



Department of Defense **INSTRUCTION**

NUMBER 4540.01

June 2, 2015

USD(P)

SUBJECT: Use of International Airspace by U.S. Military Aircraft and for Missile and Projectile Firings

References: See Enclosure 1

1. **PURPOSE.** In accordance with the authority in DoD Directive (DoDD) 5111.1 (Reference (a)) and the Deputy Secretary of Defense Memorandum (Reference (b)), this instruction:

a. Reissues DoD Instruction (DoDI) 4540.01 (Reference (c)) to establish policy and assign responsibilities governing U.S. military aircraft operations and missile and projectile firing activities in international airspace.

b. Identifies procedures for U.S. military aircraft operations and missile and projectile firing activities in international airspace consistent with the Convention on International Civil Aviation (Reference (d)) and the applicable navigational provisions as reflected in the United Nations Convention on the Law of the Sea (Reference (e)).

2. **APPLICABILITY.** This instruction applies to OSD, the Military Departments, the Office of the Chairman of the Joint Chiefs of Staff and the Joint Staff, the Combatant Commands, the Office of the Inspector General of the Department of Defense, the Defense Agencies, the DoD Field Activities, and all other organizational entities in the DoD (referred to collectively in this instruction as the "DoD Components").

3. **POLICY.** It is DoD policy that:

a. DoD will continue to support and observe principles of established international law, including those portions of Reference (d) that apply to State aircraft and customary international law reflected in Reference (e). Such principles of international law include:

(1) No State has sovereignty over international airspace.

(2) All States enjoy the rights, freedoms, and lawful uses of airspace recognized under customary international law reflected in Reference (e).

(3) All aircraft, including military aircraft, enjoy the following rights, freedoms, and lawful uses of airspace under international law:

(a) The right of transit passage through straits used for international navigation.

(b) The right of archipelagic sea lanes passage in the air routes over the archipelagic waters of other States.

(c) The freedoms of navigation and overflight and other internationally lawful uses of the sea related to those freedoms, such as those associated with the operation of aircraft, in the exclusive economic zones of other States.

(d) The freedom of the high seas, which includes, *inter alia*, the freedoms of navigation and overflight.

b. In accordance with the DoDI S-2005.01 (Reference (f)), U.S. military aircraft will respect the maritime claims of other States, including claims to airspace, that are consistent with international law. U.S. military aircraft will not acquiesce in excessive maritime claims by other States, including their claims to airspace, that, if left unchallenged, could limit the rights, freedoms, and lawful uses of airspace recognized in international law.

c. When operating within international airspace, U.S. military aircraft may encounter airspace areas that are either established unilaterally by another State or allocated to another State by international agreement; in some circumstances, these airspace areas may overlap. Personnel operating U.S. military aircraft in these areas of airspace will ensure that their aircraft do not comply with a State's requirements for those areas if the United States considers them to be excessive claims under international law. For a summary of what claims are considered to be excessive, see the Maritime Claims Reference Manual (Reference (g)). Two such categories of airspace areas include:

(1) Air Defense Identification Zones (ADIZs)

(a) DoD respects that a State may establish an ADIZ that geographically extends into the international airspace adjacent to the State's national airspace, but such ADIZs may not impede the rights, freedoms, and lawful uses of airspace under international law of foreign aircraft, including foreign military aircraft. An ADIZ provides a practical method for a State to identify aircraft as potential threats to the State's national security.

(b) DoD respects that other States may establish conditions for foreign aircraft to enter into their national airspace and airports, including adherence to reasonable ADIZ procedures. However, DoD does not recognize efforts by other States to impose such ADIZ procedures upon foreign aircraft that are only transiting international airspace within the State's ADIZ without any intention to enter the State's national airspace.

(c) DoD understands that a State's establishment of an ADIZ neither imputes any additional rights to that State that it does not otherwise enjoy under international law, nor does it expand any of those rights for that State. Thus, DoD understands that other States continue to enjoy, quantitatively and qualitatively, the same rights, freedoms, and lawful uses of the airspace reflected in international law that they did absent a State's establishment of an ADIZ.

(2) Flight Information Regions (FIRs)

(a) DoD respects that the International Civil Aviation Organization (ICAO) has allocated, through regional air navigation agreements, responsibility for civil air traffic management in international airspace adjacent to coastal States in specified FIRs.

(b) DoD also respects that States responsible for managing FIRs generally establish rules and procedures relating to civil aviation operations to carry out their responsibilities for providing air navigation facilities and air traffic management services in both national airspace and in assigned FIRs. However, DoD understands that these FIR rules and procedures do not apply as a matter of international law to State aircraft, including U.S. military aircraft. Nonetheless, U.S. military aircraft commanders will operate consistent with FIR rules and procedures when operating under ICAO flight procedures, subject to the diplomatic clearance requirements detailed in paragraph 3.a. of Enclosure 3 of this instruction.

d. Consistent with Reference (d) and customary international law as reflected in Reference (e), the freedom of navigation and overflight in international airspace, the right of transit passage through straits used for international navigation, and the right of archipelagic sea lanes passage in the air routes over the archipelagic waters of other States must be exercised with due regard for the safety of navigation of all aircraft.

e. U.S. military aircraft and missile and projectile firings operate with due regard for the safety of all air and surface traffic.

(1) When practical and compatible with the mission, U.S. military aircraft operating in international airspace must observe ICAO flight procedures.

(2) When following ICAO flight procedures is not practical and compatible with the mission, U.S. military aircraft must operate with due regard consistent with "Operations Not Conducted Under ICAO Procedures" delineated in Enclosure 3 of this instruction. These procedures fulfill U.S. Government obligations under international law.

(3) Reasonable warning procedures with regard to the military aircraft of all States must be observed. Examples of such warnings procedures include the Agreement and Protocol Between the Government of the United States of America and the Government of the Russian Federation on the Prevention of Incidents On and Over the High Seas (Reference (h)) and the Western Pacific Naval Symposium's Code for Unplanned Encounters at Sea (Reference (i)).

(4) In time of war, armed conflict, national emergency, situations requiring self-defense, or similar military contingencies, the procedures of Enclosure 3 may be suspended. In such

instances, commanders must, consistent with military necessity, take measures to minimize hazards to all non-hostile air and surface traffic. Such suspensions must be of no greater extent or duration than required by military necessity, and operations and activities must be consistent with international law.

4. RESPONSIBILITIES. See Enclosure 2.

5. PROCEDURES. See Enclosure 3 for procedures applicable to operational commanders of U.S. military aircraft and missile and projectile firings.

6. RELEASABILITY. **Cleared for public release.** This instruction is available on the Internet from the DoD Issuances Website at <http://www.dtic.mil/whs/directives>.

7. EFFECTIVE DATE. This instruction is effective June 2, 2015.



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Under Secretary of Defense for Policy

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ENCLOSURE 1

REFERENCES

- (a) DoD Directive 5111.1, “Under Secretary of Defense for Policy (USD(P)),” December 8, 1999
- (b) Deputy Secretary of Defense Memorandum, “Delegations of Authority,” November 30, 2006
- (c) DoD Instruction 4540.01, “Use of International Airspace by U.S. Military Aircraft and Missile/Projectile Firings,” March 28, 2007 (hereby cancelled)
- (d) Convention on International Civil Aviation¹
- (e) United Nations Convention on the Law of the Sea, December 10, 1982
- (f) DoD Instruction S-2005.01, “Freedom of Navigation (FON) Program (U),” October 20, 2014
- (g) Maritime Claims Reference Manual²
- (h) Agreement Between the Government of the United States of America and the Government of the Union of Soviet Socialist Republics on the Prevention of Incidents On and Over the Waters Outside the Limits of the Territorial Sea. Amended by the 1973 Protocol to the Agreement and the 1998 Exchange of Diplomatic Notes (NOTAL)
- (i) Western Pacific Naval Symposium, Code for Unplanned Encounters at Sea (CUES), April 22, 2014
- (j) DoD Flight Information Publication, “General Planning,” current edition
- (k) DoD Foreign Clearance Guide³
- (l) DoD Directive 5101.16, “DoD Executive Agent (EA) for Support to the National Science Foundation (NSF) Division of Polar Programs (PLR),” May 27, 2015

¹ Available at <http://www.icao.int/publications/pages/doc7300.aspx>

² Available at http://www.jag.navy.mil/organization/code_10_mcrm.htm

³ Available at <https://www.fcg.pentagon.mil>

ENCLOSURE 2
RESPONSIBILITIES

1. ASSISTANT SECRETARY OF DEFENSE FOR HOMELAND DEFENSE AND GLOBAL SECURITY (ASD(HD&GS)). Under the authority, direction, and control of the Under Secretary of Defense for Policy (USD(P)), the ASD(HD&GS):

a. Manages the DoD policy outlined in this instruction, including the processing of requests in subparagraph 3.c.(3) of Enclosure 3 of this instruction.

b. Supervises the Oceans Policy Advisor, who has day-to-day responsibilities for managing the DoD policy outlined in this instruction. For matters concerning the DoD policy, the Oceans Policy Advisor may be contacted at: osd.pentagon.ousd-policy.list.oceans-policy-advisor@mail.smil.mil.

2. EXECUTIVE DIRECTOR, DoD POLICY BOARD ON FEDERAL AVIATION. Under the authority, direction, and control of the Under Secretary of Defense for Acquisition, Technology; and Logistics, the Executive Director, DoD Policy Board on Federal Aviation, coordinates amplifying guidance for operations not conducted under ICAO procedures for submission to the National Geospatial-Intelligence Agency (NGA) for incorporation into DoD Flight Information Publications (Reference (j)).

3. DIRECTOR, NGA. Under the authority, direction, and control of the Under Secretary of Defense for Intelligence, the Director, NGA, must ensure that the provisions of this instruction are incorporated into Reference (j).

4. DoD COMPONENT HEADS. The DoD Component heads must execute the responsibilities and follow the procedures as stated in this instruction.

ENCLOSURE 3

PROCEDURES

1. SELECTION OF OPERATING AREAS. Flight operations and firing activities must be conducted away from high-density air traffic areas when possible, and must be selected so as not to interfere with established air routes and ocean shipping lanes. In establishing firing exercise areas, every effort must be made to confine activities to warning areas, altitude reservations, other special-use airspace, or any combination thereof. Arrangements for airspace or altitude reservations must be made through the appropriate airspace or altitude reservation facility.

2. NOTICES TO AIRMEN (NOTAMS) AND NOTICES TO MARINERS (NOTMARS).

When firings may affect the safety of nonparticipating aircraft and ships, NOTAMS and NOTMARS must be submitted as appropriate by the operational command of the firing unit. Coordination among air and surface operations is essential to ensure safe routing of all air and surface traffic to, from, and around operating areas.

3. PROCEDURES FOR CONDUCTING AIRCRAFT OPERATIONS

a. Operations in FIRs. Military aircraft transiting through a FIR without intending to penetrate foreign national airspace over territorial seas are not required and will not submit a request for diplomatic clearance. Military aircraft exercising the right of transit passage through a strait used for international navigation or the right of archipelagic sea lanes passage in an air route over the archipelagic waters of another State are also not required and will not submit a request for diplomatic clearance. If penetration of foreign national airspace is required, a diplomatic clearance must be obtained (if required by the DoD Foreign Clearance Guide (Reference (k))) from the State whose airspace will be penetrated.

b. Operations Conducted Under ICAO Procedures. Normally, routine point-to-point and navigation flights must follow ICAO flight procedures. Reference (j) provides ICAO information, definitions, rules, and procedures. Reference (k) provides specific DoD guidance.

c. Operations Not Conducted Under ICAO Procedures. Military aircraft operations in international airspace, through straits used for international navigation, and through the air routes over the archipelagic waters of other States, may not lend themselves to ICAO flight procedures. This may include, but is not limited to, military contingencies, classified missions, politically sensitive missions, routine aircraft carrier operations, and some training activities.

(1) Such operations not conducted under ICAO flight procedures are conducted with due regard for the safety of all other aircraft. The military aircraft commander must ensure that at least one of the following conditions be satisfied to enable safe separation from other aircraft:

(a) Aircraft must be operated in visual meteorological conditions. For unmanned aircraft, the aircraft commander or a visual observer in communication with the aircraft commander must also maintain continuous and direct line-of-sight visual observation of the unmanned aircraft's surrounding airspace. Aids to visual observation, such as binoculars or periscopes, may be employed consistent with the applicable Military Department's guidance.

(b) Aircraft may temporarily be operated in less than visual meteorological conditions when required by operational needs if the aircraft commander determines that there is acceptable risk to other aircraft. The aircraft commander must utilize all available resources and information in assessing an acceptable level of risk before conducting such operations with due regard for all other aircraft. Any aircraft operations in reduced visibility must be of no greater extent or duration than required. For unmanned aircraft, this applies only to operations otherwise authorized under subparagraph 3.c.(1)(a) of this enclosure (i.e., those requiring continuous and direct line-of-sight visual observation).

(c) Aircraft must be operated under continuous surveillance by, and in communication with, a surface or airborne facility providing the surveillance. Certain aircraft, typically due to small size, shape, or material composition, may not be detected by surveillance. This condition may be satisfied if the facility providing surveillance can ascertain the position of the aircraft and has the capability to maintain continuous surveillance of the surrounding airspace while in communication with the aircraft commander.

(d) Manned aircraft must be equipped with airborne radar that is sufficient to provide separation between them, the aircraft they may be controlling, and other aircraft.

(e) Unmanned aircraft must be equipped with a Military Department-certified system that is sufficient to provide separation between them and other aircraft.

(2) The military aircraft commander must consider any amplifying guidance for operating with due regard published in Reference (j) and applicable Military Department publications.

(3) Alternative means or conditions for achieving due regard will be subject to approval by the USD(P), through the point of contact identified in paragraph 1.b. of Enclosure 2, and contingent upon a responsible Military Department or Combatant Commander making a case for such alternative means or conditions in achieving due regard for the safety of all aircraft.

d. Operations in Foreign ADIZs. In addition to States managing FIRs that have been allocated by ICAO, some States have also established ADIZs. Geographically, some of these ADIZs fully align with the boundaries of a State's allocated FIRs, while others extend beyond their allocated FIRs. U.S. military aircraft commanders must follow the appropriate procedures.

(1) Military aircraft operations conducted under ICAO procedures in international airspace:

(a) Where there is intent to penetrate the national airspace of the ADIZ country, the aircraft commander will follow the ADIZ policy and procedure guidance in paragraph 3.c. above the signature of this instruction and Reference (j), respectively.

(b) Where the military aircraft is transiting through an ADIZ with no intent to penetrate the national airspace of the ADIZ country, the aircraft commander will not follow any ADIZ procedures that are above and beyond the ICAO flight procedures (e.g., filing flight plan).

(2) Military aircraft operations not conducted under ICAO procedures in international airspace are not required to and will not comply with foreign ADIZ procedures.

e. Operations Conducted in the Antarctic Treaty Area. In addition to the procedures outlined in this instruction, military aircraft operations conducted in the Antarctic Treaty Area will comply with DoDD 5101.16 (Reference (1)).

4. PROCEDURES FOR MISSILE AND PROJECTILE FIRINGS. Firing areas must be selected so that trajectories or flight profiles are clear of established oceanic air routes or areas of known surface or air activity. An exception to this operating procedure may be made when the operational commander can ascertain that aircraft are operating above the maximum ordinate of the missile or projectile trajectory.

GLOSSARY

PART I. ABBREVIATIONS AND ACRONYMS

ADIZ	air defense identification zone
ASD(HD&GS)	Assistant Secretary of Defense for Homeland Defense and Global Security
DoDD	DoD Directive
DoDI	DoD Instruction
FIR	flight information region
ICAO	International Civil Aviation Organization
NGA	National Geospatial-Intelligence Agency
NOTAM	notice to airmen
NOTMAR	notice to mariners
USD(P)	Under Secretary of Defense for Policy

PART II. DEFINITIONS

These terms and their definitions are for the purposes of this instruction.

foreign national airspace. The national airspace of a State other than the United States.

international airspace. Any airspace that is not subject to the sovereignty of a State. This includes all airspace seaward of coastal States' national airspace, including airspace over contiguous zones, exclusive economic zones, and the high seas.

military aircraft. Includes manned and unmanned aircraft.

national airspace. Any airspace that is subject to the sovereignty of a State. This includes airspace above the territorial seas, internal waters, archipelagic waters (for archipelagic States) and land territory of a State. Consistent with international law, the U.S. Government recognizes territorial sea claims up to a maximum distance of 12 nautical miles from a coastal State's baseline drawn in accordance with international law.