



# CHAIRMAN OF THE JOINT CHIEFS OF STAFF INSTRUCTION

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J6

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CJCSI 6740.01A

15 May 2002

## MILITARY TELECOMMUNICATIONS AGREEMENTS AND ARRANGEMENTS BETWEEN THE UNITED STATES AND REGIONAL DEFENSE ORGANIZATIONS OR FRIENDLY FOREIGN NATIONS

References: See Enclosure B.

1. **Purpose.** The instruction provides policy on negotiating and concluding international military telecommunications agreements and arrangements to sell or exchange telecommunications support or services to allow the transfer of data and voice traffic between the United States and regional defense organizations or friendly foreign nations. It also provides for delegation of authority for certain kinds of telecommunications agreements.

2. **Cancellation.** CJCSI 6740.01, 18 September 1996, "MILITARY TELECOMMUNICATIONS AGREEMENTS AND ARRANGEMENTS BETWEEN THE UNITED STATES AND REGIONAL DEFENSE ORGANIZATIONS OR FRIENDLY FOREIGN NATIONS," is canceled.

3. **Applicability.** This instruction applies to the formation of certain international military telecommunications agreements and arrangements to be concluded under the authority of the Chairman of the Joint Chiefs of Staff under DOD authority. (Some military telecommunications arrangements are not considered international agreements; e.g., foreign military sales (FMS), letters of offer and acceptance (LOAs), or NATO standardization agreements (STANAGs) that only establish implementing procedures.)

4. **Policy.** DOD policy for the transfer of data or voice traffic between the US military telecommunications systems and regional defense organizations or friendly foreign nations and the exchange of telecommunications services is that such transfer and/or exchange is authorized when such an arrangement is in the US national interest. For example, when the arrangement:

a. Is based on US military requirements, as in the case of active combined military operations.

b. Assists in the fulfilling of broader US international agreements, including support of contingency or war plans.

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c. Provides for transmitting telecommunications between the United States and foreign units or commands.

d. Improves the reliability of US military telecommunications by providing alternate routes or reserve capacity.

e. Furthers specific goals (e.g., rationalization, standardization, and interoperability) consistent with current DOD policies.

5. Definitions. See Appendix A to Enclosure A.

6. Responsibilities. See Enclosure A.

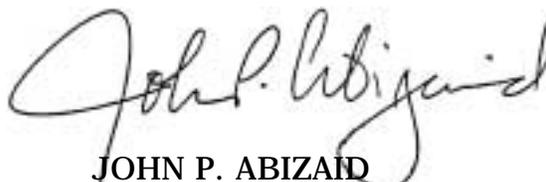
7. Summary of Changes. This instruction:

a. Adds responsibility for each combatant commander and DISA to provide locally prepared registers of telecommunications agreements as well as copies of agreements in force to the Director, Joint Staff, J-6, as detailed in Enclosure A, subparagraph 7(f).

b. Changes procedures for DISA's annual compilation of the "Register of Telecommunications Agreements." DISA's report will be based on products sent to the Director, Joint Staff, J-6, as detailed in Enclosure A, subparagraph 7(f).

8. Releasability. This manual is approved for public release; distribution is unlimited. DOD components (to include the combatant commands), other Federal agencies, and the public may obtain copies of this manual through the Internet from the CJCS Directives Home Page -- <http://www.dtic.mil/doctrine/jel/cjcsd.htm>. Copies are also available through the Government Printing Office or the Joint Electronic Library CD-ROM.

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



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Enclosures

- A--General Policy and Instructions
  - Appendix A--Legal Memorandum Considerations
  - Appendix B--Sample Letter of Transmittal
- B--References
- Glossary--Definitions

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## ENCLOSURE A

### GENERAL POLICY AND INSTRUCTIONS

1. Introduction. Enclosure A provides policy and procedures on negotiating and concluding international military telecommunications agreements and arrangements to sell or exchange telecommunications support or services to allow the transfer of data and voice traffic between the United States and regional defense organizations or friendly foreign nations. It also provides for delegation of authority for certain kinds of telecommunications agreements. Although this CJCSI replaces MOP 43, it will not abrogate or necessitate any changes in existing agreements between the United States and regional defense organizations or friendly foreign nations.

2. Applicability. This CJCSI applies to the formation of certain international military telecommunications agreements and arrangements to be concluded under the authority of the Chairman of the Joint Chiefs of Staff or DOD authority. (Some military telecommunications arrangements are not considered international agreements; e.g., FMS, letters of offer and acceptance (LOAs), or NATO standardization agreements (STANAGs) that only establish implementing procedures.) This CJCSI does not apply to:

a. The procurement, including lease, of telecommunications services and related equipment from foreign commercial telecommunications entities.

b. Negotiation of international military telecommunications agreements involving matters delegated to the Secretaries of the Military Departments (single-Service matters).

3. Authority to Negotiate and Conclude. Within the Department of Defense, the authority to negotiate and conclude international agreements originates with the Secretary of Defense and, in separate areas of cognizance, has been delegated by DODD 5530.3 to the Secretaries of the Military Departments; certain Under or Assistant Secretaries of Defense; the Chairman of the Joint Chiefs of Staff; and Directors of Defense agencies.

a. The Chairman of the Joint Chiefs of Staff. When the proposed agreement concerns operational command of joint forces, the Chairman of the Joint Chiefs of Staff has been delegated the authority to negotiate and conclude international agreements related to the sharing or

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exchange of DOD communications equipment, facilities, support, services, or other communications resources (including agreements under title 10, United States Code (USC), section 2350f); the use of US military frequencies or frequency bands; and the use of US communications facilities and/or systems by foreign organizations, whether overseas or in CONUS. The Chairman of the Joint Chiefs of Staff has delegated this approval authority to the combatant commanders to negotiate and conclude international agreements concerning military telecommunications systems and resources other than for those listed below. Further delegation by the combatant commanders to the commanders of subordinate unified commands, component commands, joint task forces, and US Defense representatives is authorized.

(1) COMSEC equipment is normally provided to foreign governments or international organizations in one of two ways: either as a sale via FMS/COMSEC Device Services procedures administered by spell out acronym (DSAA), or as a loan or temporary transfer using 10 USC 421 as legal authority and telecommunications agreement procedures under this CJCSI. The National Security Telecommunications and Information Systems Security Committee must specifically authorize any release to friendly foreign nations of US COMSEC equipment, which may be associated with telecommunications agreements. Negotiation and conclusion of such agreements can be accomplished only after the required COMSEC equipment has been specifically authorized for release per subparagraph 7(d). All telecommunications agreements concerning COMSEC will be coordinated with NSA.

(2) The Defense Information System includes the Defense Message System, Defense Information Systems Network, Defense Red Switch Network, Defense Satellite Communications System, their electronically connected subscribers, their successor systems, and the transmission facilities of these systems.

(3) CJCS-controlled telecommunications and C2 equipment.

(4) Military satellite communications.

(5) Configuration management -- procedural interface standards (message text formats and tactical digital information links) and technical interface standards (spread spectrum communications systems).

(6) Communications-electronics agreements under the purview of the US Military Communications-Electronics Board.

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Requests to commit these assets to a non-US user must be submitted to the Chairman of the Joint Chiefs of Staff. Requesters should review CJCSIs 2300.01, 5721.01, 6110.01, 6211.02, 6215.01, 6250.01, and 6510.01, as applicable, before preparing the request.

b. Office of the Secretary of Defense. CJCS delegation is limited in certain circumstances. Any request to negotiate and conclude proposed agreements involving one or more of these areas must be forwarded to OSD via the Joint Staff for approval.

(1) Proposed international agreements having policy significance; i.e., agreements that require Deputy Under Secretary of Defense for Security Policy approval under the criteria set forth in subparagraph h of DODD 5530.3.

(2) Proposed international agreements relying on 10 USC 2304(c)(4) to limit free and open competition to conduct procurement.

(3) Proposed international agreements that, when implemented, require new legislation.

c. Overseas Unified Command Authority in a Major Emergency. In a major emergency, an overseas commander of a unified command is delegated the full CJCS authority to negotiate and conclude international military telecommunication agreements with regional defense organizations or friendly foreign nations when such arrangements are in the national interest. Agreement duration must be limited to the period of the major emergency. Although a written agreement is not required before action can take place, any oral agreements should be put in writing as soon as possible. After the emergency has passed, any requirement for continued communications support will be formalized by agreement. These proposed agreements will be concluded in accordance with this CJCSI.

4. FMS Arrangements. Under FMS military telecommunications arrangements, the United States provides telecommunications support or training through security assistance procedures to regional defense organizations or friendly foreign nations on a reimbursable basis. DSAA is the principal DOD element through which the Secretary of Defense carries out administration for FMS and other security assistance matters in accordance with DODDs 5132.3 and 5105.38. The Director, DSAA, has been delegated all authority of the Secretary of Defense for security assistance. The Chairman of the Joint Chiefs of Staff, in coordination with the Services, advises on security assistance requests. Specifically, the Director for Strategic Plans and Policy (J-5) is the designated Joint

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Staff principal for security assistance concerning politico-military matters, and the Director for Logistics (J-4) is the designated Joint Staff principal for all security assistance implementation and execution matters in peacetime. The Director for Command, Control, Communications, and Computer Systems (J-6) coordinates, through a CJCSI 6740.01 action, international agreements that are associated with FMS cases. In the case of any inconsistency between an FMS LOA and international agreement, FMS procedures will take precedence. Requests to buy or lease telecommunications equipment through FMS procedures will comply with the provisions of the Security Assistance Management Manual. Initial points of contact for an interested foreign government may include the Security Assistance Organization (SAO) attached to the cognizant US diplomatic mission or responsible Joint Staff or Service components, as appropriate. Any individual who receives a security assistance request for telecommunications support should forward that request, and any related correspondence, to either the Chairman of the Joint Chiefs of Staff, cognizant SAO, or Service element. When finalized, these arrangements will be described in FMS LOAs or leases that may not be concluded without the authorization of DSAA and Service element.

5. STANAGs. The Military Communications-Electronics Board is the DOD focal point for coordinating and approving the US position on all STANAGs involving military telecommunications. J-6 coordinates, through a CJCSI 6740.01 action, those STANAGs that are international telecommunications agreements.

6. Policy. The transfer of data or voice traffic between the military telecommunications systems of the United States and regional defense organizations or friendly foreign nations and the exchange of telecommunications services is authorized when such an arrangement is in the US national interest. For example, when the arrangement:

- a. Is based on US military requirements, as in the case of active combined military operations.
- b. Assists in the fulfilling of broader US international agreements, including support of contingency or war plans.
- c. Provides for transmitting telecommunications between the United States and foreign units or commands.
- d. Improves the reliability of US military telecommunications by providing alternate routes or reserve capacity.
- e. Furthers specific goals (e.g., rationalization, standardization, and interoperability) consistent with current DOD policies.

## 7. General Information

a. Requests To Establish Agreements. A request may originate as follows:

(1) **Formal Request From Foreign Entity.** A formal request for services from a regional defense organization or a friendly foreign nation.

(2) **US Offer to Foreign Entity.** A formal US offer of services to a regional defense organization or a friendly foreign nation.

(3) **Request by the United States.** A request by the United States to use military telecommunications services of a regional defense organization or friendly foreign nation.

### b. Agreement Considerations

(1) In determining the extent of US military communications support to be provided to a regional defense organization or friendly foreign nation, the available capacity of the US military telecommunications system and the releasability of the required cryptographic equipment should be considered. In reviewing the capacity of US military telecommunications systems, both fixed and mobile or transportable, US contingency and war plan requirements should be noted. Additionally, a determination must be made that the requirement is within the capability of the US military telecommunications system and that the establishment of the capability would be in the US national interest as determined on a case-by-case basis. Approval of requests for providing services will not constitute authority to improve or expand US military telecommunications systems.

(2) Foreign military traffic will normally use commercial telecommunications facilities unless a US determination is made that adequate, cost-effective commercial facilities are not otherwise available or that the use of military facilities best serves US national interests.

(3) Agreements that authorize generalized or unspecified use of US or non-US military telecommunications will not be concluded. The approval authority will ensure that the agreement clearly defines:

(a) All obligations and benefits concerning military communications support and related supplies and services to be provided.

(b) The mechanism to determine and allocate project or reimbursement costs or other contributions.

(c) Agreement duration. This should not exceed 5 years without specific reason.

(4) International agreements to provide alternate route communications services for the United States will not prevent justification of subsequent unilateral, parallel, or alternate circuitry or increased capacity in primary US circuitry to meet expected requirements for unilateral operations.

(5) If a military telecommunications arrangement can be appropriately documented within the terms and conditions of an FMS LOA, the FMS case is not an international agreement to be concluded under this CJCSI. However, if all participants request otherwise, an international agreement may be concluded to supplement the FMS case. Conversely, if the participants do not want to enter into an agreement but want to address any terms and conditions of the arrangement not in the LOA, the terms and conditions may be appended to the LOA.

(6) In drafting agreements, interoperability requirements should be considered and specifically stated in the agreement.

c. Restrictions on Agreements. Agreements concluded with regional defense organizations or friendly foreign nations would be subject to the following restrictions:

(1) Unless approved on a case-by-case basis by the Chairman of the Joint Chiefs of Staff, the following will not be accepted in negotiated agreements:

(a) Data and voice traffic originated by friendly foreign military missions in the United States (except as provided in subparagraph c(5) below).

(b) Nonmilitary data and voice traffic.

(2) Traffic Constraints. The United States reserves the unilateral right to suspend, limit (e.g., MINIMIZE), or terminate the handling of foreign traffic (voice or data), when necessary, in accordance with US policies and procedures. All proposed agreements will provide that the United States retains this right. The exercise of this right by the United States may require that non-US data traffic be processed by ways other than those provided in the agreement or arrangement under conditions

such as MINIMIZE. If circumstances allow, the United States will notify all other signatories concerned when such action is pending.

(3) Transfer Points. Unless provided for by separate agreement, traffic originated by a regional defense organization or friendly foreign nation will not be transmitted over US military facilities that parallel facilities of the originating or receiving nation or organization. Such traffic will be shifted either at the designated transfer points in the record or voice traffic network or at the nearest convenient point where such a parallel occurs. However, this provision will not prevent onward routing of such traffic when parallel facilities available to the originator or receiver are temporarily disrupted.

(4) Classified Traffic. Nonreleasable US national classified traffic intended for US addressees served by a foreign communications system will be encrypted in a US cryptographic system common to the originator and addressees before transfer into the foreign communications system.

(5) Exception. Restrictions (1) and (3) will not apply when contrary to international agreements in force, US law, or regulation. In these situations (unless otherwise provided in US security regulations) non-US record, data, and voice traffic will be handled as if the traffic were that of the United States.

(6) Availability. All agreements will be subject to availability of appropriations.

d. Cryptographic Equipment. Before initiating discussion or negotiations on international telecommunications matters, US personnel must define the need, or expected need, for US COMSEC or cryptographic equipment. When use of US cryptographic equipment is implied or possible, but not absolutely required, discussions may be conducted; however, no COMSEC equipment may be committed or discussed other than to acknowledge that some type of US Government or commercial cryptographic equipment may be required. CJCSI 6510.06 contains specific guidance and should be consulted before initiating discussions on disclosure or release of US COMSEC information to a foreign government or international organization.

e. Telecommunications Aspects of Other International Agreements. Military telecommunications support, supplies, and services, such as the exchange of telecommunications services and data and voice traffic, may be part of more comprehensive international agreements. The telecommunications aspects of those agreements are governed by the policy herein.

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f. Register of Telecommunications Agreements. The Register of Telecommunications Agreements serves as an operational document to bring visibility to existing agreements during any operations. The following steps for each combatant commander and the Director, DISA, will facilitate the compilation and production of the Register.

(1) By 31 January of each year, each combatant commander and the Director, DISA, will provide to the Director, Joint Staff J-6, a register of telecommunications agreements. The register will list all international military telecommunications agreements concluded under the provisions of this CJCSI or other applicable references, and will record the concluding authority, title, references, US signature date, date entered into force, and expiration date of the original agreement.

(2) Copies of negotiated agreements shall be provided to the Director, Joint Staff J-6.

(3) By 28 February of each year, the Joint Staff J-6 Directorate will forward all registers to the Director, DISA, who will compile and distribute the Register of Telecommunications Agreements by 30 March.

(a) This register will list the same criteria detailed in subparagraph 7(f)(1) above, and will reflect inputs received from each combatant command J-6 and from the Director, DISA.

(b) Distribution will be to the Secretary, Joint Staff; Directors, J-3, J-4, J-5, J-6, J-7, and J-8, Joint Staff; Chiefs of the Services; combatant commanders; heads of DOD agencies; certain OSD officials, specifically Assistant Secretary of Defense (International Security Affairs (ASD(ISA)), ASD (International Security Policy) (ASD(ISP)), ASD (Command, Control, Communications, and Intelligence) (ASD(C3I)), Under Secretary of Defense for Policy (USD(P)), and General Counsel; Director, NSA; Director, DIA; and others, as appropriate.

8. Procedures. Follow these steps to conclude an international agreement:

a. Determination of Approval Authority. The individual who can authorize the negotiation and conclusion of the agreement will be determined in accordance with paragraph 2 above.

(1) Identify the objectives to be attained and specific categories and availability of implementing military telecommunications support, supplies, and services necessary to achieve these objectives.

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(2) Review this CJCSI and other DOD regulations to determine the appropriate approval authority concerning these categories.

(3) Informally meet with cognizant staff officers assigned to the approval authority to ascertain applicable policies.

b. Consideration of Legislative, Legal, Funding and Foreign Disclosure Authorities. Review legislative and funding authority using the considerations below and in Appendix A of this enclosure to determine the basis to establish and execute US obligations or receive benefits to or from regional defense organizations or friendly foreign governments. In addition to holding or obtaining the authority to negotiate or conclude an international telecommunications agreement addressed in paragraph 3 above, the responsible officer must be assured that substantive US legal authority exists to undertake each obligation or receive each benefit identified in the agreement by the US Government. Also, funding must be available to undertake any responsibility created by the agreement. This substantive legal authority must be found in constitutional, statutory, treaty, or other laws applicable to the subject matter involved in the agreement. In this regard, several principles apply:

(1) Lack of a specific prohibition in the law does not constitute substantive legal authority. The execution of each responsibility and the acceptance of each benefit must be specifically authorized.

(2) Congress appropriates funds for specific purposes; funds must be applied only to those purposes. Expenditure of these funds must be proper and restricted to those amounts allocated by proper authority. No funds may be expended in excess of or in advance of the amount allocated.

(3) DOD funds are authorized and appropriated for DOD missions, not foreign assistance. Defense articles and services obtained with congressional appropriations may not be sold, transferred, leased, loaned, or otherwise disposed of to foreign countries except as specifically authorized by law. Foreign assistance funds are separately authorized and appropriated.

(4) Several US laws provide established avenues for providing US military telecommunications assets to regional defense organizations or friendly foreign governments.

(5) Prior to negotiating an international agreement that may require the disclosure of classified military information to a foreign government or international organization, approval must be obtained

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from the originating authority for the information concerned. In some cases, an exception to the National Disclosure Policy may be required.

c. Conduct of Nonbinding Exploratory Discussions

(1) After making the above determinations, approach the responsible foreign government agency to begin nonbinding, exploratory discussions to determine if the basis for an agreement exists. If so, prepare a draft agreement, but do not provide it to any representative of the foreign government until authority to negotiate is received. Minutes of such nonbinding discussions will be kept as part of the negotiating history.

(2) Adhere to local regulations concerning these discussions. Do not make any commitment on behalf of the United States.

(3) Although nonbinding exploratory discussions are generally authorized without reference to higher authority, advise higher authority of intended discussions with foreign officials, when appropriate.

(4) Avoid discussion of: any pending authorization to release US classified information until authorized in accordance with DODD 5230.11; specific US COMSEC measures or equipment or cryptographic equipment until authorized in accordance with CJCSI 6510.06.

d. Preparation and Submission of the Request To Negotiate and Conclude an Agreement, the Draft Text, and Other Supporting Documents. An approval authority may negotiate and conclude an international agreement within his or her area of authority. If the requester does not hold such authority, he or she must submit a letter or message request for authority to negotiate and/or conclude an agreement together with the draft agreement and other supporting documents via the chain of command to the approval authority. Combatant commands, Defense agencies responsive to the Chairman of the Joint Chiefs of Staff and, when appropriate, the Military Services will submit all requests concerning proposed military telecommunications agreements that require CJCS or OSD approval or coordination to the Director, J-6, Joint Staff.

(1) Request. The request should reference this CJCSI and other applicable DOD directives and clearly state its purpose.

(2) Draft Text. A draft text should normally be provided with the request. If a draft text is not available, an outline of the proposed agreement should be submitted with the request to the approval authority.

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(3) Support Documents. The following additional documents will be submitted with the draft international agreement:

(a) The Legal Memorandum specifically identifies the constitutional, statutory, treaty, or other legal authority that authorizes the United States to undertake each obligation and to receive each benefit and any other relevant legal considerations in the proposed agreement. Legal memorandum considerations are at Appendix B of this enclosure.

(b) The Fiscal Memorandum provides the estimated cost, by fiscal year, to each participant to undertake all proposed project obligations, the source of obligation funding, or if all funds are not presently available or programmed for outyears, an explanation of any plan to obtain additional funds or legislative funding authority. Computations for exchanges of equivalent value and the method for determining value also should be included.

(c) A Technology Assessment/Control Plan (TA/CP):

1. Describes the scope of the agreement.
2. Identifies the technologies and sensitive information involved.
3. Evaluates the foreign technologies or other benefits the United States is likely to acquire.
4. Assesses the risk to US information.
5. Establishes foreign disclosure guidance.
6. Prescribes specific requirements for the protection of sensitive and classified technical information during the course of the agreement. Additional information describing the TA/CP is contained in DODD 5530.3.

e. Processing Requests Under CJCS Authority. As described in paragraph 3 herein, some international agreements require OSD approval. For these agreements, the Joint Staff element primarily responsible will prepare a cover letter to OSD, with an information copy to the requesting combatant command or agency, and forward the request to OSD for further action or obtain approval, as appropriate. Most telecommunications agreements submitted to the Joint Staff, however, fall under the Chairman's authority and require OSD and DOS

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coordination. To accomplish this requirement, the Director, J-6, Joint Staff, will follow these procedures:

(1) J-6 will obtain informal comments from the appropriate OSD, DOS, and Joint Staff directorates on the request before submission for formal action. The requester and cognizant Joint Staff element will be advised of these comments in order to modify the draft agreement to make it conform to US law and OSD, DOS, and CJCS policy.

(2) The cognizant Joint Staff element will submit the request and all associated documents to the Joint Staff, Services, and DOD agencies, as appropriate, for CJCS approval in accordance with the staffing procedures provided in CJCSI 5711.01.

(3) Thereafter, the cognizant Joint Staff element will obtain coordination from OSD and DOS including, as appropriate, ASD(C3I), USDP(DUSD(SP)), Comptroller, and General Counsel. Information copies of the request and associated documentation will be provided as necessary.

(4) After coordination has been completed, the Director, Joint Staff, will provide the response on behalf of the Chairman of the Joint Chiefs of Staff in accordance with CJCSI 5711.01 procedures. Generally, the response will authorize both negotiation and conclusion of the agreement as long as the finally negotiated text does not result in substantive changes to the approved draft text. Substantive changes include those provisions that, by themselves, might form the basis of a separate agreement or that propose a new or altered significant obligation not previously contemplated by the parties. If the negotiation process appears to be leading toward substantive changes to the approved text, a request for authority to negotiate and conclude these changes should be submitted in the same manner as previously done. Also, if additional direction, coordination, or approval to negotiate substantial changes is required during ongoing negotiations, the negotiators should send a message to the Chairman of the Joint Chiefs of Staff with information copies to all concerned. The request message should provide a draft text and any modifications to the legal or fiscal memorandums or TA/CP and a schedule of future negotiations.

f. Processing Requests That Require DOS Approval. Some telecommunications agreements submitted to the Chairman of the Joint Chiefs of Staff require DOS approval in accordance with 10 USC 2350f. After coordination has been completed, the proposed agreement will be forwarded to DOS for approval. Thereafter, the Director, Joint Staff, will provide the response on behalf of the Chairman of the Joint Chiefs of Staff in accordance with CJCSI 5711.01 procedures.

g. Negotiation. Before beginning negotiations, DODD 5530.3 will be consulted for additional guidance concerning the exercise of the authority to negotiate or conclude an international agreement. The negotiating team should be well versed on all the aspects of each agreement, particularly any limits on the legal authority and funding source supporting the agreement, any existing politico-military sensitivities, and all pertinent details of military telecommunications associated with the agreement.

h. Conclusion. The execution of the agreement indicates that the participants will abide by its terms in full. Conclusion of an agreement will occur only after receipt of proper authorization.

i. Distribution. Certified and signed copies of the international agreement will be mailed to the following offices not later than 20 days after the agreement has been signed:

(1) Two copies to DOD General Counsel, Washington, D.C. 20301-1600.

(2) One copy to the Assistant Legal Advisor for Treaty Affairs, Department of State, Washington, D.C. 20520.

(3) One copy to ASD(C3I).

(4) One copy to the Secretary, Joint Staff.

(5) One copy to the Director, J-6, Joint Staff.

(6) One copy to the Director, DISA. Attn: Code AR.

A letter of transmittal is required for each agreement. A sample format is provided at Appendix C of this enclosure.

j. Case-Zablocki Act. Offices responsible for reporting agreements under the Case Act and this CJCSI will, under all circumstances, take appropriate action to ensure that their reporting procedures result in the transmission of certified copies of international agreements so as to arrive at the Office of the Assistant Legal Adviser for Treaty Affairs, Department of State, Washington, D.C. 20520, not later than 20 days after the agreements have been signed (as required by 22 Code of Federal Regulations, Section 181.5). In the past Congress has denied funding for implementation of agreements that failed to be transmitted to Congress within the statutory time limits of the Case Act.

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k. Historical Records. The concluding command will compile a complete record of the agreement, including the negotiating period, the period in which the agreement and any subsequent agreements remain in force, and thereafter, as appropriate. The concluding command will maintain a permanent record of each completed action, including all applicable coordination (inside and outside of the Department of Defense) and authorizations.

l. Agreement Suspension, Amendment, Renewal, or Termination. The Chairman of the Joint Chiefs of Staff must approve any request to substantively amend or prematurely terminate any agreement or to suspend performance under any agreement entered into under subparagraph 3(a) of this CJCSI. The Director, J-6, Joint Staff, is authorized to approve any request to renew agreements entered into under the provisions of this CJCSI. No request is required in cases where the commander who wishes to take such action has been delegated the authority to negotiate and conclude the agreement under consideration as stated in subparagraph 3(a) of this CJCSI. The commander may act and later advise all concerned of the action. If a commander subordinate to an approval authority other than the Chairman of the Joint Chiefs of Staff or OSD wishes to take such action, the commander will submit the request to that approval authority through the chain of command.

(1) Concluding commanders at all levels are authorized to negotiate and conclude nonsubstantive modifications to agreements within the terms of the original concluding authority. Such modifications will be reported immediately after conclusion in writing to the addressees.

(2) Substantive changes will be referred to the original approval authority via the chain of command.

## APPENDIX A TO ENCLOSURE A

### LEGAL MEMORANDUM CONSIDERATIONS

This appendix identifies the available legislative authority to implement the exchange of military telecommunications with foreign military establishments.

#### 1. Joint Use of Communications Facilities

a. Joint use of communications facilities normally involves cost sharing of implementing telecommunications interconnections and procuring, operating, and maintenance of telecommunications systems.

b. The legal authority for the United States to share telecommunications support costs and responsibilities with another government or international organization to accomplish individual responsibilities through joint activity is inherently, rather than expressly, provided to the Department of Defense and the operational chain of command.

c. If a joint cost-sharing project would further an US-only requirement, US-appropriated funds can be expended in support of the project. If no US requirement will be filled by the agreement, the cost-sharing project should not proceed. It is not lawful.

d. Except when specifically authorized, the United States cannot contribute appropriated funds to another government or international organization to acquire articles that will be owned jointly by the other foreign participant(s). In cost-shared projects, each participant exercises its own procurement authority to obtain project equipment, contributes equipment, supplies, and services to the project, and retains property title and control over its manpower.

2. FMS Sale and Lease. If the United States provides defense equipment or services to another government or an international organization to allow the other government or organization to perform its responsibilities under a cost-shared program, the equipment or services should be provided under the Arms Export Control Act (sales or leases) or the Foreign Assistance Act (grant aid). A brief synopsis of some of the various FMS sale and lease procedures follows.

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a. FMS regulations for sale or lease of materials normally require the United States to recover all costs. Exceptions to this requirement may be requested from the Director, DSAA, for leases entered into for cooperative research or development, military exercises, communications or electronic interface projects, or for any defense article that has passed three-quarters of its normal service life.

b. To lease telecommunications equipment through FMS procedures, DSAA must be shown that:

(1) Compelling foreign policy and national security reasons exist for providing such articles on a lease rather than a sale basis.

(2) The articles are not needed for the lease period for public use.

(3) Either the US Government will need the articles back or the foreign government will not need the articles indefinitely.

c. The legal difference between a sale and a lease is that, in a sale, the title to the sold article transfers; in a lease, it does not. However, a seller as conditions of sale may retain many elements of title. For example, FMS sales condition the transaction upon the buyer's waiver of the right to resell the item to a third party without the consent of the original seller. Under the Arms Export Control Act, a lease may be terminated under the same conditions as a sale.

d. An international agreement may include provision for FMS sales or leases; however, the actual FMS sale or lease documentation is not an international agreement and, as a result, the staffing of such documents for approval is in accordance with the Security Assistance Management Manual (reference 2c).

### 3. Telecommunications System Access Exchange

a. An arrangement may contemplate the exchange of telecommunications system access between the United States and another government or international organization. Such substantial communications services involved in this type of arrangement do not qualify as reciprocal international courtesies or as services customarily made available without charge.

b. The NATO Mutual Support Act (NMSA), 10 USC 2341-2350, authorizes the exchange of logistic support (including telecommunications services) under certain conditions. These conditions include the exchange of support, pursuant to cross-servicing

agreements, with NATO and certain non-NATO countries. NMSA allows for transfers effected on a reimbursement basis, by replacement in kind, or by exchange of supplies or services of equal value. Credits and liabilities must be liquidated at least quarterly.

c. Independent of NMSA, the DOD Authorization Act for FY 1990 and 1991 (Public Law 101-189) amended 10 USC by inserting a new section, 2350f, "Revision and Extension of Authority for Procurement of Communications Support and Related Supplies and Services from Other Nations." Under this provision, in return for being provided communications support and related supplies and services, the United States would agree to provide an equivalent value of communications support and related supplies and services. In addition, this provision requires that any accrued credits and liabilities resulting from an unequal exchange during the term of the arrangement be liquidated by direct payment to the party that provided the greater amount. Liquidation would be made at times agreed upon by the parties and the final liquidation could be no later than 30 days after the end of the term of the arrangement. Accrued credits and liabilities also would be reconciled annually. Any liability of the United States resulting from a reconciliation would be charged against the applicable appropriation available to the Department of Defense (at the time of reconciliation) for obligation for communications support and related supplies and services. Any payments received by the United States would be credited to the appropriation from which such communications support and related supplies and services were provided. Such arrangements would be limited to 5 years or less and would be treated as international agreements for approval, signing, and reporting purposes. This provision authorizes the Secretary of Defense, subject to the approval of the Secretary of State, to enter into a bilateral or multilateral arrangement with:

(1) NATO or any other international organization the Secretary of Defense designates as an allied international organization.

(2) Any NATO country, Australia, New Zealand, Japan, the Republic of Korea, Thailand, Singapore and Malaysia, or any other country the Secretary of Defense, with the concurrence of the Secretary of State, designates as an allied country.

4. Cryptographic Support. Arrangements may involve government or commercial cryptographic equipment. Sometimes, US military COMSEC equipment required to transmit and receive classified information must

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be made available to other governments or to an international organization.

a. In addition to the Arms Export Control Act (sales or leases) and the Foreign Assistance Act (grant aid), in appropriate circumstances the provisions of 10 USC 421 provide a legal basis for temporary transfers of cryptographic support, to include COMSEC equipment to foreign governments. Section 421 authorizes the Secretary of Defense to use funds available to the Department of Defense for intelligence and communications purposes to pay for the expenses of arrangements with foreign countries for cryptographic support.

b. The temporary transfer of cryptographic support will be effected by an international agreement and will require DOD, CJCS, and NSA coordination and approval. Specific cryptographic equipment will require CJCSI 6510.06-release authority before being discussed with a foreign country and the method of transfer must be approved under a CJCSI 6510.06 release.

APPENDIX B TO ENCLOSURE A  
SAMPLE LETTER OF TRANSMITTAL

Date:

From: (e.g., Headquarters, USEUCOM/J-6)

To: Distribution

Subject: Transmittal of an International Agreement

1. Type of Agreement (e.g., bilateral or multilateral).
2. Parties to the Agreement.
3. Title and subtitle, as appropriate.
4. Subject of the Agreement.
5. Summary of the terms of the Agreement.
6. All agencies, US and foreign, responsible for carrying out the provisions of the Agreement.
7. Background information, including reference to any treaty or other agreement that the Agreement implements and the circumstances under which it was negotiated. Including the title(s) and date(s) of agreement(s), if any, on which the Agreement is based or that the Agreement amends.
8. The effect of the Agreement, including the benefits to be gained and the costs to the parties.
9. Discussion of the legal authority that authorizes the Department of Defense or its agencies to enter into the Agreement.
10. Date of signature and date the agreement will enter into force.
11. Period of the Agreement and the expected date of termination.

12. Printed names of all signing officials, their titles and offices they represent, and their countries or international organizations.

13. Geographic location where the Agreement was signed.

14. Organizational element responsible for maintaining the negotiating history for the Agreement.

NOTE: All copies must be certified to be true copies of the original as signed.

## ENCLOSURE B

### REFERENCES

The following references are basic to this CJCSI and are the guiding documents for international agreements, military telecommunications, and Joint Staff staffing procedures related to international agreements.

#### 1. International Agreements

a. DOD Directive 21010.9, 30 September 1988, "Mutual Logistic Support Between the United States and Governments of Eligible Countries and NATO Subsidiary Bodies," addresses DOD implementation of the NATO Mutual Support Act of 1979.

b. DOD Directive 5530.3, 11 June 1987, "International Agreements," assigns responsibility for control of international agreements within the Department of Defense; centralizes the authority to approve the negotiation and conclusion of international agreements; and delegates approval authority to the Chairman of the Joint Chiefs of Staff to negotiate and conclude certain categories of international agreements.

c. CJCSI 2300.01A, 12 February 1999, "International Agreements," implements DOD Directive 5530.3; provides general policy guidance regarding international agreements; and further delegates approval authority held by the Chairman of the Joint Chiefs of Staff except that pertaining to a certain subcategory of telecommunications agreement or C-E agreement under the purview of the Military Communications-Electronics Board.

#### 2. Military Telecommunications

a. DOD Directive 5100.35, 10 March 1998, "Military Communications-Electronics Board (MCEB)," establishes the MCEB and defines its mission.

b. DOD Directive 5105.19, 25 June 1991, "Defense Information Systems Agency (DISA)," addresses responsibilities for the Defense Communications System.

c. DOD Directive 5105.38-M, February 2002, "Security Assistance Management Manual," assists in complying with statutes and directives related to security assistance policies and procedures.

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d. DOD Instruction S-5225.1, 4 November 1983, "Communications Security (COMSEC) Assistance to Foreign Governments and International Organizations," contains guidance on transfers of COMSEC equipment to foreign governments.

e. DOD Directive 5132.3, 10 March 1981, "DOD Policy and Responsibilities Relating to Security Assistance," discusses security assistance policy.

f. CJCSI 6110.01, 25 January 1996, "CJCS-Controlled Tactical Communications Assets," provides that all requests to use assets under this CJCSI will be addressed to the Chairman of the Joint Chiefs of Staff.

g. CJCSI 6215.01B, 23 September 2001, "Policy for Department of Defense Voice Networks," establishes procedures to resolve non-DOD requests, including non-US requests, for access to these systems.

h. CJCSI 5721.01A, 01 May 1999, "The Defense Message System and Associated Message Processing Systems," provides procedures to resolve requests from non-US activities for connection to these systems.

i. CJCSI 6211.02A, 22 May 1996, "Defense Information System Network and Connected Systems," requires that requests for connection by non-US activities are to be forwarded to the Chairman of the Joint Chiefs of Staff for validation and forwarded to OSD for approval.

j. CJCSI 6250.01A, 10 December 2001, "Satellite Communications," provides high-level operational policy, guidance, and procedures for the planning, management, employment, and use of DOD satellite communications (SATCOM) resources; the principal purpose of this instruction is to define the processes necessary to ensure essential SATCOM support for mission accomplishment.

k. CJCSI 6510.06, 15 February 2001, "Communications Security Releases to Foreign Nations," establishes policy and procedures for disclosing, releasing, and transferring COMSEC products or associated COMSEC information to foreign governments as well as negotiating and concluding international COMSEC agreements.

3. Joint Staff Staffing Procedures. CJCSI 5711.01, 01 March 1999, "Policy on Action Processing," sets up procedures for processing joint actions.

## GLOSSARY

### DEFINITIONS

The following definitions apply:

1. US Military Telecommunications Systems. All US military telecommunications, including:
  - a. The Defense Communications System (DCS), as defined in Enclosure I of DODD 5105.19.
  - b. Tactical and other non-DCS telecommunications systems.
2. Exchange of Telecommunications Services
  - a. The allocation of telecommunications capacity, systems, or circuits as a service on a mutually beneficial basis in the military telecommunications systems of both the United States and a regional defense organization or a friendly foreign nation.
  - b. The exchange of telecommunications services may include intersystem connections.
3. Transfer of Data and Voice Traffic. The processing and transmitting of data, facsimile, and voice traffic between US-operated military telecommunications systems and those operated by regional defense organizations or friendly foreign nations.
4. Classified Military Information. Information originated by or for the Department of Defense or its agencies or that is under their jurisdiction or control and requires protection in the interests of national security. Such information is designated TOP SECRET, SECRET, and CONFIDENTIAL, as described in EO 12356. Classified military information may be in oral, visual, or material form. Classified military information DOES NOT include National Security Telecommunications and Information Systems Security Information (e.g., COMSEC).
5. Military Telecommunications Agreement. Any agreement to provide, receive, or exchange telecommunications services. The Military Telecommunications Agreement may or may not be an "international agreement" using the definition below.

a. Any agreement that is concluded with one or more foreign governments (including their agencies, an instrumentality, or political subdivisions) or with an international organization if the agreement:

(1) Is signed or agreed to by personnel of any DOD component or representatives of the Department of State or other agencies of the US Government.

(2) Signifies the intention of the parties to be bound in international law.

(3) Is called an "international agreement", "memorandum of understanding," "exchange of notes," "exchange of letters," "technical arrangement," "protocol," "note verbal," "aide memoir," "agreed minute," "plan," "contract," "arrangement," or some other name having a similar legal consequence.

b. Any oral agreement that meets the criteria of subparagraph 5(a) above. (Oral agreements must be subsequently committed to writing by the DOD representative who enters into the agreement.)

6. Negotiation. Communication of a position or an offer on behalf of the United States, the Department of Defense, or DOD representative to a foreign government representative (agency, instrumentality, or political subdivision) or to an international organization in such detail that, if accepted in substance, would result in an international agreement. The term "negotiation" includes any such communication conditional upon later approval by higher authority, but excludes preliminary and exploratory discussions or routine meetings conducted with the understanding that the views communicated are not binding on any side. The term "negotiation" also includes provision of a draft agreement or other document, the acceptance of which would constitute an agreement.

7. Conclusion. The act of signing, initialing, responding, or otherwise indicating the acceptance of an international agreement, as then negotiated, by the United States.

8. Rationalization

a. The overall concept that includes such measures as:

(1) Consolidating support activities.

(2) Mutual cooperation and support.

(3) Restructuring of forces.

(4) Specializing appropriate defense tasks.

(5) Standardization.

b. In telecommunications, rationalization includes mutual support actions; e.g., interconnections, joint operation, collocation, consolidation, or integration of the separate NATO and NATO member strategic and tactical telecommunications subsystems and systems.

9. Equivalent Interface Level. For Automatic Digital Network (AUTODIN) agreements, the concept of equivalent interface level is the interface of gateways to national networks at the AUTODIN Switching Center (ASC) level, the interface of local area networks, special purpose networks and multi-user terminals at the service concentrator or ASC levels, and the interface of single-user terminals at any level.

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