



DEPARTMENT OF THE NAVY
OFFICE OF THE CHIEF OF NAVAL OPERATIONS
2000 NAVY PENTAGON
WASHINGTON, DC 20350-2000

OPNAVINST 5710.25B
N3/N5L
10 May 2016

OPNAV INSTRUCTION 5710.25B

From: Chief of Naval Operations

Subj: INTERNATIONAL AGREEMENTS

Ref: (a) 22 CFR 181
(b) Case-Zablocki Act, 1 U.S.C. §112
(c) DoD Directive 5530.3 of 11 June 1987
(d) SECNAVINST 5710.25B
(e) DIAI 2000.001 (NOTAL)

Encl: (1) Approval Authorities
(2) Sample Request for Authorization to Negotiate
(3) Sample Fiscal Memorandum
(4) Sample Legal Memorandum
(5) Sample Request for Authorization to Conclude
(6) Sample Command Forwarding Memorandum to OJAG
(7) Sample Background Statement for International Agreement

1. Purpose

a. To implement references (a) through (e) concerning the negotiation and conclusion of international agreements. This instruction is a complete revision and should be reviewed in its entirety.

b. Significant changes to this instruction are primarily to clarify the state of the law for ease of use and review and to make the international agreement process compliant with Federal law and directives. These changes are indicated in subparagraphs 1b(1) through 1b(4).

(1) Clarification that the instruction does not constitute legal authority to negotiate or conclude any international agreement, but only the procedural authority to request permission to negotiate and conclude international agreements for which legal authority is found elsewhere;

(2) Clarification of the legal reviews and concurrent staffing requirements, including the roles of command staff judge advocates; Office of the Judge Advocate General (OJAG), Deputy Assistant Judge Advocate General for International and Operational Law (Code 10); and Office of the General Counsel;

(3) Removal of the "policy significance" requirement before routing to Office of the Chief of Naval Operations (OPNAV) Director of International Engagement (N52) and OJAG for review; and

(4) Clarification of approval authority and coordination requirement.

2. Cancellation. OPNAVINST 5710.25A.

3. Background

a. References (a) and (b) provide that, notwithstanding any other provision of law, an international agreement may not be signed or otherwise concluded on behalf of the United States Government without prior consultation with the Secretary of State. Per reference (c), questions concerning the requirement to effect such coordination must be referred to the Department of Defense (DoD) Office of the General Counsel (DoD OGC). All Navy commands must refer such questions - including whether a proposed arrangement or understanding would constitute an international agreement - through their staff judge advocate to the OJAG (Code 10) for further coordination with DoD OGC.

b. The term "negotiation" is defined as communication by any means of a position or an offer, on behalf of the United States, DoD, or any officer or organizational element thereof, to an agent or representative of a foreign government, including an agency, instrumentality, political subdivision thereof, or of an international organization, in such detail that the acceptance of such position or offer would result in an international agreement. The term "negotiation" includes any such communication, even if conditioned on later approval by the responsible authority. The term "negotiation" also includes provision of a draft agreement or other document, the acceptance of which would constitute an agreement, as well as discussions concerning any U.S., foreign government, or international organization draft documents whether or not titled "agreement."

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

4. Scope and Applicability

a. This instruction applies to all commands with respect to the international agreements that concern matters within their functional responsibility. This instruction does not constitute legal authority to negotiate or conclude any international agreement. Such authority may be requested and obtained following references (a) and (b). Substantive legal authority for specific obligations proposed to be assumed by the DoD through an international agreement may be found only in the law applicable to the subject matter in the text of the agreement. Commands must comply with references (a) through (e) when proposing and obtaining authorization for the negotiation and conclusion of international agreements; for carrying out responsibilities with respect to the initiation, negotiation, and conclusion of international agreements; and for the resolution of questions of implementation and compliance concerning international agreements.

b. Per reference (c), paragraph 8.13, all Navy commands to whom the responsibility to negotiate or conclude an international agreement has been delegated must obtain the concurrence of the Judge Advocate General of the Navy before tendering any draft of such agreement to a prospective party thereto, before initialing any negotiated text, and before concluding any international agreement. That concurrence must include a certification that the requirements of references (b), (c), and this instruction have been met.

c. Per references (c) and (d), this instruction applies to operational agreements and not to international acquisition agreements. International acquisition agreements are the responsibility of the Assistant Secretary of the Navy (Research, Development and Acquisition) and the Deputy Assistant Secretary of the Navy (International Programs).

5. General. Subparagraphs 5a through 5c are a summary of the steps involved in proposing an international agreement and for carrying out responsibilities with respect to the initiation, negotiation, and conclusion of an international agreement.

a. Request for Authorization to Negotiate

(1) Commands must submit a request for authorization to negotiate an international agreement through the appropriate chain of command per references (a) through (e) and this instruction. Requests for such authorizations may be initiated by an approval authority listed in enclosure (1). A sample request is included in enclosure (2), and the required fiscal and legal memoranda are included in enclosures (3) and (4), respectively. Assistance in drafting the request is available from OPNAV N52 and OJAG (Code 10). A technology assessment and control plan is required for international agreements that are policy significant. All other requests should include a brief description of the type and classification of any technology or information transfer involved per reference (c). All requests must be forwarded through OPNAV N52 to Deputy Chief of Naval Operations for Operations, Plans and Strategy (CNO N3/N5) for coordination with OJAG (Code 10), the Office of the Secretary of Defense (Policy), and DoD OGC.

(2) An authorization to negotiate an international agreement may indicate who the negotiators will be, and may provide specific instructions to be adhered to during the negotiations.

b. Request for Authorization to Conclude

(1) When negotiations over the international agreement's text are complete and before commands may conclude (i.e., by signing or otherwise accepting) the agreement, commands must submit a request for authorization to conclude the international agreement per references (a) through (e) and this instruction. Requests for such authorizations are made after negotiators reach an "ad referendum" text - one agreed between the negotiators but subject to final approval by their respective governments. Requests for such authorizations may be initiated by the command that was authorized to conduct the negotiation. A sample request to conclude an international agreement is included in enclosure (5).

(2) Commands may request authorization to negotiate and conclude at the same time. If approved, commands must submit a separate request for authorization to conclude if the "ad referendum" text of the international agreement differs substantively from the text that was authorized to initiate the negotiation.

(3) Copies of all authorizations to either negotiate or conclude international agreements must be forwarded to OPNAV N52 (except those pertaining to intelligence agreements) and OJAG (Code 10) (all authorizations).

c. Conclusion and Transmittal. After conclusion and per references (a) through (d), submit four certified copies (or three copies and the original), the background statement, and translator's certificate (if there is a foreign language text) to OJAG (Code 10), 1322 Patterson Avenue South-East, Suite 3000, Washington Navy Yard, DC 20374-5066 within 10 calendar days after the last signature (format provided in enclosures (6) and (7)). This requirement may not apply to intelligence agreements and should be evaluated on a case-by-case basis in consultation with OJAG (Code 10) and Defense Intelligence Agency.

6. Responsibilities

a. CNO N3/N5 must:

(1) Exercise overall policy and management control concerning the implementation of this instruction.

(2) Resolve any questions of policy concerning international agreement practices and procedures or interpretation of this instruction.

(3) If necessary, withhold authority to negotiate and conclude agreements, or direct additional coordination within DoD of actions under this instruction.

b. OPNAV N52 must receive, as a "copy to" addressee, all requests for and approvals of authorizations to either negotiate or conclude international agreements (except those pertaining to intelligence agreements). This is done to ensure OPNAV N52 is aware of all pending international agreements.

c. The Judge Advocate General of the Navy must coordinate on all international agreements and determine if concurrence and certification are appropriate per reference (d).

d. OJAG (Code 10) must receive, as a "copy to" addressee, all requests for and approvals of authorizations to either negotiate or conclude international agreements. This is done to ensure the Judge Advocate General of the Navy is aware of all pending international agreements. OJAG (Code 10) must serve as the central office of record for international agreements concluded under this instruction, per reference (d).

e. Approval authorities (listed in enclosure (1)) must exercise approval authority responsibilities per this instruction.

f. The approval authority is responsible for developing the international agreement proposal; coordinating with appropriate commands and authorities; and arranging and funding translation certification (if a foreign language text is used in addition to the English language text). Prior to the transfer of any information or technology, implementing commands must have obtained the appropriate delegation of disclosure authority from the Navy International Programs Office or OPNAV disclosure authority.

7. Action. OJAG (Code 10) must submit a list of all concluded international agreements to the DoD OGC. All approval authorities must support OJAG (Code 10) in compiling the list.

8. Changes. Submit recommended changes to CNO N3/N5.

9. Records Management. Records created as a result of this instruction, regardless of media and format, must be managed per Secretary of the Navy Manual 5210.1 of January 2012.



R. L. THOMAS
Director, Navy Staff

Distribution:

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APPROVAL AUTHORITIES

1. Approval authorities may submit requests for authorizations to negotiate international agreements concerning the matters described below and, as separately authorized per references (c) and (d), they may carry out responsibilities with respect to the initiation, negotiation, and conclusion of international agreements. Chief of Naval Operations (CNO), Vice Chief of Naval Operations, and CNO N3/N5 may withhold the authority to carry out such responsibilities.

2. All other listed approval authorities may take actions under this instruction with respect to those international agreements that fall within the appropriate subcategory. If an international agreement would fall into two categories, the more specific category must be used (e.g., oceanography implementing agreement under a DoD agreement would fall into both categories listed in subparagraphs 4a and 4c; however, the category listed in subparagraph 4c, subcategory oceanographic matters, would be the appropriate one to use). Fleet component refers to echelon 2 naval component commanders: Fleet Forces Command; Commander, Pacific Fleet; Naval Forces Africa, Naval Forces Europe; and Naval Forces Central Command.

3. Authority to take actions under this instruction with respect to international agreements may be exercised by the approval authority, their principal deputy, or an official specifically designated in writing to act for the approval authority with regard to a specific agreement. "Blanket" or "standing" delegations are not authorized.

4. Categories of Agreements

a. Category: Implementing Arrangements. Technical, operational, working, or similar operational agreements or arrangements concluded pursuant to an international agreement.

Subcategories

Approval Authority

1. Minor technical, operational, working, or similar implementing arrangements

Fleet component

- | | |
|--|---|
| 2. Access and basing arrangements,
joint manning or use of facilities | Fleet component
Deputy Chief of
Naval Operations,
Fleet Readiness
and Logistics (CNO
N4); Commander
Navy Installations
Command |
|--|---|

b. Category: Cooperative or Reciprocal Support Agreements. Cooperative or reciprocal operational, logistical, training, or other military support, including logistics support arrangements that relate to section 7227 of title 10, United States Code (U.S.C.), and arrangements for shared use or licensing of military equipment, facilities, services, and non-physical resources.

<u>Subcategories</u>	<u>Approval Authority</u>
1. Minor cooperative or reciprocal support (excluding exchanges)	Fleet component
2. Fuel exchange	CNO N4
3. Pre-positioning agreements	CNO N4
4. Cryptologic support	Deputy Chief of Naval Operations, Information Dominance (CNO N2/N6)
5. Law enforcement cooperation	Naval Criminal Investigative Services (OPNAV N09N)
6. Diving support agreements	Director, Undersea Warfare (OPNAV N97)

c. Category: Plans, Exercises, Operations, and Exchanges Agreements. Combined military planning, command relationships, military exercises and operations, minor and emergency force

deployments, exchange programs (excluding the engineer and scientist exchange program), including those described by section 2114 of title 10, U.S.C. (agreements with foreign military medical schools for reciprocal education programs), and liaison programs.

<u>Subcategories</u>	<u>Approval Authority</u>
1. Minor planning, command relationships, military exercises and operations, minor and emergency force deployments	Fleet component
2. Meteorology, oceanography, hydrography, astrometry, and precise time programs	Oceanography, Space and Maritime Domain Awareness (OPNAV N2/N6E)
3. Personnel exchange	Deputy Chief of Naval Operations, Manpower, Personnel, Training, and Education (CNO N1)
4. Liaison officers	Fleet component and OPNAV N52
5. Submarine rescue procedures	OPNAV N97
6. Professional military education exchange	CNO N1 and OPNAV N52

d. Category: Military Intelligence Agreements. Collection and exchange of military intelligence information (except signals intelligence agreements) must be forwarded to Director, Defense Intelligence Agency for coordination, via the Under Secretary of the Navy and the CNO N2/N6.

e. Category: Military Information Exchange Agreements (IEA). Collection or exchange of military information and data other than military intelligence. Does not include acquisition-related data exchange agreements (DEA) and IEAs.

Subcategories

Approval Authority

1. DEAs and IEAs Principal

Applicable OPNAV official (CNO N1), CNO (N2/N6), Deputy Chief of Naval Operations, Warfare Systems (CNO N9)

2. Tactical Environmental Information

OPNAV N2/N6E

3. Law Enforcement (non-maritime)

OPNAV N09N

f. Category: Health and Medical Agreements. Health and medical cooperative research, development, test, evaluation, technical data exchange, and related standardization agreements must be coordinated by the Surgeon General of the Navy (CNO N093) and the Bureau of Medicine and Surgery.

g. Category: Communications Agreements. Sharing or exchange of DoD communications equipment, facilities, support, services, or other communication resources with a foreign country or alliance organization, the use of United States military frequencies or frequency bands, and the use of United States communications facilities or systems by foreign organizations, whether overseas or in the United States must be coordinated by CNO N2/N6.

h. Agreements Not Listed. Forward any operational agreements not described above to CNO via applicable CNO principal official (copy to OPNAV N52)

OPNAVINST 5710.25B
10 May 2016

SAMPLE REQUEST FOR AUTHORIZATION TO NEGOTIATE

5800
Ser [**/**]
DD MMM YY

From: [Approval Authority [listed in enclosure (1)]]
To: Under Secretary of Defense for Policy
Via: (1) [Chain of command]
(2) Judge Advocate General

Subj: REQUEST FOR AUTHORIZATION TO NEGOTIATE AN INTERNATIONAL
AGREEMENT CONCERNING [SUBJECT MATTER] WITH [COUNTRIES]

Ref: (a) Case-Zablocki Act, 1 U.S.C. §112
(b) CFR 181
(c) DoD Directive 5530.3 of 11 June 1987
(d) SECNAVINST 5710.25B
(e) OPNAVINST 5710.25B

Encl: (1) Proposed Text of International Agreement
(2) Fiscal memorandum
(3) Legal memorandum

1. Per references (a) through (e), request authorization to negotiate an international agreement concerning the [subject matter] with [countries involved] based upon the proposed text (enclosure (1)). [Further, if additional consultation with the Department of State is required, explain why and request that Office of the Secretary of Defense (Policy) coordinate such consultation: "It appears necessary for Under Secretary of Defense (Policy) (USD(P)) to request the Secretary of State for Circular 175 authorization to negotiate and conclude this proposed international agreement because ***."]

2. [Background of agreement/issues]
3. [Benefits/risks to the U.S. Government]
4. [Proposed negotiators and schedule]

Enclosure (2)

5. Fiscal memorandum attached as enclosure (2) [the comptroller for the initiating command should prepare the fiscal memo]. Legal review attached as enclosure (3) [initiating command should request assistance from OJAG (Code 10) to develop the legal review as well as the entire request for authorization].

[Attach other enclosures as appropriate. See reference (c), paragraph 9.2 for other requirements for the request.]

6. My point of contact is ***

SIGNATURE

Copy to:
OPNAV (N52)
Other commands as appropriate

SAMPLE

SAMPLE FISCAL MEMORANDUM

7040
Ser [**/**]
DD MMM YY

MEMORANDUM

From: Comptroller [or other fiscal officer]
To: [approval authority]

Subj: FISCAL MEMORANDUM CONCERNING [subject of agreement]
INTERNATIONAL AGREEMENT

Ref: (a) DoD 7000.14-R, Financial management Regulation,
March 2016

1. While costs for each financial obligation vary from year to year, a general estimate (not including United States military man hours) is as follows:

[List costs with major items separated]

2. Number of man-hours contributed by United States personnel required to support these agreements on an annual basis: [***].

3. [Cite appropriate Public Law or U.S. Code title and section] provides sufficient legal authority to spend appropriated funds in order to support the proposed agreements.

[Discuss further as necessary].

4. Obligations of the party to this agreement are subject to the availability of appropriated funds for such purposes. We would notify the other party immediately if funds were not sufficient to satisfy our obligations under the agreement. Per reference (a), the proposed agreement meets fiscal requirements.

SIGNATURE

SAMPLE LEGAL MEMORANDUM

5800
Ser [**/**]
DD MMM YY

From: [Staff Judge Advocate]
To: [approval authority]

Subj: LEGAL REVIEW OF PROPOSED AGREEMENT OF [list title]

Ref: (a) [request]
(b) 10 U.S.C. §113
(c) Case-Zablocki Act, 1 U.S.C. §112
(d) CFR 181
(e) DoD Directive 5530.3 of 11 June 1987
(f) SECNAVINST 5710.25B
(g) OPNAVINST 5710.25B
(h) [International Agreements, if applicable]

Encl: (1) Proposed text of international agreement

1. Background. [Approval authority] requests authorization to negotiate or conclude an international agreement with [country and organization] concerning [subject of agreement, e.g., all instances of the recovery; trans-border shipment; and the possible on-site emergency disposal of unexploded ordnance that may be discovered along the coasts] based upon the proposed text in enclosure (1). This legal memorandum considers which U.S. Government official may authorize the negotiation and conclusion of the proposed agreement and the underlying legal authority for the obligations in the agreement's text.

2. Opinion. Subject to [any required changes or recommended modifications and] appropriate authorization by [U.S. Government official], there exists legal authority to negotiate and conclude the proposed agreement.

3. Discussion

a. The authority for the executive branch to negotiate and conclude the proposed international agreement is based on article II, section 2, of the U.S. Constitution that sets forth

the President's foreign affairs powers and provides that the President must be the Commander-in-Chief of the United States Armed Forces. In his or her capacity as Commander-in-Chief, the President may enter into international agreements regarding the use of United States military forces. Reference (b) provides that the Secretary of Defense (SeCDeF) is the principal assistant to the President in all matters relating to the DoD. It further provides that the SeCDeF has authority, direction, and control over the Department, and that the SeCDeF, unless specifically prohibited by law, may perform any of his or her functions or duties, or exercise any of his or her powers through, or with the aid of, such persons in or organizations of the DoD as he or she may designate. However, the Case Act (see references (c) and (d)) 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.

b. The authorization to negotiate and conclude the proposed international agreement is based upon . . . [i.e., proposed request for C175 authorization from Secretary of State or an existing, related international agreement that names DoD as the executive agent or implementing agent and a written delegation from USD(P) to CNO of executive agent authorities. Of note, some older agreements may name CNO or particular Navy commands as executive agent or implementing agent.] [As appropriate, provide legal analysis as to why the text of the agreement provides necessary authority under international law to facilitate the underlying purpose of the proposed agreement. Also, provide legal analysis about obligations in the text of the proposed agreement and the existence of statutory authority for DoD and the Navy, in particular, to comply with such obligations -- For example, see reference (*), which requires the SeCDeF to [***]. Furthermore, reference (*) requires the United States and [***] to cooperate in the area of [***]. Finally, statutory authority is contained in reference (*), which states in part that [***]].

4. Required Changes. [If applicable or none].

5. Recommendations. [If applicable or none].

6. Case Act Compliance. Per reference (b), please ensure that the items listed in subparagraphs 6a through 6c are provided

within 10 days after the final signature on the agreement to Office of the Judge Advocate General, Attn: Code 10, 1322 Patterson Avenue South-East, Suite 3000, Washington Navy Yard, DC, 20374-5066.

a. Four reproducible copies of the completed international agreement (both English and foreign text). Unless one of the copies is the original, each of the copies must be certified to be a true copy of the original agreement.

b. A translation of the foreign language text meeting the requirements of reference (e), paragraph 8.11.2. The translation must be completed before the agreement is signed.

c. A background statement meeting the requirements of reference (e), enclosure (6).

7. Point of Contact. The point of contact for this memorandum is [name, email address, phone number].

SIGNATURE

OPNAVINST 5710.25B
10 May 2016

SAMPLE REQUEST FOR AUTHORIZATION TO CONCLUDE

5800
Ser [**/**]
DD MMM YY

From: [Approval Authority [listed in enclosure (1)]]
To: Under Secretary of Defense for Policy
Via: (1) [Chain of command]
(2) Judge Advocate General

Subj: REQUEST FOR AUTHORIZATION TO CONCLUDE AN INTERNATIONAL
AGREEMENT CONCERNING [SUBJECT MATTER] WITH [COUNTRIES]

Ref: (a) Case-Zablocki Act, 1 U.S.C. §112
(b) CFR 181
(c) DoD Directive 5530.3 of 11 June 1987
(d) SECNAVINST 5710.25B
(e) OPNAVINST 5710.25B

Encl: (1) Proposed ad referendum text
(2) Request for authorization to negotiate
(3) Authorization to negotiate
(4) Legal memorandum

1. Per references (a) through (e), request authorization to conclude an international agreement concerning the [subject matter] with [countries involved] based upon the ad referendum text reached by the negotiators (enclosure (1)). An authorization to negotiate such an agreement was requested and approved previously in enclosures (2) and (3). The ad referendum text [does or does not substantively] differ from the originally proposed text of the agreement. [Provide a summary of the text of any differences. Also, an additional legal memorandum should be provided as enclosure (4) that explains why such differences are or are not substantive. If the differences are substantive, it should provide a legal analysis about the statutory authority for DoD to comply with any additional obligations that result from such differences in the text.]

Enclosure (5)

OPNAVINST 5710.25B
10 May 2016

2. My point of contact is [***].

SIGNATURE

Copy to:
OPNAV (N52)
Other commands as desired

SAMPLE

OPNAVINST 5710.25B
10 May 2016

SAMPLE COMMAND FORWARDING MEMORANDUM TO OJAG

5800
Ser [**/**]
DD MMM YY

From: [Command that concluded the agreement]
To: Office of the Judge Advocate General (Code 10)
Subj: CASE ACT NOTIFICATION CONCERNING [***]
Ref: (a) DoD Directive 5530.3 of 11 June 1987
(b) SECNAVINST 5710.25B
Encl: (1) International Agreement (English Text)
(2) Background Text
(3) [if applicable, International Agreement (foreign text) with translator's certificate]
1. Per references (a) and (b), four certified copies of enclosure (1) and enclosure (2) are submitted. [If agreements submitted later than 10 days after signature, provide explanation for the delay].
2. My point of contact is [***]

SIGNATURE

Copy to:
Approval authority

Enclosure (6)

SAMPLE BACKGROUND STATEMENT FOR INTERNATIONAL AGREEMENT

1. Type of agreement: [bilateral or multilateral]
2. Organizations and countries that are parties to the agreement [do not list United States]:
3. United States and foreign governmental agencies or units responsible for carrying out the agreement:
4. Full title of the agreement:
5. Subject matter of the agreement: [a general summary of the text and a discussion of any especially important provisions]
6. Citation of the legal authority that authorizes agreement: [specific legislation, a treaty, the constitutional authority of the President, or U.S. Code title and section, or some combination of these. A simple citation is adequate; not necessary to quote or summarize the provision of law or treaty, but the specific sections or articles should be cited rather than referring to the law or treaty as a whole].
7. Date of entry into force:
8. Date of termination: [actual date or indefinite]
9. Signing official's name, title and office, country:
10. Full title and date of agreement, if any, upon which this agreement is based or amends:
11. Date of signature of the agreement: