claims offices to agree on reimbursements, will provide DOD with a much stronger basis for justifying claims requirements to the Congress.

The Department of State reviewed a draft of our report but did not provide official comments.

CHAPTER 3

LIMITED DIRECT U.S. VERIFICATION

OF CLAIMS REIMBURSEMENTS

The Army does very little to verify damage claims payments and relies heavily on FRG officials to investigate and adjudicate the claims and pay the claimants. We believe it is necessary for the United States to assume a more direct role in the investigation of damages caused by U.S. forces.

HOW A DAMAGE CLAIM EVOLVES

Typically, prior to USACSEUR involvement, military operating units which intend to conduct an exercise submit a "maneuver right" notification to U.S. Army-Europe, Deputy Chief of Staff, Host Nation Activities (HNA). This notification presents HNA with the timing, location, and unit composition of personnel, tracked-vehicles, wheeled-vehicles, and other equipment for the planned training. HNA immediately forwards a copy of the notice to USACSEUR so that a potential damage claim file can be established.

The military units, in conjunction with HNA, coordinate with appropriate FRG local officials, including local commissioners, mayors, foresters, highway departments, and police. This coordination helps to identify certain locations, such as newly constructed roads or areas where movement with tracked vehicles would create excessive damage. Also, it involves FRG officials in exercise planning, thereby reducing potential resistance to maneuvers.

Prior to maneuvers, when units conduct pre-exercise surveys for operational planning purposes, they will sometimes note pre-existing damage to avoid future claims.

After the exercise has actually been conducted, units forward a Master Maneuver Damage Report to HNA which then forwards the report to USACSEUR. These reports generally include data on exercise dates; property, equipment and units or personnel involved; a detailed map overlay showing unit location and/or movements during an exercise; and a listing of known damages caused during the exercise or pre-exercise damage.

Damages caused during an exercise are then reported by injured parties to the FRG state-level DCO. There are 45 DCOs located in the FRG. USACSEUR deals regularly with 23 of them, 22 in southern Germany where most U.S. exercises are held and 1 in Bremen which processes all U.S. claims arising in northern Germany. Of the 22 in southern Germany, those located in Nuernburg, Wuerzburg, and Frankfurt process 60 percent of all U.S. claims with USACSEUR.

Injured parties submit their claims through the responsible DCO for the area where the damage occurred. Under FRG law, claimants must initially file within 3 months of the damage incident and the claim must be finalized within 2 years.

About 90 percent of maneuver damage claimants are private German residents, mostly farmers who suffer crop and agricultural field damages. The remaining 10 percent are generally municipalities or other governmental units whose most common damage claim is for field or country roads and highways. While the majority of claimants are individual residents, their damage claims constitute only about one-third of the costs, while governmental units receive two-thirds. This is largely because damage repair costs to roads far exceed those for fields. For example, repairs to a country road can range from \$40,000 to \$50,000 for 1 kilometer while the cost to restore an entire 16,000 square meter field may total only about \$1,700.

KEY FRG VERSUS MINOR U.S. ROLE IN PROCESSING A CLAIM

The primary role in damage claim processing is performed by the German DCOs while USACSEUR, together with Army units, merely establish U.S. force presence in the area of reported damage.

We visited the DCO in Nuernburg to discuss and observe its procedures for investigating and adjudicating damage claims. Maneuver damages asserted by the claimants are investigated as soon as possible at the scene of the incident. Each DCO employs special experts for assessing the various types and costs of damage. The Nuernburg DCO, for example, employs five experts on crops, one on forestry, two on buildings, and four on roads and other types of damage. Additional experts in these areas are detailed from other government agencies during heavy workload periods. The Nuernburg DCO averages 12,000 to 14,000 maneuver damage claims each year or 8,000 to 10,000 for years when REFORGER exercises are not held in the Nuernburg area of responsibility. Tort claims, usually traffic accidents, are submitted to the DCOs with evidence

such as repair bills, expert opinions, or medical certificates. The expert opinions are normally rendered by duly appointed, independent, sworn experts who are admitted to the courts. The DCO examines these claims and presents settlement offers to the claimant who may file legal suit. An average of over 800 claims cases are fought and settled each year in German courts.

The FRG adjudication process achieves about a 25-percent reduction in the amounts paid compared to the amounts claimed by injured parties as shown below.

SOFA MANEUVER/TORT
CLAIMS REIMBURSED

<u>Fiscal year</u>	<u>Total claimed</u>	<u>FRG amount paid</u>	<u>FRG reductions</u>
1979	\$65.6	\$50.4	\$15.2 (23%)
1978	\$39.4	\$28.9	\$10.5 (27%)
1977	\$44.0	\$32.0	\$12.0 (27%)

Once the DCO process is completed, a claim notification is forwarded to USACSEUR. The notice will include details such as the nature, timing, and location of the damage, the identity of the claimant, and the amount claimed.

USACSEUR's role is only to verify U.S. presence. Upon receipt of claim notice from a DCO, USACSEUR merely cross-checks the detail in the DCO notice against the Master Damage Reports received from military units. The three basic elements considered are timing, location, and damage type such as whether the damage was caused by a track or wheel vehicle. The DCO notice is then certified accordingly as follows:

Scope--defined to show the United States was involved in the line of official duty and will accept payment responsibility up to 75 percent of the stated amount of the claim.

Non-Scope--defined to show the United States was involved outside the line of duty and will accept payment responsibility for 100 percent of the claim as stated (used only in tort claims, largely traffic accidents).

Not-Involved--defined to show the United States denies responsibility and refuses payment.1/

Scope-Exceptional--defined to show the United States was involved in the line of official duty but denies part or all responsibility for damage caused and payment.2/

About 98 percent of the claims notices are returned to the DCOs stamped "scope." Reimbursement listings are prepared by the DCOs, after claimants are paid, and are submitted to USACSEUR. Once the schedules are checked by line entry to verify each was certified scope and to assure mathematical accuracy, a reimbursement voucher is prepared and submitted to an Army finance office to pay the DCO.

In two cases, USACSEUR does not even verify U.S. involvement. The so-called "simplified procedure," which is used for all maneuver damage claims under \$500, accounts for the majority of claims processed. For example, of the total maneuver and tort claims reimbursed by the United States in fiscal year 1979, about 70 percent were under this simplified procedure. In these cases, USACSEUR only receives reimbursement listings to check and pay. The certification process is eliminated.

The second common case in which the certification step is waived is for multinational exercises. Post-maneuver conferences are attended by officials from each nation as well as representatives from the DCOs involved and USACSEUR representatives to determine damage and claim payment responsibilities. Basically, if damage can be identified with a certain nation, that nation is responsible for the normal 75-percent share rate. If German military units are involved, the FRG shares equally with the other nations. When German units do not participate, the FRG pays one-half of an equal participant's share (for example, the United States, Canada, and FRG pay 40, 40, and 20 percent, respectively). The sharing responsibilities are detailed

1/ This certification is applied at a rate of about 1 percent of the total claims processed. Generally, when applied, this certification results in DCOs denial of any payment to claimants.

2/ This certification is rarely used, only for about 1/2 percent of total claims processed. It applies when actions of the claimant were deemed irresponsible, for example, intoxication at the time of damage incident.

in a post-maneuver conference agreement. This document is used by USACSEUR to cross-check directly against the DCO reimbursement listings, again eliminating the certification process.

USACSEUR officials are very much aware of the limited U.S. role in the overall claims process, especially in the area of claims investigation. They consider more U.S. emphasis could best be placed on use of U.S. personnel to investigate the expensive road damage claims. Such U.S. representatives could accompany the DCO investigation staff at least on a spot-check basis.

CONCLUSIONS AND RECOMMENDATIONS

The FRG has a sophisticated and experienced organization for adjudicating and processing damage claims. In our visit to the Nuernberg DCO, we were impressed with the expertise and professionalism of the claims examiners. We have no reason to doubt the accuracy or integrity of the DCO claims determinations. However, the almost total lack of U.S. involvement in verifying even the very large dollar amount claims is questionable. Now that claims have greatly increased in cost, it is reasonable to expect increased surveillance and monitoring of the claims payments. We believe, at a minimum, USACSEUR should make physical verification of damages and monitor the DCO settlement amount for high-cost road damage claims. Qualified U.S. personnel may be available in existing engineer units in the FRG to perform this function on a part-time basis.

[We recommend that the Secretary of Defense strengthen USACSEUR's capability to verify high-cost damage claims in the FRG through the use of qualified engineering personnel already stationed in the FRG, whenever possible. If such personnel cannot be used on a part-time basis, the Secretary should provide appropriate resources to USACSEUR to obtain a qualified staff member to perform this function.]

DOD written comments on our draft did not address this issue. However, DOD claims officials who reviewed the draft discussed their comments with us. They believe this recommendation has merit and will be pursued.

CHAPTER 4

DAMAGE LIMITATION A

SERIOUS U.S. PRIORITY

We were generally impressed with the level of damage prevention efforts demonstrated by the U.S. Army in Germany. Troops receive extensive training, and exercise schedules are modified when excessive damage is anticipated. Sustaining and improving the current level of effort with appropriate attention to exercise realism is a worthwhile DOD objective.

SOLDIERS ARE MADE AWARE OF NEED FOR DAMAGE CONTROL

USACSEUR, even with its limited resources, makes a substantial effort on damage control training. Classes are provided annually at central locations for all military unit claims officers who are responsible for preparing the Master Maneuver Damage Reports. Special emphasis is placed on properly reporting maneuver damage and tort incidents. In addition, special maneuver damage presentations are given to all maneuvering units prior to their participation in an exercise. These presentations are based on color slides prepared by USACSEUR during past exercises and attempt to point out ways of avoiding damage. Separate presentations are also provided by USACSEUR training classes to 57 battalion-level units, 6 commanding generals, and 23 vehicle-drive/first-line supervisors.

Training and other measures to avoid maneuver damage are also practiced within the operational military units. The Army provides detailed guidance to units establishing procedures for the conduct of maneuvers in the FRG. All units are provided a complete range of instructional material to be used in maneuver damage prevention training, in learning proper damage reporting procedures, and in coordinating their exercise plans with German agencies. For example, photo slide and video-cassette briefings on the techniques of reducing damages are provided to units for their own training and they are also given maps identifying state and local boundaries and area officials who must be contacted for coordination.

Adverse weather conditions, as mentioned earlier, can have a serious impact on damage levels and subsequent claims. For example, last winter a thaw and heavy rain caused the soil to become very soft and more susceptible to damage. These conditions prompted a February 1980 Army directive that field exercises be held to an absolute minimum. Also, REFORGER 79,

the first winter maneuver conducted since 1973, was halted in mid-exercise because of poor weather conditions and the possibility of high maneuver damage.

Similar restrictive actions are taken when concern arises that specific locations have been subject to excessive use by training forces. For example, prior to REFORGER 78, areas were designated "off limits" because the locations were subject to very heavy training use in recent years.

Another measure taken is using available combat engineers to correct damages when possible. For example, they remove mud and oil spills from roadways which not only can serve to reduce potential damage claims but can also aid in preventing vehicle accidents.

General damage prevention awareness is also enhanced by providing unit personnel with cards to carry in their possession as a reminder of the Army's concern for limiting damage as shown below:

HQs V CORPS

THE ELEVEN COMMANDMENTS OF MANEUVER DAMAGE

DON'T

1. Don't cut trees, nail signs to trees, or knock over trees with tracked vehicles.
2. Don't use climbers on trees or otherwise skin bark from the trees.
3. Don't enter areas used for tree nurseries and seedlings.
4. Don't destroy antihills in the forests.
5. Don't use cultivated fields and orchards if such use will damage growing crops.
6. Don't enter terrain drainage areas with tracked or wheeled vehicles unless the ground will support such vehicles.
7. Don't bury garbage in water collection areas.
8. Don't contaminate the soil with petroleum products.
9. Don't track the vehicle in front of you when traveling cross-country.
10. Don't make sharp turns (or neutral steer) unless absolutely necessary.
11. Don't travel on edge of road with tracked vehicles.

DO

1. Do avoid unnecessary costs by being maneuver-damage-conscious.
2. Do take precautions to prevent forest or brush fires.
3. Do report maneuver damages to your commanding officer.
4. Do comply with posted road restrictions and bridge classifications.
5. Do fill and level foxholes and emplacements.
6. Do police any area prior to departure.
7. Do minimize vehicular movement in bivouac areas.
8. Do cross railroads only at authorized crossings to avoid rail damage.
9. Do clear highway of excessive mud caused by vehicles entering road from field locations.
10. Do use a ground guide to check doubtful terrain.
11. Do coordinate with German officials prior to digging holes which may damage commercial communication lines.

AETV Form 46, 1 JUN 78

U.S. forces generally enjoy a very favorable reputation compared to other allied units training in the FRG. One ally with only about one-third the number of troops in Germany pays more in damage claims per man annually than does the United States.

ACTIONS TO CONTROL DAMAGES
CAN CONSTRAIN EXERCISE REALISM

Military exercises provide valuable opportunities for the military services to train together and to practice the joint concepts and plans for employment in actual combat situations. The exercises also provide perhaps the best opportunities, short of actual combat, to test the effectiveness of the U.S. military forces, and the plans and doctrine necessary for combat. In brief, exercises are essential elements of U.S. military forces' training.

An assessment of the need for the great increase in the amount and size of field exercises conducted in Germany by U.S. forces was beyond the scope of our review. Such an assessment would have to include analysis of the trade-offs between increased readiness resulting from more training maneuvers and the greatly increased cost of damage claims incurred in the FRG.

In our December 1979 report,^{1/} we recommended that DOD increase emphasis on realism in the design, planning and execution of exercises. Efforts to limit maneuver damage can have an adverse impact on exercise realism and therefore U.S. readiness. According to Army officials, military units in the FRG are presently giving all possible priority to controlling damage. In one instance, during REFORGER 79, certain Warsaw Pact/Soviet tactics were not used because large maneuver damages were anticipated if two divisions massed in a concentrated area.

Concern for both damage control and exercise realism are important priorities that must be balanced. Our report ^{1/} pointed out that scenarios, including scaling down the size of exercises, changing exercise dates or conducting similar exercises elsewhere are options to improve realism and can also reduce damage.

^{1/} "Improving the Effectiveness of Joint Military Exercises-- An important Tool For Military Readiness" (Dec. 11, 1979, LCD-80-2).

CONCLUSIONS

Overall, we believe the various measures addressed above and other similar actions taken on a regular basis demonstrate the serious priority given by the U.S. Army to control and limit maneuver damages caused in the FRG. The United States enjoys a very favorable reputation when compared to other allied military units training in the FRG. We believe it is important for the United States to maintain this good record by continuing current efforts and pursuing new and innovative measures whenever possible.



THE DAMAGE TO THESE FIELDS, USED AS A STAGING AREA FOR TANKS AND OTHER HEAVY ARMORED VEHICLES, WILL RESULT IN SEVERAL CLAIMS. THE COUNTRY ROAD IS PROBABLY ALSO DAMAGED WHERE THE VEHICLES ENTER AND LEAVE THE FIELDS.

Courtesy of U.S. Army Claims Service



THE TANK COLUMN MOVING THROUGH THESE FIELDS IS CAUSING A MINIMUM AMOUNT OF DAMAGE AND LEAVING FEW TELL-TALE TRACKS VISIBLE FROM THE AIR. IN A REAL COMBAT SITUATION, HOWEVER, THE TANK COMMANDER MAY PREFER TAKING A STRAIGHT PATH TO CUT HIS TRAVEL TIME.

Courtesy of U.S. Army Claims Service

CHAPTER 5

CAN U.S. DAMAGE CLAIMS PAYMENTS BE REDUCED THROUGH ALLIED COST SHARING?

In its report on the fiscal 1980 Defense Appropriations Bill, the House Committee on Appropriations questioned the huge increases in claims costs overseas and called for increased host nation sharing of these costs. Should the United States expect the FRG to pay more for damage claims? This chapter discusses some of the considerations involved in answering these questions.

FRG COST SHARING

The FRG currently pays 25 percent of "scope" damage claims incurred by U.S. forces in Germany, 25 percent of claims incurred by all other allied countries with troops training in Germany, 100 percent of damage claims caused by FRG armed forces, and 100 percent of all administrative costs associated with the NATO damage claims program. This is the cost sharing formula provided in the NATO SOFA and implemented by subsequent agreements which have been in effect since 1963. In 1978, the FRG Ministry of Finance estimated that this claims program cost Germany about DM 85.4 million, or over \$42.7 million.

The processing of claims by the German Defense Cost Offices provides considerable benefit to U.S. forces. The Ministry of Finance estimated that claims processing by the DCOs cost about DM 20 million yearly, or about \$10 million. In addition, an average of 812 cases are fought and settled in German courts each year involving NATO claims. We could not determine the share of these costs attributable directly to U.S. claims; however, it is clear that FRG administration of claims process saves the United States both expense and personnel.

Under these circumstances could the United States expect more cost sharing of damage claims by the FRG? U.S. claims officials consider it unlikely from a strictly claims standpoint. Damage claims are a sensitive issue in Germany because so many exercises are held there and such extensive damage results. It would be politically difficult for the FRG to have to bear the brunt of the damage and then pay increasing amounts of its own funds for repair. Making the force which causes the damage responsible for the bulk of the repair cost provides a control over the maneuvering units. If they did not have to pay for the damage they commit, the units might be less concerned about controlling and limiting that damage. The Germans

would also be reluctant to enter into a more favorable arrangement with the United States because the other forces in the FRG would expect similar treatment.

While it is difficult to justify increased FRG claims payments strictly on the basis of claims cost equity, claims may be a good candidate for inclusion in a large program of German cost sharing. If the United States decided to seek greater budgetary support from the FRG to cover U.S. maintenance and operations costs in Europe, claims are readily identifiable, paid in German currency, already administered and adjudicated by the German offices, and of significant amount. Other cost sharing alternatives in the FRG will be discussed in our upcoming report as a part of the series requested by the House Committee on Appropriations.

APPEAL TO NATO FOR
DAMAGE CLAIMS COST RELIEF

Under the current SOFA formula, the United States and the FRG have been bearing about 80 percent or more of the total cost of NATO exercise damage done in Germany. Because of the big increase in the number and extent of exercises conducted by NATO in recent years, and because most of the exercises--for obvious geographic reasons--have been conducted in the FRG, the damage claim burden has become disturbingly large. In fiscal year 1978, the United States and FRG together incurred total costs in Germany of about \$62 million.

Paragraph 5(f) of Article VIII of the NATO SOFA provides that:

"In cases where the application of the provisions of * * *this paragraph would cause a Contracting Party serious hardship, it may request the North Atlantic Council to arrange a settlement of a different nature."

With the cost of damage claims rising and just two countries bearing the great bulk of these costs, it may be time to conclude that the claims provisions do result in "serious hardship" and alternative funding methods should be sought. One possibility would be to shift the damage claims burden to the alliance as a whole through some sort of negotiated cost sharing formula. Damage claims, regardless of where they occur, arise because of training exercises conducted to improve military readiness. Such exercises benefit the entire alliance, not just the maneuvering force and the host country. Reasoning along these lines is used in the NATO infrastructure program, and a detailed cost sharing schedule has been developed to

equitably share the infrastructure burden. A similar formula could be used for damage claims. Host countries could continue to adjudicate and pay the claims but reimbursement would be sought from a central NATO fund.

Although we have not studied the details of such an arrangement nor assessed all the implications for decreasing U.S. claims costs, we believe such an approach has merit and DOD should study this and other approaches for more equitably distributing the growing damage claims burden within the alliance.

CONCLUSIONS AND RECOMMENDATION

While the recommendations contained in chapters 2 and 3 could help alleviate some of the damage claims burden and bring order to the claims budgeting process, only cost sharing offers hope for major reductions in U.S. damage claims paid in the FRG. To expect the Germans to bear all these costs, however, may be unrealistic, and negotiations toward this end would be difficult. Even a central NATO cost sharing arrangement for damage claims will be difficult to negotiate because the United States and FRG are the only members who stand to gain financially from a change in the current system. However, we believe that it may be time to initiate talks in NATO on this issue. Damage claims, which were once relatively insignificant, now consume large dollar amounts that could be better spent on increased firepower and readiness in Europe or could reduce the U.S. operating costs and balance of payments problems.

Therefore, we recommend that the Secretaries of State and Defense develop a cost sharing strategy for damage claims which considers (1) including claims in bilateral cost sharing negotiations with the FRG, and (2) approaching the North Atlantic Council under the provisions of paragraph 5(f) of the NATO SOFA seeking relief from the increasing damage claims burden.

AGENCY COMMENTS

DOD disagreed with our view that claims may be a good candidate for future inclusion in a larger program of German cost sharing. They consider that such action would be politically difficult and unlikely to succeed. Our upcoming report on cost sharing in the FRG and United Kingdom will discuss this issue further.

Defense also disagreed with our recommendation that a cost sharing strategy be developed which considers approaching the North Atlantic Council under the provision of paragraph 5(f) of Article VIII of the NATO SOFA seeking relief from the financial hardship imposed by the cost of damage claims. DOD believes that this provision was probably not intended to be used as a procedure to renegotiate the claims section of the SOFA and that renegotiation would be unwise. They also maintain that administrative obstacles would render such actions unlikely to succeed and more cumbersome to implement.

Our recommendation does not advocate renegotiation of the SOFA. We believe that DOD can and should develop a cost sharing strategy for damage claims that takes a detailed look at the potential for broad cost sharing agreements with the FRG. In developing this plan, DOD should also consider the possibility of seeking relief from NATO under paragraph 5(f); this would not necessarily involve renegotiation of the SOFA. Certainly NATO allies would be reluctant to increase their costs to save the United States money, but the damage claims costs have increased so much that it may be time to consider new approaches.

The Department of State reviewed a draft of our report but did not provide official comments.



INTERNATIONAL
SECURITY AFFAIRS

ASSISTANT SECRETARY OF DEFENSE

WASHINGTON D.C. 20301

22 August 1980

Mr. J. K. Fasick
Director, International Division
United States General Accounting Office
Washington, D. C. 20548

Dear Mr. Fasick:

This is in reply to your letter dated July 17, 1980, to the Secretary of Defense concerning your draft report to the Chairman, House Committee on Appropriations, on Military Damage Claims in Germany, Code 463730B (OSD Case #5479-A).

In summary, the report is fair and accurate in most respects and provides a very useful overview of maneuver claims in Germany. It is obvious from the report and comments from people in the field that your staff did considerable work on the study and made their best efforts to obtain all of the pertinent facts. We disagree, however, with certain of the recommendations and believe that the facts as reported support different conclusions in some cases. In addition, we believe that the very important issue of meeting our current claims obligations also should be discussed in the report.

One recommendation in the report is that we establish a mutually acceptable monthly reimbursement level with the Federal Republic of Germany for the payment of claims. This recommendation has merit, but under present circumstances it would be difficult to implement. As pointed out in the report, Congress has failed to appropriate the funds required to meet our claims obligations. Therefore, unless the required claims funds are provided by Congress we cannot propose reasonable monthly payments that would be acceptable to the Germans.

The Defense Audit Service recommended indefinite annual funding for claims in its report dated 23 November 1979 concerning DOD claims, report No. 80-033. That report was based on a comprehensive and in-depth study of defense claims operations. The recommendation was well thought out and fully substantiated by the facts contained in the report. The draft report expresses the reservation that the GAO is not convinced that such a funding mechanism would provide the necessary discipline and control needed to minimize damage claims costs. However, as pointed out in the GAO draft report, that objective is being met by other programs and measures currently in effect. We therefore believe that the GAO should endorse that recommendation to keep us in compliance with our international obligations.

The report recommends that the Secretaries of State and Defense develop a cost sharing strategy for damage claims in a bilateral cost sharing negotiation with the Federal Republic of Germany. The Report, however, correctly points out that maneuver damage claims are a sensitive issue in Germany because so many exercises are held there, which results in extensive damage. It would be politically difficult for the Federal Republic of Germany to bear the brunt of the damage and then pay increasing amounts of their own funds for repair beyond what has been determined to be their fair share. The Germans would be reluctant to support a more favorable arrangement for the United States because other Sending States would expect similar treatment. A bilateral negotiation with the Federal Republic of Germany to change the NATO SOFA in the area of claims would have an unpredictable ripple effect throughout all the countries which are NATO-SOFA signatories and where other countries have used the NATO-SOFA format as a model for their agreements. At the time we negotiated the claims formula in the NATO-SOFA, the United States Government was in a far better bargaining position than it is today, so the result of opening new negotiations could be self defeating. There also is the danger that we could not limit the negotiations to claims but may open up other areas where we enjoy significant advantages. Therefore, we disagree with the conclusion that claims may still be a good candidate for inclusion in a larger program of German cost sharing.

The report also recommends that the Secretaries of State and Defense develop a cost sharing strategy which considers approaching the North Atlantic Council under the provision of paragraph 5f of Article VIII, NATO-SOFA, seeking relief from the increasing damage claims burden. It does not appear that paragraph 5f was intended to be used as a procedure to renegotiate the claims section of this agreement. Paragraph 5f was intended to relieve any hardship occurring to a signatory country on a case by case basis, such as a single catastrophic incident. In addition, this recommendation appears inappropriate in that the United States would be sharing all maneuver damage costs with other signatories. The report recognizes the United States' good record of claims damage avoidance versus the apparent poor record of some other countries. To share all costs might lessen some of the incentive to avoid unnecessary damages and actually result in greater total costs. Other NATO countries now maneuver in the Federal Republic of Germany and pay for their claims, and it is unlikely that they would agree to bear a larger proportionate share than they do now. In view of these factors, claims cost sharing would not appear to be to our benefit. Also, this would simply add another bureaucratic layer to an already difficult and complex procedure.

We strongly urge that reference be made in the report to the recent action of the House Appropriations Committee denying our request to reprogram \$12.3M of FY 1980 funds for payment of claims in the Federal Republic of Germany. There are no funds remaining for maneuver claims and there already is a substantial backlog of claims to be reimbursed. In our opinion this situation will have an adverse impact on the entire claims program and on the recommendations in the GAO report. It also will aggravate the situation of a backlog of claims as reported on pages 8 and 9 of the report. Our failure to meet the claims reimbursement obligations would provide the Germans with a basis for refusing to allow us to maneuver. A loss of maneuver rights would result in a degradation of the combat readiness and tactical capabilities of the U.S. Forces in Europe. Such action also could

cause the Germans to terminate items of host nation support they are now providing and not favorably consider present and future requests for host nation support.

Most important, however, a failure to pay these claims would constitute a unilateral breach of our international obligations. It hardly could be expected to establish the trust and respect necessary for entering into negotiations on a new claims formula or other host nation support matters. The refusal of the United States to honor its agreements would inevitably sour relations with one of our closest allies and could cause other NATO partners to question our commitments.

Thank you for the opportunity to comment on the report. We sincerely hope that our comments have been beneficial and will be considered in your final report.

Sincerely,



Franklin D. Kramer
Principal Deputy Assistant Secretary
of Defense
International Security Affairs

(463730)

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