SECNAV INSTRUCTION 5710.32

From: Secretary of the Navy

Subj: INTERNATIONAL AGREEMENTS AND ARRANGEMENTS

Ref: (a) DoD Directive 5530.3 of 11 June 1987
    (b) DIA Directive 2000.200 of 3 July 2014
    (c) DoD Instruction 5000.02 of 26 November 2013
    (d) Defense Acquisition Guidebook of 26 February 2017
    (e) SECNAV M-5210.1
    (f) Federal Acquisition Regulation of 06 May 2019
    (g) 10 U.S.C.
    (h) 22 U.S.C.
    (j) 22 U.S.C. §§2751 et seq.
    (k) SECNAV Memo, Loans and Gifts for Cooperative Research and Development – Section 65, Arms Export Control Act of 23 May 95 (NOTAL)
    (l) DEPSECDEF Memo, Loans and Gifts for Cooperative Research and Development – Section 65, Arms Export Control Act of 27 November 1990
    (m) National Disclosure Policy (NOTAL)
    (n) DoD 7000.14-R, Department of Defense Financial Management Regulation of 1 May 2019
    (o) 1 U.S.C Chapter §§112-112a
    (p) SECNAVINST 5000.34F
    (q) SECNAV M-5214.1

Encl: (1) Definitions
      (2) Department of the Navy Responsibilities
      (3) Delegation of Authority
      (4) Additional Requirements for Certain Agreements and Arrangements
      (5) Procedures for International Acquisition Agreements
      (6) Procedures for Intelligence Agreements and Arrangements (To Include Sharing)

1. Purpose. To establish Department of the Navy (DON) policy, responsibilities, and procedures for legally binding international agreements and non-legally binding international
arrangements with foreign governments or international organizations, per references (a) through (q).

2. **Cancellation.** SECNAVINST 5710.25B.

3. **Applicability.** This instruction is applicable to all DON organizations and personnel involved in the development, negotiation, conclusion, implementation, amendment, extension, and termination of international agreements and arrangements as defined in enclosure (1). This instruction does not apply to international agreements and arrangements concerning operational command of joint forces or other multi-Service matters under the cognizance of the Chairman of the Joint Chiefs of Staff or the Combatant Commanders or those exempt from definition of international agreements and arrangements as described in enclosure (1).

4. **Policy**

   a. It is DON policy to ensure DON’s international agreement and arrangement efforts comply fully with Department of Defense (DoD) policy, and that any formalized agreement that seeks to commit the DON either in resources, actions, or reciprocity is appropriately coordinated and approved at the appropriate level within the DON. Accordingly, DON organizations and personnel may not take any actions that our allies and partners could interpret as a negotiation of or commitment to any international agreement or arrangement subject to the provisions of reference (b) without first securing the necessary approval. All international arrangements, as defined in enclosure (1), will be forwarded to Deputy Under Secretary of the Navy (DUSN) for archiving in a central database. All international agreements, as defined in enclosure (1), will continue to be archived in a separate repository maintained by the Office of the Judge Advocate General (OJAG).

   b. All international agreements and arrangements made on the DON’s behalf will be consistent with DoD and DON policy.

5. **Responsibilities.** See enclosure (2).

6. **Delegation of Authority.** See enclosure (3).
7. **Procedures.** All requests within the DON for authority to negotiate and conclude international agreements as defined in enclosure (1), based on the roles and responsibilities as defined in enclosure (2), must obtain written concurrence from all designated DON organizations in accordance with enclosure (3) before requesting approval from non-DON components (e.g., the Office of the Secretary of Defense (OSD) or Combatant Commands (CCMDs)). When requesting authority to negotiate and conclude international agreements and arrangements, DON organizations and personnel shall strictly adhere to instructions in enclosure (4) when applicable and the following procedures:

   a. For authority to negotiate and conclude proposed international agreements, submit for approval the following requirements to all appropriate DON organizations and components:

      (1) A written request and justification for authority to negotiate and conclude a proposed international agreement. This justification should include the substantive and procedural legal authority to conduct the proposed activity and the fiscal enabler to do so.

      (2) A draft text of the proposed international agreement.

      (3) A legal memorandum from the DON Office of General Counsel (OGC) or the OJAG, depending on the type of agreement, stating the constitutional, statutory, or other legal authority for each proposed obligation that the United States would assume in the agreement; an explanation of other relevant legal considerations; and legal concurrence for authority to negotiate and conclude such agreement.

      (4) A policy memorandum from the DUSN providing concurrence on all policy-significant international agreements not governed by references (c) or (d).

      (5) When the expenditure of funds is involved, a fiscal memorandum, from the office of the appropriate Comptroller, stating the estimated cost of each proposed obligation the DON would assume in the agreement, the source of funds to be
obligated, and references to foreign currency payment provisions.

b. At the very outset of any discussion that could lead to an international agreement with foreign countries or international organizations, DON organizations and personnel must coordinate with foreign disclosure officers and, as necessary, organizations with delegated responsibilities for international agreements, in order to avoid giving a false or misleading impression of the DON’s willingness and authority to enter into a potential international agreement.

c. To negotiate and conclude amendments and extensions of international agreements, DON organizations and personnel must also receive prior written authorization in accordance with enclosures (3) and (4).

d. The above-stated requirements of this paragraph do not apply to all international acquisition agreements or to all international intelligence agreements or arrangements. For any international acquisition agreement, which follows regulations in references (b), (c), or (d) the process is as dictated in enclosure (5). For international intelligence agreements and arrangements, which are governed by the regulations in reference (b) the process is as dictated in enclosure (6). For all new international acquisition agreements or international intelligence agreements, the lead DON agency or organization will provide a copy to DUSN for information purposes only as some agreements rise to the level of the Under Secretary of Defense for Policy (USD (P)) and it needs to be provided to the DON equivalent for review.

8. Reporting Requirements

a. All DON organizations shall provide OJAG, Code 10 with all concluded, renewed, or terminated international agreements, by means of original or certified copies (or both), no later than 10 calendar days after signature of the agreement. OJAG will then submit copies to those agreements to other agencies, as appropriate. (All international intelligence agreements/arrangements shall be submitted, as appropriate, to the Defense Intelligence Agency (DIA), National Geospatial-Intelligence Agency (NGA), or National Security Agency (NSA) no later than 10 calendar days after signature of the agreement.)
b. In accordance with reference (a) and applicable policy and procedures, OJAG shall transmit the text of any international agreement (with the exception of intelligence agreements) directly to the Department of State’s Assistant Legal Adviser for Treaty Affairs and to the DoD OGC, not later than 20 days after the agreement enters into force or effect.

c. All DON organizations shall provide DUSN with all concluded, renewed, or terminated international arrangements by means of a certified copy into a central database no later than 15 days after signature of the arrangement.

9. Records Management

a. Records created as a result of this instruction, regardless of format or media, must be maintained and dispositioned according to the records disposition schedules found on the Directives and Records Management Division (DRMD) portal page: https://portal.secnav.navy.mil/orgs/DUSNM/DONAA/DRM/SitePages/Home.aspx.

b. For questions concerning the management of records related to this instruction or the records disposition schedules, please contact your local Records Manager or the DRMD program office.

10. Reports. The reporting requirements contained in paragraph 8, enclosure (5), paragraphs 7 and 8, and enclosure (6) paragraph 3 are exempt from information collection control, per reference (q), Part IV, paragraphs 7i and 7n.

THOMAS B. MODLY
Under Secretary of the Navy

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DEFINITIONS

1. Conclusion. The act of signing, initialing, responding, or otherwise indicating the acceptance of an international agreement or arrangement by the United States.

2. Exploratory Discussions. Preliminary or routine meetings with a foreign government to determine the desire, willingness, or feasibility of establishing a new (or significantly modifying an existing) bilateral or multilateral relationship, and where the parties do not discuss draft documents, so long as the discussion or meeting is conducted with the understanding that the views communicated do not and shall not bind or commit any side legally or otherwise.

3. International Agreement. Any agreement concluded with one or more foreign governments (including their agencies, instrumentalities, or political subdivisions) or with an international organization that:

   a. Is signed or agreed to by personnel of any DON Component;

   b. Signifies the intention of its parties to be bound under international law;

   c. Is identified or titled as an international agreement or as a memorandum of understanding, memorandum of agreement, memorandum of arrangements, exchange of notes, exchange of letters, technical arrangement, protocol, note verbal, aide memoire, agreed minute, contract, arrangement, statement of intent, letter of intent, statement of understanding, or any other name connoting a similar legal consequence.

   (1) The identification or title is not, in and of itself, dispositive of whether a document is an international agreement

   (2) Any oral agreement by personnel of any DON Component that meets the criteria of this definition is an international agreement. Although international agreements may be concluded verbally or in writing, the DON representative who enters into an oral international arrangement must reduce the agreement to writing.
d. The following are not considered to constitute international agreements for the purposes of this instruction:

(1) Contracts made under reference (f);
(2) Foreign Military Sales Credit Agreements;
(3) Foreign Military Sales Letters of Offer and Acceptance (LOA);
(4) Standardization Agreements (STANAG), including Quadripartite Standardization Agreements, Air Standardization Coordination Committee, Air Standards, and Naval Standardization Agreements, that record the adoption of like or similar military equipment, ammunition, supplies, and stores or operational, logistic, and administrative procedures. However, a STANAG 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 to constitute an international agreement;
(5) Leases under Section 2667 and 2675 of reference (g) and Section 2796 of reference (h);
(6) Agreements solely to establish administrative procedures;
(7) Acquisitions or orders pursuant to cross-servicing agreements made under the authority of Section 2321 of reference (d) and (i). However, umbrella agreements, implementing arrangements, and cross-servicing agreements under the Section 2321 of reference (j) are international agreements;
(8) Research, Development, Test and Evaluation Information Exchange Annexes under Master Information Exchange Agreements;
(9) Statements of Intent, Statements of Principle, and similar documents setting out aspirations and goals without the intent and requisite language to be bound under international law; and
(10) Working group terms of reference and other implementing arrangements under international agreements that are procedural in nature.

4. **International Arrangement.** Per reference (b), “Any arrangement signed or agreed to by personnel representing the DON with a foreign government entity that is not legally binding but conveys intent, standardizes relationships, or could be interpreted as U.S. policy or official position, except in the case of international intelligence arrangements:”

   a. In the case of international intelligence arrangements, use of the term, “International Arrangements”, in this instruction will have the same meaning as the definition of that term in reference (b); and

   b. Any oral understanding that meets the criteria of this definition is an “international arrangement” for purposes of this Instruction. The DON representative who enters into an oral “International Arrangement” must reduce the arrangement to writing.

5. **International Acquisition Agreements.** Agreements concerning the research, development, and acquisition process and governed by references (c) and (d).

6. **Military Intelligence.** The collection, analysis, production, and dissemination of information relating to any foreign military or military-related situation or activity that is significant to military policy-making or the planning and conduct of military operations and activities.

7. **Negotiation.** Communication by any means of a position or an offer, on behalf of the United States, DoD, DON, 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 international organization, in such detail that the acceptance in substance of such position or offer would result in an international agreement or intelligence arrangement. The term “negotiation” includes any such communication even though conditioned on later approval by the responsible authority. The term “negotiation” also includes the act of providing a draft agreement or other document, the acceptance of which would constitute an agreement, as well as
any discussion concerning a U.S. or foreign government or international organization draft document. The term “negotiation” does not include preliminary or exploratory discussions or routine meetings where no draft documents are discussed, so long as such discussions or meetings are conducted with the understanding that the views communicated do not and shall not bind or commit any side, legally or otherwise.

8. **Policy Significant.** Agreements that:
   
   a. Specify national disclosure, technology-sharing or work-sharing arrangements, co-production of military equipment or offset commitments as part of an agreement for international cooperation in the research, development, test, evaluation, or production of defense articles, services, or technology.
   
   b. Because of their intrinsic importance or sensitivity, would directly and significantly affect foreign or defense relations between the United States and another government.
   
   c. By their nature, would require approval, negotiation or signature at the OSD or the diplomatic level.
   
   d. Would create security commitments currently not assumed by the United States in existing mutual security or other defense agreements and arrangements, or that would increase U.S. obligations with respect to the defense of a foreign government or area.
   
   e. This is not inclusive of all types of agreements having policy significance. Other identifying criteria or categories of such agreements may be published by the Under Secretary of the Navy (UNSECNAV) via the DUSN if required by future developments.
   
   f. For purposes of this Instruction, “policy-significant” does not include international acquisition agreements or arrangements for which the Assistant Secretary of the Navy (Research, Development and Acquisition) (ASN (RD&A)) and the Deputy Assistant Secretary of the Navy (International Programs) (DASN (IP)) are responsible.
DEPARTMENT OF THE NAVY RESPONSIBILITIES

1. UNSECNAV

   a. The UNSECNAV is responsible for the oversight, management, and compliance of DON International Agreements and Arrangements.

   b. The DUSN is designated as the Senior Official in the DON for International Agreements and Arrangements not governed by references (c) and (d). In this role, the DUSN, under the direction and consent of the UNSECNAV, shall:

      (1) Provide policy oversight and guidance to the Chief of Naval Operations (CNO), the Commandant of the Marine Corps (CMC), and all other DON organizations for all requests to negotiate, conclude, modify, renew, or terminate any international agreements that possess “policy significance” (see enclosure (4)) and serve as the conduit to the Office of the Secretary of Defense for Policy for the DON;

      (2) Develop the requirements for and maintain a system of records for all international arrangements as defined in enclosure (1); and

      (3) Review and provide policy recommendations for all international agreements and arrangements involving intelligence and related matters as set forth in enclosure (6).

2. OJAG. The OJAG shall provide legal support and guidance to CNO, CMC, and all other DON organizations for all requests to negotiate, conclude, modify, extend, or terminate any international agreement or arrangement not within the cognizance of the OGC and based on the policy and procedures outlined in reference (a). Pursuant to reference (k), OJAG will also act as the DON central office of record for all international agreements and conduct Case Act notifications for all DON international agreements.

3. OGC. The DON OGC will provide required legal support to the ASN (RD&A), the Navy International Programs Office (NIPO), and all other DON activities for all requests to negotiate, conclude, amend, extend, or terminate any international acquisition agreement. GC, through DON OGC, will provide other
legal support on matters within the cognizance of the GC. GC will maintain a close working relationship with the OJAG and Staff Judge Advocate to the CMC (SJA to CMC) on matters of common interest, including arrangements related to litigation. This responsibility will not infringe on the OJAG’s primary responsibility for International and Operational Law matters.

4. **SJA to CMC.** The SJA to CMC through the Judge Advocate Division (JAD) shall provide required legal support to CMC and all other Marine Corps activities for all requests to negotiate, conclude, modify, extend, or terminate any international agreement delegated to the CMC pursuant to enclosure (3) and based on the policy and procedures outlined in this instruction and reference (a). JAD will forward Marine Corps re-delegation of authority correspondence and international agreements/arrangements to OJAG as directed in this instruction.

5. **Assistant Secretary of the Navy (Financial Management and Comptroller) (ASN (FM&C)).** The ASN (FM&C) will provide fiscal review and guidance to CNO, CMC, ASN (RD&A), and all other DON organizations concerning financial matters for all international agreements, as set forth in this instruction, enclosure (5), and references (a), (c), and (d).

6. **ASN (RD&A).** For international acquisition agreements in the areas enumerated below, ASN (RD&A) will exercise the authority to negotiate, conclude, and implement such agreements as delegated by the Office of the Under Secretary of Defense for Acquisition and Sustainment (OUSD (A&S)) to the Secretary of the Navy (SECNAV) or to ASN (RD&A) pursuant to or in accordance with references (a), (b), and (c). ASN (RD&A) is granted authority to use summary or streamlined procedures, as appropriate, in accordance with references (a), (b), and (c). These authorities may be re-delegated by ASN (RD&A):

   a. Responsibilities concerning these authorities are as follows:

   (1) Review and approve, or forward to the appropriate approval authority requests to negotiate and conclude the following types of international acquisition agreements in accordance with applicable policy and procedures;
(2) Cooperative research, development, production, or follow-on support;

(3) Cooperative data exchange agreements (including acquisition-related data exchange agreements and master research and development information exchange agreements);

(4) Engineering and Scientist Exchange Program agreements;

(5) Cooperative research and development loans and gifts under Section 65 of reference (j);

(6) Cooperative test and evaluation;

(7) Cooperative agreements for reciprocal use of test facilities;

(8) Security assistance agreements (which term does not include Foreign Military Sales LOA);

(9) Security of technology and classified information agreements; and

(10) All other acquisition-related international agreements.

b. Conclude the types of acquisition agreements cited immediately above in paragraph (1) on behalf of DoD when authority to conclude such agreements has been granted by higher authority. Any such authority to conclude an international agreement may be re-delegated. All further delegations must be in writing.

7. DASN (IP). The DASN (IP), acting as Director for NIPO, will have the following responsibilities:

a. Review and approve disclosure guidance, as appropriate, for any DON international agreement that involves technology transfer and foreign disclosure issues.

b. Exercise the authority to negotiate, conclude, and implement international acquisition agreements as delegated by
c. Exercise the authority to make, accept, and administer cooperative research and development loan and gift agreements as delegated by the Deputy Secretary of Defense to SECNAV in reference (j) and re-delegated by SECNAV to the Director, NIPO in reference (l).

d. Upon appropriate re-delegation of authority from ASN (RD&A), negotiate, conclude, and implement international acquisition agreements.

e. Develop policy for the review, coordination, negotiation, and implementation of international acquisition agreements in accordance with references (a), (c), and (d), as applicable, as well as with applicable law, regulations, directives, and policies.

f. Ensure proposed requests to negotiate and conclude international acquisition agreements are reviewed and approved in accordance with enclosure (5).

g. In conjunction with the Systems Commands (SYSCOMs), Program Executive Officers (PEOs), Direct Reporting Program Managers (DRPMs) and Office of Naval Research (ONR), develop and coordinate requests to negotiate and conclude international acquisition agreements, and review and approve, or forward to the appropriate approval authority, in accordance with the policies and procedures set forth in enclosure (2) and (3), and references (a), (c), and (d), as applicable.

h. Provide OJAG all concluded international acquisition agreements within 10 days after the agreement is signed.
DELEGATION OF AUTHORITY

Per reference (a), the Secretary of Defense (SECDEF) has delegated to the SECNAV the authority to negotiate and conclude, or approve the negotiation and conclusion of, the following categories of international agreements involving predominantly DON matters listed below:

1. CNO and CMC. Authority to negotiate and conclude international agreements, delegated to SECNAV by reference (a), is delegated to the CNO and CMC for matters under their respective cognizance, in accordance with the policy and procedures set forth in this instruction, in the following categories:

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

   b. Cooperative or Reciprocal Support Agreements: Cooperative or reciprocal operational, logistical, training, or other military support, including logistic support arrangements under Section 8627 of reference (g), and arrangements for shared use or licensing of military equipment, facilities, services, and non-physical resources.

   c. 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 effected pursuant to Section 2114 of reference (g) (agreements with foreign military medical schools for reciprocal education programs) and section 347 of reference (g) (agreements for exchanges with foreign military academies), and liaison programs.

   d. Military Information Agreements: Collection or exchange of military information and technical data other than military intelligence (excluding acquisition-related Data Exchange Agreements/Information Exchange Agreements).
e. Health and Medical Agreements: Health and medical matters, including cooperative research, development, testing, evaluation, technical data exchange, and related STANAG.

f. Communications Agreements: Sharing or exchange of DoD communications equipment, facilities, support, services, or other communication resources with a foreign country or alliance organization, and the use of U.S. communications facilities and/or systems by foreign organizations, whether oversees or in the continental United States.

2. ASN (RD&A). Authority to negotiate and conclude international agreements, delegated to SECNAV by references (a) and (c), and is delegated to the ASN (RD&A) for agreements concerning the research, development, and acquisition process, in accordance with the policy and procedures set forth in this instruction, as applicable to international acquisition agreements, in the following categories:

   a. Cooperative research, development, production, or follow-on support;

   b. Cooperative data exchange agreements (including acquisition-related data exchange agreements and master research and development information exchange agreements);

   c. Engineering and Scientist Exchange Program agreements;

   d. Cooperative research and development loans and gifts under section 2796d of reference (j);

   e. Cooperative test and evaluation;

   f. Cooperative agreements for reciprocal use of test facilities;

   g. Security assistance agreements (excluding Foreign Military Sales LOA);

   h. Security of technology and classified information agreements; and

   i. All additional acquisition-related agreements under the criteria contained in references (a), (c), and (d).
3. **Re-delegation of Authority.** Authority delegated in this instruction may be re-delegated to subordinate commanders or authorized representatives. Re-delegations of authority to such officials must be in writing and must clearly reflect whether such officials may further delegate that authority to other officials. However, re-delegation does not relieve the re-delegating commander or official of the final responsibility for compliance with this instruction or DoD policy. Re-delegating commanders or officials must send copies of all directives, messages, or correspondence re-delegating authority or otherwise implementing this instruction to the OJAG Code 10 (National Security Law – International Programs). (Exception: Staff actions (e.g., “for the commander”) are not considered re-delegations.)
ADDITIONAL REQUIREMENTS FOR CERTAIN AGREEMENTS AND ARRANGEMENTS

1. Policy-Significant Agreements

   a. For agreements not governed by references (c) and (d), that involve “policy significance,” any DON representative or authorized designee must obtain concurrence from the DUSN and either the DON OGC, OJAG, or JAD (depending on the type of agreement) prior to seeking approval by the USD (P) to negotiate or conclude policy-significant international agreements. The term “policy significance” is to be broadly interpreted and includes, but is not limited to, agreements that would:

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

   (2) Directly and significantly affect, impact, or alter foreign or defense relations between the United States and another government or international organization because of their intrinsic importance or sensitivity;

   (3) Directly and significantly affect, impact, or alter the security or defense commitments or assurances currently assumed or supported by the United States;

   (4) Create additional security commitments not currently assumed by the United States in existing mutual security or other defense agreements, or which would increase U.S. obligations with respect to the defense of a foreign government or area;

   (5) Raise unusual, uncommon, or novel legal questions, or would establish important new legal precedents, as determined by the GC, JAG, and/or JAD; and

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

   b. In the event of uncertainty as to the applicability of this definition to a specific issue or agreement, DON elements should seek guidance from the supported CCMD legal advisor or,
in the absence of such a legal advisor, the DON GC, JAG, or JAD. However, any agreement provision related to any of the following subjects should be regarded as presumptively policy significant:

1. Provisions that would relinquish existing U.S. rights or incur a new type of U.S. obligation and/or liability (this does not include an obligation to pay for goods or services procured in accordance with existing legal authorities) or that would make significant changes in logistic support for U.S. forces, including base adjustments.

2. Provisions that would subject U.S. forces to any type of foreign environmental regulation or requirements (distinguished from a commitment to comply with existing DoD and DON policies related to environmental stewardship).

3. Provisions that would impose a new obligation on the United States to respect or obey foreign law.

4. Provisions that would compromise the ability of U.S. forces to comply with all applicable force protection and security directives, regulations, and policies, for example, by limiting the ability of U.S. forces to carry weapons or ammunition.

5. Provisions that create, modify, restrict, or terminate permanent basing arrangements for U.S. forces in any country.

6. Provisions that create, modify, or terminate rights or obligations under a Status of Forces Agreement (SOFA) or address issues normally addressed in a SOFA-type arrangement, including, but not limited to:
   
   a. Foreign criminal procedures and jurisdiction;
   
   b. Immigration procedures;
   
   c. Customs fees or inspections;
   
   d. Freedom of movement within a country, including its air space or its territorial waters;
   
   e. Foreign claims;
(f) Environmental issues;

(g) Foreign taxes;

(h) Licensing of U.S. forces personnel; and

(i) Foreign governmental fees, other than for services requested by the United States and actually received.

(7) However, if the provisions merely incorporate existing SOFA provisions, or if the agreement is a renewal of an existing agreement without substantive change, it is not considered presumptively “policy significant.” As a practical matter, when agreements are written to incorporate SOFA provisions, they should be written in such a way to reference the actual SOFA, rather than independently restating SOFA provisions, in case the SOFA provisions are amended during the life of the agreement.

(8) Provisions imposing new obligations related to the payment of foreign taxes or granting immunity from foreign taxes.

(9) Provisions inconsistent with any existing policy of the DoD or the applicable CCMD.

(10) Provisions that address in any fashion the jurisdiction of the International Criminal Court or any similar international tribunal vis-à-vis U.S. forces.

c. The examples above do not represent an all-inclusive description of agreements/arrangements that have policy significance. The DUSN and the appropriate legal office may identify other criteria or categories of these agreements, as applicable. In instances when it is unclear whether an international agreement has policy significance, then the DON representative shall send the proposed agreement to the Office of the DUSN for determination.

2. Intelligence Agreements and Arrangements (to include sharing)
a. International agreements and arrangements concerning intelligence and related matters must obtain concurrence from the UNSECNAV via DUSN and OJAG National Security Law Division – International Programs Department (Code 10) or JAD for Marine Corps intelligence agreements prior to final approval by the Director, DIA, as set forth in reference (h) and (m), for the negotiation and conclusion of agreements/arrangements involving the collection and exchange of intelligence information. (Exceptions: The negotiation and conclusion of SIGINT agreements require final approval by the Director, NSA; similarly, the negotiation and conclusion of imagery intelligence and geospatial intelligence agreements require final approval by the Director, NGA. (For procedures for Intelligence Agreements and Arrangements (including Sharing), see enclosure (6)).

b. International intelligence agreements and arrangements will be pursued only when relationships demonstrably support U.S. national security interests and foreign policy goals and objectives, and provide a clear and identifiable benefit to the United States.

c. International intelligence agreements or arrangements having or likely to have a significant impact on the plans or programs of a geographic or functional CCMD must be coordinated with the affected command.

d. No international intelligence agreement or arrangement having significant defense policy implications will be negotiated or concluded without the prior approval of the Under Secretaries of Defense for Intelligence and USD (P) (Director, DIA is responsible for coordinating this approval). Agreements and arrangements having significant defense policy implications include, but are not limited to, those agreements and arrangements that would:

(1) Significantly affect, impact, or alter the foreign or defense relationships between the United States and another foreign government or international organization;

(2) Significantly affect, impact, or alter the security or defense commitments or assurances currently assumed or supported by the United States;
(3) Would raise unusual, uncommon, or novel legal questions or would establish important new legal precedents, as determined by the DIA OGC; and

(4) By their nature, would require approval or conclusion by the SECDEF.

3. Additional Agreements. The authorities delegated in this instruction do not apply to the request for approval to negotiate and conclude the following international agreements:

   a. Agreements not governed by references (c) and (g) that would rely on the authority of section 2304 of reference (e) for the use of other-than-competitive contracting procedures. Negotiation and conclusion of such agreements require prior approval of the OUSD (A&S).

   b. Agreements or arrangements that require new legislative authority for implementation must obtain prior approval from the DoD OGC before negotiating or concluding such agreements.

   c. Agreements or arrangements, not governed by reference (c) and (m) that involve or are likely to involve the release of classified military information (other than military intelligence), classified technology, or other classified material require review and approval by the sponsoring organization’s Designated Disclosure Authority, as defined by reference (d). If the international agreement or arrangement involves the disclosure of information that exceeds the sponsoring organization’s delegated disclosure authority, then the NIPO must provide the disclosure authorization. If required, the NIPO shall submit all necessary requests for exceptions to the reference (d) to the National Disclosure Policy Committee (NDPC).

   d. Agreements or arrangements that involve or are likely to involve the sharing of classified military intelligence require review by the sponsoring organization’s Designated Disclosure Authority, as defined by reference (m). The Deputy Director of Naval Intelligence shall submit all necessary requests for exceptions to National Disclosure Policy to the Military Intelligence Disclosure Policy Committee.
e. Agreements involving security assistance programs must obtain prior approval of the Defense Security Cooperation Agency before negotiating and concluding such agreements.

f. Agreements related to on-base financial institutions (e.g., military banking facilities and credit unions) and international financial agreements requiring coordination with the Treasury Department under reference (n). The negotiation and conclusion of such agreements require the prior approval of the Under Secretary of Defense (Comptroller).
1. **Introduction**

   a. An international agreement is required to engage in a cooperative acquisition-related activity (also referenced herein as a “project”) involving the United States and foreign governments. DON acquisition organizations shall consult with the NIPO to ascertain whether any of the types of international acquisition agreements listed in enclosure (3) must be used for a proposed project effort, prior to the development of international agreements for that effort.

   b. The necessity for a properly authorized international acquisition agreement may be indicated in circumstances including, but not limited to, the following activities involving foreign government and U.S. Government cooperative partners:

      (1) The provision or exchange of scientific or technical information by the partners;

      (2) The generation of scientific or technical information (either independently or jointly by the partners or by a partner’s contractor);

      (3) Management and oversight by partner representatives of cooperative work efforts; and

      (4) Commitment of partner resources (for example, work by government personnel, work performed under contracts issued by a partner, a partner’s use of its or another partner’s facilities, the provision or loan of equipment or material by one partner to another, and funding from the partners for the cooperative effort).

   c. The need for an international acquisition agreement would also be indicated in circumstances in which government funds are provided by one partner to another for purposes of contracting or entering into other obligations in furtherance of the cooperative effort. If there is any uncertainty about the need for an international acquisition agreement for cooperative acquisition-related activities with foreign governments, the first step must be to contact NIPO for clarification, to ensure
compliance with law, regulation, and policy for international agreements.

2. Delegation of Authority

   a. Pursuant to reference (c), the OUSD (A&S) (International Cooperation (IC)) sets forth, in reference (d), “streamlined agreements procedures” for the staffing and granting of authority for the negotiation and conclusion of international acquisition agreements. The authority granted by OUSD (A&S) to ASN(RDA) or DASN (IP) to negotiate or conclude international agreements may be exercised by ASN(RDA) or DASN (IP), as applicable.

   b. Per reference (l), the SECNAV has the authority to make, accept, and administer agreements for no-cost, cooperative research and development loans of materials, supplies, or equipment from the DoD to countries that are North Atlantic Treaty Organization (NATO) allies or major non-NATO allies, as well as no-cost loans or gifts of material, supplies, or equipment from such countries to the DoD, in accordance with Section 65 of reference (j). SECNAV re-delegated this authority to the DASN (IP) in reference (k).

3. Procedures for Cooperative Project Initiation

   a. Project Formulation

      (1) The first step in developing a new cooperative project is to consult with NIPO. The purpose of consultation is to focus primarily on the following: the potential project’s proposed objectives and scope of work; the project schedule; the availability of DoD/DON funding to meet anticipated obligations; the determination of which approved requirements the project is designed to fulfill; and the determination of the interest of partner nation(s) in the proposed effort.

      (2) In general, one or more rounds of technical discussions between DON program personnel and foreign representatives may be necessary to further explore intentions and technical details for a cooperative project, to include ascertaining the existence of common project objectives, common operational or technology-based requirements, the ability to harmonize acquisition program and budgeting requirements, and
mutual interest in and commitment to a prospective project. Depending on the nature of the proposed project, NIPO personnel may attend technical discussions to assist the project originators with formulating the basic concepts for the cooperative project, including, but not limited to, the scope of work, management structure, and cost-sharing.

b. Guidance for Project Technical Discussions. During consultation, NIPO will advise on how to conduct any technical discussions with foreign representatives to assist with the project formulation. In general, DON personnel will observe the following guidance:

(1) Inform foreign representatives that participation in such discussions in no way implies an intention or obligation on the part of DoD/DON to enter into an international agreement.

(2) Do not discuss any draft international agreement or any document that contains text that may become part of an international agreement.

(3) Unless specifically delegated, ensure that no classified information is disclosed to foreign nationals without NIPO’s prior approval. If the classification of information to be disclosed exceeds the country classification levels established by Annex A of reference (o), an exception to policy must be approved by the NDPC prior to transfer. Requests for exceptions must be sent to NIPO.

c. Summary Statement of Intent (SSOI) Development. Upon completion of technical discussions, the project originator will prepare an SSOI in the format provided by NIPO, which will contain a clear, concise project summary that provides sufficient justification to obtain Request for Authority to Develop and Negotiate (RAD) approval.

d. Project Endorsement. Upon completion of the SSOI, the project originator must obtain written Flag Officer/Senior Executive Service/Commanding Officer/Program Manager level project endorsement from the cognizant organization (SYSCOM, PEO, DRPM, or ONR). A memorandum from the cognizant organization that forwards the SSOI to NIPO for DON RAD staffing will constitute endorsement of the project.
4. RAD and Negotiate the International Agreement

   a. RAD Staffing and Review. Upon receipt of the SSOI forwarded by the cognizant organization for the project for DON RAD staffing, NIPO will staff the SSOI for concurrence, to include the project originator, the acquisition/resource sponsor(s), Counsel, NIPO, the appropriate DASN (if applicable), CNO/CMC offices, and ASN (FM&C). After completion of this coordination, NIPO will prepare a request to develop and negotiate the international agreement that will be submitted to the approving authority.

   b. Drafting the international agreement. At the outset of the RAD staffing process, NIPO will request that the project originator assist NIPO in preparing the draft international agreement. Such assistance by the project originator will include, but may not be limited to, provision of a detailed description of the project’s objectives, scope of work, management, and financial structure.

   c. RAD Approval. NIPO will obtain RAD approval from OUSD (A&S), ASN (RD&A), or DASN (IP) in accordance with relevant policies in references (a), (c), and (d), and applicable redelegations of authorities.

5. Negotiations. After RAD authority is received, NIPO will transmit the draft international agreement to the foreign participant(s) for review. NIPO will also schedule and conduct negotiations with the foreign participant(s) in the most appropriate manner. Complicated international agreements may require that a U.S. negotiation team (normally composed of a chief negotiator and legal counsel from NIPO and project originator programmatic and/or technical representatives) meet face-to-face with representatives of the foreign participant(s). For less complex international agreements, negotiations may be conducted electronically, without any face-to-face meetings with the proposed partner nation(s). NIPO is the sole authorized negotiating agency for DON international acquisition agreements, and the project originator is not authorized to conduct negotiations, including discussions of tabled international agreement text, without NIPO approval.
6. Staffing Request for Final Authority to Conclude (RFA) the International Agreement

   a. Upon successful completion of negotiations, NIPO will prepare the necessary documents to request final authority to conclude the international agreement. The RFA documents will be distributed for DON coordination. If issues are identified during this staffing process, NIPO and the project originator will coordinate efforts to resolve those issues. Upon receipt of DON concurrences, NIPO will prepare the final version of the RFA documents that will be submitted to the approving authority, OUSD (A&S), in accordance with relevant policies in references (a), (c), and (d).

   b. For international agreements negotiated under the authority of Section 27 of reference (j), NIPO will prepare and forward to OUSD (A&S) (IC) a Section 27 Project Certification, which will be transmitted to Congress. Signature of Section 27 international agreements on behalf of DoD is contingent upon the expiration of the 30-day period following the transmittal of the certification to Congress.

   c. Within 10 days of concluding an acquisition international agreement, NIPO will forward to OJAG four reproducible, certified copies of the agreement. Any officer or U.S. civilian employee authorized by U.S. law to administer oaths or to make acknowledgements may certify the copies to be true copies. The certification will be in the following format and affixed on the title page:

       Certified to be a true copy

       __________________________
       Name      Rank      Service
       Custodian of the original

   OJAG will maintain certified and electronic copies of all Navy acquisition agreements.

7. Implementation and Monitoring of Concluded International Acquisition Agreements. In general, responsibility for implementation of concluded international acquisition agreements rests with the cognizant DON acquisition organization (PEO,
SYSCOM, DRPM, or ONR) cited in the agreement. ASN (RD&A) and NIPO remain responsible, however, for monitoring DON compliance with all international acquisition agreements which remain in force, including DoD and Congressional reporting requirements. In the event an issue arises concerning international agreement compliance that cannot be resolved by the DON implementing organization cited in the agreement, ASN (RD&A) and NIPO should be immediately provided with the facts and circumstances relevant to the issue per reference (a) guidance.

8. **Situational Awareness of International Acquisition Agreements.** NIPO will provide a periodic report of staffing and approval progress for proposed international acquisition agreements. The report will also reflect the signature of international acquisition agreements and information exchange annexes to master international information exchange acquisition agreements. Additionally, NIPO will provide ASN (FM&C) notification of conclusion of international agreements involving the transfer of foreign government funds to DON acquisition activities.
PROCEDURES FOR INTELLIGENCE AGREEMENTS AND ARRANGEMENTS
(TO INCLUDE SHARING)

1. Introduction. The establishment of formal intelligence relationships with traditional and emerging foreign partners is essential to leverage their expertise and capabilities. The establishment of these formal relationships increases our global situational awareness and improves intelligence collection on key topics and countries worldwide. Although many are not legally binding in nature, intelligence agreements and arrangements formalize the relationship, define the relationship’s parameters, and manage the participants’ expectations.

2. Delegation of Authority. Reference (a) delegates authority for international agreements and arrangements in the collection and exchange of military intelligence to the Director of the DIA. Reference (p) delegates authority to the UNSECNAV for the advance approval of any intelligence activity, intelligence-related activity, or Special Access Program that involves bilateral agreements or arrangements with foreign governments or involves the transfer of funds or equipment to or from a foreign government.

3. Procedures for Initiation a Formal Intelligence Relationship

   a. Exploratory Discussions. Before a new intelligence agreement/arrangement can be negotiated and concluded, a request to conduct exploratory discussions with the proposed partner must be generated in accordance with the requirements outlined in reference (b) and submitted to the UNSECNAV via the DUSN and then DIA for approval. Per references (b) and (h), submission to DIA must be accomplished at least 60 days in advance of the desired date to begin discussions. Therefore, submission to UNSECNAV is required at least 75 days in advance of the desired start date. The request should address the parameters of the proposed relationship, the rationale and benefit of entering the relationship, and any associated risks.

   b. Negotiating the Agreement/Arrangement. After the conclusion of successful exploratory discussions, a draft Memorandum of Understanding (MOU) may be written. Once drafted, a request to negotiate and conclude the draft MOU must be submitted to UNSECNAV, via the DUSN and then DIA for approval.
No draft may be passed to or discussed with the partner prior to obtaining DIA approval. UNSECNAV, via the DUSN and DIA must be kept informed of the progress of negotiations. Significant changes to the draft agreement/arrangement may require additional approval from UNSECNAV via the DUSN and DIA prior to concluding the MOU. Request to negotiate and conclude the MOU will include a Legal Memo signed by the OJAG’s National Security Law Division - International Programs Department (Code 10) (or JAD for Marine Corps intelligence matters), and a Fiscal Memo signed by the appropriate Comptroller when the expenditure of funds is involved.

c. Reporting Requirements. Upon conclusion of the agreement/arrangement, an electronic copy will be provided to DIA for their records. An electronic version and a completed Background Statement will also be provided to OJAG Code 10.

d. Routine Renewals of Agreements or Arrangements without Significant Changes. When renewing or extending agreements/arrangements with established partners, and when there are no proposed significant changes to the agreement/arrangement, an Action Memo informing UNSECNAV, via the DUSN, of the intent to renew or extend the agreement/arrangement without modification must be forwarded to UNSECNAV for approval. Approval to extend or renew the MOU must also be requested through DIA. The same reporting requirements identified above will apply to routine renewals and extensions.