



# DoD INSTRUCTION 5530.03

## INTERNATIONAL AGREEMENTS

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**Originating Component:** Office of the General Counsel of the Department of Defense

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**Reissues and Cancels:** DoD Directive 5530.03, "International Agreements," June 11, 1987, as amended

**Approved by:** David Norquist, Deputy Secretary of Defense

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**Purpose:** This issuance:

- Delegates the authorities of the Secretary of Defense to approve, negotiate, and conclude international agreements.
- Establishes policy and assigns responsibilities for:
  - Compliance with Section 112b of Title 1, United States Code (U.S.C.), also known and referred to in this issuance as the "Case Act."
  - Delegating authorities for specific categories of international agreements.
- Prescribes guidance for:
  - Obtaining authorizations, including Department of State (DOS) authorization and internal DoD authorization, required to negotiate and conclude international agreements with foreign governments or agencies thereof and international organizations by DoD personnel and DoD Components, commands, and other organizational elements.
  - Initiating, negotiating, concluding, and reporting international agreements.
  - Resolving OSD and DoD Component concerns with implementation of and compliance with international agreements.
  - Maintaining central repositories for international agreements in DoD.

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## **SECTION 1: GENERAL ISSUANCE INFORMATION**

### **1.1. APPLICABILITY.** This issuance applies to:

a. OSD, the Military Departments, the Office of the Chairman of the Joint Chiefs of Staff (CJCS) 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 within DoD (referred to collectively in this issuance as the “DoD Components”).

b. All international agreements concerning matters within the functional responsibilities of all DoD Components.

c. All non-binding subsidiary instruments that invoke the provisions of an umbrella or chapeau agreement, or for which an umbrella or chapeau agreement is invoked in another document.

**1.2. POLICY.** It is DoD policy to comply with all U.S. laws, regulations, policies, and procedures regarding the negotiation and conclusion of international agreements, and to maintain awareness of, and comply with, the terms of applicable international agreements.

## SECTION 2: RESPONSIBILITIES

**2.1. UNDER SECRETARY OF DEFENSE FOR POLICY (USD(P)).** In addition to the responsibilities in Paragraphs 2.3. and 2.5., and subject to appropriate DoD legal authority or specific DOS authorization (see Paragraphs 3.2. and 5.1.c.), the USD(P) may authorize the negotiation and conclusion of all international agreements relating to the responsibilities and functions of the USD(P) established in DoD Directive (DoDD) 5111.1.

**2.2. UNDER SECRETARY OF DEFENSE FOR ACQUISITION AND SUSTAINMENT (USD(A&S)).** In addition to the responsibilities in Paragraphs 2.3. and 2.5., and subject to appropriate DoD legal authority or specific DOS authorization (see Paragraphs 3.2. and 5.1.c.), the USD(A&S) may authorize the negotiation and conclusion of all international agreements relating to the responsibilities and functions of the USD(A&S) established in DoDD 5134.01 and the July 13, 2018, Deputy Secretary of Defense Memorandum.

**2.3. USD(P) AND USD(A&S).** The USD(P) and the USD(A&S):

a. Coordinate regularly to ensure consistency of policy and practice within DoD regarding the negotiation and conclusion of international agreements.

b. With respect to international agreements under their respective responsibilities, as specified in Paragraph 5.1.d., and subject to DoD legal authority or specific DOS authorization as listed in Paragraphs 3.2. and 5.1.c.:

(1) May delegate their respective authorities to authorize or approve negotiation and conclusion of international agreements to the DoD Component heads, or to the office or activity within the DoD Component that has cognizance over the applicable international agreement. The USD(P) and USD(A&S) may grant the authority to redelegate such authority if desired, and may rescind or change any delegations they make. Section 3 of this issuance delineates such delegations of authority. All further delegations must be in writing, and a copy of such delegations must be filed with the General Counsel of the Department of Defense (GC DoD).

(2) Authorize the negotiation and conclusion of international agreements.

(3) Arrange for DoD participation in the negotiations of international agreements, including representation, advice, or assistance by other DoD Components, when appropriate.

(4) Monitor the implementation of agreements in force, and provide appropriate guidance, advice, and assistance to other DoD Components in exercising their responsibilities under such international agreements.

**2.4. GC DoD.** The GC DoD:

- a. Acts as lead counsel for DoD in all international negotiations conducted by OSD before initiation of negotiations, for the tender of proposed international agreements to prospective parties or participants for the negotiation of international agreements, and for the conclusion of international agreements, in accordance with DoDD 5145.01.
- b. Coordinates with DoD Components that are authorized to negotiate and conclude international agreements throughout the negotiation process.
- c. Provides assistance, upon request, to DoD Components' General Counsel or Staff Judge Advocate (SJA), or the Legal Counsel to the CJCS, when authority to negotiate an international agreement has been delegated to officials of that DoD Component.
- d. Establishes and distributes policies and guidance, as needed, to implement this issuance.

**2.5. RELEVANT DOD COMPONENT HEADS.** The DoD Component heads who are delegated authority to negotiate and conclude international agreements, or the offices or activities within the applicable DoD Components with cognizance over a particular type of international agreement that has been delegated with that authority:

- a. Oversee implementation of and compliance with international agreements for which the respective DoD Component heads have responsibility.
- b. Annually inform the GC DoD of implementation of, compliance with, amendments to, and termination of all international agreements in force for which they have responsibility.
  - (1) If a question arises concerning whether any DoD Component is complying with the terms of an international agreement, and the question cannot be resolved by informal discussions between the responsible offices, then the responsible offices will provide the responsible DoD Component with cognizance over the particular type of international agreement with the details relevant to resolving such question.
  - (2) If a question arises concerning whether there is DoD legal authority or specific DOS authorization as appropriate, whether any document or set of documents constitutes an international agreement, or whether an international agreement has policy significance as specified in Paragraph 5.1.d., then before proceeding, the DoD Component with cognizance over the particular type of international agreement must first submit that question for decision through the GC DoD and either the USD(P) or the USD(A&S), as applicable, or their respective designees, to resolve such question.
- c. Develop, distribute, and maintain respective DoD Component guidance to implement this issuance and designate a single office of record for handling international agreements.
  - (1) Accept and coordinate requests originating within that DoD Component for authorization under Section 5 to negotiate or conclude an international agreement.

(2) Record coordination actions taken on a request originating from another DoD Component.

(3) Record the final determination when the USD(P) or the USD(A&S), or their respective designees, as applicable, approves or denies a DoD Component request to negotiate or conclude an international agreement.

(4) Ensure that a complete file of the negotiation history is compiled and retained for 10 years or until the agreement expires by its terms or is terminated, whichever is later. A complete file must be maintained in retrievable form within the DoD Component for each international agreement that the DoD Component has primary negotiating responsibility for within DoD. This requirement applies even if the chief U.S. negotiator or the signer of the agreement is an official of another DoD Component or another federal department or agency.

(5) Monitor compliance within that DoD Component with the provisions of this issuance.

(6) Maintain an index of all international agreements negotiated by, or within the responsibility of, the DoD Component concerned. A copy of the index, updated to include all international agreements concluded during the previous calendar year, must be sent to the GC DoD by March 31, of each year.

(7) Forward the original text of the international agreement, together with all accompanying papers, such as agreed minutes, exchanges of notes, or side letters directly to the Assistant Legal Adviser for Treaty Affairs, DOS; and to the GC DoD, not later than 20 days after the international agreement enters into force or effect in accordance with Sections 6 and 7.

d. Provide notice to the USD(P) or USD(A&S), as appropriate, with a copy to the GC DoD, if an approval authority delegated in Section 3 is redelegated.

### **SECTION 3: DELEGATIONS OF AUTHORITY TO NEGOTIATE AND CONCLUDE INTERNATIONAL AGREEMENTS**

3.1. Subject to DOS substantive authorization (see Paragraphs 3.2. and 5.1.c.), as appropriate, and Paragraph 5.1.d., the authority to negotiate and conclude international agreements, within the categories specified in this section, is hereby delegated to the DoD Component heads, as designated in this section. Notwithstanding any delegations of authority, DoD Component heads must comply with all applicable requirements in this issuance, and must consult with the GC DoD, through the respective DoD Component's General Counsel or SJA, and through the Office of the Legal Counsel to the CJCS, when applicable, regarding any international agreement that may raise significant legal issues.

3.2. These delegations do not confer substantive DoD legal authority or specific DOS authorization as defined in Paragraphs 181.2.(b) and 181.4. of the Case Act, Part 181 of Title 22, Code of Federal Regulations (CFR), to enter into a particular international agreement for which there is no separate legal authority. In accordance with subchapter 720 of Volume 11 of the DOS Foreign Affairs Manual, also known and referred to in this issuance as "Circular-175," specific DOS authorization is required in the case of any international agreement that is binding under international law. Subject to substantive DoD legal authority and specific DOS authorization by Circular-175, the authority to negotiate and conclude the following categories of international agreements is delegated as follows:

a. Authority for technical, operational, working, status of forces, or defense cooperation agreements, or similar international agreements, and authority for technical, operational, working, or similar implementing agreements concluded pursuant to a treaty or executive agreement is delegated to:

(1) The DoD Component head with primary responsibility for the subject matter of the international agreement, in coordination with the relevant Combatant Commander, as appropriate.

(2) The relevant Combatant Commander, through the CJCS, for international agreements concerning the joint operations of U.S. forces and combined operations of U.S. and foreign forces.

b. Authority for international agreements for cooperative or reciprocal operational, logistic, training, or other military support, including arrangements for shared use or licensing of military equipment, facilities, services, and non-physical resources, is delegated to:

(1) The DoD Component head with primary responsibility for the subject matter of the international agreement, in coordination with the relevant Combatant Commander, as appropriate.

(2) The Director, Defense Security Cooperation Agency (DSCA), for international agreements relating to the provision of defense articles, military training, and other defense-related services by grant, loan, cash sale, or lease, pursuant to the Security Assistance Program.

(3) The relevant Combatant Commander, through the CJCS, for international agreements concerning the joint operations of U.S. forces and combined operations of U.S. and foreign forces.

(4) The Director, International Cooperation (IC) in the Office of the USD(A&S), through the USD(A&S), for international agreements concerning cooperative or reciprocal logistic support, including shared use of equipment, facilities, and services.

(5) The Assistant Secretary of Defense for Health Affairs, through the Under Secretary of Defense for Personnel and Readiness, for international agreements pertaining to health and medical matters, including those related to the provision of medical care to foreign military and diplomatic personnel, as may be authorized pursuant to Section 2559 of Title 10, U.S.C.

c. Authority for international agreements relating to combined military planning, combined command relationships, combined military exercises and operations, humanitarian operations, peacekeeping operations, contingency operations, and minor and emergency force deployments is delegated to the relevant Combatant Commander, through the CJCS, in coordination with the Director, DSCA.

d. Authority for international agreements relating to personnel assignments, exchange, and liaison programs is delegated to the DoD Component head who assigns U.S. forces personnel or accepts foreign personnel or liaison officers, in coordination with the relevant Combatant Commander, and the Director, DSCA, as appropriate. This does not apply to agreements that are implemented under the authorities delegated to the Director, IC, in Paragraph 3.2.i.

e. Authority for international agreements for the collection or exchange of military intelligence information, less signals and geospatial intelligence, is delegated to the Director, Defense Intelligence Agency (DIR DIA). International agreements pertaining to signals intelligence are delegated to the Director, National Security Agency/Chief, Central Security Service (DIRNSA/CHCSS). International agreements pertaining to geospatial intelligence are delegated to the Director, National Geospatial-Intelligence Agency (NGA). The Under Secretary of Defense for Intelligence (USD(I)) must coordinate on all proposed international agreements concerning intelligence and intelligence-related matters.

f. Authority for international agreements for the collection or exchange of military information and data other than military intelligence, as defined in DoDD 5230.11 and National Disclosure Policy (NDP)-1, is delegated to:

(1) The DoD Component heads.

(2) The relevant Combatant Commander, through the CJCS, for agreements concerning the joint operations of U.S. forces and the combined operations of U.S. and foreign forces.



(3) The Director, NGA, with USD(I) and USD(P) concurrence, for international agreements relating to mapping, charting, geodesy, and gravity data.

g. Authority for international agreements relating to communications security or cyber security technology, services, support, research, equipment development and production, including commercial communication product security, mutual recognition of evaluation test activities, and collaborative development of evaluation test specifications, is delegated to the DIRNSA/CHCSS. The USD(I) and DoD Chief Information Officer (DoD CIO) must coordinate on all such proposed international agreements.

h. Authority for international agreements relating to military-related signals intelligence is delegated to the DIRNSA/CHCSS. The USD(I) must coordinate on all such proposed international agreements.

i. Authority for international agreements relating to cooperative research, development, test, evaluation, production, follow-on support, information exchange, and related personnel exchange and standardization agreements is delegated to the Director, IC, Office of the USD(A&S), through the USD(A&S), for such matters including, but not limited to, the exchanges of engineers and scientists under the Engineer and Scientist Exchange Program.

j. Authority for international 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), including international agreements pursuant to Section 2350f of Title 10, U.S.C.; the use of U.S. military frequencies or frequency bands; communications interoperability or security; and the use of U.S. communications facilities and systems by foreign organizations, whether overseas or in the continental United States, is delegated to:

(1) The DoD Component head with primary responsibility for the subject matter of the international agreement, in coordination with the relevant Combatant Command, as appropriate.

(2) The relevant Combatant Commander, through the CJCS, for international agreements relating to the joint operations of U.S. forces and combined operations of U.S. and foreign forces.

(3) The DoD CIO for all other related matters.

k. Authority for international agreements relating to command, control, and communications, and information technology policies, standards, and programs, pursuant to DoDD 5144.02, is delegated to the DoD CIO.

l. Authority for international agreements relating to cooperation in cybersecurity and defensive cyberspace operations is delegated to the DoD CIO.

m. Authority for international agreements relating to on-base financial institutions (e.g., military banking facilities and credit unions) is delegated to the Under Secretary of Defense (Comptroller)/Chief Financial Officer, Department of Defense (USD(C)/CFO).

n. Authority for international agreements relating to military and industrial security agreements, in accordance with the provisions of DoDD 5230.11, is delegated to the USD(P) or his or her designee.

o. Authority for international agreements relating to water resources development is delegated to the DoD Component head with primary responsibility for the subject matter of the agreement, in coordination with the USD(P) and the relevant Combatant Command.

p. Authority for international agreements pertaining to safeguarding classified information and material is delegated to the Director, Defense Technology Security Administration, in accordance with the provisions of DoDD 5105.72.

q. Authority for international agreements relating to the use of test facilities for the testing of defense-related materiel, and agreements for the reciprocal use of test facilities is delegated to the Director, Operational Test and Evaluation.

3.3. No authority may be redelegated without the prior written consent of the delegating authority in Paragraph 3.2. Redelegations of authority may be given for categories of international agreements, rather than on a case-by-case basis. Requests by a delegating authority to redelegate the authority to negotiate and conclude international agreements that have policy significance as specified in Paragraph 5.1.d. will be coordinated with the USD(P) or the USD(A&S), or their respective designees, as applicable. In the request for authority to delegate, the original delegating authority will address and resolve any questions or conflicts pertaining to any further delegations of authority. The original delegating authority may also impose limitations on subsequent delegations and may rescind or change any delegation made, and may also limit subsequent redelegations.

## **SECTION 4: EXERCISING THE AUTHORITY TO APPROVE THE NEGOTIATION AND CONCLUSION OF INTERNATIONAL AGREEMENTS**

4.1. Subject to Paragraph 5.1.d., exercising the authority to approve the negotiation and conclusion of international agreements, including the procedures described in this section and Section 5, will be accomplished in accordance with DoD Component guidance implementing this issuance. The procedures in this section will be used by DoD officials in exercising their authority to grant or deny requests for authority to negotiate and conclude international agreements.

4.2. Authority to approve the negotiation and conclusion of international agreements will be exercised in full consultation with all other DoD Components that may have an interest in the objective of the proposed international agreement. Specific procedures for exercising the authority to approve the negotiation and conclusion of international agreements include, but are not limited to, the following:

a. Before negotiation of an international agreement, DoD Components assigned to or located within the geographic area of responsibility of a geographic Combatant Command (GCC) will:

(1) Fully inform the appropriate GCC of any proposed negotiation that might affect the plans and programs of such commands.

(2) Provide the GCC with a copy of each agreement upon its conclusion, in addition to fulfilling the reporting requirements of Sections 6 and 7.

b. Before negotiation of an international agreement, DoD Components not assigned to or located within the geographic area of responsibility of a GCC will:

(1) Inform the appropriate GCC and the Office of the CJCS of any proposed negotiation that might affect the plans and programs of such commands.

(2) Provide the GCC with a copy of each such agreement upon its conclusion, in addition to fulfilling the reporting requirements of Sections 6 and 7.

c. The international agreements discussed in Paragraphs 3.2.a. and b. that involve significant changes in logistic support for the Military Departments, including adjustments to the use of facilities abroad that may affect joint or combined plans and programs, will be coordinated with the USD(P); the CJCS; Commander, United States Transportation Command; and the GCC for the overseas area involved, or their respective designees.

d. Before making any commitment to representatives of a foreign government or international organization, security of information provisions contained in international agreements involving, or likely to involve, program security instructions (PSIs) or the release of classified military information, classified technology, or classified material, will be coordinated with the USD(P), or his or her designee. International agreements involving, or likely to involve,

the release of classified military information will be coordinated with the USD(P), or his or her designee, and the Defense Technology Security Administration. Such agreements will comply with DoDD 5230.11 and NDP-1 and will meet the conditions for release provided in those publications.

e. International agreements that might have an effect on the development or procurement of standardized weapon systems or equipment among NATO States will be coordinated with the USD(A&S) and the USD(P), or their respective designees, as early in the development or procurement stage as possible. DoD Instruction (DoDI) 2010.06 provides policy guidance on materiel interoperability and standardization with allies and coalition partners.

4.3. Nothing in this issuance will be construed as altering such authorities as may be delegated in other DoDDs or DoDIs to OSD or other DoD Component heads that are authorized to develop and prescribe DoD procedures, positions, policies, and plans for carrying out their functional responsibilities. DoD officials authorized under this issuance to conduct negotiations will ensure that negotiations are conducted in accordance with such positions, plans, and policies.

## **SECTION 5: NEGOTIATING OR CONCLUDING INTERNATIONAL AGREEMENTS**

### **5.1. REQUIREMENTS FOR, AND RESTRICTIONS ON, AUTHORITY TO NEGOTIATE OR CONCLUDE INTERNATIONAL AGREEMENTS.**

a. The following requirements for, and restrictions on, authority to negotiate or conclude apply to all international agreements.

(1) Appropriate authorities must grant the authorization to negotiate or conclude proposed international agreements in accordance with Section 3.

(2) DoD Components proposing the negotiation of an international agreement must comply with the relevant provisions of the Case Act, Part 181 of Title 22, CFR, and this issuance.

(3) The DoD officer or employee, other than an official authorized under this issuance to grant approval to negotiate, who receives a proposal from a representative of a foreign government or international organization seeking to initiate the negotiation of an international agreement for which negotiation authority has not been granted under this issuance, must report that fact promptly, through appropriate channels, to the office or activity within the DoD Component concerned that has cognizance over the applicable type of international agreement. The DoD officer or employee must obtain appropriate authorization before taking part in negotiations. DoD personnel may accept proposed texts from foreign government representatives but must not begin negotiations, and must inform the foreign government representative that such proposed text must be submitted for approval to negotiate before any negotiations may occur.

(4) DoD personnel authorized to conduct or take part in the negotiation of an international agreement will be responsible for ensuring that during the negotiation:

(a) No proposal is communicated to a foreign government or to an international organization as a U.S. Government proposal if that proposal deviates from an existing authorization or instruction.

(b) No proposal is agreed to beyond the existing authorization without clearance from the original approval authority.

(c) DoD personnel communicate to the foreign government or international organization that any proposal that has been tentatively accepted but is beyond the existing authorization during negotiation is not final and must be subject to final approval by the appropriate approval authority.

(5) DoD Component heads authorized to negotiate and conclude international agreements will consult regularly with the GC DoD or the relevant Office of General Counsel or SJA, and through the Office of the Legal Counsel to the CJCS, and the relevant office of the

authorizing official, throughout the negotiation process. DoD Component GCs and SJAs are encouraged to request assistance from the GC DoD.

(6) The authorization to negotiate or conclude proposed substantive amendments to an international agreement must be granted in accordance with the procedures outlined in this issuance, including DoD legal authority or specific DOS authorization (see Paragraphs 3.2. and 5.1.c.). Substantive amendments include those provisions that, by themselves, might form the basis of a separate agreement; that propose a new obligation not previously contemplated by the parties; or that propose a substantive revision to an existing obligation, including any provisions that are not authorized by DoD legal authority or specific DOS authorization. The negotiation or conclusion of all amendments, whether substantive or not, must be approved by the same DoD official (or his or her successor) who approved the original international agreement, unless such official (or his or her successor) has expressly delegated such approval authority to another DoD official.

(7) DoD Components authorized to negotiate and conclude international agreements must not discuss the initiation, ongoing negotiations, or conclusion of international agreements with members of the news media without prior coordination with the applicable DoD Component senior public affairs official.

(8) Requests for authority to negotiate and conclude international agreements that have policy significance, as specified in Paragraph 5.1.d., will be forwarded to the USD(P) or the USD(A&S), as applicable, or their respective designees, for approval. In those instances when it is unclear whether an international agreement has policy significance, then the USD(P) or USD(A&S), as applicable, or their respective designees, will decide whether a proposed agreement falls under Paragraph 5.1.d.

b. No DoD Component will make any unilateral commitment to any foreign government or international organization, whether in the form of a letter, memorandum, or oral statement, without obtaining the concurrence of the DoD Component's Office of General Counsel or SJA.

c. This issuance, including the delegations of authority in Section 3, does not constitute substantive DoD legal authority or specific DOS authorization to negotiate or conclude any international agreement.

(1) Substantive DoD legal authority and specific DOS authorization to negotiate and conclude an international agreement, or to undertake responsibilities or commitments proposed to be assumed by the United States, DoD, or other U.S. department or agency, through an international agreement, will be subject to:

(a) The law applicable to the subject matter in the agreement.

(b) Appropriate DOS authorization by concurrence of, or consultation with, the DOS pursuant to Part 181 of Title 22, CFR and, if applicable, the Circular-175 process, given the Secretary of State's responsibilities for the conduct of U.S. foreign relations.

(2) Requests for Circular-175 authorization to negotiate or conclude any international agreement must include a legal and policy memorandum, which includes all relevant enclosures

and information concerning the international agreement, contained in Figure 1. The legal and policy memorandum may be part of the same memorandum.

**Figure 1. Background Statement for Submission of International Agreements**

- I. Type of Agreement:  
bilateral \_\_\_\_\_ multilateral \_\_\_\_\_
- II. Classification of the agreement.
- III. Specify whether the agreement is binding or non-binding under international law.
- IV. Specify the parties or participants (normally ministries, agencies, or departments of governments).
- V. List all U.S. and foreign governmental ministries, agencies, or departments identified as responsible for carrying out the agreement.
- VI. Specify the full title of the agreement.
- VII. Specify the subject matter of the agreement.
- VIII. Provide a statement of the legal authority under which the Department of Defense is authorized to enter into, conclude, and implement the agreement.
- IX. Provide a statement of any provisions raising particular legal issues, including any understanding regarding the meaning of particular provisions.
- X. Provide a statement of provisions that significantly deviate from the template contained in the blanket Circular-175 authorization, if applicable.
- XI. Identify the applicable Circular-175 authorization and attach a copy of such authorization, if possible.
- XII. Provide a statement confirming that the legal analysis in the memorandum of law in the Circular-175 authorization applies to the proposed agreement, and a discussion of new legal issues raised by the request, if applicable.
- XIII. For implementing agreements, include a copy of the agreement under which the implementing agreement is being concluded.
- XIV. State the date of entry into force or entry in effect. Spell the month.
- XV. State the date of termination, if applicable. Spell the month.
- XVI. Print the names of each signing official, his or her title and the office represented, and the ministry, agency, or department or international organization represented.
- XVII. State the full title(s) and date(s) of agreement(s), if any, upon which this agreement is based or that this agreement amends.
- XVIII. State the date or dates of signature of this agreement. Spell the month.

d. The USD(P) or the USD(A&S), as applicable, or their respective designees, will approve the authority for a DoD Component head, as designated in Section 3, to negotiate or conclude each proposed international agreement under his or her cognizance that has policy significance before such international agreement will be negotiated or concluded.

(1) International agreements that have policy significance include, but are not limited to, international agreements that:

(a) Could significantly affect:

1. Foreign or defense relations between the United States and another government, including, but not limited to, agreements relating to the status of U.S. Armed Forces and DoD civilian employee personnel in foreign countries, e.g., exemptions from host nation laws.

2. Access to foreign territory.

3. Access to or use of foreign government-owned land or structures on a reimbursable or non-reimbursable basis.

4. Construction or relinquishment of the right of use of land or structures on foreign government-owned facilities.

5. Bilateral defense or military-to-military associations between the United States and another country.

(b) Would create security commitments, assurances, or arrangements currently not assumed by the United States in existing treaties; would create mutual security or other defense agreements and arrangements; or would alter U.S. obligations with respect to the defense of a foreign government or area.

(c) Would raise unusual or uncommon legal issues or establish significant new legal precedents, as determined by the DoD Component GC or SJA, as applicable.

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

(e) Have foreign disclosure policy implications pursuant to DoDD 5230.11 and DoDD 5230.20, or involve communications interoperability or security.

(f) Involve cooperative production of military equipment or cooperation in the research, development, test, evaluation, or production of defense articles, services, or technology.

(g) Concern cooperative or reciprocal logistic support, including shared use of equipment, facilities, and services.

(h) Have cost-sharing provisions.



(2) Paragraphs 5.1.d.(1)(a)-(h) do not represent an exhaustive description of international agreements that have policy significance. Other identifying criteria or categories of these agreements may be identified by the USD(P) or the USD(A&S), as applicable, the GC DoD, or their respective designees.

e. Notwithstanding the delegations of authority in Sections 3 and 4, no international agreement that relies on the authority of Section 2304(c)(4) of Title 10, U.S.C., for use of other-than-competitive contracting procedures will be negotiated or concluded without the prior approval of the USD(A&S) or his or her designee.

f. Notwithstanding Sections 3 and 4, no international agreement that involves the expenditure of DoD funds, or has funding implications, will be negotiated or concluded without the concurrence of the USD(C)/CFO or his or her designee.

g. Notwithstanding Sections 3 and 4, no international agreement that implicates a reliance upon DoD's legal authorities to undertake military construction will be negotiated or concluded without the concurrence of the USD(P), the USD(A&S), and the USD(C)/(CFO), or their respective designees, as applicable, and the relevant Combatant Command, through the CJCS.

h. Notwithstanding Sections 3 and 4, no international agreement that involves payment to any entity of a foreign government for use of or access to land or facilities, except in the case of an international agreement for the reciprocal use of test facilities, will be negotiated or concluded without the concurrence of the:

(1) USD(P), USD(A&S), and USD(C)/(CFO), or their respective designees;

(2) Relevant Combatant Command, through the CJCS; and

(3) The office or activity within the DoD Component concerned that will be responsible for making any such payments.

i. Notwithstanding Sections 3 and 4, no international agreement, the implementation of which requires the enactment of new legislative authority, will be concluded without the prior approval of the Assistant Secretary of Defense for Legislative Affairs and the GC DoD or their respective designees.

j. Notwithstanding Sections 3 and 4, no international agreement that involves health affairs or personnel and readiness matters will be concluded without prior coordination with the Under Secretary of Defense for Personnel and Readiness and the GC DoD or their respective designees.

k. The authorization to conclude an international agreement may be requested and granted simultaneously with the authorization to negotiate an international agreement. Alternatively, the authorization to conclude may be withheld initially and granted later. The grant of either authorization may be made subject to any conditions considered necessary or desirable by the authorizing official; this may include prescribing which DoD personnel will participate in the negotiation, and designating the delegation lead and the chief negotiator, to the extent those decisions are within the purview of the authorizing official.

l. Implementing agreements, annexes, project agreements, or other subsidiary agreements that are implemented under an umbrella or other master international agreement will be reviewed by the GC DoD. The responsible DoD Component must include in the request for GC DoD review a legal memorandum by that DoD Component's Office of General Counsel or SJA. The memorandum will provide, among other relevant matters, a detailed review of why the proposed subsidiary agreement is within the scope of the umbrella or master agreement and may be concluded under the terms of such agreement.

m. With the exception of Paragraph 5.1.a.(4)(a), the restrictions and requirements of this section do not apply to DoD personnel and employees assigned or detailed to U.S. delegations or diplomatic missions, whether as individuals or as members of a military mission, group, or other organization, in those situations where the chief of the U.S. delegation or diplomatic mission receives authorization to negotiate from the Secretary of State, consistent with Part 181 of Title 22, CFR. In such situations, DoD personnel must comply fully with applicable instructions, including directives of the chief of the U.S. delegation or diplomatic mission.

n. International agreements concluded by any DoD official must be in English language text unless one of the following criteria has been met:

(1) The international agreement expressly provides that the English language text will be considered by the parties as the governing text in case of conflict between the different language texts; or

(2) The international agreement expressly provides that the English language text and the foreign language text are equally authentic. The foreign language text of the agreement must be made the subject of a memorandum, executed before the agreement or arrangement is concluded in any language, stating that the foreign language text and the English language text are in conformity with each other and that both texts have the same meaning in all substantive respects. The certification will be dated and signed by a civilian, military, or local translator who has been designated as qualified by the DoD official authorized to negotiate and conclude the agreement or arrangement, or by an appropriate DOS official. The certification and the foreign language text of the agreement must be sent with the English language text of the agreement to the cognizant central repository identified in Section 6, and in accordance with Section 7, to DOS.

o. Each international agreement and any of its amendments concluded by DoD officials must include the dates and places of signature and the typed name and title of each signatory. The month should be spelled out.

p. Unless an international agreement has been reviewed and approved in accordance with the procedures specified in Paragraph 5.2., the USD(P), the USD(A&S), and all other officials of DoD Components to whom the responsibility to negotiate and conclude international agreements has been delegated must obtain the concurrence of their DoD Component's Office of General Counsel or SJA before providing any draft of such agreement to a prospective party; before approving any negotiated text; and before concluding any international agreement. That concurrence will include a certification that the requirements of the Case Act and this issuance have been met.

## **5.2. PROCEDURES FOR REQUESTING AUTHORIZATION TO NEGOTIATE OR CONCLUDE AN INTERNATIONAL AGREEMENT.**

a. The procedures in this section will be used by the USD(P), the USD(A&S), and all other OSD officials to whom responsibility for granting or denying requests for authorization to negotiate or conclude international agreements has been delegated by this issuance or by the USD(P) or the USD(A&S), when considering a request for authorization to negotiate or conclude an international agreement. For international agreements under the authority of the USD(A&S), streamlined agreement procedures, including the use of a summary statement of intent, as authorized in DoDI 5000.02 and as described in the Defense Acquisition Guidebook, may be used in lieu of the procedures in this section.

b. The office or activity within the DoD Component concerned will request the authority to negotiate or conclude an international agreement in the Component's area of interest from the USD(P), the USD(A&S), or the official within the DoD Component to whom the requisite authority has been delegated to authorize the negotiation or conclusion of an international agreement. The following will be forwarded with the request to negotiate or conclude an international agreement:

(1) A draft text or outline of the proposed international agreement, or an explanation for the unavailability of such a draft.

(2) A legal memorandum:

(a) Identifying any existing agreements to which the agreement relates.

(b) Explaining provisions that significantly deviate from the template contained in a blanket authorization, if applicable.

(c) Addressing any new legal issues raised by the request.

(d) Reciting the applicable constitutional, statutory, or other legal authority for carrying out each obligation proposed to be undertaken by the United States, DoD, or DoD Component in the proposed international agreement.

(e) Identifying the applicable Circular-175 authorization and attaching a copy of such authorization, if possible.

(f) Explaining other relevant legal considerations.

(3) A fiscal memorandum that specifies the estimated cost of each obligation proposed to be undertaken by the United States, DoD, or DoD Component in the proposed international agreement, and the source of funds to be obligated or a statement that additional funds for carrying out the purpose of the proposed international agreement will be requested for a specified fiscal year or years.

(4) A policy memorandum explaining in detail why the proposed international agreement is necessary or desirable, including any particular policy issues, the meaning of particular

provisions, and a summary of the risks and benefits relevant to any transfer of technology or disclosure of information addressed in the agreement.

(5) For international agreements under the authority of the USD(A&S), the legal, fiscal, and policy memoranda may be combined into a single coordinated document, such as a summary statement of intent as described in the September 14, 1994, Deputy Secretary of Defense Memorandum and the Defense Acquisition Guidebook. For international agreements under the authority of the USD(P), the legal, fiscal, and policy memoranda may be combined into a single coordinated document.

(6) For international agreements that allow for the provision or generation of classified or controlled unclassified information, a delegation of disclosure authority letter (DDL) or other written authorization approved by the DoD Component's foreign disclosure office is required as part of the request for authority to conclude an international agreement. The format in Figure 2 should be used for this purpose by cognizant DoD Components. Although all elements identified should be provided generally in the order shown, information should be presented in the clearest and easiest-to-use manner. For example, for complex systems, the usefulness of the DDL may be enhanced if items 5 and 6 are broken out by major subsystem.

**Figure 2. DDL Format**

1. **classification and categories permitted:** Identify the highest classification of information to be disclosed and specify the National Disclosure Policy (NDP) categories for disclosure.
2. **countries:** Identify the countries or international organizations covered under the DDL.
3. **disclosure methods:** e.g., oral, visual, or documentary.
4. **categories permitted:** Specify NDP categories to be disclosed or released.
5. **scope:** Specify who is authorized to release material or information, to whom disclosure is authorized, and the purpose of the disclosure (e.g., to support a foreign military sales case or a cooperative development program).
6. **authorized for disclosure:** Describe material or information that may be disclosed.\*
7. **not authorized for disclosure:** Describe material or information that may not be disclosed.\*
8. **procedures:** Specify review and release procedures, special security procedures, or protective measures to be imposed.
9. **redelegation:** Specify the extent that redelegation of authority (if any) is permitted to subordinate activities.

\*In addition to providing specific descriptions of disclosable and restricted material and information, items 6 and 7 will also specify any imposed conditions or limitations to be imposed (e.g., time-phasing of release, allowable forms for software, identification of items releasable only as finished, tested assemblies.).

Note: Use the NDP-1 Security Classification Guide (SCG) to determine the classification of paragraphs 1 and 4. The classification of paragraphs 6 and 7 is dependent on the specific technology or system SCGs, or other classified documents.

(7) Paragraphs 5.2.b.(1)-(5) do not apply to standard form data or information exchange annexes that are negotiated under the authority of a master agreement prescribing the format of

annexes, provided that such annexes do not have policy significance and the requirements of Paragraph 5.1.p. have been met.

c. The request may also include:

(1) A request for the designation of a chief negotiator who also may be authorized to conclude the international agreement.

(2) A request for assistance in the negotiation from other DoD Components.

(3) A request that the international agreement be negotiated and concluded by OSD or by a U.S. Government department or agency other than DoD.

d. The request will be supplemented with any other relevant information that the USD(P), the USD(A&S), or other authorized DoD official considers necessary to reach a decision.

e. Before granting any such request, the USD(P) or the USD(A&S), as applicable, or other authorized DoD official must obtain concurrence from the GC DoD. The USD(P), the USD(A&S), or other authorized DoD official must obtain concurrence from the USD(C)/CFO, or his or her designee, if the international agreement involves the expenditure of DoD funds or has funding implications.

## **SECTION 6: CENTRAL REPOSITORY**

6.1. Except for agreements or arrangements referred to in Paragraph 6.3., two reproducible copies of each international agreement, including any amendments, implementing agreements or arrangements, annexes, project agreements or arrangements, or other subsidiary agreements or arrangements concluded under such international agreement, must be sent by the DoD Component office responsible for concluding the international agreement to the GC DoD at 1600 Defense Pentagon, Washington, DC, 20301-1600. The copies must be sent no later than 20 days after the agreement or arrangement is signed or enters into force or effect, whichever occurs first. Each of the copies must be certified to be a true copy of the original. Copies should be one-sided only. Copies may be certified by any officer or U.S. civilian employee authorized by U.S. law to administer oaths or to make acknowledgments. A background statement meeting the requirements of Part 181 of Title 22, CFR, including the data points in Figure 1, will accompany the transmitted text.

6.2. The GC DoD will maintain the central repository, including an index updated at least once per year, for all international agreements, with accompanying legal and fiscal memorandums when required, which are coordinated, negotiated, or concluded by DoD personnel. Exceptions to this requirement are:

- a. Agreements or arrangements in the intelligence field.
- b. Those documents not considered to constitute international agreements or arrangements for the purposes of this issuance.

6.3. The DIR DIA will maintain a central repository of international agreements in the intelligence field that are coordinated, negotiated, or concluded on his or her behalf. The repository office will maintain an index of all such agreements. A copy of the updated index of international agreements that entered into force or effect, or were amended, during the previous calendar year must be provided to the GC DoD by March 31 of each year. The index will not include agreements that the DIR DIA determines to be sensitive or compartmented. The index will include at a minimum:

- a. The title of the international agreement.
- b. The classification of the international agreement.
- c. The DoD Component that negotiated and concluded the international agreement.
- d. The name of the foreign party with whom the agreement has been concluded.
- e. The date the agreement entered into force or effect.
- f. A brief statement of the general purpose of the agreement.

g. The date of expiration or termination of the agreement, if applicable. For sensitive or compartmented agreements, the DIR DIA will make separate arrangements with the GC DoD to ensure that cognizance of such agreements is maintained.

h. A copy of the letter or memorandum authorizing the DoD Component to negotiate and conclude the international agreement.

6.4. When a question arises as to whether a document or set of documents constitutes an international agreement, such document or documents must be forwarded in a timely fashion to the GC DoD, who will determine if the document in question should be treated as an international agreement and processed in accordance with Paragraph 5.1. and Sections 6 and 7.

## **SECTION 7: CASE ACT IMPLEMENTATION**

7.1. Part 181 of Title 22, CFR, which implements the Case Act, provides that, notwithstanding any other provision of law, an international agreement may not be signed or otherwise concluded on behalf of the United States without prior consultation with the Secretary of State.

a. Before authorization is granted to negotiate or conclude an international agreement, consultation with DOS will be accomplished by the GC DoD and the USD(P) or the USD(A&S), as appropriate, for all international agreements having policy significance and for all international agreements for which approval authority has not been subsequently delegated. (See Paragraph 5.1.d., and the Case Act for further guidance.)

b. Questions concerning the requirement to effect such coordination will be referred to the GC DoD.

7.2. A DoD Component that enters into an international agreement must transmit the original text of the international agreement, together with all accompanying papers, such as agreed minutes, exchanges of notes, or side letters, directly to the Assistant Legal Adviser for Treaty Affairs, DOS; and to the GC DoD, no later than 20 days after the international agreement enters into force or effect. The texts transmitted must be accurate, legible, and complete, and must include the texts in all languages in which the agreement was signed or initiated. Where the original texts of concluded agreements are not available, certified copies must be transmitted in the same manner as original texts. A certified copy must be an exact copy of the signed original. If the text of the international agreement is transmitted more than 20 days after its entry into force, the transmittal document must fully and completely describe the reasons for the late submission. A background statement meeting the requirements of Part 181, Title 22, CFR, and in the format of Figure 1, must accompany the transmitted text.

7.3. Any DoD Component that enters into an international intelligence agreement must, within 15 days after conclusion of the international agreement, provide the Defense Intelligence Agency with one complete reproducible copy of the agreement along with a background statement meeting the requirements of Part 181, Title 22, CFR, and in the format of Figure 1. Agreements pertaining to signals intelligence and delegated to the DIRNSA/CHCSS and agreements pertaining to geospatial intelligence and delegated to the Director, NGA, are exempt from this requirement. The DIR DIA will ensure that the text of the agreement is transmitted to the Assistant Legal Adviser for Treaty Affairs, DOS.

7.4. Questions regarding whether an international agreement is required by the Case Act to be transmitted to Congress will be referred to DOS through the USD(P), the USD(A&S), or the GC DoD as appropriate. If determined appropriate, DOS will transmit the international agreement to Congress.



7.5. When a question arises as to whether any document or set of documents constitutes an international agreement within the meaning of the Case Act, such question will be referred through and by the GC DoD to the Assistant Legal Adviser for Treaty Affairs, DOS.

## GLOSSARY

### G.1. ACRONYMS.

CFR	Code of Federal Regulations
DDL	delegation of disclosure authority letter
DIR DIA	Director, Defense Intelligence Agency
DIRNSA/CHCSS	Director, National Security Agency/Chief, Central Security Service
DoD CIO	DoD Chief Information Officer
DoDD	DoD directive
DoDI	DoD instruction
DOS	Department of State
DSCA	Defense Security Cooperation Agency
GCC	geographic Combatant Commander
GC DoD	General Counsel of the Department of Defense
IC	International Cooperation
NATO	North Atlantic Treaty Organization
NDP	National Disclosure Policy
NGA	National Geospatial-Intelligence Agency
PSI	program security instruction
SCG	security classification guide
SJA	Staff Judge Advocate
U.S.C.	United States Code
USD(A&S)	Under Secretary of Defense for Acquisition and Sustainment
USD(C)/CFO	Under Secretary of Defense (Comptroller)/Chief Financial Officer, Department of Defense
USD(I)	Under Secretary of Defense for Intelligence
USD(P)	Under Secretary of Defense for Policy

### G.2. DEFINITIONS. These terms and their definitions are for the purpose of this issuance.

**chapeau agreement.** A bilateral agreement that establishes legally binding commitments under international law affecting major aspects of cooperation such as logistical support, liability, and property rights, including intellectual property rights, that are applicable to non-binding written

arrangements in the course of mutual defense activities when invoked by or for that applicable arrangement.

**conclusion.** The act of signing, initialing, responding to, or otherwise indicating the acceptance of an international agreement by a department or agency of the U.S. Government.

**DoD Component head.** An official that serves as the head of one of the DoD Components, as identified in DoDD 5100.01.

**international agreement.** Any agreement concluded with one or more foreign governments, including their agencies, instrumentalities, or political subdivisions, or with an international organization that:

Is signed or agreed to by personnel of any DoD Component, or by representatives of the DOS or any other department or agency of the U.S. Government.

Signifies the intent of the parties to be bound under international law. The intent of the parties to have their undertaking governed by international law need not be manifested by a third-party dispute settlement mechanism or any express reference to international law. A DoD Component's GC or SJA must be consulted when making a determination as to whether an international agreement or arrangement is binding under international law.

Is denominated as an international agreement or as a memorandum of understanding, memorandum of agreement, memorandum of arrangement, exchange of notes, exchange of letters, technical arrangement, protocol, note verbale, aide memoire, agreed minute, arrangement, statement of intent, letter of intent, statement of understanding, or any other name connoting a similar legal consequence. This includes any implementing agreement or arrangement, annex, project agreement or arrangement, or other subsidiary arrangement to a master agreement or arrangement.

Any oral agreement that meets the criteria of this definition is an international agreement. The DoD representative who enters into an oral agreement will cause such agreement to be reduced to writing. In written form, the agreement is subject to the requirements of this issuance.

The following do not constitute international agreements for the purposes of this issuance:

Contracts made under the Federal Acquisition Regulation.

Foreign military sales credit agreements.

Foreign military sales letters of offer and acceptance executed in the format managed by DSCA.

Standardization Agreements such as NATO Standardization Agreements, American, British, Canadian, Australian, and New Zealand standards, and Air and Space Interoperability Council Air Standards, which record the adoption of like or similar military equipment, ammunition, supplies, and stores or operational, logistic, and administrative procedures. A NATO Standardization Agreement that provides for mutual support or cross-servicing of

military equipment, ammunition, supplies, and stores or for mutual rendering of defense services, including training, is considered an international agreement.

Leases with foreign governments and commercial entities pursuant to Section 2675 of Title 10, U.S.C., and with foreign governments and international organizations pursuant to Section 2796 of Title 22, U.S.C.

Agreements made solely to establish administrative procedures.

Acquisitions or orders pursuant to acquisition and cross-servicing agreements made in accordance with the authority of Section 2341 of Title 10, U.S.C. and DoDD 2010.9. Umbrella agreements, implementing arrangements, and cross-servicing agreements pursuant to DoDD 2010.9 are international agreements.

**negotiation.** Communication by any means of a position or an offer, on behalf of the United States, the DoD, or any officer or organizational element thereof, to an agent or representative of a foreign government, including an agency, instrumentality, or political subdivision thereof, or of an international organization, in such detail that the acceptance in substance of such position or offer would result in an international agreement.

The term includes any such communication, even though the agreement may be conditioned on later approval by the responsible authority.

The term also includes the presentation of a draft agreement or other document, the acceptance of which would constitute an agreement, as well as discussions concerning any U.S. or foreign government or international organization draft document whether or not titled “agreement.”

The term does not include preliminary or exploratory discussions, consultations, or routine meetings where no proposed texts or draft documents are presented, so long as such discussions or meetings are conducted with the understanding that the views communicated do not and will not bind or commit any side, legally or otherwise.

**original delegating authority.** The DoD Component granted the authority to negotiate and conclude international agreements pursuant to this issuance, and that subsequently redelegates such authority.

**PSI.** Provides guidance used to supplement national security rules of the participant countries under which classified information and materiel are normally protected. It should be used to reconcile differences in national policies so that standard procedures will be used for the international program, and will be approved by the national or designated security authorities of all participant countries. Along with the SCG, the PSI should be initiated concurrently with development of the request for authority to develop an international agreement involving the exchange of classified information.

**security arrangement or assurance.** An indication, other than a binding obligation, that the United States will take some action short of acting in the common defense of another state that

has been subject to an armed attack. An example would be an agreement to consult promptly with another state in the event of a threat to that state's security and stability.

**security commitment.** A binding obligation incurred by the United States to act in the common defense of another state that has been subject to armed attack.

## REFERENCES

- Code of Federal Regulations, Title 22, Part 181
- Defense Acquisition Guidebook, current edition
- Department of State, “Foreign Affairs Manual,” current edition (Subchapter 720 of Volume 11 is also known as the “Department of State Circular-175 Procedures”)
- Deputy Secretary of Defense Memorandum, “Streamlining the Development of International Research and Development (R&D) Agreements,” September 14, 1994
- Deputy Secretary of Defense Memorandum, “Establishment of the Office of the Under Secretary of Defense for Research and Engineering and the Office of the Under Secretary of Defense for Acquisition and Sustainment,” July 13, 2018
- DoD Directive 2010.9, “Acquisition and Cross-Servicing Agreements,” April 28, 2003, as amended
- DoD Directive 5100.01, “Functions of the Department of Defense and its Major Components,” December 21, 2010
- DoD Directive 5105.72, “Defense Technology Security Administration (DTSA),” April 26, 2016
- DoD Directive 5111.1, “Under Secretary of Defense for Policy (USD(P)),” December 8, 1999
- DoD Directive 5134.01, Under Secretary of Defense for Acquisition, Technology, and Logistics (USD(AT&L)),” December 9, 2005, as amended
- DoD Directive 5144.02, “DoD Chief Information Officer (DoD CIO),” November 21, 2014, as amended
- DoD Directive 5145.01, “General Counsel of the Department of Defense (GC DoD),” December 2, 2013, as amended
- DoD Directive 5230.11, “Disclosure of Classified Military Information to Foreign Governments and International Organizations,” June 16, 1992
- DoD Directive 5230.20, “Visits and Assignments of Foreign Nationals,” June 22, 2005
- DoD Instruction 2010.06, “Materiel Interoperability and Standardization with Allies and Coalition Partners,” July 29, 2009, as amended
- DoD Instruction 5000.02, “Operation of the Defense Acquisition System,” January 7, 2015, as amended
- Federal Acquisition Regulation, current edition
- National Disclosure Policy-1, “National Policy and Procedures for the Disclosure of Classified Military Information to Foreign Governments and International Organizations,” February 14, 2017
- National Disclosure Policy Security Classification Guide, April 10, 2017
- United States Code, Title 1, Section 112b (also known as the “Case Act”)
- United States Code, Title 10
- United States Code, Title 22, Section 2796