

HEADQUARTERS
UNITED STATES EUROPEAN COMMAND
APO AE 09128

DIRECTIVE
NUMBER 5-13

27 JAN 1994

ADMINISTRATIVE MATTERS

International Agreements;
Authority and Responsibilities

1. Summary. This Directive promulgates command policy and procedures for the implementation of DOD Directive 5530.3, redelegates USCINCEUR authority to negotiate and conclude specified international agreements, prescribes reporting requirements for new agreements, and establishes a central USEUCOM repository of international agreements. This Directive is procedural only. It does not create any substantive authority for international agreements.

2. Applicability.

a. This Directive is a USEUCOM publication which establishes and announces policy, assigns responsibilities, prescribes procedures, and directs actions for USEUCOM activities, internal and external to the Headquarters, to include component commands.

b. The definitions, policies, and procedures set forth in this Directive, and those contained in reference 5b, apply to:

(1) All elements of this command; including HQ USEUCOM and

the units, agencies, and activities assigned for its direct support; the component commands; security assistance organizations; and any joint task forces that may be established in the USEUCOM area of responsibility.

(2) All other military organizations in the USEUCOM area of responsibility to the extent their negotiation or conclusion of an international agreement may have an impact upon, or affect in any significant manner, the plans, policies, programs, or responsibilities of USEUCOM or of an element of USEUCOM.

3. Internal Control Systems. Internal management controls are applicable to this Directive and the provisions of AR 11-2 apply. These controls shall focus on program performance and on the economy and efficiency of operations. USEUCOM forces functioning in the area of international agreements will comply.

4. Suggested Improvements. The proponent agent for this Directive is the Office of the Legal Advisor

for Headquarters, U.S. European Command. Users are invited to send comments, questions, and suggested improvements to HQ USEUCOM, Office of the Legal Advisor, APO AE 09128-4209.

5. References.

a. DOD Directive 2010.9, Mutual Logistic Support Between the United States and Governments of Other NATO Subsidiary Bodies.

b. DOD Directive 5530.3, International Agreements (Appendix I).

c. JCS Memorandum of Policy No. 21, International Agreements.

d. USEUCOM Directive 56-9, European Command Relationships, USCINCEUR Contact Officers and U.S. Defense Representatives.

6. Explanation of Terms. The definitions in enclosure 2 of reference 5b apply to this Directive.

7. Responsibilities in General.

a. Component commanders will:

(1) Ensure full compliance with the provisions of reference 5b and this Directive with respect to international agreements negotiated or concluded under authority delegated to them by the Commander in Chief, U.S. European Command.

(2) Ensure subordinate commanders are informed of international agreements provisions with which they are expected to comply.

(3) Ensure subordinate commanders have available for ready reference those international agreements pertaining to their units, activities, or installations

(or regulations which implement those agreements).

(4) Submit an annual list of those agreements negotiated and concluded by the component during the previous calendar year to HQ USEUCOM (ECLA) by 15 January.

b. Within HQ USEUCOM:

(1) The Plans and Policy Directorate (ECJ5) is designated the central office of record, in compliance with reference 5b. As central office of record, ECJ5 will:

(a) Receive requests for authorization to negotiate and conclude international agreements.

(b) Record coordination actions taken on a request.

(c) Assign action to the cognizant staff directorate/office.

(2) Directors and office chiefs have authority to approve negotiation and conclusion of international agreements and act on matters pertaining to international agreements according to assigned staff functions following concurrence of:

(a) The Director of Plans and Policy (ECJ5).

(b) The Legal Advisor (ECLA).

(c) The Comptroller (ECCM).

(d) The Political Adviser (ECPLAD).

(e) Any other HQ USEUCOM directorate or staff office which may have an interest in or be affected by the substance of the proposed agreement.

(f) Components and other DOD agencies, as appropriate.

12-7 JAN 1994

(3) Each directorate/staff office primarily responsible for an international agreement will compile and maintain a complete negotiating history file, to include coordination and authorization.

(4) In matters concerning broad policy for international agreements or that encompass the responsibility of more than one directorate, the Plans and Policy Directorate (ECJ5) is assigned primary responsibility.

(5) The Office of the Legal Advisor (ECLA) will:

(a) Maintain a USEUCOM central repository of international agreements which contains copies of all international agreements concluded by this headquarters and its attached elements, the component commands, security assistance organizations, and other DOD elements required by this Directive to transmit copies of agreements to this headquarters.

(b) Ensure the compilation, retention, and retrievability within USEUCOM of a complete negotiating history file for each international agreement for which USEUCOM (including USEUCOM components) bears primary negotiating responsibility. When another HQ USEUCOM directorate or staff office, or a component, maintains the complete negotiating history file, ECJ5 will maintain a skeletal file showing the nature of the agreement, major actions taken, and the location of the complete file.

(c) Compile and publish annually an index of international agreements which identifies, chronologically and by country, with appropriate cross references, the agreements contained in the USEUCOM central repository of international

agreements. Forward a copy of the index, updated to include all agreements of the previous year, to the General Counsel, DOD, by 31 January.

(d) Prepare the legal memoranda required by reference 3b for requests of authority to negotiate and conclude international agreements forwarded to USD(P).

(e) Monitor compliance with the provisions of the references and this Directive.

(f) Provide legal advice and assistance as specified in paragraph 9c below.

(g) Provide representation at negotiations, as requested, within staffing capabilities.

(6) The Comptroller (ECCM) will:

(a) Prepare the fiscal memoranda required by reference 3b for requests of authority to negotiate and conclude international agreements forwarded to USD(P).

(b) Provide fiscal advice and assistance as specified in paragraph 9d below.

8. Policy in General.

a. Basic Policy. Within USEUCOM, the policy for negotiating and concluding international agreements is one of:

(1) Retaining approval authority at a level commensurate with the significance of the agreement.

(2) Providing for full consultation with all interested DOD organizations, as well as Service components or other elements of the unified command.

(3) Maintaining a careful record of the line of authority to negotiate and conclude agreements.

(4) Maintaining a central repository for all agreements negotiated and concluded.

(5) Strict and timely compliance with the requirement to submit copies of concluded agreements.

(6) Conduct of negotiations by the organizational element or executive agent with the best knowledge of those matters pertinent to the substance of the negotiations.

b. Implementation.

International agreements will be implemented within USEUCOM by either covering letters or regulations. Commanders at all echelons will be informed of international agreement provisions with which they are expected to comply. Commanders will maintain ready access to international agreements or regulations implementing international agreements pertaining to their units, activities, or installations.

c. Resolution of Conflicts.

Questions concerning compliance by any party with the terms of an international agreement should be resolved, if possible, by informal discussions between the responsible offices. If unresolvable locally, circumstances surrounding a suspected agreements violation should be reported within the normal military chain of command, keeping the USCINCEUR Contact Officer or U.S. Defense Representative informed. No action, including accusations or statements that an agreement has been violated, abrogated, or broken, shall be taken unless authorized by USCINCEUR.

9. Procedures in General.

a. Requests for authority to negotiate or conclude international agreements not falling within the approval authority of the component commanders, or where there is doubt as to the proper approval authority, shall be submitted with the supporting documentation described in reference 5b to HQ USEUCOM, ATTN: ECJ5, or to other appropriate approval authority with information copy to HQ USEUCOM, ATTN: ECJ5.

b. To the extent authorized by applicable Service directives, component commanders may authorize the use of summary procedures as provided in reference 5b for the categories of international agreements for which they have been delegated approval authority.

c. The following will be submitted to both the Staff Judge Advocate or Legal Advisor and Comptroller of the command responsible for negotiation:

(1) All requests for authority to negotiate and conclude international agreements prepared for submission to higher authority pursuant to the provisions of reference 5b,

(2) A draft text of the proposed agreement prior to its presentation to or substantive discussion with representatives of the country or organization with which the agreement is to be negotiated.

(3) A final text of the proposed agreement prior to concluding the agreement.

d. This review process will determine whether legal and fiscal memoranda are required to comply with reference 5b, ensure authority

27 JAN 1994

to negotiate and conclude the agreement exists, that the agreement is consistent with U.S. law and policy, that the agreement contains no major unprogrammed fiscal obligations, and otherwise conforms to fiscal law and regulation.

e. The restrictions in paragraph H-11 of reference 5b on concluding an agreement in a foreign language will be strictly observed.

f. For each international agreement concluded under the authority delegated to the Commander in Chief, U.S. European Command, or redelegated as provided herein, properly certified and reproducible copies shall be transmitted directly not later than 20 days after conclusion by the organizational element primarily responsible for the agreement as follows:

(1) Two copies to the General Counsel, Department of Defense,

(2) One copy to the Office of the Secretary, Joint Chiefs of Staff,

(3) One copy to HQ USEUCOM, ATTN: ECLA,

(4) One copy of the covering Letter of Transmittal only to HQ USEUCOM, ATTN: ECJ5,

(5) One copy to the appropriate USCINCEUR Contact Officer (USCCO) (identified in reference 5d),

(6) One copy to the appropriate United States Defense Representative (USDR) (identified in reference 5d; send only if USDR is not same office as USCCO).

g. For each international agreement concluded under authority other than that described in paragraph 9c, in addition to other

copies required by applicable Service or agency regulations, one reproducible copy will be transmitted not later than 20 days after its conclusion by the organizational element primarily responsible for the agreement directly to:

(1) HQ USEUCOM, ATTN: ECLA.

(2) The appropriate USCINCEUR Contact Officer (identified in reference 5d),

(3) The appropriate U.S. Defense Representative (identified in reference 5d).

h. Policy and procedures for mutual logistic support between the U.S. and governments of other NATO countries and subsidiary bodies, including the authority to negotiate and conclude cross-servicing agreements, implementing arrangements, and acquisition arrangements, are included in reference 5a.

10. Redelegation Policy.

a. With the exceptions noted in paragraph 10c, the Chairman, Joint Chiefs of Staff, by reference 5c, has redelegated to the Commander in Chief, U.S. European Command, the authority to grant or deny requests for authority to negotiate and conclude:

(1) International agreements (except those concerning predominately single-Service matters) relating to combined military planning, command relationships, military exercises and operations, minor and emergency force deployment, and personnel exchange programs.

(2) International agreements concerning operational command of joint forces within the following

categories:

(a) Technical, operational, working, or similar agreements or arrangements concluded pursuant to a treaty or executive agreement that entails implementing arrangements.

(b) Agreements for cooperative or reciprocal operational, logistical, training, or other military support, including arrangements for shared use or licensing of military equipment, facilities, services, and non-physical resources.

(c) Agreements for the collection or exchange of military information and data other than military intelligence.

(d) Agreements relating to the sharing or exchange of DOD communications equipment, facilities, support, services, or other communications resources with a foreign country or alliance organization such as the North Atlantic Treaty Organization (NATO), the use of U.S. military frequencies or frequency bands, and the use of U.S. communications facilities and/or systems by foreign organizations, whether overseas or in the continental United States.

b. The phrase "agreements concerning operational command of joint forces" is intended to include all agreements in the categories described above that may have an impact upon the performance by USCINCEUR of those functions of command involving the composition of subordinate forces, assignment of tasks, designation of objectives, and authoritative direction necessary to accomplish the mission. The scope of authority of a unified commander's exercise of operational command is contained in JCS Pub. 2, Unified Action Armed Forces, Subsection 2. Generally speaking,

any agreement that affects in any significant manner the plans, policies, programs, or responsibilities of USCINCEUR is included within the meaning of the phrase.

c. The delegation of authority to the Commander in Chief, U.S. European Command, to grant or deny requests for authority to negotiate or conclude international agreements does not extend to:

(1) Agreements having policy significance. Such agreements must be approved by OUSD(P) before negotiation, and again before they are concluded. Agreements "having policy significance" include those that:

(a) Specify national disclosure, technology-sharing or work-sharing arrangements, coproduction of military equipment or offset commitments as part of an agreement for international cooperation in the research, development, test, evaluation, or production of defense articles, services, or technology.

(b) Because of their intrinsic importance or sensitivity, would directly and significantly affect foreign or defense relations between the United States and another government.

(c) By their nature, would require approval, negotiation or signature at the OSD or the diplomatic level.

(d) Would create security commitments currently not assumed by the United States in existing mutual security or other defense agreements and arrangements or which would increase U.S. obligations with respect to the defense of a foreign government or area.

27 JAN 1987

ED 5-13

(2) Agreements whose implementation require enactment of new legislative authority.

(3) Agreements which rely on the authority of 10 U.S.C. 2304(c)(4) for acquisition by other than competitive contracting procedures.

(4) Agreements within specific subcategories of military communications as follows:

(a) Release or loan of U.S. COMSEC equipment.

(b) Interconnection to the U.S. Defense Communications System.

(c) Electrical interconnection to AUTODIN, AUTOVON, and AUTOSEVOCOM.

(d) Use of AUTODIN, AUTOVON, or AUTOSEVOCOM networks by foreign nations or regional defense organizations.

(e) Significant military communications arrangements with NATO not covered by any other categories herein.

(f) Transfer of record and telephone traffic of a regional defense organization or friendly foreign nation traversing the Defense Communications System, if more than 120 days.

(5) Communications-electronics agreements under the purview of the U.S. Military Communication-Electronics Board.

(6) Agreements for collection and exchange of military intelligence, cryptologic support, and counterintelligence.

11. Redelegation Procedure.

a. The authority delegated by

the Chairman, Joint Chiefs of Staff, to USCINCEUR to grant or deny requests for authority to negotiate and conclude technical, operational, working, or similar agreements pursuant to a treaty or executive agreement which contemplates implementing arrangements is redelegated subject to the limitations herein to the component commanders. Delegation by USCINCEUR of authority to negotiate and conclude all other categories of international agreements will be considered on a case by case basis.

b. Where USCINCEUR has designated a component command as executive agent in a matter of unified or multi-Service interest, the authority to negotiate and conclude international agreements delegated to USCINCEUR by reference 5c is hereby redelegated to the component command while so acting, unless the directive expressly limits that authority.

c. The delegation of authority to authorize the negotiation and conclusion of international agreements in the categories described above does not confer or create any substantive authority to negotiate and conclude a particular agreement. The substantive authority to negotiate and conclude an international agreement must exist independently of the authority to authorize its negotiation and conclusion. This substantive authority is derived from statutes as implemented by regulations and directives dealing with the particular subject.

d. Notwithstanding the redelegation of authority contained herein, international agreements which may have an impact upon or affect in any significant manner the

27 JAN 1984

ED 5-13

plans, policies, programs, or responsibilities of the U.S. European Command or a component command or DOD element in the USEUCOM area shall be coordinated by the commander primarily responsible for their negotiation and conclusion with the HQ USEUCOM staff directorate having primary interest in the subject matter of the negotiation or with the HQ USEUCOM

Plans and Policy Directorate (ECJ5), where the directorate with primary interest is not apparent, in sufficient time to permit coordination as required by reference 5b and this Directive.

e. The normal commander-staff relationship, in which the staff element acts "by direction" or "for the commander," is not considered redelegation.

FOR THE COMMANDER IN CHIEF:

OFFICIAL:

RICHARD F. KELLER
Lieutenant General, USA
Chief of Staff

W. L. Kiser Acting AG
RICHARD J. GARCIA
LTC, USA
Adjutant General

Appendix A: DoD Directive 5530.3

DISTRIBUTION: ECJ1, ECJ2, ECJ3, ECJ4, ECJ5, ECJ6, ECMD, ECPA, ECCM, JAC