

CHAIRMAN OF THE JOINT CHIEFS OF STAFF INSTRUCTION

Current as of 20 Dec 10

J-5
DISTRIBUTION: A, B, C, J, S

CJCSI 2300.01D
5 October 2007

INTERNATIONAL AGREEMENTS

References: See Enclosure E.

1. Purpose. This instruction provides information to implement and supplement reference a. Additionally, this instruction provides only procedural guidance; substantive authority to negotiate or conclude an international agreement must be derived from the US Constitution or federal law.
2. Cancellation. CJCSI 2300.01C, 15 March 2006, is canceled.
3. Applicability. This instruction applies to the Joint Staff, combatant commands, and Defense agencies reporting to the Secretary of Defense through the Chairman of the Joint Chiefs of Staff (hereafter referred to as "the Chairman"). These organizations will use this instruction to negotiate and conclude agreements for which approval authority has been delegated to the Chairman by reference a. Those Defense agencies and Services negotiating and concluding international agreements within the geographic area of responsibility of any of the combatant commands will coordinate such agreement with the cognizant combatant commander in accordance with paragraph 6.2.1 of reference a. Relationships between commanders of combatant commands and international commands and organizations are governed by reference b.
4. Policy. Reference a delegates authority to the Chairman to negotiate and conclude certain types of international agreements concerning operational command of joint forces. In exercising further delegation authority, the Chairman applies DOD policy on negotiating and concluding international agreements. This instruction implements current DOD policies that apply to the Chairman and delegated authorities.

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5. Definitions. "International agreement" is defined in Enclosure 2 of reference a. An agreement is an international agreement and subject to the purview of this instruction and reference a if it meets the requirements of Enclosure 2 of reference a, regardless of the label or title attached to the document. Thus, contingency or operations plans that contain commitments not covered by existing agreements may constitute international agreements if they are cosigned or agreed to by US and foreign officials. The operative requirement is whether the agreement signifies intention of the parties to be bound in international law.

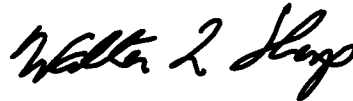
6. Delegations. See Enclosure A.

7. Responsibilities. See Enclosure B.

8. Summary of Changes. This change updates CJCSI 2300.01C. Changes are administrative in nature to reflect authority delegated to commanders not organizations.

9. Releasability. This instruction is approved for public release; distribution is unlimited. DOD components (to include the combatant commands), other federal agencies, and the public may obtain copies of this instruction through the Internet from the CJCS Directives Home Page--
http://www.dtic.mil/cjcs_directives.

10. Effective Date. This instruction is effective immediately.



WALTER L. SHARP
Lieutenant General, USA
Director, Joint Staff

Enclosures:

- A--Delegations
- B--Responsibilities
- C--Processing Guidelines
- D--Sample Letter of Transmittal
- E--References

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ENCLOSURE A

DELEGATIONS

1. Delegations of Authority to CJCS

a. In paragraph 13 of reference a, the Secretary of Defense delegates authority to the Chairman to negotiate and conclude certain agreements, except those having policy significance as described in paragraph 4 below. See specifically the following subparagraphs of reference a: 13.1.2, 13.2.2, 13.3.2, 13.5.2, and 13.8.2.

b. Certain delegations in paragraph 13 of reference a must be interpreted narrowly. These are:

(1) There is no delegation of authority for technical or implementing arrangements that expand or deviate from a basic treaty or executive agreement.

(a) There is delegation of authority for project annexes and other documents that provide technical content for an umbrella agreement, so long as they are consistent with, and contemplated by, the umbrella agreement.

(b) There is delegation of authority if the terms of the implementing arrangement are clearly anticipated or identified in the underlying agreement. For example, if the underlying agreement calls for the sale of 1,000 vehicles and a subsequent implementing arrangement requires a first installment of 100 vehicles, there is delegation of authority. However, if the proposed implementing arrangement contains a new or altered obligation not contemplated by the parties, authority is not delegated.

(2) There is no delegation of authority if the implementing arrangement revises status of forces agreement rights or places restrictions on operating rights. See reference k.

(3) When authority has been delegated to the Chairman (and further delegated, as in paragraph 2 of this enclosure) to negotiate an agreement, the requirement to fully coordinate the agreement remains. Such coordination should begin early and continue throughout the negotiation process. It is not appropriate to negotiate a text and subsequently effect "coordination" to conclude the agreement.

(4) Although authority has been delegated to negotiate personnel exchange agreements, negotiating and concluding personnel exchange

agreements that rely on legal authority delegated to the Chairman require coordination with the Department of State by the Office of the Chairman of the Joint Chiefs of Staff Legal Counsel (OCJCS(LC)). As appropriate, such actions will be coordinated with the Office of the Under Secretary of Defense for Policy (OUSD(P)).

(5) Authority has been delegated to negotiate logistic support agreements. Reference c, however, applies to logistic support agreements under the Acquisition and Cross-Servicing Authority in chapter 138 of title 10, United States Code. Subparagraph 5.3.1 of reference c requires referring new or revised cross-servicing agreements to the Office of the Under Secretary of Defense (Acquisition, Technology, and Logistics) for review and authority to conclude. The Director for Logistics (J-4) will accomplish such referral in consultation with the OCJCS/LC.

(6) Questions should be directed to OCJCS(LC) about procedures under reference a including whether to obtain authority to negotiate a particular agreement.

(7) OCJCS(LC) will coordinate all international agreements requiring Circular 175 authority with OUSD(P). In accordance with reference a, OUSD(P) will secure the required Circular 175 authority in coordination with the Department of State.

2. Further Delegation of Authority. Except as noted in paragraphs 3 and 4 below, the approval authority delegated to the Chairman is further delegated to the combatant commanders. Further delegation to commanders of subordinate combatant commands, component commands, joint task forces, and US Defense representatives is authorized. The combatant commander to which approval authority is initially delegated will be responsible for complying with reference a, regardless of whether the delegated authority is further delegated. That combatant commander will forward two copies of revised or new implementation documents, if any, to the Secretary, Joint Staff, within 60 days of the date of receipt of this instruction and as significant changes occur. The normal commander-staff relationship, in which the staff element acts by direction of or for the commander, is not considered delegation.

3. Authority Reserved by The Chairman of the Joint Chiefs of Staff. The authority delegated to the Chairman is not further delegated for the following types of international agreements:

a. Agreements concerning specific subcategories of military communications equipment, systems, or procedures as follows:

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(1) US COMSEC equipment. References d and e provide policy and procedures on negotiating and concluding international agreements concerning COMSEC matters.

(2) The US Defense Communications System (DCS) (including AUTODIN and its follow-on systems, the Defense Message System (DMS), Defense Information Systems Network (DISN), Defense Switched Network (DSN), and the Defense Red Switch Network (DRSN)).

(3) CJCS-controlled telecommunications and C2 equipment.

(4) Military satellite communications.

(5) Configuration management -- procedural interface standards (message text formats/tactical digital information links) and technical interface standards (Spread Spectrum Communications Systems).

b. Communications-electronics (C-E) agreements under the purview of the US Military C-E Board.

c. Reference e provides policy and procedures on negotiating and concluding the types of international military telecommunications agreements described in the preceding two subparagraphs.

4. Agreements Having Policy Significance. The authority delegated to the Chairman, as described in paragraph 1 above and redelegated to the combatant commanders in paragraph 2, does not apply to agreements having policy significance within the meaning of subsection 8.4.1 of reference a.

a. Broadly interpret the term "policy significance." Consider any subject formally raised for discussion at the ASD level or its equivalent in a foreign government or in an international organization to have policy significance. When there is uncertainty about the authority to negotiate an agreement, send it informally to OCJCS(LC) for clarification.

b. Send agreements or proposals that involve major unprogrammed fiscal obligations, affect US security commitments, or are otherwise restricted by reference a through channels to the Director, Joint Staff, in accordance with Section 9 of reference a, with recommendations for further action. As appropriate, and after review by the Joint Staff and the OCJCS(LC), the Director, Joint Staff, will forward the proposal to OUSD(P). Coordinate agreements involving major unprogrammed fiscal obligations funded by a DOD component or Defense agency with the funding sponsor.

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ENCLOSURE B

RESPONSIBILITIES

1. Each commander exercising delegated authority under this instruction will name a single office of record for administering and controlling international agreements, to include maintaining a repository of agreements and carrying out other record-keeping functions as required.
2. Combatant commands will:
 - a. Reconcile their master indexes of international agreements with their subordinate commands at the end of each calendar year.
 - b. Forward a hard copy and an electronic copy of the complete reconciled index (with annotations to show agreements made and/or terminated in the previous calendar year) to the Director, Joint Staff, not later than 31 January each year. The index will include the following information for each agreement: title; general purpose; dates of signature, entry into force, and termination; who holds the original signed text; and classification.
3. The Secretary, Joint Staff, is designated as the central office of record for:
 - a. Receiving requests for authorization within the Joint Staff.
 - b. Assigning action to the appropriate staff agency.
 - c. Forwarding completed actions if appropriate.
 - d. Providing a single repository for receiving, retaining, and retrieving records of international agreements negotiated and concluded under the authority of the Chairman including those forwarded by the combatant commands.
 - e. Providing an annual list of terminated international agreements to the Office of the Department of Defense General Counsel (OSD/GC).
 - f. Reconciling of the OCJCS master index of international agreements with OSD/GC.
4. The Joint Staff directorates, acting on matters of international agreements according to their assigned staff functions and the nature of the matter referred to them, will:

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a. Obtain the necessary coordination and approval within the Joint Staff and other DOD agencies, as appropriate.

b. Provide the Secretary, Joint Staff, a complete record of each completed action including the applicable coordination and authorization.

5. On matters concerning broad policy for international agreements or encompassing the responsibility of more than one directorate, the Director for Strategic Plans and Policy (J-5) will normally be assigned lead responsibility within the Joint Staff.

6. Legal advisors and staff judge advocates will conduct all required legal reviews. For the Office of the Chairman of the Joint Chiefs of Staff and for the Joint Staff, OCJCS(LC) will perform this function.

ENCLOSURE C

PROCESSING GUIDELINES

1. The responsible organizational element will submit all proposals for negotiating or concluding international agreements under the authority of the combatant commanders to the appropriate legal advisor or staff judge advocate for review and concurrence. Submit proposals before offering draft agreements to a prospective party and before initialing or signing any such international agreement. Personnel in the unified commands or their subordinate units will not make any unilateral commitments to a foreign government or international organization, either orally or in writing, before seeking review and obtaining concurrence of the legal adviser or staff judge advocate of the combatant command involved.
2. All proposals for negotiating or concluding international agreements that include US financial obligations or have any other cost or fiscal implications will be submitted to the comptroller of the combatant command, or Joint Staff, as appropriate. The comptroller will conduct a fiscal review of the proposed undertaking and document that review in a fiscal memorandum that follows the format of reference f.
3. Combatant commanders may delegate responsibility for the legal and fiscal reviews required by paragraphs 1 and 2 above to subordinate commands or units that have the delegated authority to negotiate international agreements.
4. Combatant commanders will designate an official responsible for reviewing all agreements that call for disclosure of classified information to ensure compliance with reference a and National Disclosure Policy-1 (NDP-1). An official will also be responsible for reviewing technology assessment control plans and issuing delegation of disclosure letters. For the Joint Staff, the Director, DIA (J-2), is assigned those responsibilities.
5. To ensure consistency with Executive Order 12114 of 4 January 1994, or its successor, commands that negotiate international agreements with environmental consequences are responsible for ensuring that they are informed of the environmental aspects of the agreement, giving particular attention to reasonably foreseeable, significant, adverse environmental aspects. Commands should consider reasonable alternatives to fulfill the purpose of the agreement and reasonably available methods to mitigate any reasonably foreseeable, significant, adverse impacts. If the agreement requires Circular 175 authority, the request for such authority should include a brief analysis of the environmental considerations discussed in this paragraph.

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6. The negotiation and conclusion of an amendment or extension to an international agreement must be approved in accordance with the requirements of this instruction by the same US headquarters or office that approved the original agreement or by another headquarters or office that has been expressly delegated the authority to approve amendments or extension to that agreement.
7. Subparagraph 8.11.211b of reference a applies when a foreign language text is signed simultaneously with the English language text.
8. The command that negotiates an international agreement will maintain a complete negotiating history for that agreement available if required. It must keep the file for the duration of the agreement or until it has no further legal significance.
9. Within 20 days after the agreement has been signed, the responsible organizational element will send copies of each agreement concluded under the authority delegated to the Chairman or further delegated to subordinate commander as follows:
 - a. Two reproducible copies to the General Counsel, Department of Defense, Washington, D.C. 20301-1600.
 - b. One reproducible copy to the Assistant Legal Advisor for Treaty Affairs, Department of State, Washington, D.C. 20520.
 - c. One reproducible copy to the Secretary, Joint Staff.
 - d. Copies to any other offices and agencies prescribed by the combatant commands or other competent authority.
10. All copies will be certified as true copies of the original agreement.
11. A letter of transmittal is required for each agreement (see sample format in Enclosure D). In addition, include the following information:
 - a. Summary of the terms of the agreement as well as any interpretive statements or side letters that may have been signed at the time the agreement was concluded.
 - b. Background information including reference to any treaty or other agreement that the agreement implements and the circumstances under which it was negotiated.
 - c. If classified, who the classifying agencies are and the downgrading or declassification instructions.

d. A statement of textual conformity if a foreign language version of the agreement was signed simultaneously with an English version. Guidance is in Title 22, Code of Federal Regulations, section 181.4(h).

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ENCLOSURE D

SAMPLE LETTER OF TRANSMITTAL

Date

From: _____ (e.g., Headquarters, USEUCOM/J-5)

To: _____ (e.g., Secretary, Joint Staff)

Subject: Transmittal of an International Agreement

1. Type of agreement (e.g., bilateral or multilateral).
2. Parties to the agreement.
3. Title and subtitle, as appropriate.
4. Subject of the agreement.
5. Summary of the terms of the agreement.
6. All agencies, US, and foreign responsible for carrying out the provisions of the agreement.
7. Background information including reference to any treaty or other agreement that the agreement implements and the circumstances under which it was negotiated. Include the title(s) and date(s) of the agreement(s), if any, on which the agreement is based or which the agreement amends.
8. The effect of the agreement including the benefits to be gained and the costs to the parties.
9. Discussion of the domestic legal authority that authorizes the Department of Defense or its agencies to enter into the agreement.
10. Date of signature and date the agreement will enter into force.
11. Period of the agreement and the expected date of termination.
12. Printed names of all signing officials, their titles and offices they represent, and their countries or international organizations.

13. Geographic location(s) where the agreement was signed.
14. Organizational element responsible for maintaining the negotiating history for the agreement.

NOTE: Certify all copies as true copies of the signed original.

ENCLOSURE E

REFERENCES

- a. DOD Directive 5530.3, 11 June 1987, "International Agreements"
- b. CJCSI 5130.01C Series, "Relationships Between Commanders of Combatant Commands and International Commands and Organizations"
- c. DOD Directive 2010.9, 28 April 2003, "Acquisition and Cross-Servicing Agreements"
- d. CJCSI 6510.01D Series, "Information Assurance (IA) and Computer Network Defense (CND)"
- e. CJCSI 6740.01A Series, "Military Telecommunications Agreements and Arrangements Between the United States and Regional Defense Organizations or Friendly Foreign Nations"
- f. DOD Regulation 7000.14-R, Volume 12, Chapter 9, September 2005, "Department of Defense Financial Management Regulations: International Agreements"
- g. Department of State Circular 175, 13 December 1955, as amended
- h. National Disclosure Policy-1, "National Policy and Procedures for Disclosure of Classified Military Information to Foreign Governments and International Organizations," 2 October 2000
- i. Executive Order 12114, 4 January 1994, "Environmental Effects Abroad of Major Federal Actions"
- j. Title 22, "Foreign Relations," Code of Federal Regulations, Section 181.4(h), as amended
- k. Deputy Secretary of Defense memorandum, "Guidance on Negotiation International Agreements (U)" (Classified), 10 August 2005
- l. Title 1, United States Code, section 112b(a)

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