



CHAIRMAN OF THE JOINT CHIEFS OF STAFF INSTRUCTION

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J-5
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CJCSI 2410.01D
31 August 2010

GUIDANCE FOR THE EXERCISE OF RIGHT-OF-ASSISTANCE ENTRY

References:

- a. Department of State policy statement, 8 August 1986, "Statement of Policy by the Department of State, the Department of Defense, and the United States Coast Guard Concerning Exercise of the Right of Assistance Entry," reprinted in the Annotated Supplement to the Commander's Handbook on the Law of Naval Operations, NWP 1-14M/MCWP 5-12.1/COMDTPUB P5800.1
 - b. United States National Search and Rescue Supplement to the International Aeronautical and Maritime Search and Rescue Manual, May 2000
 - c. CJCSI 3121.01 Series, "Standing Rules of Engagement/Standing Rules for the Use of Force for US Forces (U)"
 - d. United Nations Convention on Law of the Sea, 10 December 1982, 1833 U.N.T.S. 3, 21 I.L.M. 1261 (1982) and implementation of Part XI of United Nations Convention on Law of the Sea of 28 July 1994, 1836 U.N.T.S. 3, 33 I.L.M. 1311 (1994)
 - e. DOD 2005.1M, 23 June 2005, "Maritime Claims Reference Manual"
1. Purpose. This instruction establishes uniform policy for the exercise of right-of-assistance entry (RAE) by U.S. military ships and aircraft within the U.S.-recognized territorial seas or archipelagic waters of foreign states.
 2. Cancellation. CJCSI 2410.01C, 30 March 2007, is canceled.

3. Applicability. This instruction applies to all personnel assigned or attached to the Joint Staff, and to the combatant commands (including assigned or attached subordinate units). Copies are provided to the Services for training on RAE operations, coordination, and communications procedures, as appropriate.

4. Policy

a. All ship and aircraft commanders have an obligation to assist those in danger of being lost at sea. This long-recognized duty of mariners permits assistance entry into the territorial sea by ships or, under certain circumstances, aircraft without permission of the coastal nation to engage in legitimate efforts to render immediate rescue assistance to those in danger or distress at sea. RAE applies only to rescues in which the location of the persons or property in danger or distress is reasonably well known.

b. RAE, however, does not extend to conducting area searches for persons or property in danger or distress when their location is not yet reasonably well known (reference a). U.S. forces will conduct area searches within U.S.-recognized foreign territorial seas or archipelagic waters only with the permission of the coastal state (such permission may be by international agreement, such as search and rescue (SAR) agreements). When considering conducting area searches within claimed or U.S.-recognized foreign territorial seas or archipelagic waters, commanders must comply with the provisions of references b and c for SAR.

c. RAE into the territorial sea or archipelagic waters of a foreign state involves two conflicting principles that must be considered: (1) the limited right of nations to regulate entry into, and the operations within, territorial seas or archipelagic waters subject to their sovereignty and (2) the time-honored mariners' duty under customary international law of rendering rapid and effective assistance to persons, ships, or aircraft in imminent peril at sea without regard to nationality or location.

d. The customary international law of RAE is more fully developed for vessels than for aircraft. Moreover, while the right of innocent passage exists for vessels through territorial seas, no such right exists for aircraft in the airspace above the territorial seas -- that airspace is considered "national airspace." Unauthorized entry into national airspace could be considered a breach of that state's sovereignty. Therefore, if an operational commander intends to employ military aircraft into national airspace, the operational

commander should consider the possible reaction of that coastal or archipelagic state. The U.S. position is that aircraft engaged in RAE are an extension of the vessels conducting rescue operations and, as such, those flights are consistent with the “duty to render assistance” described in reference d, Article 98. Nonetheless, in accordance with reference a, there are additional coordination steps that may be required for use of military aircraft, as discussed below.

e. RAE and SAR actions should comply with any applicable international agreements, including those described in reference b, Appendix B (up-to-date listing of agreements may be obtained by contacting U.S. Coast Guard Headquarters through www.uscg.mil/nsarc).

f. Reference e is the Department of Defense source document for determining the scope of a particular maritime claim (e.g., extent of a claimed territorial sea) and whether that particular maritime claim is recognized by the United States. Reference e may be supplemented by fleet directives that contain updated information on foreign claims.

5. Definitions

a. Danger or distress. For purposes of this instruction, danger or distress is a clearly apparent risk of death, disabling injury, loss, or significant damage.

b. Operational commander on the scene (operational commander). The operational commander is the senior officer in tactical command of the unit(s) capable of rendering meaningful and timely assistance. This operational commander is responsible for coordinating rescue efforts at the site.

c. Perils of the sea. Perils of the sea are accidents and dangers peculiar to maritime activities including storms, waves, and wind; grounding; fire, smoke, and noxious fumes; flooding, sinking, and capsizing; loss of propulsion or steering; and other hazards of the sea.

6. Responsibilities

a. The Director for Operations (J-3) will ensure that the National Joint Operations and Intelligence Center (NJOIC) will, upon receipt of a report of the exercise of RAE, immediately inform the Department of State Operations Center and Headquarters, U.S. Coast Guard Command Center, which will notify foreign state rescue authorities of the RAE operation, as appropriate.

b. The Director for Strategic Plans and Policy (J-5) will serve as the Joint Staff primary point of contact for RAE issues.

c. Combatant commanders will ensure that operational units follow the below guidance:

(1) Exercising RAE and Entering the U.S.-recognized Territorial Sea or Archipelagic Waters of a Foreign State. The operational commander of a U.S. military ship should exercise RAE and immediately enter a foreign state's U.S.-recognized territorial sea or archipelagic waters when all three of the following conditions are met:

(a) A person, ship, or aircraft within the foreign territorial sea or archipelagic waters is in danger or distress from perils of the sea and requires immediate rescue assistance;

(b) The location is reasonably well known; and,

(c) The U.S. military ship is in a position to render timely and effective assistance.

(2) Use of Military Aircraft to Conduct RAE. An operational commander may render immediate rescue assistance by deploying a U.S. military aircraft (including aircraft embarked aboard military ships conducting RAE operations) into the national airspace within U.S.-recognized foreign territorial seas or archipelagic waters when all four of the following conditions are met:

(a) A person, ship, or aircraft within the foreign territorial sea or archipelagic waters is in danger or distress from perils of the sea and requires immediate rescue assistance;

(b) The location is reasonably well known;

(c) The U.S. military aircraft is able to render timely and effective assistance; and,

(d) Any delay in rendering assistance could be life-threatening. If the situation is not life-threatening, then, pursuant to reference a, the operational commander must request guidance from higher authority via the operational chain of command using the fastest means available. In this situation, the combatant commander shall notify the NJOIC, which must consult with the Department of State (through its operations center) before the combatant commander or other appropriate authority may authorize such use of military aircraft in territorial seas or archipelagic waters.

(3) Additional Considerations Before Exercising RAE. When the above conditions to exercise RAE are met, operational commanders should consider the safety of the crews, military ships, and military aircraft they command, as

well as the safety of persons, ships, and aircraft in danger or distress before exercising RAE. Operational commanders, as part of their safety evaluation for crew, ships, aircraft, should also assess force protection considerations based on all available information. These considerations should be weighed against the long-standing duty to render aid to those in peril on the seas. Although not required, operational commanders may also consider whether other rescue units, capable and willing to render timely and effective assistance, are on the scene or immediately en route.

(4) Notification to the Foreign State. Although exercise of RAE does not require the permission of the foreign coastal or archipelagic state, operational commanders should notify that state's authorities before the entry into U.S.-recognized foreign territorial sea or archipelagic waters, if possible, in order to promote international comity, avoid misunderstanding, and alert local rescue and medical assets. If notification cannot be provided before entry, the operational unit must notify the coastal or archipelagic state, as soon as possible, of the location, unit(s) involved, nature of the emergency, and government assistance required as well as an estimated time of departure from the territorial sea or archipelagic waters. Contact will normally be with the Rescue Coordination Center of the foreign state involved or the U.S. Embassy Country Team. If the entry is into foreign-claimed territorial sea or archipelagic waters that the United States does not recognize, then notification is not required, but may be made if necessary to obtain coastal state assistance; any such notification, however, will not indicate that an entry was made into the foreign state's territorial seas or archipelagic waters and will not request consent for such entry.

(5) Notification to Higher Authorities. Because of the implications for international relations and for U.S. security, whenever an operational commander enters or authorizes entry into the claimed or U.S.-recognized territorial sea or archipelagic waters of a foreign state under RAE, the operational commander will immediately notify appropriate authorities (Department of State, Office of Secretary of Defense, the Joint Staff, the U.S. Coast Guard, and the cognizant U.S. Embassy and U.S. Defense Attaché Office) by an Operations Report-3 (OPREP-3) PINNACLE. The OPREP-3 PINNACLE will describe location; unit(s) involved; nature of the rescue assistance; whether coastal or archipelagic state was notified before entry; reaction by the coastal or archipelagic state, including efforts to deny entry or offers of assistance; and estimated time to complete the mission.

7. Summary of Changes. This revision updates CJCSI 2410.01C by making the NJOIC responsible for notifying the Department of State Operations Center of any exercise of RAE and by making other administrative changes.

8. Releasability. This instruction is approved for public release; distribution is unlimited. DOD components, 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.

9. Effective Date. This instruction is effective upon receipt.

A handwritten signature in cursive script that reads "Bruce E. Grooms".

B. E. GROOMS
RADM, USN
Vice Director, Joint Staff

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